# 2004 Compliance Report

## 2004 Report on Compliance with the Hague Abduction Convention

INTRODUCTION:

Parental child abduction is a tragedy. When a child is abducted across international borders, the difficulties are compounded for everyone involved. The Department of State considers international parental child abduction, as well as the welfare and protection of U.S. citizen children taken overseas, to be important, serious matters. We place the highest priority on the welfare of children who have been victimized by international abductions.

For some parents, an important tool in seeking the return from another country of their abducted or wrongfully retained child is the Hague Convention on the Civil Aspects of International Child Abduction (the Convention). The United States was a major force in preparing and negotiating the Convention, which was finalized in 1980 and entered into force for the United States on July 1, 1988. Today, the United States has a treaty relationship under the Convention with fifty-three other countries. The Convention applies to the wrongful removal or retention of a child that occurred on or after the date the Convention came into force between the U.S. and the other country concerned. The date on which the U.S. entered into a treaty relationship with its many Convention partner countries varies and more countries are considering becoming parties to the Convention all the time. The U.S. has actively encouraged countries to accede to the Convention, recognizing its potential effectiveness not just in resolving cases of international parental child abduction, but in deterring future abductions.

As mandated by Section 2803 of Public Law 105-277, (the Foreign Affairs Reform and Restructuring Act of 1998), as amended by Section 202 of Public Law 106-113 (the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act for Fiscal Years 2000 and 2001) and Section 212 of the Foreign Relations Authorization Act for Fiscal Year 2003, the Department of State submits this report on compliance with the Convention by other party countries. Previous such reports were completed in April 1999, September 2000, April 2001 and January 2003. The individual cases covered in Attachment A of the present report remained unresolved as of September 30, 2003.

This report identifies those countries in which implementation of the Convention is incomplete or in which a particular country's judicial or executive authorities fail properly to apply the Convention's requirements, for reasons specific to each country and to varying degrees. The report also discusses unresolved applications for the return of children to the United States that have been filed through the Department of State, which serves as the U.S. Central Authority for the Convention. Under the Convention, return and access applications may also be filed either with the Central Authority of the country in which the child is

located or directly with a properly empowered court in that country. The result is that left-behind parents may (and frequently do) pursue the return of a child under the Convention without involving the U.S. Central Authority. In these circumstances, the U.S. Central Authority may never learn of such applications or their eventual disposition. This report therefore cannot give a complete picture of the outcome of all Convention applications for the return of children to the United States.

The U.S. Central Authority considers a Convention application to be “filed” on the date on which the application is forwarded by the U.S. Central Authority to the appropriate foreign Central Authority, rather than the date of the initial receipt of the application by the U.S. Central Authority. This is because in many cases the U.S. Central Authority must obtain further information and supporting documents from the applicants before the application is considered complete and ready to forward to the foreign Central Authority for processing. When such supplementary information is required, the U.S. Central Authority makes every effort to obtain the needed information expeditiously.

The U.S. Central Authority may open a Convention case based on a parent expressing concern about his/her child abroad, without requiring that a Convention application be filed or complete. The U.S. Central Authority may forward to other Central Authorities incomplete applications, even those lacking critical supporting documents. In such cases the U.S. Central Authority informs applicant parents that, while other Central Authorities are often unable to process an application without complete documentation, the other Central Authority may be able to make limited preliminary inquiries while parents are gathering the required documents. Thus, a Convention case may be “open” even if no application has been “filed.” This further complicates reporting on compliance with the Convention, since an opened case may be resolved without an application ever being filed. The U.S. Central Authority is naturally pleased if an abducted or wrongfully retained child is returned to the U.S. without the need to file an actual application under the Convention.

As has been the practice in previous reports, the Department is reporting as “resolved” cases that are determined by the U.S. Central Authority to be “closed” as Convention cases or that are “inactive.” This is a technical designation, and does not necessarily mean an end to the Department’s support of a left-behind parent’s efforts to resolve a dispute involving an abduction or wrongful retention. As in other countries party to the Convention, the U.S. Central Authority closes or inactivates Convention cases for a variety of reasons. These include: return of the child; parental reconciliation or agreement; a parent's withdrawal of the request for assistance; inability to contact the requesting parent after numerous attempts over a two-year period; exhaustion of all judicial remedies available under the Convention; the child attaining 16 years of age; or (in appropriate cases) the granting and effective enforcement of access rights. In all such cases, regardless of the outcome, no further proceedings pursuant to the Convention are anticipated. Treating these cases as “resolved” and closing them as Convention cases is consistent with the practice of other Convention party countries. More specifically, we will close a Convention case if the circumstances definitively require it, such as the return of a child or upon the specific request of the applicant parent. We will “inactivate” a case when, in the absence of such definitive circumstances, the facts of the case do not allow, or the applicant parent does not permit, a further reasonable pursuit of the case. Two years after inactivation, and in the absence of additional relevant requests for assistance by the left-behind parent, the case will be closed.

The exhaustion of all judicial remedies available under the Convention may result in a case that is "closed" but that has been resolved in a way that is unsatisfactory to the applicant parent and the U.S. Central Authority. Independent of whether the left-behind parent is satisfied with the result of an application for a child's return, the judicial and/or administrative authorities in the country to which a child was abducted or in which a child was wrongfully retained may or may not have applied the Convention correctly. Even when a case for the return of a child under the Convention has been closed, however, the U.S. Central Authority stands ready to provide assistance to the left-behind parent by helping to facilitate access to a child (which may be sought under or independently of the Convention), reporting on the welfare of the child, or assisting the parent to achieve a more satisfactory solution. When a foreign court decision on the Convention aspects of a case indicates a misunderstanding of or failure properly to apply the Convention's terms, the U.S. Department of State may register its concern and dissatisfaction with the decision through the foreign Central Authority and/or through diplomatic channels. The same is true in circumstances involving the failure by administrative or other executive officials effectively to enforce court or other relevant orders arising out of applications under the Convention. The Secretary of State, other senior Department officials and U.S. Ambassadors and Consuls have repeatedly raised international parental child abduction issues and specific cases with appropriate foreign government officials.

Annexed to this report as Attachment A is a list by country of the cases submitted pursuant to the Convention that remained unresolved for more than 18 months as of September 30, 2003. Specific details that might identify the parties to a case or relevant others, have been removed to protect the privacy of the child and the applicant parent.

This report identifies specific countries and individual cases in which countries party to the Convention have not complied with its terms or in which the result for applicant parents in the United States has been inconsistent with the purposes and objectives of the Convention. The U.S. Department of State continues to take steps to promote better information sharing and more consistent practices among countries party to the Convention. The Department works in close cooperation with the Hague Permanent Bureau on judicial education issues and the formulation of Best Practices guides for states party to the Convention. In coordination with the Hague Permanent Bureau, the United States and Germany co-sponsored an October 2003 judicial training conference on Convention enforcement issues for judges and Central Authority officials from the U.S., Canada, Israel, and a number of European countries.

Supplementing the treatment of matters relating to applications for the return of children under the Convention, Attachment B of this year's report provides a discussion of several key issues relating to parental access to children as they relate to our Convention partner countries. While the Convention does not treat in depth many of the questions surrounding access, the Department of State recognizes the critical importance of children having meaningful access to both parents.

**Reporting Period**:

This report covers the period from October 1, 2002 to September 30, 2003. The information provided herein is that available to the U.S. Central Authority within these dates. In some instances, updates are provided to include developments subsequent to September 30, 2003.

**RESPONSE TO SECTION 2803 (a)**:

**Section 2803(a)(1)**of Public Law 105-277, as amended, requires that we report "the number of applications for the return of children submitted by applicants in the United States to the Central Authority for the United States that remain unresolved more than 18 months after the date of filing."

Taking into account the above clarifications, as of September 30, 2003, there were forty-one (41) applications for return in U.S. Central Authority records that remained open and active eighteen months after the date of filing with the relevant foreign Central Authority. This total includes several cases that became known to the U.S. Central Authority through contacts with parents or local and state officials, but that were actually filed by California authorities directly with a foreign Central Authority.

**Section 2803 (a)(2)**requests "a list of the countries to which children in unresolved applications described in paragraph (1) are alleged to have been abducted, are being wrongfully retained in violation of the United States court orders, or which have failed to comply with any of their obligations under such convention with respect to applications for the return of children, access to children, or both, submitted by applicants in the United States."

The forty-one applications identified above that remain unresolved eighteen months after the date of filing, as of September 30, 2003, involved fourteen countries: Colombia, Ecuador, France, Germany, Honduras, Ireland, Israel, Mauritius, Mexico, Poland, South Africa, Spain, Turkey, and Zimbabwe . The extent to which these countries and others appear to present additional, systemic problems of compliance with the Convention is discussed further in the passages concerning Sections 2803(a)(3), (a)(4) and (a)(6), below.

In considering the question of compliance with the Convention and the treatment of court orders of custody, it should be noted that adjudications of return applications under the Convention are not custody proceedings. Rather, the basic obligation under the Convention to return a child arises if a child is removed to or retained in a country party to the Convention in violation of rights of custody existing and actually exercised in (and under the law of) the child's country of habitual residence. Most Convention cases filed by parents seeking the return of a child to the United States are premised on the existence of rights of custody held by the applicant parent that arise by operation of law, typically because the applicable state law creates joint rights of custody in both parents. A court order of custody in favor of a left-behind parent is not a requirement for pursuing a return application under the Convention. In effect, the Convention requires that foreign countries recognize rights of custody arising under U.S. law (if the child is habitually resident in the U.S.) to the extent that such rights provide the basis for an application and the rationale for return. Courts adjudicating applications for return under the Convention are not permitted to examine or rule on the merits of an underlying custody dispute.

**Section 2803 (a)(3)**requests "a list of countries that have demonstrated a pattern of noncompliance with the obligations of the Convention with respect to the applications for the return of children, access to children, or both, submitted by applicants in the United States to the Central Authority of the United States."

There are many factors relevant to evaluating whether a country has properly implemented and is effectively applying the Convention, not least because the executive, legislative and judicial branches of each party country have important and varying roles. A country may thus perform well in some areas and poorly in others. The Department of State, building on the recommendations of an inter-agency working group on international parental child abduction, has identified certain elements of overall performance relating to the Convention's most important requirements and has used these as factors to evaluate each country's compliance.

These elements are: the existence and effectiveness of implementing legislation; Central Authority performance; judicial performance; and enforcement of orders. "Implementing legislation" can be evaluated as to whether, after ratification of the Convention, the Convention is given the force of law within the domestic legal system of the country concerned, enabling the executive and judicial branches to carry out the country's Convention responsibilities. "Central Authority performance" involves the speed of processing applications; the existence of and adherence to procedures for assisting left-behind parents in obtaining knowledgeable, affordable legal assistance; the availability of judicial education or resource programs; responsiveness to inquiries by the U.S. Central Authority and left-behind parents; and success in promptly locating abducted children. "Judicial performance" comprises the timeliness of first hearing and subsequent appeals of applications under the Convention and whether courts apply the law of the Convention appropriately. "Enforcement of orders" involves the prompt enforcement of civil court or other relevant orders issued pursuant to applications under the Convention by administrative or law enforcement authorities and the existence and effectiveness of mechanisms to compel compliance with such orders. Countries in which failure to enforce orders is a particular problem are addressed in the passages concerning Section (a)(6) below.

This report identifies those countries that the Department of State has found to have demonstrated a pattern of noncompliance or that, despite a small number of cases, have such systemic problems that the Department believes a larger volume of cases would demonstrate continued noncompliance constituting a pattern. In addition, the Department recognizes that countries may demonstrate varying levels of commitment to and effort in meeting their obligations under the Convention. The Department considers that countries listed as noncompliant are not taking effective steps to address serious deficiencies.

Applying the criteria identified above, and as discussed further below, the Department of State considers Austria, Colombia, Ecuador, Honduras, Mauritius, Mexico, and Turkey to be "Noncompliant" and Romania and Switzerland to be "Not Fully Compliant" with their obligations under the Convention. The Department of State has also identified several "Countries of Concern" that have inadequately addressed significant aspects of their obligations under the Convention. These countries are Greece, Hungary, Israel, Panama, Poland, and The Bahamas .

**Note Regarding Comparisons to the 2002 Report**:

Ecuador, Greece, Hungary, Israel, Romania, and Turkey have been added to the list of countries we have identified with compliance problems since the last report.

In view of Germany's significant improvement since 2000 in its application of the Convention in the context of return applications, the Department has removed Germany from the discussion of Countries of Concern. Problems in Germany with enforcement of access orders persist and are covered in the Enforcement section of this report.

Specific systemic changes that have produced positive results in Germany's processing and adjudication of return cases include consolidating the number of courts that hear Convention cases, streamlining the processing of applications, and educating judges about their role in applying the Convention. Moreover, the German Central Authority has been prompt in responding to requests from the U.S. Central Authority, efficient in moving Convention applications forward for resolution, and available to discuss and proposed solutions for difficult or problematic cases. The U.S.-Germany bi-national working group continues to meet semi-annually to discuss specific long-standing cases, new cases and/or other issues as they relate to the Convention. Increasingly since 2000, and including in the past year, German courts have consistently rendered decisions that are consistent with the law of the Convention and have ordered the return of children wrongfully removed from the U.S. or retained in Germany. Bailiffs and police now more effectively intervene to enforce return orders when necessary in comparison with prior reporting periods. The latter development reflects a greater awareness among German authorities of the means at their disposal for enforcing orders and a greater sensitivity to the need to exercise the available legal authority to ensure that court-ordered returns in fact take place.

The Department will continue to meet regularly with German officials regarding Convention and related child custody case concerns, to monitor closely return and access cases submitted to the German Central Authority, and to seek German assistance in addressing long-outstanding and unresolved cases.

Spain, cited as a country of concern in the 2002 Report, has also demonstrated improvement during the reporting period. The Spanish Central Authority was more responsive to inquiries from the U.S. Central Authority and more recent Hague cases have been positively and efficiently addressed. Through the U.S. Embassy in Madrid, the Department is actively engaged with the Spanish Central Authority to build on Spain's progress in meeting its Hague Abduction Convention obligations. As a result of this general improvement and Spain's efforts, the Department has removed Spain as a country of concern from this year's Report.

