This does not imply the consent by the United States of America to the exercise of jurisdiction of the Italian Courts in disputes, if any, directly or indirectly connected with this instrument. Nothing in this instrument implies a waiver to sovereign or personal immunity.26

The embassy has not provided further details about the circumstances under which the agreement was concluded.27

The payment reportedly marked the first of its kind “made by the US government to the family of a drone-strike victim killed outside a declared war zone.”28 As of the date of publication, the U.S. government had not reached an agreement with the family of Warren Weinstein.29

PRIVATE INTERNATIONAL LAW

United States Ratifies Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance
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The United States deposited its instrument of ratification for the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (the Convention)1 in September 2016.2 The Convention entered into force for the United States several months later.3 Ratification was facilitated by the passage of novel federal implementing legislation that—rather than directly mandating alterations to the domestic legal structure—created a financial incentive for states to change their child support laws. The Idaho


26 U.S.-Italy Agreement, supra note 25, Art. 10.
27 Kirchgaessner, supra note 25.
28 Id. (“Experts say it is already understood that the US offers condolence payments to the families of civilian casualties of airstrikes in Afghanistan and Iraq, but that the Lo Porto agreement stands out because he was killed in Pakistan and because documents show the US was directly involved in the payment.”).
29 Miller & Jaffe, supra note 25.


3 Id.
legislature displayed some initial resistance, by early 2016 all fifty states had changed the relevant laws, enabling the submission of U.S. ratification.

According to a National Security Council spokesperson, the Convention “contains numerous groundbreaking provisions that, for the first time on a global scale, will establish uniform, simple, fast, and inexpensive procedures for the processing of international child support cases . . .”4 U.S. Secretary of State John Kerry added:

The United States already has a comprehensive system to establish, recognize, and enforce domestic and international child support obligations. The Convention requires that all [parties] have similar systems in place. As a result, more children in the United States and abroad should receive more support, more expeditiously than ever before.5

The Office of Child Support Enforcement (OCSE)6 identified several key aspects of the Convention. First, it

will greatly speed up the enforcement of U.S. orders. It limits the circumstances under which a court can review and object to an order. It requires recognition of a U.S. order unless a respondent timely raises a challenge and it limits available objections that the respondent may raise to those similar to ones now allowed under U.S. law.7

Second,

[t]he Convention recognizes U.S. due process requirements. It allows a challenge to recognition of a foreign support order if there was a lack of notice and an opportunity for a hearing. It allows a challenge if the order does not comply with U.S. jurisdictional rules. And it allows a court to refuse recognition of an order if it is manifestly incompatible with public policy.8

Third, the Convention “requires [parties] to provide free legal assistance in child support cases,” something U.S. agencies are already required to do.9 Finally, “[t]he Convention provides standardized procedures and timeframes. Each [party] must follow certain procedures to recognize and enforce child support orders. They must meet certain timeframes for allowing a challenge to an order and for providing status updates.”10

The United States has supported the Convention since its inception. According to OCSE, “[t]he United States actively participated in the development of the Convention from the beginning of negotiations in 2003.”11 The Convention was concluded on November 23,

4 Price Statement, supra note 1.
5 Remarks on Hague Convention Ratification, supra note 1.
6 OCSE is the federal agency responsible for overseeing the national child support program and helping state child support agencies manage state programs in compliance with federal law. About the Office of Child Support Enforcement (OCSE), OFFICE OF CHILD SUPPORT ENFORCEMENT (last updated Aug. 18, 2016), at http://www.acf.hhs.gov/css/about.
8 OFF. CHILD SUPPORT ENF’T, supra note 7; see also Hague Maintenance Convention, supra note 1, Arts. 20, 22, 23(7).
9 OFF. CHILD SUPPORT ENF’T, supra note 7; see also Hague Maintenance Convention, supra note 1, Art. 14.
10 OFF. CHILD SUPPORT ENF’T, supra note 7; see also Hague Maintenance Convention, supra note 1, Art. 23.
11 OFF. CHILD SUPPORT ENF’T, supra note 7.

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2007, and the United States was the first country to sign it a few weeks later. In September 2008, then-President Bush recommended that the Senate consent to ratification “at the earliest possible date,” noting that entry into force of the Convention “would be in the interests of U.S. families, as it would enable them to receive child support owed by debtors abroad more quickly and reliably.”

The Bush administration recommended two reservations to the Convention. The first proposed reservation related to certain portions of Article 20(1). Absent a reservation, these provisions would require the United States to recognize and enforce decisions made by judicial or administrative authorities of other states parties in the following cases: (1) where “the creditor was habitually resident in [that state] at the time proceedings were instituted;” (2) where “there has been agreement to the jurisdiction in writing by the parties,” except “in disputes relating to maintenance obligations in respect of children;” and (3) where “the decision [regarding maintenance obligations] was made by an authority exercising jurisdiction on a matter of personal status or parental responsibility, unless that jurisdiction was based solely on the nationality of one of the parties.”

The Bush administration objected to these provisions, for the following reasons: First, “[i]n order to satisfy [U.S.] due process standards, there must be a nexus between the debtor and the forum in order to give the forum jurisdiction over the debtor. In other words, it is the respondent’s (debtor’s) contacts with the forum, not the petitioner’s (creditor’s), that are determinative.” Second, “[i]n the United States, the general state-law rule is that forum selection clauses in divorce, spousal support and child support cases are unenforceable if the chosen forum has no nexus with either party.” Third,

[i]n the United States, a competent authority must have personal jurisdiction over the parties. The fact that a court has in rem jurisdiction over a marriage, for example, does not mean that the court has personal jurisdiction over the parties. Without the requisite minimum contacts for personal jurisdiction, a U.S. court cannot issue a valid order.

The second reservation recommended by the administration related to a provision requiring the acceptance of certain communications in the French language.

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14 The Convention permits both reservations. Hague Maintenance Convention, supra note 1, Art. 62.
15 SENATE CONSIDERATION OF TREATY DOC. NO. 110–21, supra note 13, at xxvi.
16 Hague Maintenance Convention, supra note 1, Art. 20(1)(c), (e)–(f).
17 SENATE CONSIDERATION OF TREATY DOC. NO. 110–21, supra note 13, at xv.
18 Id.
19 Id.
20 S. EXEC. REP. NO. 111–2, at 8 (Jan. 22, 2010), at https://www.congress.gov/111/crpt/erpt2/CRPT-1111erp2.pdf. The Convention requires parties to designate a Central Authority to “transmit and receive” applications for the recognition and enforcement of orders and “initiate or facilitate the institution of proceedings in respect of such applications.” Hague Maintenance Convention, supra note 1, Art. 6(1). On December 8, 2016, President Obama issued an executive order that designated the Department of Health and Human