**Noncompliant Countries**

**AUSTRIA**

Austria has been identified as noncompliant in all of the Department's previous compliance reports. The Department's concerns about Austrian compliance and willingness to address chronic problems persist.

Bilateral interaction has increased in the past year regarding a long outstanding access case that, although not currently being pursued under the Convention, resulted from earlier compliance problems. Numerous Austrian officials have proved willing to meet to discuss the case, but the need for repeated approaches from U.S. officials to produce any movement towards improved access for the left-behind

parent is troubling. Top U.S. officials, including the Secretary of State, the Attorney General, and State Department officials at the Under Secretary and Assistant Secretary levels, as well as the U.S. Ambassador, have pressed the matter with Austrian officials, including the Austrian Chancellor, Foreign Minister, Justice Minister, Interior Minister, the Austrian Ambassador in Washington, and officials at the Under Secretary and Assistant Secretary levels.

In this case, Austrian courts at every level up to the Supreme Court ordered the return of the child to the United States under the Convention. The taking parent appealed enforcement of the return order. Austria's courts then determined that the return order should not be enforced because the delays in the case had caused the child to become "settled" in Austria and return would cause the child psychological harm. After denial of the child's return to the United States, the left-behind parent sought access to his child under the Convention. Austrian courts finally granted very limited access in Austria.

The taking parent has repeatedly rebuffed efforts to increase contact between the left-behind parent and the child, and criticized both the U.S. and Austrian governments for their intervention in the matter. The left-behind parent filed a complaint with the European Court of Human Rights, which in April 2003 determined that Austria had violated the left-behind parent's and the child's right to a family life under the European Convention for the Protection of Human Rights and Fundamental Freedoms. In response to the repeated urgings of U.S. officials, including meetings held during the visit of Assistant Secretary Maura Harty to Vienna in July 2003, Austrian officials have provided their good offices to bring about a meeting with the abducting parent. Nevertheless, we are aware of no developments that indicate the frequency or reliability of access for the left-behind parent has improved.

Legislative changes that would consolidate Convention return case adjudications in fewer courts remained pending throughout the reporting period. In November 2003, the Austrian Parliament passed legislation to this effect, limiting the number of courts empowered to hear Convention return cases to sixteen (Convention access cases were not restricted to these courts), down from over two hundred. As part of the new law's implementation, the Austrian Central Authority is also to provide the courts with special training to educate judges about Convention case issues. These changes are not scheduled to go into effect before 2005, so it maybe several years before we can begin to determine the effects of the legislation on judicial processing of return applications.

**COLOMBIA**

The U.S. Central Authority is concerned about systemic problems in resolving Convention cases regarding children taken from the U.S. to Colombia. Two major obstacles to returning children from Colombia in a manner consistent with the Convention have been mentioned in previous compliance reports, which focused on the judiciary's insistence on applying Colombian family and custody law to Convention return cases and a lack of responsiveness by the Colombian Central Authority (CCA). However, problems associated with the judiciary's treatment of return applications under the Convention are more extensive than previously reported and have resulted in Colombia's listing as a noncompliant country in this year's report.

Judicial processing of return cases is slow and not geared toward meeting the goals of the Convention. Colombia's current implementing legislation does not facilitate judicial action on return applications. The jurisdiction of the courts to hear Convention cases remains unclear. The courts' willingness and ability expeditiously to hear and issue a decision on Convention applications is a key component in the effective application of the Convention. The lack of clear jurisdictional guidance to Colombia's courts has been evident in cases that have been transferred from one court to another repeatedly as judges decline jurisdiction. The Colombia Constitutional Court ruled in 2002 that Civil Circuit courts, not the Family Ombudsmen or Family courts, have jurisdiction in Convention cases. Despite that decision, courts appear to remain uncertain about which courts have jurisdiction and according to what standards and procedures Convention applications should be adjudicated. The Civil Circuit courts have not received training on the Convention and there is no legislation governing how courts are to deal with Convention cases.

Proceedings in those cases that are heard in court are often characterized by lengthy delays; Colombian courts frequently request a home study of left-behind parents in the United States before ordering a child's return to the United States. Such inquiries, which tend to go to the merits of custody, are properly left to the courts of the country of habitual residence and are inappropriate in the context of a Convention return proceeding.

The Colombian Central Authority is slow in forwarding Hague applications to the courts and does not assist applicant parents in obtaining legal assistance for the case's judicial phases. The U.S. Central Authority often has difficulty reaching the Colombian Central Authority and in receiving responses to routine inquiries. When responses eventually arrive, they are usually outdated and often not responsive to the original request for information.

There has been no evidence of positive change in Colombia's implementation or application of the Convention in recent years despite repeated approaches from the U.S. Central Authority and the U.S. Embassy relating concerns about Colombia's handling of Convention cases. Moreover, a review of U.S. Central Authority case records reveals that very few children, given the volume of applications that have been forwarded to Colombia, actually return to the United States. In view of the persistent and grave nature of these problems, the U.S. Central Authority considers Colombia noncompliant with the Convention.

The U.S. Embassy reports that the Colombian Ministry of Foreign Relations has recently indicated a commitment to making the adoption of implementing legislation a matter of urgency. Our assessment of compliance in future reports will depend on whether cases are resolved in a manner consistent with the Convention and the above-noted systemic problems are addressed.

**ECUADOR**

Ecuador has not been responsive in providing status reports on cases submitted by the U.S. Central Authority for some time. After repeated unsuccessful attempts by the U.S. Central Authority in 2003 to obtain case status reports from the Ecuador Central Authority, the U.S. Central Authority requested U.S.

Embassy assistance in contacting the Ecuador Central Authority for case information. U.S. Embassy officials learned that the Children's Court, which had been designated to hear Convention cases and to act as the Ecuador Central Authority, was abolished in April 2003 without any provision for an alternate agency to assume its Convention-related responsibilities. No court or other entity has since been responsible for hearing Convention cases or performing the other critical tasks necessary to fulfill the Convention's obligations and normally performed by a Central Authority.

During the reporting period there was no progress in resolving Convention cases submitted in Ecuador by parents from the United States, one of which dates back as far as 1995. Parents in Ecuador currently forward their own Hague requests for return of children unlawfully removed from Ecuador to foreign Central Authorities through Ecuador's embassies abroad. By failing to provide for an effective Central Authority to oversee application of the Convention in Ecuador and to assist parents with applications for the return of their abducted children from Ecuador, Ecuador clearly is not complying with even its most fundamental Convention obligations.

The removal of Ecuador from the list of noncompliant countries in the future will require evidence that Ecuador is undertaking steps to fulfill its responsibilities under the Convention, beginning with designating a Central Authority, ensuring timely processing and adjudication of incoming applications, enforcing return orders and providing timely information to parents and foreign Central Authorities regarding case processing.

**HONDURAS**

During the reporting period, Honduras took no action to resolve the pending applications submitted on behalf of left-behind parents from the United States. U.S. Embassy efforts to assist the U.S. Central Authority in moving the cases forward resulted in repeated assertions by the Honduran Central Authority that the Hague Abduction Convention was not in effect between Honduras and the United States because the Honduran government never ratified the Convention. These assertions are contrary to Honduras' accession to the Convention on March 1, 1994, and the U.S. acceptance of the Honduran accession effective June 1, 1994; both acts are reflected in corresponding instruments deposited in accordance with the Convention's terms of accession. Finally, in early 2004, the Honduran Congress ratified the Convention.

A case submitted to the Honduras Central Authority in 1994 was resolved in 2002 after the taking grandparent was extradited to the United States and the child was returned; Convention procedures were not used. A 1998 application for a child's return is still pending, although the taking parent is back in the United States facing criminal charges related to the abduction. Two new applications submitted to the Honduras Central Authority in 2003 also remain pending.

Until the Honduran government takes concrete action to resolve outstanding and future cases submitted by the U.S. Central Authority in a manner consistent with its Convention obligations, Honduras will continue to be listed as a noncompliant country in our annual report to Congress.

**MAURITIUS**

As in previous years, Mauritius remains noncompliant because it has not taken proper steps to apply the Convention and ensure the processing of cases in accordance with its terms. Mauritius became a party to the Convention in 1993, but only adopted implementing legislation in July 2000. The U.S. Central Authority submitted two cases (one in June 1998 and the second in February 1999) to the Mauritian Central Authority after Mauritius became party to the Convention, but before it adopted implementing legislation. Although the U.S. Central Authority has only forwarded two applications to Mauritius, both cases have been characterized by lengthy processing delays and neither case was resolved by the courts before the end of the reporting period.

The Department of State and the U.S. Embassy in Mauritius are following these cases closely and communicating with the Mauritian government regarding next steps. Most recently, in January 2004, U.S. Embassy officials met with the head of the Mauritian Central Authority to underline U.S. concerns about the long delays in processing applications for the return of children to the U.S. and Mauritius' failure to take appropriate measures to apply the Convention.

The removal of Mauritius from the category of noncompliant countries will require concrete action to resolve long outstanding cases and any future cases in a manner consistent with Mauritius' Convention obligations.

**MEXICO**

Mexico remains the destination country of the greatest number of children abducted from or wrongfully retained outside the United States by parents or other relatives. Despite coordinated efforts undertaken by the U.S. Embassy, the U.S. Central Authority, and senior Department of State officials to press for more expeditious processing and resolution of cases, the systemic problems in Mexico's handling of Convention applications that were detailed in the 2002 Compliance Report persisted during the reporting period. The Department’s experience is that, relative to the large number of pending Convention cases in Mexico, the number of cases resolved annually in Mexico is quite small. Most Convention return applications remain pending and never progress to the point of a definitive adjudication. Among the U.S. Central Authority's greatest concerns is Mexico's inability to locate children. Other problems include long delays in adjudication of return applications, the Mexican Central Authority's lack of adequate resources to perform its role effectively, the absence of implementing legislation integrating the Convention into the Mexican legal system, and an apparent lack of understanding of the Convention among many Mexican judges, which has resulted in Convention cases being treated as custody matters or mishandled in other ways.

Mexico's inability to obtain better results in locating children and taking parents is particularly troubling. Many Convention return applications forwarded by the U.S. Central Authority have languished for years; when children and taking parents are not located, Mexican courts will not rule on the application. As a result, and despite persistent efforts by the U.S. Central Authority to prompt Mexican authorities to address these cases, numerous parents have waited for years with no contact or information about the

whereabouts of their children. Of the return applications submitted to the Mexican Central Authority that remained unresolved after eighteen months or longer, approximately half remain in limbo because Mexican authorities have not located the children. As a practical matter, the left-behind parent or someone working on his/her behalf must develop most leads pertaining to the possible location of abducted children without the help of Mexican authorities. In some cases, Mexican authorities profess an inability to find children even when the family or the U.S. Embassy has shared concrete information with the Mexican Central Authority on the child's whereabouts.

If the whereabouts of an abducted or wrongfully retained child cannot be established, for whatever reason, Mexican courts return the case file to the Mexican Central Authority, which in turn refers the case to Mexican law enforcement. The U.S. Central Authority is not aware of even a single case in which Mexican law enforcement, once the Mexican Central Authority forwarded a Convention case to them, located the children.

Those cases that do result in a court hearing face further obstacles, including lengthy court delays. Lack of implementing legislation to integrate the Convention into the Mexican legal system remains a problem. The *amparo* (a special appeal claiming a violation of an individual's constitutional rights) has been used by taking parents to block Convention proceedings indefinitely pending a ruling by another court as to whether the parent's constitutional rights have been violated. In addition, Mexican courts are able to reconsider at any stage of the proceedings factual determinations made by lower courts, producing additional delay. Both problems highlight the degree to which the lack of implementing legislation in Mexico has hampered the Convention’s effectiveness.

Another problem (also compounded by the absence of implementing legislation) is the apparent lack of understanding by many judges in Mexico of the law of the Convention. Mexican judges frequently seem to ignore the fact that a case before them arises out of a return application under the Convention, and instead simply apply the procedural and substantive law that would govern a Mexican custody dispute. The result is almost always that those courts deny return without evaluating the merits of the application under the law of the Convention. U.S. Embassy officials report that the Mexican Central Authority has taken some preliminary steps to address this problem. The Mexican Central Authority actively participated in June 2003 in a conference hosted by the U.S. Embassy to educate family law judges about the Hague Convention. The Mexican Central Authority has also started to contact judges it believes may be presiding over a Convention case for the first time to provide support and guidance, and, in particular, to emphasize the distinction between the court's role in Convention cases and its role in domestic custody determinations.

Mexican Central Authority officials discuss the Convention with the judiciary and attorneys, monitor proceedings, and provide the U.S. Embassy with updates on active case processing. However, the Mexican government dedicates limited resources to the Mexican Central Authority, including insufficient staff to handle the volume of cases. The Mexican Central Authority’s ability to help bring about successful resolution of individual cases involving children taken from the U.S. is correspondingly limited. U.S. Embassy officials meet monthly with Mexican Central Authority personnel to obtain updates on pending cases but, even with regular and continued embassy involvement, the Mexican Central Authority clearly is

overburdened. Improvement in this area seems unlikely unless the Mexican government commits more resources to the Central Authority.

**TURKEY**

The United States accepted Turkey's accession to the Convention in 2000. Although only nine cases have been submitted for return of children to the United States, the problems experienced in those cases indicate that Turkey is not fulfilling its responsibilities under the Convention. Applications for return of children to the U.S. are subject to long and repeated court delays, and courts allow consideration of issues unrelated to Convention criteria when adjudicating return applications. There have also been indications of the use of political influence over the courts and other government officials involved in case processing. Turkey has not implemented the Convention into its domestic law. In addition, Turkish officials have consistently been unable to locate abducted children, and throughout much of the reporting period, the Turkish Central Authority was not responsive to frequent and direct requests from the U.S. Central Authority for information and assistance.

The Department of State and the U.S. Embassy in Ankara are fully engaged at all levels on the problems related to return of children from Turkey under the Convention. The Department has discussed individual cases and broader compliance issues with Turkish embassy officials. The U.S. Ambassador to Turkey raised the problems with Turkey's implementation and application of the Convention and the status of pending applications from the United States with the Minister of Justice on several occasions. Embassy officials have stressed with members of the Turkish Parliament the importance of adopting implementing legislation. Assistant Secretary for Consular Affairs Maura Harty also discussed compliance concerns with the Turkish Minister of Justice in December 2003.

**Countries Not Fully Compliant**

**ROMANIA**

Romania was not cited in previous Compliance Reports. However, over the past year, the U.S. Central Authority has observed significant problems in Romania's handling of Convention applications for the return of children to the United States. Romanian courts appear to have either a limited understanding of the Convention or an unwillingness to apply the Convention properly when doing so would require the return of a child to another country.

Specific compliance problems include judges who routinely order psychological evaluations and treat Convention return cases as child custody disputes, and the appearance of bias in court decisions in favor of taking parents who are Romanian nationals. Also, courts have denied return in cases that remain unresolved after one year of judicial processing, thereby penalizing the left-behind parent for the slowness of the courts. According to U.S. Central Authority records, in the past six years, out of seven applications forwarded to the Romanian Central Authority for return of children to the U.S., there have been no court-ordered returns and only one voluntary return.

The U.S. Central Authority also noted problems in getting the Romanian Central Authority to respond to requests for status reports and clarifications of court proceedings during the reporting period. Late in 2003, the Romanian Central Authority's responsiveness did improve, however.

In the coming year, the U.S. Central Authority and the U.S. Embassy will monitor closely Romania's actions on Hague return applications submitted by parents in the U.S. The removal of Romania from the category of not fully compliant countries will require concrete action demonstrating that Romanian courts adjudicate Hague return applications expeditiously and in a manner consistent with the Convention.

**SWITZERLAND**

Switzerland remains in the category of countries not fully compliant with the Convention due to the fact that the most significant problem outlined in last year’s report—lengthy court delays arising in part from the inability of the Swiss federal government to prevent cantons from re-opening Hague cases following a return order—has not been resolved.

Switzerland has a federal system of government with powerful and independent cantons. Authorities at the federal level, including the Swiss Central Authority, are cooperative and responsive, but there are problems with the cantonal governments, courts and child welfare agencies, which have favored the Swiss parent in some parental abduction cases. Taking parents have been able to resist enforcement of return orders issued by the courts of one canton by moving to another canton to re-litigate issues already addressed in the judicial decision issued under the Convention. Swiss federal authorities appear unable to compel cantonal authorities to obey federal court orders relating to the Convention.

The Department views the inability to date of the Swiss legal system to prevent such re-litigation and to require mutual recognition and enforcement of federal and cantonal orders for return as inconsistent with Switzerland's obligations under the Convention. It suggests a systemic problem in the Swiss judiciary that can lead to decisions and outcomes that are inconsistent with the objects and purposes of the Convention.

Recently, Swiss courts have begun issuing enforcement orders to accompany return orders. This change may make it more difficult for taking parents to re-open their cases in other cantons, and thus could lead to resolving cases more quickly. Also, in 2003, Switzerland founded an institute to train Swiss judges on how to handle cases brought under the Convention. These developments may foster improved cooperation between courts and the Swiss Central Authority. While the Department welcomes these positive steps, it is too soon to determine what effect they will have on Swiss application of the Convention.

The removal of Switzerland from the category of not fully compliant countries will require evidence that measures taken by Swiss authorities are addressing effectively Switzerland’s systemic problems that have allowed taking parents to avoid returning children by moving to another canton and re-litigating Convention cases.

## Countries of Concern

### GREECE

Greece is cited for the first time this year. Judicial processing of Hague return applications is slow, with particularly lengthy delays at the appeal level. In reviewing the final court action in cases submitted to the Greek Central Authority (GCA) in recent years, U.S. Central Authority (USCA) records reveal a worrying trend on the part of Greek courts to deny Hague applications for return. Greek courts of first instance have typically denied rather than granted return. Although the GCA provides free legal representation, translators and written translations to the left-behind parent throughout the court process, it can take up to six months to obtain translated copies of court decisions to share with left-behind parents. This in effect hinders parents from learning the basis for the lower court decision, knowledge that might prompt them to pursue an appeal. Under Greek law appeals must be filed within thirty days of the lower court's decision.

During the reporting period ending September 2003, the USCA also found communication with the GCA difficult, due apparently to GCA infrastructure constraints. However, since October 2003, the communication and responsiveness problems experienced during the reporting period have been eliminated, thanks in large part to upgrades in the GCA's computer systems and an increase in GCA staffing.

### HUNGARY

Hungary was not cited in previous reports and the volume of cases involving children abducted from the U.S. to Hungary remains low (the Department is aware of nine cases of abduction since 2000). However, based on Hungary’s treatment of applications submitted by U.S. parents in recent years, including during the reporting period, the Department is concerned that Hungarian judges adjudicating Convention cases have a limited understanding of the Convention or an unwillingness to apply the Convention to facilitate return of children from Hungary to their country of habitual residence.

The U.S. Central Authority has observed problems in the way Hungarian judges have handled return requests under the Convention, including by ordering psychological evaluations and treating cases as child custody disputes rather than according to the law of the Convention. According to U.S. Central Authority records, six Convention applications for return of children to the United States since 1998 have resulted in two voluntary returns and four applications submitted for judicial decision. In two of the four adjudicated cases, the court determined that Hungary was the place of the child's habitual residence. In the other two cases, the court based its decision to deny the return application on the perception that returning the child to the United States would inflict psychological harm on the child as a result of separating the child from the taking parent. This is an improper application of the limited exception to the obligation to return provided for under Article 13(b) of the Convention for situations in which return would expose the child to a "grave risk" of harm. The courts’ decisions also indicate that the judges considered matters relating to the merits of custody that are not relevant in return proceedings under the Convention. Hungarian judges have also demonstrated an apparent willingness to accept a taking parent's claims of

abuse without requiring substantiating evidence, putting the left-behind parent who filed the Convention application at a severe disadvantage.

The U.S. Central Authority and the U.S. Embassy will continue to monitor the treatment of applications for return in Hungary to determine whether Hungarian judges are applying the Convention properly.

**ISRAEL**

The Department has two principal concerns regarding Israeli performance in acting on Convention return applications. With increasing frequency, Israeli courts request psychological evaluations in initial hearings related to return applications, and courts frequently condition return on broad “undertakings” that place an onerous burden on left-behind parents and tend to lengthen court proceedings.

During the reporting period, some Israeli courts began requesting psychological evaluations of both parents and children before rendering a decision on return applications. Although such reviews caused minimal delays in the proceedings, the practice of requiring psychological evaluations during the initial hearing is inconsistent with the purposes and objectives of the Convention. Unless part of a carefully circumscribed inquiry in response to a taking parent’s assertion of defenses under the Convention’s Article 13.b. (generally considered only at later stages of a return proceeding), such psychological evaluations go to the merits of custody and parental “fitness” and are properly left to the courts of the country of habitual residence, consistent with Article 16 of the Convention.

Israeli courts also frequently require left-behind parents to agree to numerous and often burdensome “undertakings” before issuing an order for return. Undertakings are conditions that a court may require a left-behind parent to meet before the court will issue an effective return order. For example, Israeli courts have required confirmation that no criminal charges relating to the child’s abduction have been or will be filed against the taking parent—a matter over which private citizens often have little or no control. Taking parents have asked courts to require assurances that they will be able to return to the U.S. to resume residence and seek employment. Court-imposed undertakings have also included requiring the left-behind parent to pay expenses associated with travel to or living in the U.S. Left-behind parents are often unable to fulfill some preconditions for return, such as requiring assurances that a taking parent will receive a visa or be able to reside lawfully in the U.S. While a left-behind parent's agreement to undertakings may ultimately result in a return order, negotiating the exact nature and extent of undertakings, in light of the taking parent's requests and the left-behind parent's ability to address those requests, often increases the length of court proceedings.

**PANAMA**

In the 2001 and 2002 reports, Panama was found noncompliant. Panama's handling of Convention cases has significantly improved since mid-2002 and thus this year the Department considers Panama a country of concern. Panama's steady improvement in its commitment to adhering to the Convention began with the passage of domestic implementing legislation in November 2001. The Panamanian Central Authority has improved its responsiveness to requests for information and three children were

returned in the fall of 2002. The Government of Panama has limited jurisdiction to adjudicate Convention applications to one central court, provided training for judges, and participated in international meetings focusing on improved implementation of the Hague Convention.

Despite these signs that the Panamanian government has focused on applying appropriate measures and resources to implement and apply the Convention, problems in locating missing children and taking parents persist. According to the Panamanian Central Authority, authorities tasked with locating taking parents and abducted children lack the human and technological resources to conduct searches. Delays in adjudication also remain a problem. Backlogs of cases that are systemic throughout the court system also occur in Convention cases, delaying decisions on applications for the return of children to the U.S. Hague applications submitted in 2003 have remained pending in the courts for over six months without any court ruling.

**POLAND**

During this reporting period, Poland continued to demonstrate problems in its implementation and application of the Hague Convention. These problems stem primarily from three factors: (a) Polish court caseload constraints that result in prolonged delays in reaching decisions on Convention return applications; (b) the lack of an adequate domestic statutory framework with enforcement mechanisms (e.g., a parent who becomes a fugitive to avoid complying with a final return judgment does not commit a "crime" -- and therefore cannot be the subject of a fugitive warrant -- unless the parent has been stripped of parental rights); and (c) a faulty translation into Polish of Article 13 of the Convention (the Polish translation radically lowers the standard for refusing returns by saying that return can be denied if it would put the child in an "unfavorable" rather than an "intolerable" situation) that some courts still use four years after the Ministry of Justice agreed in 1999 to distribute an accurate translation.

Improvements in the Polish Central Authority's responsiveness that were noted in the 2002 Report have continued and our contacts with central government officials indicate a recognition of the importance of handling Convention cases effectively. But adjudication of return applications under the Convention is still characterized by lengthy delays, courts still deny return applications based on a faulty interpretation of the Convention, and enforcement problems have not been resolved.

Officials from the Department of State in Washington and the U.S. Embassy in Poland have raised compliance issues and individual abduction cases with high-ranking officials from the Polish government repeatedly over the past year. By diplomatic note and formal demarche, the Department and the U.S. Embassy have underlined the need for the Polish government to ensure that judges adjudicating return applications use only the correct translation of the Convention’s text and that the Justice Ministry remind the courts of the corrected translation.

**THE BAHAMAS**

At the end of the reporting period there were no pending applications for return of children to the U.S. from The Bahamas. However, the Bahamian Central Authority was unresponsive to U.S. Central Authority and U.S. Embassy inquiries concerning the most recent return applications submitted in previous years. Long judicial and administrative authority delays were also typical in previous cases. There have been no recent cases to demonstrate that the systemic problems noted in the 2001 and 2002 reports have been resolved. The U.S. Central Authority will maintain The Bahamas on its list of Countries of Concern and will monitor closely the Bahamian Central Authority's responsiveness and judicial actions until The Bahamas processes Hague applications for return of children to the U.S. in a manner consistent with the Convention.

**Unresolved Return Cases**

**Section 2803 (a)(4)**requests “[d]etailed information on each unresolved case described in paragraph (1) and on actions taken by the Department of State to resolve each such case, including specific actions taken by the United States chief of mission in the country to which the child is alleged to have been abducted.”

The information requested under this section is provided in Attachment A .

**Encouraging Use of the Convention**

**Section 2803 (a)(5)**requests “information on efforts by the Department of State to encourage other countries to become signatories to the Convention.”

The Department avails itself of appropriate opportunities that arise in bilateral contacts to persuade other countries of the advantages that would derive from becoming parties to the Convention. The Assistant Secretary for Consular Affairs routinely raises the Convention in talks with foreign officials on other bilateral consular matters. The Department maintains a library of talking points and materials for its overseas posts to use in explaining to foreign governments the advantages of adhering to the Convention.

When a country accedes to the Convention, the Department does not automatically accept it as a Convention partner. The Department assesses whether the country has established the necessary legal and institutional framework for carrying out its Convention responsibilities. In 2003, the U.S. completed its assessments of Malta and Brazil and accepted their accessions. Assessments of Uruguay's, Costa Rica's, and Bulgaria's accessions are currently underway. The Department has also been in contact with Peru and Trinidad & Tobago regarding the assessment process the Department undertakes before it can accept their accession. Department officials have also discussed the Convention with the governments of The Philippines, Azerbaijan, and Zambia, which have yet to accede. States that acceded to the Convention since September 2002 include Bulgaria (August 2003), Lithuania (September 2002) and Thailand (November 2002). The Department of State is reviewing these countries’ implementation of the Convention to determine whether to recognize their accessions.

**Enforcement problems**

**Section 2803 (a)(6)**requests “[a] list of the countries that are parties to the Convention in which, during the reporting period, parents who have been left-behind in the United States have not been able to secure prompt enforcement of a final return or access order under a Hague proceeding, of a United States custody, access, or visitation order, or of an access or visitation order by authorities in the country concerned, due to the absence of a prompt and effective method for enforcement of civil court orders, the absence of a doctrine of comity, or other factors.”

The Convention directs contracting states to ensure that rights of custody and or access are effectively respected. The Convention requires that other countries recognize U.S. custody rights, including rights of access and visitation, to the extent that such rights provide the basis for applications and the rationale for return. Adjudication of a return case by a foreign court under the Convention is not a decision whether to enforce a custody order.

In the context of a return application, the Convention specifically limits consideration of custody matters to the question of whether the applying parent was actually exercising rights of custody (under the applicable law in the child’s country of habitual residence) at the time the child was wrongfully removed to or retained in another country. Our evaluation of compliance with the Convention’s requirements concerning the return of abducted or wrongfully retained children and corresponding enforcement issues does not, therefore, evaluate the extent to which U.S. court orders are recognized and enforced as such. Attachment B provides further discussion of access (including visitation) and custody issues, and the recognition and enforcement of custody and access orders.

**GERMANY**

Since 2000, Germany has demonstrated strong performance in application of the Convention regarding applications for the return of children to the U.S. Despite this improvement, we continue to observe unwillingness on the part of some judges, law enforcement personnel and others within the child welfare system in Germany to enforce German orders granting parental access in both Convention and non-Convention access cases. American parents often obtain favorable court judgments regarding access and visitation, but the German courts' decisions remain unenforced for years. A taking parent can defy an access order with impunity. As a result, a number of U.S. parents still face problems obtaining access to and maintaining a positive parent-child relationship with their children who remain in Germany.

In one particularly high-profile access case, the foreign parent living in Germany with physical custody of two children had defied valid German court orders permitting visitation by a U.S. parent. The parent in Germany monitored all contacts between the children and other persons and prevented the children from meeting or communicating with the U.S. parent for almost eight years. U.S. officials sought assistance from German officials at all levels. In a breakthrough in early 2004, following years of sustained efforts by the German-U.S. bi-national working group, the Assistant Secretary for Consular Affairs and the U.S. Ambassador to Germany, local authorities removed the children from the foreign parent's care and are now assessing the best way to reacquaint the children with the U.S. parent after their prolonged

separation. The Department will monitor other German access cases to evaluate whether this action by local German authorities to seek a court order with enforcement powers serves as an example for other German child welfare officials who are charged with enforcing court-ordered custody or access.

**ISRAEL**

The Israeli Central Authority has been cooperative and responsive in its dealing with the U.S. Central Authority. As noted previously, however, the Israeli court's order for a child's return in one long-standing case has not been enforced due to an inability to locate the child and taking parent.

**POLAND**

As noted above, Poland's domestic legal framework does not permit the consistent, effective enforcement of orders for return. As a practical matter, a taking parent who flees or hides a child in defiance of a final return order cannot be compelled to comply with the order unless the parent is first stripped of his/her parental rights.

**SPAIN**

In one case of note a long standing order for return was not enforced during the reporting period because local law enforcement officials could not locate the child. In April 2004, Spanish authorities found the child and resumed action on the case.

**SWEDEN**

Sweden's significantly improved record on enforcing return orders was noted in the 2002 Compliance Report. As discussed in Attachment B , however, enforcement problems remain a barrier to access. Arrest or physical removal of the child from the violator's care is rarely used and Sweden does not have the equivalent of a "contempt of court" ruling. In the Department of State's experience, Swedish courts have enforced very few of the rulings favorable to American fathers.

**SWITZERLAND**

Local officials are responsible for enforcing court orders for return and access. As noted above, enforcement of orders in one canton issued in another canton is a systemic and serious problem. In one significant case, local officials refused to enforce an order for return issued by the federal courts.

**Non-governmental Organizations**

**Section 2803 (a)(7)**requests "[a] description of the efforts of the Secretary of State to encourage the parties to the Convention to facilitate the work of non-governmental organizations within their countries that assist parents seeking the return of children under the Convention."

Efforts in this particular area are carried out under the auspices and direction of the Secretary of State by the Office of Children's Issues in the Department of State's Bureau of Consular Affairs. One significant problem is the lack, in some party countries, of non-governmental organizations that could assist parents seeking the return of children under the Convention. Where non-governmental organizations that deal with abuse, abduction or disappearance of children do operate, there is also a general reluctance of domestic organizations abroad to put themselves in the position of arguing for the return of children that are citizens of their country to another country, especially in the face of conflicting claims that are not easily settled outside a legal framework. The Department believes that most non-governmental organizations abroad accept the fact that their countries have given responsibility to governmental Central Authorities as the most effective means to assist parents with the return of their children.

At the same time, there are non-governmental organizations, such as International Social Services (ISS), that work with U.S. and foreign officials and parents to facilitate contact with and return of children. ISS currently has national branch offices or bureaus in 146 countries (including most of our Hague Convention partner countries) to assist families who are separated, including separation resulting from child abduction. When appropriate, the Department and U.S. consular officials refer parents to ISS for additional support or work directly with ISS. In some cases, ISS has been actively involved in arranging escorts for returning children and in working to establish better communication between parents or between a parent and child.

In 2003, the Office of Children's Issues met with U.K. officials and discussed the ways in which non-governmental organizations in the United Kingdom and the United States assist in work involved in Convention and other child abduction cases. Non-governmental organizations are very actively involved in working with government authorities and parents, as well as in educating the public regarding child abduction issues, in the United Kingdom and France . In November 2002, several British and French non-governmental organizations jointly organized a conference to discuss how parents and children can maintain contact after abduction to countries not party to the Convention. The conference brought together government officials from the European Union, Mahgreb and Middle Eastern countries to discuss bilateral cooperative efforts that achieve the return of abducted children and, when return is not achieved, visitation rights for left-behind parents.

Representatives of the Office of Children's Issues attended a conference in fall 2003 to learn more about Canadian government and non-governmental organization efforts to assist parents and children to prevent child abduction. The Office of Children's Issues also contacted U.S. embassies and consulates in a number of Hague Convention and non-Hague Convention party countries to share non-governmental organization information that the National Center for Missing and Exploited Children had developed and to request suggestions regarding other non-governmental organizations in-country that might assist parents and children in child abduction cases.

## Attachment A

**LIST BY COUNTRY OF APPLICATIONS FOR THE RETURN OF CHILDREN SUBMITTED BY UNITED STATES CITIZENS TO THE CENTRAL AUTHORITY FOR THE UNITED STATES THAT REMAIN UNRESOLVED MORE THAN 18 MONTHS AFTER THE DATE OF FILING.**

**The following acronyms are used throughout:

CI- Office of Children's Issues. CI is an office in Overseas Citizen Services of the Bureau of Consular Affairs, U.S. Department of State
CA- Foreign Central Authority responsible for Hague Abduction Convention Issues in the Foreign country
LBP - Left-behind parent from whom a child has been abducted or wrongfully retained abroad
TP- Taking parent, who abducted or wrongfully retained the child abroad

Please note that case summaries below do not include references to the Department of State's and overseas posts' frequent and ongoing conversations and meetings with left-behind parents.

**COLOMBIA**
Date of abduction or wrongful retention: August 23, 1998
Date Hague Application filed: March 11, 1999
Has child been located? Yes

The child was ordered returned to the United States in March 2000, but the decision was reversed in October 2000, upon appeal. Since then, the case has moved through 5 different courts without resolution. The U.S. Embassy and CI have approached Colombian authorities at various times on behalf of the LBP. Since February 2001, the Embassy has sent five diplomatic notes, the most recent of which was forwarded in November 2002, to the Colombian government on this case, urging its swift completion in compliance with Colombian commitments under the Hague Convention. In August 2003, Embassy Bogota asked for assistance by diplomatic note in gaining consular access to the child. At the request of the Colombian Ministry of Foreign Affairs, Bienestar Familiar, Colombia's social services agency, attempted to facilitate a consular officer visit with the child. The taking parent would not grant access unless ordered by a Colombian court. The CA requested that the court hearing the Hague case assist in obtaining consular access. The court has refused to do so.

Actions taken by the Chief of Mission: Six diplomatic notes have been sent to the Colombian Ministry of Foreign Affairs regarding the case since February 2001. In January 2003, the Ambassador met with the Foreign Minister to discuss the case, and in February 2003, the Consul General in Bogota met with the director of the Colombian Central Authority to discuss Hague compliance issues and this case in particular.

**ECUADOR Case 1** :
Date of abduction or wrongful retention: February 6, 1995
Date Hague application filed: February 24, 1995
Has child been located? No

The LBP in this case filed a Hague application for the child's return immediately after the abduction. The case remained in the Ecuador court system for several years with little action. Eventually a court ordered the return of the child; however, the order was never enforced because the TP hid the child. Additionally, the LBP was not initially aware of the order for return, having been misinformed by the attorney that the case had been lost. The Ecuador CA did not inform the LBP of the return order either. In 2001, CI contacted the LBP with information regarding the order for return. Recent attempts by CI and the U.S. Embassy to obtain a case update from the CA have proved unsuccessful.

**ECUADOR Case 2** :
Date of abduction or wrongful retention: Nov. 16, 2001
Date Hague application filed: February 25, 2002
Have children been located? Yes

The LBP filed a Hague application for the return of two children in February 2002. In June 2002, the Embassy of Ecuador notified CI that additional legal documentation was needed. CI requested clarification and was informed that the CA required a court order relating to custody. CI protested this requirement with the CA, noting that it was not necessary under the Hague Convention. CI last had contact with the LBP in early 2002, when the LBP indicated that copies of custody orders would be forwarded to CI when available. CI received no correspondence from the LBP and, in July and September 2003, CI wrote to the LBP, with no response.

**FRANCE**
Date of abduction or wrongful retention: April 2001
Date Hague application filed: June 2001
Has child been located? Yes

The child was abducted while still a toddler and the LBP's Hague application for return of the child was approved by the court of first instance in January 2002. The TP appealed the court's decision to return the child, lost the appeal, and disappeared shortly thereafter. French authorities were unable to locate the TP and child for nearly two years. Finally, in January 2004, they were found hiding in a convent. The TP was arrested, but was released on parole and is required to check in with the police twice a week. Authorities are working to re-unite LBP with the child, who has not seen LBP in almost three years. The Consul General and Embassy officials met with French CA representatives in January 2004 to discuss Hague compliance issues and updates on this case.

**GERMANY Case 1** :
Date of abduction or wrongful retention: July 17, 2000
Date Hague application filed: December 12, 2000
Has child been located? Yes

The LBP filed an application for return of the child. In March 2002 a judge ruled the child should be returned to the United States. The order was not enforced since the TP and child went into hiding and could not be located. The TP's location was eventually confirmed in August 2003 and the German CA

made preparations to attempt enforcement of the return order. The LBP wished to consult local counsel and the child's guardian ad litem before enforcement proceedings commenced, so enforcement was halted. There was also the fear that TP would flee again if notified of enforcement proceedings.

Actions taken by Chief of Mission: The Chief of Mission has directed consular staff to continue to work with German Justice Ministry and CA officials to assist the LBP and the child.

**GERMANY Case 2** :
Date of abduction or wrongful retention: July 2000
Date Hague application filed: November 2000
Has child been located? Yes

The TP abducted the child to Germany in July 2000. A judge reviewed the LBP's application and in July 2001 ordered the child's return to the United States. The TP appealed the return order, lost the appeal, and refused to return the child. The LBP and German authorities made several unsuccessful attempts to pick up the child to enforce the return order. In late 2001, the TP and child went into hiding. The LBP filed criminal charges in Germany against the TP for kidnapping, and the latter was found guilty in 2003. The LBP recently decided not to pursue enforcement of the return order due to the psychological trauma previously inflicted upon the child. Mediation has been suggested to assist the LBP in re-building a relationship with the child.

Actions taken by Chief of Mission: The Chief of Mission has directed consular staff to continue to work with German Justice Ministry and CA officials to assist the LBP and the child.

**HONDURAS**
Date of abduction or wrongful retention: April 1, 1997
Date Hague application filed: May 27, 1998
Has child been located? Yes

The designated CA, the Instituto Hondureño de la Niñez y la familia (IHNFA), has at no point addressed the return of this child to the United States. IHNFA has, at the request of the Embassy, made welfare visits to the child and reports of these visits have been provided to the LBP. After removing the child to Honduras, the Honduran-American TP re-entered the United States in 2003. The child's abduction to Honduras violated a U.S. court order issued in December 1997 that mandated that the child not be removed from the court's jurisdiction. The U.S. civil court that issued the order is holding the TP in contempt and has indicated that the TP will remain in custody until the child returns to the United States. The TP also faces pending criminal charges under the International Parental Kidnapping Act. The Honduran government is monitoring the TP Honduran-American national's U.S. civil court case. At a recent U.S. court hearing, an official from the Honduran Consulate indicated the Honduran government will not allow the child to travel to the U.S. In 2003, Embassy representatives raised the issue of Honduran non-compliance with the Hague Convention with IHNFA officials and the President of the Honduran Congress.

**IRELAND**
Date of abduction or wrongful retention: July 1999
Date Hague application filed: November 15, 1999
Has child been located? Yes (subsequent to close of reporting period)

A July 1999 Irish court order of return resulted in the TP and child traveling to the United States but they did not attend a scheduled custody hearing in California. Instead, they returned to Ireland and disappeared. A new return application was filed but the Irish CA could not locate them. The TP and child were found in October 2003, in the United Kingdom, living under assumed names. The Irish CA transferred the case file to the UK CA and closed its case. Hague proceedings are now underway in the U.K. The case was adjourned until March 2004, pending submission of reports investigating the TP's claim that the child is now settled in the U.K.

**ISRAEL**
Date of abduction or wrongful retention: April 18, 1997
Date Hague application filed: October 6, 1997
Have children been located? No

In November 1998, an Israeli court ordered that the children be returned to the United States; the TP failed to comply with court order. In January 1999, after attempts to locate the TP and children in Israel had failed, the court issued another order instructing the police to locate the children. Unfortunately, efforts undertaken by police since then have failed to locate the children.

CI has maintained regular, ongoing contact with the LBP, U.S. and Israeli law enforcement, and the Israeli CA. In an effort to help the CA and foreign law enforcement locate the TP, CI and federal law enforcement provided them with the TP's Department of Motor Vehicles photograph. At CI's request, the director of the CA has had several meetings with law enforcement officials regarding their efforts to locate the children. The CA informed CI that search efforts had been expanded, but the children's whereabouts remain a mystery.

**MAURITIUS Case 1** :
Date of abduction or wrongful retention: December 4, 1998
Date Hague application filed: February 3, 1999
Have children been located? Yes

This is one of two cases in Mauritius in which the application was filed after the country became a party to the Convention (October 1993) but before the country's legislative body incorporated the Convention into the law of Mauritius (October 2000). The Mauritian CA said it could not accept the applications at the time because the Convention had not been incorporated into domestic law. In light of the passage of implementing legislation, and at the prompting of CI and the U.S. Embassy, the CA has said it believes it could bring the case before the Court in the hope of having it considered. Initially, a court date was scheduled for January 2003. However, no court action was taken during the reporting period partly due to confusion over documents required by Mauritius. The CA does not have a transparent procedure. The

LBP has been asked twice in the last year to revise an affidavit required in support of the return application. In March 2003, Embassy representatives conducted a welfare visit to the children. A procedural hearing for submission of both parties'' affidavits before a Supreme Court judge was scheduled for February 2004.

The U.S. Embassy in Port Louis has been in regular contact with the LBP and the CA. In May 2002, Embassy representatives met with senior officials of the Ministry of Women's Rights, Child Development and Family Welfare to discuss this case. In June 2002, Embassy officials met with the Assistant Secretary of the Ministry of Women's Rights, Child Development and Family Welfare to discuss how the Ministry could assist in ensuring effective implementation and application of the Convention. In early 2004, embassy officials met with the head of the CA to discuss the case and press for its resolution in a manner consistent with the Convention.

**MAURITIUS Case 2** :
Date of abduction or wrongful retention: February 14, 1998
Date Hague application filed: June 9, 1998
Has child been located? Yes

This case was filed under the Convention between the time of Mauritian accession and the passage of implementing legislation. This was the reason the CA initially took no action on it. In June 2002, the Mauritian government requested additional documentation from the LBP. The requested documents were forwarded in September 2002. An October 2002 request for another document was fulfilled that same month, and in November 2002, the Mauritian State Law Office introduced a motion to return the child to the LBP. Several court dates were scheduled throughout 2003, but no hearings took place. An initial hearing before a Supreme Court judge was held in January 2004 and a full hearing before the Supreme Court is currently scheduled for June 2004.

Embassy officials have assisted the LBP to interface with Mauritian government officials. In May 2002, Embassy representatives met with senior officials of the Ministry of Women's Rights, Child Development and Family Welfare to raise the profile of this case and followed up a month later with discussions with the Assistant Secretary of the Ministry of Women's Rights, Child Development and Family Welfare on improving the Ministry's effectiveness with respect to implementation and application of the Convention. In early 2004, embassy officials met with the head of the CA to discuss the case and press for its resolution in a manner consistent with the Convention.

**MEXICO Case 1** :
Date of abduction or wrongful retention: November 22, 1993
Date Hague application filed: November 8, 1994
Has child been located? No

The LBP filed the application for return directly with the Mexican CA and first communicated with the Department of State in August 2001. The TP filed an *amparo* (constitutional challenge) objecting to a Family Judge order that the child be taken into protective custody of social services pending the

resolution of the case. The *amparo* was denied but the TP successfully evaded notice of the next hearing date and since then, all attempts to locate the TP or child have failed. In December 2001, the LBP provided CI with an address for the TP and the information was immediately forwarded to the CA. Chief of Mission raised this case at Binational meetings in 1999 and 2000, and with the Foreign Ministry Under Secretary in February 2001, highlighting problems caused by not locating children. The Assistant Secretary for Consular Affairs also discussed this issue with the Mexican delegation to the Special Commission on the operation of the Hague Convention held in The Netherlands in March 2001. The Department raised the status of this case with the Legal Advisor to the Embassy of Mexico in November 2001. In October 2002, a judge returned the case to the CA after several unsuccessful attempts to locate the child at addresses supplied by CI. The CA forwarded the case to the Interpol unit at Mexico's Federal Investigative Agency (AFI) for further investigation to locate the child and taking parent. Assistant Secretary Harty raised the case in the Binational Committee Meeting in November 2003. During that meeting the CA reported that Mexican authorities are still unable to locate the child. Assistant Secretary Harty again raised the case in a meeting with her counterpart in the Mexican Ministry of Foreign Affairs in January 2004. Two attempts to arrange consular visits through the TP's parent in early 2004 were unsuccessful.

**MEXICO Case 2** :
Date of abduction or wrongful retention: August 1, 1993
Date Hague application filed: June 23, 1997
Have children been located? Yes

This case involves two children. Filing of a complete Hague application was delayed first by the LBP submitting an incomplete application, then by the Mexican CA's repeated requests for originals of documents and translations previously sent, and finally because the court to which it was assigned could not locate the file. The Department forwarded the incomplete Hague application to the CA in June 1997. The Department notified the LBP that the application was incomplete and requested the needed documents. In September 1999, the CA acknowledged the application was complete. The Assistant Secretary for Consular Affairs discussed this case with her Mexican counterparts at Binational meetings in 1999 and 2000. Chief of Mission raised this case with the Foreign Ministry Under Secretary in February 2001. The Assistant Secretary for Consular Affairs also discussed this issue with the Mexican delegation to the Special Commission on the operation of the Hague Convention held in The Netherlands in March 2001.The Department queried the CA about this case in August and October 2001. The Department raised the case's status with the Legal Advisor to the Embassy of Mexico in November 2001. CA staff advised the Department in February 2002 that the court had lost the file in 2000 and they were preparing a certified copy from the CA records to send to the court. The CA reported in October 2003 that the LBP decided not to pursue the children's return, asking instead for access. The TP and children moved and the CA was unable to locate the children until December 2003, when they were found at the home of a relative of the TP. The case was returned to a judge for processing and the court has requested confirmation whether the LBP is available to attend a hearing. Assistant Secretary Harty raised the case in the Binational Committee Meeting in November 2003 and again in January 2004, when she met with her counterpart in the Mexican Ministry of Foreign Affairs.

**MEXICO Case 3** :
Date of abduction or wrongful retention: February 28, 1996
Date Hague application filed: October 27, 1997
Has child been located? Yes

The court hearing the case denied the application for return in June 1998, apparently finding that the LBP was not exercising rights of custody before the child"s removal to Mexico. The decision was appealed by the LBP and in February 1999 the court ordered the case remanded for a re-hearing because the child was not represented by counsel in earlier court proceedings. The LBP appealed this decision and asked the court to order the child returned to the United States. That appeal was denied in February 2000. The LBP then filed an *amparo* (constitutional challenge) and the case was forwarded back to the courts for review.

Since then the Department has repeatedly asked the Mexican CA for information regarding any progress in the courts. The Department facilitated a visit by the LBP with the child and communication with the TP in November 1999 and helped pass communications between the CA and the LBP in 2002. Chief of Mission raised this case at Binational meetings in 1999 and 2000, and with the Foreign Ministry Under Secretary in February 2001. Assistant Secretary for Consular Affairs discussed the case with the Mexican delegation to the Special Commission on the operation of the Hague Convention held in the The Netherlands in March 2001.The Department raised the status of this case with the Legal Advisor to the Embassy of Mexico in November 2001. The CA reported in October 2003 that an *amparo* filed by the LBP had not been resolved. Assistant Secretary Harty raised the case in the Binational Committee Meeting in November 2003 and again in January 2004, when she met with her counterpart in the Mexican Ministry of Foreign Affairs.

**MEXICO Case 4** :
Date of abduction or wrongful retention: August 15, 1997
Date Hague application filed: January 2, 1998
Have children been located? Yes

In January 2001, CI provided the Mexican CA the address of the school the two children attended, but until recently the CA stated the children could not be located. Chief of Mission raised this case at Binational meetings in 1999 and 2000, and with the Foreign Ministry Under Secretary in February 2001, highlighting problems caused by not locating children. The Assistant Secretary for Consular Affairs also discussed this issue with the Mexican delegation to the Special Commission on the operation of the Hague Convention held in The Netherlands in March 2001. The Department raised the status of this case with the Legal Advisor to the Embassy of Mexico in November 2001. The LBP visited both children in the summer of 2003 near a residence where the children have lived since being taken to Mexico. The CA reported in October 2003 that the case was forwarded to a court and in January 2004 the CA stated that a hearing date has been scheduled for April 2004. Assistant Secretary Harty raised the case in the Binational Committee Meeting in November 2003 and again in January 2004, when she met with her counterpart in the Mexican Ministry of Foreign Affairs.

**MEXICO Case 5** :
Date of abduction or wrongful retention: September 18, 1993
Date Hague application filed: April 10, 1998
Have children been located? No

Originally this case involved two children. In August 1998, the Mexican CA advised CI that the court was setting a date for the Hague hearing and asked the Department if the LBP would be able to attend. The LBP asked that the case be postponed until September 1998 to allow the LBP to travel to Mexico. Throughout 1998 and 1999, the Department repeatedly asked the CA if a hearing date had been set but the CA did not respond to these inquiries. The case was inactive for approximately one year when CI attempts to contact the LBP and determine the LBP's whereabouts proved unsuccessful. The case was re-activated in November 2000 when the LBP contacted CI and provided a current contact address.

In July 2001, the LBP provided an address for the children and requested a consular welfare and whereabouts visit. A consular officer conducted a welfare and whereabouts visit in August 2001 and again in November 2002. CI offered assistance in re-establishing the LBP's communication with the children by passing letters, packages and mail to them and translating phone calls. The Department passed exact location information regarding the children to the CA in August 2001, but no action resulted. Chief of Mission raised this case at Binational meetings in 1999 and 2000, and with the Foreign Ministry Under Secretary in February 2001, highlighting problems caused by not locating children. The Assistant Secretary for Consular Affairs also discussed this issue with the Mexican delegation to the Special Commission on the operation of the Hague Convention held in The Netherlands in March 2001. The Department raised the status of this case with the Legal Advisor to the Embassy of Mexico in November 2001. The LBP parent established telephone and mail contact with the older child by telephone. The TP, who had left the children with a grandparent and returned to the U.S., traveled to Mexico and sent the younger child back to the U.S. As of May 2003, only the older of the two children remained in Mexico. The LBP continued to pursue return of the older child until CI learned that in the fall of 2003, the TP returned to Mexico and took the older child, presumably bringing the child back to reside in the U.S.

**MEXICO Case 6** :
Date of abduction or wrongful retention: February 14, 1999
Date Hague application filed: February 19, 1999
Has child been located? Yes

This case involves two children and was filed directly with the Mexican CA by the District Attorney’s Office in California. California authorities work directly with the LBP and the CA and inform CI of relevant important actions in the case. In response to a request from CI and the U.S. Embassy for a status update, the Mexican CA reported in October 2003 that the case had been forwarded to a court in 1999. When the judge could not locate the children, the case file was returned, presumably to the CA, but the file''s present location is unknown. The CA believes the file was forwarded to Mexican social services. CI regards the application as still pending re-location and resolution, but has not heard from the LBP since 2001. Chief of Mission raised this case at Binational meetings in 1999 and 2000, and with the Foreign

Ministry Under Secretary in February 2001. The Assistant Secretary for Consular Affairs also discussed this issue with the Mexican delegation to the Special Commission on the operation of the Hague Convention held in The Netherlands in March 2001. Assistant Secretary Harty raised the case in the Binational Committee Meeting in November 2003 and again in January 2004, when she met with her counterpart in the Mexican Ministry of Foreign Affairs.

**MEXICO Case 7** :
Date of abduction or wrongful retention: December 15, 1998
Date Hague application filed: March 8, 1999
Has child been located? No

The Department worked with the LBP to locate the TP in Mexico in 1999 and 2000. The U.S. Mission confirmed the the TP's work address in August 2000. The Department forwarded this information to the Mexican CA the same month. The CA, in response to repeated CI requests for case updates, reported in January 2002 that the case had been forwarded to the courts. The CA informed the U.S. Embassy in early 2004 that the court had never located the TP, and the case file was forwarded to Mexican Interpol for location of the TP and child. Chief of Mission raised this case at Binational meetings in 1999 and 2000, and with the Foreign Ministry Under Secretary in February 2001, highlighting problems caused by not locating children. The Assistant Secretary for Consular Affairs also discussed this issue with the Mexican delegation to the Special Commission on the operation of the Hague Convention held in The Netherlands in March 2001. Correspondence from CI to the LBP has remained unanswered since 2002. Assistant Secretary Harty raised the case in the Binational Committee Meeting in November 2003 and again in January 2004, when she met with her counterpart in the Mexican Ministry of Foreign Affairs.

**MEXICO Case 8** :
Date of abduction or wrongful retention: January 10, 1994
Date Hague application filed: March 9, 1999
Has child been located? No

The LBP is a Mexican national who forwarded the return application directly to the Mexican CA and maintains direct contact with the CA. In November 1999, in response to a request from the Mexican Embassy for an update on the case, CI queried the CA. In April 2000, the CA responded that the TP had filed an amparo against an order issued for the child's return and the CA would inform CI of the results of the appeal. Department raised the status of this case with the Legal Advisor to the Embassy of Mexico in November 2001. The TP's amparo was eventually denied, thus allowing the return to proceed. Chief of Mission raised this case at Binational meetings in 1999 and 2000, and with the Foreign Ministry Under Secretary in February 2001, highlighting problems caused by not locating children. The Assistant Secretary for Consular Affairs also discussed this issue with the Mexican delegation to the Special Commission on the operation of the Hague Convention held in The Netherlands in March 2001. Assistant Secretary Harty raised the case in the Binational Committee Meeting in November 2003 and again in January 2004, when she met with her counterpart in the Mexican Ministry of Foreign Affairs. In early 2004, the CA reported that the child must be located in order for the return decision to be enforced.

**MEXICO Case 9** :
Date of abduction or wrongful retention: May 5, 1999
Date Hague application filed: August 28, 1999
Have children been located? No

This case involves two children and was filed directly with the Mexican CA by the District Attorney's Office in California. California authorities work directly with the LBP and CA and inform CI of important actions in the case. Chief of Mission raised this case at Binational meetings in 1999 and 2000, and with the Foreign Ministry Under Secretary in February 2001, highlighting problems caused by not locating children. The Assistant Secretary for Consular Affairs also discussed this issue with the Mexican delegation to the Special Commission on the operation of the Hague Convention held in The Netherlands in March 2001.Assistant Secretary Harty raised the case in the Binational Committee Meeting in November 2003 and again in January 2004, when she met with her counterpart in the Mexican Ministry of Foreign Affairs. In response to a case status request, the CA informed U.S. Embassy consular officials in early 2004 that the judge assigned to the case had not been able to locate the children.

**MEXICO Case 10** :
Date of abduction or wrongful retention: December 1, 1997
Date Hague application filed: September 29, 1999
Have children been located? No

The Mexican CA forwarded this case to the courts in early 2000. No hearing date has ever been set because the exact location of the TP and the two children is still unknown. The Department raised the status of this case with the Legal Advisor to the Embassy of Mexico in November 2001. At a meeting with the CA in February 2002, the Department raised the case as illustrative of the problems caused in child abduction cases when courts are unable to locate children. In the spring of 2003, CI provided new information regarding the children's location to the CA. Chief of Mission raised this case at Binational meetings in 1999 and 2000, and with the Foreign Ministry Under Secretary in February 2001, highlighting problems caused by not locating children. The Assistant Secretary for Consular Affairs also discussed this issue with the Mexican delegation to the Special Commission on the operation of The Hague Convention held in the Netherlands in March 2001. Assistant Secretary Harty raised the case in the Binational Committee Meeting in November 2003 and again in January 2004, when she met with her counterpart in the Mexican Ministry of Foreign Affairs. In response to a case status request from CI, the CA reported in early 2004 that the case was sent to a court but no judge had yet been assigned to handle the case.

**MEXICO Case 11** :
Date of abduction or wrongful retention: July 4, 1999
Date Hague application filed: November 4, 1999
Have children been located? No

The Mexican CA forwarded the case to the courts in 2000 but to date the authorities have not been able to locate the two children or TP in Mexico. The LBP, through a private investigator, developed information that the children may be in Canada. The Department forwarded a copy of the Hague applications to the

Canadian CA as well. Chief of Mission raised this case at a Binational meeting in 2000, and with the Foreign Ministry Under Secretary in February 2001, highlighting problems caused by not locating children. The Assistant Secretary for Consular Affairs also discussed this issue with the Mexican delegation to the Special Commission on the operation of The Hague Convention held in The Netherlands in March 2001.The Department raised the status of this case with the Legal Advisor to the Embassy of Mexico in November 2001. Assistant Secretary Harty raised the case in the Binational Committee Meeting in November 2003 and again in January 2004, when she met with her counterpart in the Mexican Ministry of Foreign Affairs. The Mexican CA informed the U.S. Embassy in early 2004 that it would contact the LBP to obtain more leads on the children's whereabouts. Though the left-behind parent applied for return of two children, the older child is now over 16 and thus falls outside the scope of the application.

**MEXICO Case 12** :
Date of abduction or wrongful retention: October 5, 1999
Date Hague application filed: December 2, 1999
Has child been located? No

In June 2000, the Department provided the TP’s address to the Mexican CA. The case was forwarded to the presiding judge in the state in which the child was located who initially refused to take this case for jurisdictional reasons. While the jurisdictional issue was under review by the Mexican courts, the Department discussed alternate non-Hague remedies with the TP. The Department also worked with the U.S. Department of Justice to re-enter the child’s name into the National Crime Information Center (NCIC) computer system in case the child returned to the United States without the LBP's knowledge. Local U.S. police had taken the child’s name out of the system once the TP and child were located in Mexico claiming that the child was no longer “missing.”

The jurisdictional issue was eventually resolved and a hearing scheduled, but the TP disappeared with the child. After the TP failed to appear at three separate hearing dates between March and June 2001 the judge, in an unprecedented move in a Hague Convention case in Mexico, issued a warrant for the TP's arrest. Chief of Mission raised this case at a Binational meeting in 2000, and with the Foreign Ministry Under Secretary in February 2001, highlighting problems caused by not locating children. The Assistant Secretary for Consular Affairs also discussed this issue with the Mexican delegation to the Special Commission on the operation of the Hague Convention held in The Netherlands in March 2001.The Department discussed the status of the case with the CA in October 2001 and queried when the warrant would be executed. The Department raised the status of this case with the Legal Advisor to the Embassy of Mexico in November 2001. At a meeting with the CA in February 2002, citing this case, the Department raised the problem caused in child abduction cases when children cannot be located by the court. The LBP’s contacts reported sighting the TP and child in November 2002. The second judge assigned to the case attempted to find the child. During the judge's visit to the presumed residence, he found a room containing the child's belongings but no child. The TP has not been arrested but the case remains with the judge pending location of the child. Assistant Secretary Harty raised the case in the Binational Committee Meeting in November 2003 and again in January 2004, when she met with her counterpart in the Mexican Ministry of Foreign Affairs.

**MEXICO Case 13** :
Date of abduction or wrongful retention: June 16, 1998
Date Hague application filed: February 21, 2000
Has child been located? No

The Mexican CA forwarded this case to the courts in April 2000. The family judge was unable to locate the child at the address provided and requested through the CA a new address or additional information to help locate the child or TP. CI forwarded this request to the LBP in October 2001. Chief of Mission raised this case at a Binational meetings in 2000 and with the Foreign Ministry Under Secretary in February 2001, highlighting problems caused by not locating children. The Assistant Secretary for Consular Affairs also discussed this issue with the Mexican delegation to the Special Commission on the operation of the Hague Convention held in The Netherlands in March 2001. The Department raised the status of this case with the Legal Advisor to the Embassy of Mexico in November 2001. At a meeting with the CA in February 2002, the Department raised the problems caused in child abduction cases when children cannot be located by the court. The CA reported in October 2003 that the case was forwarded to a judge for processing. However, the child was not found, and the case was subsequently forwarded to Mexican Interpol for investigation to locate the child. Assistant Secretary Harty raised the case in the Binational Committee Meeting in November 2003 and again in January 2004, when she met with her counterpart in the Mexican Ministry of Foreign Affairs.

**MEXICO Case 14** :
Date of abduction or wrongful retention: February 4, 2000
Date Hague application filed: March 19, 2001
Has child been located? No

The case was referred to Mexican Interpol after the Mexican CA was unable to locate the child. The LBP firmly believes that the TP and child live with the TP's parent. It is believed that the TP uses several aliases to conceal their identity. CI requested FBI to visit the TP's parent in May 2002. CI continues to work the case by requesting status updates from the Mexican CA and contacting the LBP. CI received no response from the LBP to correspondence sent in 2003, although the correspondence was not returned as undeliverable. Assistant Secretary Harty raised the case in the Binational Committee Meeting in November 2003 and again in January 2004, when she met with her counterpart in the Mexican Ministry of Foreign Affairs. The CA reported in February 2004 that Mexican Interpol has been unable to locate the child.

**MEXICO Case 15** :
Date of abduction or wrongful retention: July 1999
Date Hague application filed: December 9, 1999
Have children been located? No

After the LBP filed for dissolution of marriage in 1999, the TP took the two children to Mexico. The children were never located; the Mexican CA transferred the case to Mexican Interpol for investigation of the TP's and children's whereabouts in early 2002. Chief of Mission raised this case at a Binational

meeting in 2000, and with the Foreign Ministry Under Secretary in February 2001, highlighting problems caused by not locating children. The Assistant Secretary for Consular Affairs also discussed this issue with the Mexican delegation to the Special Commission on the operation of the Hague Convention held in The Netherlands in March 2001. Assistant Secretary Harty raised the case in the Binational Committee Meeting in November 2003 and again in January 2004, when she met with her counterpart in the Mexican Ministry of Foreign Affairs.

**MEXICO Case 16** :
Date of abduction or wrongful retention: Early 2000
Date Hague application filed: Spring 2000
Has child been located? Yes

The case was filed directly with the Mexican CA by the California District Attorney. The CA reported to U.S. Embassy consular officers in the fall of 2003 that the judge reviewing the case had denied return after the LBP failed to provide proof of rights of custody. The CA later clarified that, in denying return, the judge also considered evidence that the LBP had brought the child to Mexico and left the child with a relative, who then voluntarily turned the child over to the TP. Chief of Mission raised this case at Binational meetings in 2000, and with the Foreign Ministry Under Secretary in February 2001, highlighting problems caused by not locating children. The Assistant Secretary for Consular Affairs also discussed this issue with the Mexican delegation to the Special Commission on the operation of the Hague Convention held in The Netherlands in March 2001. Assistant Secretary Harty raised the case in the Binational Committee Meeting in November 2003 and again in January 2004, when she met with her counterpart in the Mexican Ministry of Foreign Affairs.

**MEXICO Case 17** :
Date of abduction or wrongful retention: September 4, 2000
Date Hague application filed: February 12, 2001
Has child been located? No

This case originally involved three children taken to Mexico by the TP for a two-week visit. The LBP filed a return application when the TP refused to return them after the two weeks. The two older children escaped and were returned to the LBP in April 2001. Assistant Secretary Harty raised the case in the Binational Committee Meeting in November 2003 and again in January 2004, when she met with her counterpart in the Mexican Ministry of Foreign Affairs. The case regarding the youngest child was finally brought before a judge in February 2004. The judge requested original documents because of rumors that a cousin who looks very much like the LBP has stated the child belongs to her. The Mexican CA cannot locate the original documents forwarded in support of the Hague application but has "certified" all documents associated with the case for the court's consideration. California justice officials are obtaining a new original birth certificate to forward to the court.

**MEXICO Case 18** :
Date of abduction or wrongful retention: January 8, 2000

Date Hague application filed: May 1, 2001
Has child been located? Yes, after reporting period ended

This case remained active throughout the reporting period but was resolved in October 2003 by the child's return to the LBP. From the time of the Hague application filing until the child was recovered, Mexican authorities were unable to locate the child at any of the addresses provided by the LBP. Relatives of the LBP visited Mexico and pointed out the house where the child lived. The TP and LBP met soon after but, by early 2002, discussions regarding access to the child broke down. The LBP was convinced that the TP and child continued residing in the same community, although a judge visited the address and did not find the child. The child was recovered in October 2003 when the TP was stopped for a traffic violation in the U.S. Upon locating the child, it was discovered that the TP had returned to the U.S. with the child in early 2003.

**MEXICO Case 19** :
Date of abduction or wrongful retention: November 16, 1998
Date Hague application filed: June 11, 2001
Has child been located? No

This case was filed directly with the Mexican CA by the District Attorney's Office in California. California authorities work directly with the LBP and CA and inform CI of relevant actions in the case. CI learned about the case in March 2002. U.S. Embassy officials, California justice officials and the Mexican Consulate in Los Angeles have all pressed the Mexican CA for updates on Mexican action taken on the case. Assistant Secretary Harty raised the case in the Binational Committee Meeting in November 2003 and again in January 2004, when she met with her counterpart in the Mexican Ministry of Foreign Affairs. In early 2004, the CA informed the U.S. Embassy that a judge has been assigned the case though no hearing has yet been scheduled.

**MEXICO Case 20** :
Date of abduction or wrongful retention: February 9, 2001
Date Hague application filed: July 25, 2001
Has child been located? No

This case was filed directly with the Mexican CA by the District Attorney's Office in California. California authorities work directly with the LBP and CA and inform CI of relevant actions in the case. The TP contacted the LBP twice requesting money for the child's medical treatment. In those requests, the TP gave LBP a contact telephone number and address that was the same as the location information listed on the Hague application. Assistant Secretary Harty raised the case in the Binational Committee Meeting in November 2003 and again in January 2004, when she met with her counterpart in the Mexican Ministry of Foreign Affairs. The CA has been unable to locate the child and informed the U.S. Embassy in early 2004 that the case file has been referred to Mexican Interpol for investigation to locate the TP and child.

**MEXICO Case 21** :
Date of abduction or wrongful retention: August 28, 2000

Date Hague application filed: August 23, 2001
Have children been located? No

The TP took the two children to Mexico in August 2000. The LBP did not know their location until the older child telephoned to inform the LBP that they would not return to the U.S. LBP has supplied the Mexican CA and Interpol with numerous addresses for the TP and TP's family to assist in finding the children. U.S. Embassy consular officials attempted to visit the children in June 2003 but did not find them at home. The CA suggested that LBP should consider changing the application from return to access. The LBP refused to do so. Continuing attempts to locate the children have proved unsuccessful to date. The CA has forwarded the case to a state superior court for action, but no judge has yet been assigned to the case. Assistant Secretary Harty raised the case in the Binational Committee Meeting in November 2003 and again in January 2004, when she met with her counterpart in the Mexican Ministry of Foreign Affairs.

**MEXICO Case 22** :
Date of abduction or wrongful retention: August 21, 2000
Date Hague application filed: August 30, 2001
Has child been located? No

The LBP last saw the child in July 2000 before the TP took the infant to visit grandparents in Mexico. The LBP has provided the CA with updated address information for the TP and child several times since filing the return application, but the child has not been located. The Mexican CA referred the case to Interpol for location of the child and TP in summer 2002 and no progress has been reported since. Assistant Secretary Harty raised the case in the Binational Committee Meeting in November 2003 and again in January 2004, when she met with her counterpart in the Mexican Ministry of Foreign Affairs.

**POLAND Case 1** :
Date of abduction or wrongful retention: November 28, 1998
Date Hague application filed: August 4, 1999
Have children been located? No

In July 2001, a court of appeals overturned a lower court decision and ruled in favor of returning the children to the LBP. In November 2001, the TP was ordered to return the children to the LBP, who had traveled to Poland, within three days. At that time, the TP disappeared with the children, and they have been missing ever since. The LBP traveled to Poland several times, employed the services of a private investigator, and they both worked with the Polish regional prosecutor. In August 2003, Polish authorities located two children they believed to be the missing children and emailed photographs to the LBP, who determined that the children were not the ones being sought in this case.

U.S. Embassy officials in Warsaw have repeatedly brought this case to the attention of the Polish CA, the Ministry of Justice, and the head of the International Cooperation Office. Assistant Secretary Maura Harty and Deputy Assistant Secretary Janice Jacobs each discussed this case with the Consular Affairs Chief of the Polish Foreign Ministry in 2003; Embassy officials specifically raised the case with the Polish

Foreign Ministry in January 2003 and with the Ministry of Justice in November 2003. In February 2004, Principal Deputy Assistant Secretary for Consular Affairs Daniel Smith, accompanied by the U.S. Consul General, delivered a formal demarche to the senior officials of the Polish Foreign Ministry regarding U.S. concern about Poland's continued inability to locate the children. Assistant Secretary Maura Harty reiterated our concerns about this case in a meeting with Polish Ministry of Foreign Affairs Undersecretary Jakub T. Wolski in February 2004 when she discussed the establishment of a high-level bilateral working group on consular issues.

Action taken by the Chief of Mission: Diplomatic note in 2001, a meeting with Minister of Justice in 2002, two letters to Polish courts in 2002, three diplomatic notes and three letters to local officials in 2003.

**POLAND Case 2** :
Date of abduction or wrongful retention: March 30, 2000
Date Hague application filed: December 12, 2000
Has child been located? Yes

In January 2001, the Polish Court of Justice issued a temporary order that the child not be removed from Poland. Pending a final decision on the case, the court first granted the LBP access to the child in July 2001. In June 2003, the court ordered psychological exams of both parents and the child. The LBP has traveled to Poland several times to accommodate the court and visit with the child. In November 2003, the court denied the return of the child; an appeal was filed the following month. CI has expressed concern to the CA regarding the psychological examination of the parents, and the continued use of a faulty translation of the Hague Convention by courts deciding Hague cases, including in this case. In February 2004, Principal Deputy Assistant Secretary for Consular Affairs Daniel Smith, accompanied by the U.S. Consul General, delivered a formal demarche to senior officials of the Polish Ministry of Foreign Affairs. The demarche requested that the Polish government take steps to remove the flawed translation of the Convention from circulation, and that the decision to deny return in this case be reviewed by the Ministry of Justice. Assistant Secretary Maura Harty reiterated the Department's concerns about this case in a meeting with Polish Ministry of Foreign Affairs Undersecretary Jakub T. Wolski in February 2004 when she discussed the establishment of a high-level bilateral working group on consular issues. In late February 2004, the Polish Circuit Court denied the appeal, stating that the lower court correctly found that the child and TP had returned to Poland in November 1999 with the LBP's knowledge and consent, that the child's March 2000 visit to the LBP in the U.S. was temporary and, therefore, the child was not "habitually resident" in the United States at the time of the alleged abduction. The appellate court's decision is final and cannot be appealed.

Actions taken by the Chief of Mission: The U.S. Ambassador to Poland and the Polish Minister of Justice discussed this case in a meeting in February 2002. Separately, Embassy consular officials also met with Ministry of Justice officials on the case in 2002.

**SOUTH AFRICA Case 1** :
Date of abduction or wrongful retention: May 2, 2001

Date Hague application filed: August 7, 2001
Have children been located? Yes

The first hearing on this case did not occur until September 2002, over a year after the filing of the Hague application. In November 2002, the court ruled to deny return. The court's stated basis for the decision was a finding that the LBP had acquiesced to the children's removal to South Africa. The court accepted correspondence between the parents as evidence that the LBP had acquiesced in the children's continued residence in South Africa. The LBP was granted leave to appeal in November 2002. In February 2003, the LBP was informed that the Court had lost its files on this case and that LBP would have to pay costs of reconstructing the files. The November 2003 appeal hearing before the High Court resulted in a judgment dismissing the appeal and assigning the LBP costs, thus affirming the denial of the children's return to the U.S. Consular staff attended the November 2003 appeals court hearing. In December 2003, the LBP was considering whether to file a separate appeal.

**SOUTH AFRICA Case 2** :
Date of abduction or wrongful retention: May 11, 1998
Date Hague application filed: December 29, 1998
Have children been located? Yes

This case has languished as a result of issues regarding funding of the legal costs related to the Hague application hearing process. CI has contacted the South African CA a number of times to seek its assistance. The LBP had a South African attorney in February of 1999, but the South African Legal Aid Fund that was paying the attorney to handle the case ran out of money. The attorney was not willing to continue without being paid and the LBP would have had to assume legal costs. The LBP has not made any recent efforts to communicate with CI.

**SPAIN Case 1** :
Date of abduction or wrongful retention: March 01, 1995
Date Hague Application filed: June 12, 1995
Has child been located? Yes, but then subsequently disappeared.

A lower court ordered the child returned in February 1996 and an appeals court upheld the decision in 1996. Subsequent to the final ruling, the TP took the child into hiding in Spain. From June 1995 through July 2001, repeated search orders have been issued by the Spanish Courts and continuous attempts were made by the Department of State and the LBP to share possible leads with local Spanish officials as to the child's location. Despite the Spanish authorities'' inability to locate the child and enforce the return order, the TP was able to continue legal efforts to resist the return order. In July 1999 a final motion to vacate the judgment for return was rejected, but the order was again not immediately enforced. In July 2001, the LBP was notified that the TP had initiated divorce proceedings in Spanish courts that would include custody hearings. CI brought the conflict with the Hague return order to the attention of the CA, but no response was forthcoming. Subsequently, the TP contacted the LBP through the TP’s attorney, and two separate private attempts to negotiate the child's return have failed. An Interpol notice has been issued in connection with the case. Divorce proceedings are ongoing in Spain; the LBP has requested

that a U.S. divorce order be recognized. The Spanish authorities have yet to enforce the order for return. A local attorney did locate the TP and child. However, the judge failed to act to enforce the return order.

This case has been raised repeatedly by Embassy Madrid and by Assistant Secretary Maura Harty during her March 2003 visit to Spain.

**SPAIN Case 2** :
Date of abduction or wrongful retention: September 06, 2000
Date Hague Application filed: November 13, 2000
Has child been located? Yes

The CA located the child almost immediately and a consular officer performed a welfare visit in November 2000. However, when an attempt was made to serve the TP for the Hague hearing in March 2001, the child had been moved. A second search was conducted and the TP was served in October 2001. Repeated CI requests for notice of the court hearing date went unanswered until January 2002, when the CA informed CI that the hearing was postponed pending a psychological evaluation of the child. A hearing date was set for June 2002. Repeated attempts by CI and Embassy Madrid to follow up with the CA brought no information until May 2003,when CI received a fax with an untranslated court ruling dated September 2002, denying the Hague application and indicating that the attorney prosecuting the application (a Spanish government lawyer) had declined to appeal. In the latter part of 2003, CI confirmed that no further appeals were available and advised the LBP that it would provide assistance to pursue non-Hague remedies if the LBP wished.

**TURKEY**
Date of abduction or wrongful retention: February 2, 2001
Date Hague application filed: March 5, 2002
Has child been located? Yes

In March 2002, the CA acknowledged receipt of the Hague application and stated it had been sent to the local public prosecutor to see if a voluntary return could be negotiated. In May and June 2002, CI and the U.S. Embassy in Ankara made repeated requests for a status report, with no response. In July 2002, the CA stated that the TP would not agree to return the child voluntarily and a hearing had been scheduled for June 2002. The LBP had been waiting to hear if voluntary return negotiations were successful before retaining a Turkish attorney. CI asked if the June 2002 hearing date was a misprint. In August 2002, CI was notified by the CA that in June, a Turkish court had denied the LBP's Hague application for return. CI immediately protested to the CA that the LBP did not have legal representation at the hearing. The CA agreed and asked the local public prosecutor to lodge an appeal. In October 2003 the appeals court upheld the decision of the lower court without taking into consideration that the LBP had been unrepresented in the first proceeding. The court stated, incorrectly, that the LBP had been represented by the CA public prosecutor. The CA asked the local public prosecutor to request whatever reexamination of the appellate court's decision was possible.

The Embassy raised this case multiple times with the Ministry of Foreign Affairs, Ministry of Justice, and Appeal Court officials, both in person and in writing. Assistant Secretary Maura Harty discussed this case and Hague compliance issues in general with the Minister of Justice in December 2003. In January 2004, CI learned that the Turkish Supreme Court refused to review the appeals court decision on the grounds that the CA did not appeal in a timely manner. The father did have legal representation during the two appeal cases. With the Hague process exhausted, the case for return of the child was closed in early 2004.

**ZIMBABWE**
Date of abduction or wrongful retention: August 8, 2000
Date Hague application filed: November 28, 2000
Has child been located? Yes

Although U.S. Embassy consular personnel have maintained regular contact with the Zimbabwean CA regarding this case, there has been no court action. After submission of the Hague return application to the CA, the TP agreed to voluntarily return to the U.S. with the child. Both the TP and child are still in Zimbabwe; they are awaiting the TP's U.S. immigration processing so the TP and child can travel back to the U.S. together. The LBP has not been in contact with CI since February 2002 and attempts by CI to contact the LBP have been unsuccessful.

**ATTACHMENT B - Custody and Access Issues in Hague Abduction Convention Partner Countries**

**Introduction**

As technology has improved and international travel has increased, more and more families have become “international.” Many children have parents of differing nationalities or cultural backgrounds. Other children move from one country to another with their parents as work, education or other reasons dictate. This increased mobility and international contact has also led to a growing number of families with international custody problems as parents go their separate ways.

The Department recognizes the frustration and difficulties that many U.S. parents face as they struggle to maintain solid, meaningful relationships with their children across borders, oceans, and sometimes even language barriers. Even in the best of circumstances, maintaining a close relationship can be difficult when sheer physical distance is the only barrier to contact between a parent and child. Unfortunately, in too many instances, parents face additional and unexpected barriers to contact with children living in another country.

While these barriers may prove most daunting in some countries that are not U.S. partners under the 1980 Hague Convention on the Civil Aspects of International Child Abduction, there is no doubt that even in Convention partner countries, a U.S. parent can have difficulty obtaining custody or access rights and exercising those rights. The Department of State acts on many levels to assist left-behind parents to

obtain and exercise access rights: in multilateral fora, in bilateral discussions with high-level government officials, in the day to day working level contacts with central authorities, law enforcement and child welfare officials, and with taking parents.

**Services Available to U.S. Parents**

The Department and our consular officers in U.S. embassies and consulates around the globe speak with many U.S. parents who turn to the U.S. government for information and assistance when their custody and access rights are in jeopardy. We work to assist these parents in many ways. For parents who are considering whether to file an access application under the Convention, the Department's Office of Children's Issues provides assistance in understanding the application requirements and submitting the application to the Foreign Central Authority in the country where the child resides.

If filing a access application under the Convention is not an option, or the U.S. parent chooses to pursue legal remedies directly through the foreign courts, we provide basic information about the local legal system and local social services, lists of local attorneys and basic tips on how to retain a local attorney. To help parents who are unable to visit with their children, consular officers abroad stand ready to arrange welfare and whereabouts checks to verify a child's health and current circumstances, and then report back on the visit to the concerned parent. If the parent with physical custody of the child refuses permission for a consular visit with the child, U.S. consular officers request assistance from foreign authorities to facilitate the visit or, when a consular visit is still not possible, obtain a report from local social services on the child's welfare.

If communication between child and parent has been disrupted, we work with the parent to identify alternative means to re-establish contact. The Department and consular officers abroad can also provide information about non-governmental organizations and other agencies that provide mediation services or otherwise assist in negotiating regular communication and access to the child. We are also involved at many levels in working with foreign governments to encourage them to consider creative ways to facilitate access for parents in the U.S.

**The Convention's Legal Context**

The Convention states in Article 1(b) that among the Convention's objectives is "to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States." Article 7(f) tasks Central Authorities to "take all appropriate measures . . . in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access." Article 5 provides that " 'rights of custody' shall include rights relating to the care of the person of the child, and, in particular, the right to determine the child's place of residence, while "'rights of access' shall include the right to take a child for a limited period of time to a place other than the child's habitual residence."

The principal purpose and effect of the Convention is to secure the prompt return of children wrongfully removed to or retained in any Contracting State to their country of habitual residence. Under the Convention, to be wrongful and require return of the child, the removal or retention must have been in

violation of “rights of custody”. A return application under the Convention cannot be based on a removal that deprives the left-behind parent of “rights of access” only.

The Convention does not require the administrative and judicial authorities of a State party to recognize orders concerning custody and access rights from other States. Rather, it generally requires the authorities adjudicating a return application to refrain from making decisions about custody rights if a child has been wrongfully removed or retained so that decisions about custody of the child may be made in the Convention partner country in which the child is habitually resident.

While the Convention details standards and time frames that administrative and judicial authorities must use in deciding whether a child is to be returned, the Convention is vague about how signatories should address access requests. Article 21 provides that applications for access may be presented to Central Authorities in the same manner as return applications, but does not require that any specific actions be taken. Central Authorities commit themselves “to promote the peaceful enjoyment of access rights and the fulfillment of any conditions to which the exercise of those rights may be subject.” Central Authorities are also obligated to “take steps to remove, as far as possible, all obstacles to the exercise of such rights.” They “may” initiate or assist in instituting proceedings “with a view to organizing or protecting [access] rights and securing respect for the conditions to which the exercise of these rights may be subject.”

**Emerging Patterns of Barriers to Access Abroad**

In our contacts with parents, we and our embassies and consulates in Convention partner countries have noted certain common barriers that parents in the U.S. may face when seeking to exercise rights of custody and access to children residing in Convention partner countries. The following information is an overview, based on observations and the experience of U.S. consular officials working with U.S. parents and foreign government officials on specific cases and broader issues. Whether or not parents in the U.S. choose to request formal assistance through the filing of a access application under the Convention, the Department and our embassies and consulates are actively engaged in assisting parents to establish and maintain meaningful relationships with their children abroad.

**I. U.S. Court Orders Not Automatically Recognized or Enforced in Other Countries**

Not all Convention partner countries will recognize or enforce U.S. orders related to custody or access rights and the Convention does not require them to do so. Each country’s domestic law determines the appropriate procedures and standards for recognition and enforcement of foreign court orders. By recognition we mean treating a U.S. court order as having the same legal force in the foreign country that an order issued by a court in that foreign country would have. By enforcement, we mean taking actions to compel individuals to comply with the order, including, if necessary, the imposition of sanctions (e.g., fines, arrest, removal of the child, contempt of court) for failure to do so. Enforcement of a U.S. court order in a foreign country is usually only possible when that U.S. order is first recognized in the foreign country.

Recognition of a U.S. court's custody order granting rights of custody or access may require registering the U.S. order with a local court or government agency, or obtaining a domestic court order that mirrors the provisions of the U.S. order. In some countries, a foreign court order must be registered with a central government office in order to be recognized by domestic authorities. In some others, mirror orders (local orders that reflect or "mirror" the content of the original U.S. court order) are used. In most countries, however, an individual who seeks local legal recognition and enforcement of custody and/or access ordered in a foreign country must do so through the local court system. This often requires hiring an attorney in the country where the child is residing. Both parents and/or their attorney may need to appear in person at local court hearings.

The majority of U.S. Convention partners have mechanisms for recognizing U.S. court orders related to rights of custody or access. Countries such as Bosnia & Herzegovina, Ecuador, Iceland, and Spain provide a process for recognizing orders issued in Convention partner countries. Portugal also has a process to permit recognition of orders from the U.S. but does not provide them the expedited recognition it gives to European orders. In Mexico , judges take into consideration U.S. court orders when acting on access issues, but are not bound by them; they make an independent decision based on the information before them. Colombian and Italian authorities can recognize U.S. orders, but only if they do not conflict with an existing local court order. Venezuela processes recognition requests through a formal and cumbersome letters rogatory procedure. Other Convention partner countries, however, such as Cyprus, Finland, Germany, Ireland, Serbia and Montenegro, St. Kitts/Nevis, Sweden, and Turkey , do not recognize U.S. custody or access orders, requiring a parent to petition in the local courts.

One of the Department's access cases involving Sweden illustrates the difficulties that can arise when countries do not recognize U.S. orders involving rights of custody or access. In this case, involving a U.S. citizen father and a Swedish citizen mother, a U.S. custody order provided that the parents would have joint custody, which they would exercise on a two-year rotating basis. The order incorporated the parents' agreement that the U.S. would remain the child's habitual residence and that the U.S. court issuing the order would maintain continuing and exclusive jurisdiction to resolve all future custody issues. Before the child had stayed in Sweden for two years under the order, the Swedish parent filed for sole custody in a Swedish court and refused to return the child to the U.S. at the end of the two years provided by the U.S. custody order. Sweden does not recognize U.S. custody orders. The left-behind parent filed an application under the Convention for the child's return to the U.S. The Swedish Supreme Administrative Court, after lower courts had repeatedly found in favor of the U.S. parent's application, denied the child's return, finding that Sweden had become the child's place of habitual residence during the child's stay with her mother in Sweden.

After extended litigation, the U.S. citizen father obtained an order from the Swedish courts granting him joint custody and rights to unsupervised access to his child. Enforcement of the order remains a problem, however, as the Swedish mother has refused to allow the effective exercise of these rights by the father. In such cases, U.S. parents can contact the Department in order to request foreign central authority assistance, a welfare and whereabouts visit by a consular officer, or in order to explore other alternatives, like mediation, to improve access.

## II. Problems Enforcing Local Court Orders for Custody and Access

Enforcement measures designed to protect custody and access rights may include fines, arrest, removing the child, and administrative or contempt of court sanctions aimed at compelling compliance with court orders. In a number of countries, however, local law enforcement or other official bodies do not have the legal authority, resources, or will even to enforce local custody or access orders. U.S. Embassies in Bosnia & Herzegovina, Ecuador, Serbia and Montenegro, Turkey, and Venezuela , for example, report that the laws of those countries do not permit the imposition of any sanctions for violations of order related to custody and/or access rights. In Mexico sanctions are minor and rarely enforced in practice.

In other Convention partner countries, U.S. parents face varying obstacles to effective exercise of custody or access rights granted by local courts. Sometimes, parents must file separate actions to obtain enforcement of a court's order. In St. Kitts/Nevis , a U.S. parent who is prevented from exercising rights of custody or access granted under a local court order must lodge a complaint with the court to seek remedies. Similarly, in Slovakia , a separate request for enforcement must be lodged with a court in order to obtain local authority enforcement assistance if a custody order has been violated. Even in countries that permit the imposition of sanctions against violators of custody or access orders, if the order is not specific about times, dates and lengths of visits, for example, it may also be difficult to prove that the other parent has violated the order's terms.

In some countries, such as Colombia, Ecuador, Germany, Spain, Sweden, and Switzerland , the authority to arrest a parent violating a court order or to physically remove a child from the violator's care is rarely used and mechanisms like contempt of court do not exist or are not used in cases involving custody or access disputes. In these countries enforcement is often problematic. A court ordering access rarely has direct control or influence over the police and child welfare institutions assigned the task of implementing an order. In Switzerland , local jurisdictions (cantons) operate independently, so, orders issued in one jurisdiction may not be recognized or enforceable in a different jurisdiction of the country, thus allowing a custodial parent to move the child to a different canton to prevent visits or the enforcement of a local access order. Local courts and law enforcement in these countries may also be reluctant to impose and carry out jail sentences or significant financial sanctions against parents with custody who refuse to permit the other parent to exercise court-ordered access rights.

Strong cultural aversion against using coercive measures to remove a child from a parent sometimes motivates refusal by authorities to enforce access orders or the impose sanctions on the violating custodial parent. In such cases, officials often claim reliance on a "best interests of the child" standard and refuse to take action because of the possible negative effect enforcement could have on the child involved. Such justifications for non-enforcement even occur in countries like the United Kingdom , which the U.S. Central Authority considers a model Convention partner. One U.S. parent recently reported that in the two years since a U.K. court granted her access, the child's father has persistently ensured that the child was not available to her; local authorities have reportedly cited the possible emotional trauma to the child as the reason for not enforcing the access order or punishing the violating parent.

**III. No General Standards for Custody/Access**

There are no internationally recognized standards or guidelines governing the type and frequency of access that a parent without sole custody to a child should enjoy. Courts will usually evaluate information presented by both parents and may interview the child before rendering a decision regarding custody or the frequency, duration, location, and extent of access. For example, although requesting parents in the United States may seek an order permitting the child to visit the U.S., a court considering the request may instead order more restricted access by, for example, permitting only written correspondence, telephone contact, supervised visitation, or periodic visits with the child conducted in the child's current country of residence. Some countries have demonstrated considerable creativity and flexibility in solving problems of international access through the involvement of non-governmental organizations, mediation services, and new technologies, such as video conferencing and other video and computer-based communications, to facilitate contact between parent and child.

Parents living in the U.S. may face particular difficulties obtaining joint custody in Ireland, Kosovo , Macedonia, Portugal, or Zimbabwe . Joint custody is not possible at all in Romania after the parents have divorced. Courts in some countries grant joint custody to parents living in the U.S. but arranging for U.S. visitation may be difficult or impossible. Courts may suspect that children permitted to leave their jurisdiction will fail to return, even if promises to return the child after a visit to the United States are agreed to in writing. In some cases in Panama, Sweden, and Venezuela , for example, foreign parents have had little difficulty in convincing local authorities to block a child's travel to the United States to visit with the other parent.

Over a dozen of our Convention partner countries have non-governmental organizations that have some programs to work with and assist parents and children. Most partner countries make governmental or private mediation assistance available to parents. We are not aware of government mediation assistance or non-governmental organization support for parents willing to negotiate access in Romania, Spain, or Turkey .

**IV. Child's Interests vs. Parent's Interests**

Most courts, in determining what custody and access rights a parent will have with respect to a child, will consider the best interests of the child and whether the child desires the contact with the requesting parent. In general, the child's views are given progressively greater weight as the child matures. In instances where the child is sufficiently mature to state a preference, courts may question the child directly or rely on social service professionals and/or psychological evaluations to determine the level of access that best fits the needs of the child. In cases where conflicts between parents remain intense, courts often consider the child's ability to cope with the conflict when determining appropriate access.

In many countries, such as in Germany , judges use court hearings as opportunities to observe parents as part of their evaluation before rendering a custody or access decision. A parent's appearance at court hearings may therefore be very important to the court's assessment of a parent's access application, so

that an applying parent's failure to appear may affect his or her interests negatively. The foreign attorney representing a parent should provide guidance on whether the parent's personal appearance is essential or if other means of testimony, such as telephone or video testimony, might be an acceptable and available alternative.

In its effort to determine what is in the best interests of the child, a foreign court considering a petition for custody or access by a parent in the United States may lose sight of the need to protect the child's interest in a relationship with the applying parent. Recent decisions by the European Court of Human Rights have affirmed the right that parents and children have to a relationship with each other and have made clear that governments (including courts) have an obligation to respect and protect those rights.

**V. Cultural or Linguistic Estrangement From the Child**

International custody and access rights cases often involve parents residing in countries with differing cultures. Non-custodial parents may find visiting and communicating with the child increasingly problematic the longer the child remains in a foreign country. Language barriers frequently develop as the child becomes settled in a non-English speaking environment. Some parents exploit this linguistic estrangement to reinforce their argument to courts that the child and the U.S. parent do not relate well to each other and thus the court should not expand access. Parents who face such language barriers may need to seek outside assistance to facilitate continued meaningful communication with the child. Consular officers, local social welfare agencies or non-governmental organizations may be able to assist or identify individuals or agencies that can help. U.S. consular officers conducting welfare visits can also verify the child's language skills and, through explaining the purpose of their visits, reaffirm that the child remains aware of his/her U.S. citizenship and ties to the United States.

**VI. Biases Based on Nationality, Sex, or Marital status**

Embassies in 15 of our Convention partner countries report that noticeable gender or nationality biases affect decisions on custody and access rights. In a number of countries, courts appear to favor mothers when deciding custody and access matters, particularly when young children are involved. Countries that tend to favor mothers include Argentina, Ecuador, Greece, Iceland, Mexico, Portugal, Romania, Spain, St. Kitts/Nevis, Sweden, Venezuela, and Zimbabwe . Courts in Belgium have traditionally favored mothers but attitudes have started to change in recent years. Colombian and Swiss courts hearing custody cases tend to favor their own nationals.

Fathers who have never married the mother of their child may also find that they are denied custody or access rights. In Finland , the mother controls custody of a child born out of wedlock unless and until the parents marry. In Belgium, Germany, Greece, Sweden, Switzerland, and Zimbabwe , an unwed father's rights to custody or access depend on the mother's consent.

**VII. Failure to Locate Children**

Just as locating children is a serious barrier in some *return* cases under the Convention, locating children is a frequent problem for parents in the U.S. seeking to exercise custody or *access* rights abroad. Foreign parents who choose to interfere with a child's contact with a parent in the U.S. are aided, in some countries, by policies and local authorities that place a low priority on locating children who are the subject of custody disputes.

In dealing with children taken to Mexico , for example, where authorities have a poor record of locating abducted children, some U.S. parents have waited for years for Mexican authorities to locate their children. In one long-outstanding case, the U.S. parent spent several years pursuing the children's return through the Hague Convention process. In 1999, in the face of repeated court delays and with no idea of how much longer the case would continue, the parent finally abandoned pursuit of the children's return and decided to focus on access instead. U.S. consular officials were able to work through the taking parent's attorney to arrange several visits to check on the children's welfare. In a 2003 telephone conversation with the U.S. parent, one of the children confirmed where they lived. This information was shared with the Mexican authorities who, however, report they are still unable to locate the children. No progress has been made on the access request. The U.S. parent has been separated from the children for more than ten years.

**Addressing Access and Enforcement Issues with our Hague Convention Partners**

It is clear that the absence of shared norms concerning the substance of custody and access rights and the lack, in many countries, of reliable mechanisms to ensure the effective exercise of those rights represent serious obstacles to parents in the U.S. seeking meaningful access to their children abroad. On several levels the Department works with our Convention partners to raise consciousness of custody and access issues, to seek consensus on how to address them, and to enhance the ability of parents in the U.S. to establish and maintain meaningful access with their children.

On a caseworker level, we seek Central Authority assistance for U.S. parents to negotiate the legal system in the foreign country where they seek custody or access rights. Foreign Central Authorities often work with us informally, even where they perceive no treaty obligation, to help U.S. parents address their access concerns. They do this because we spend years developing close working relationships of mutual cooperation and support.

Their cooperation is reinforced by policy level engagement in which senior Department of State officials including the Secretary, Undersecretaries, and Assistant Secretaries provide a political context for taking access issues seriously. These policy officials raise individual cases where necessary as well as highlight the importance of finding systematic solutions to access problems—problems that can cause ongoing irritations in bilateral relations. Our Embassies abroad engage foreign government officials even more frequently at all levels, seeking creative solutions to help American parents achieve meaningful custody

or access rights. They provide the front-line effort in these cases and in some countries face daunting barriers to success.

Illustrative of our engagement with our Convention partners are the frequent opportunities Assistant Secretary Harty takes to raise abduction and custody and access issues in her meetings here and abroad with foreign officials. She personally advocated for left-behind parents in individual long-standing custody and access cases with Swedish, Austrian, German, Italian, Turkish, Brazilian, Costa Rican, Polish, and Mexican counterparts during the period of this report. In addition, Assistant Secretary Harty led the U.S. Government's efforts to address parental access rights issues involving children in countries not party to the Hague Abduction Convention. Both in Washington and in several trips to the Middle East over the past year, she has met with her counterparts and other senior officials to underline the Department's support for improved access for U.S. parents. Her efforts on behalf of American citizens seeking access rights to their children in Saudi Arabia, Egypt, Lebanon, Jordan, Morocco, the United Arab Emirates and Syria are opening doors previously closed to us and promise to provide a model for other Convention countries seeking access in these countries for their citizens. Her work is helping to frame the discussion on what access should include and how we can go about achieving it. Ambassador Harty negotiated a U.S.- Egypt Memorandum of Understanding setting forth guidelines for possible future arrangements on cooperation in consular cases concerning parental access to children, signed in Cairo in October 2003, that has been greeted with intense interest by our Convention partners. A similar Memorandum of Understanding has been negotiated with Lebanon and sample texts for similar arrangements have been shared with Jordanian, Syrian, Moroccan, and Emirati officials.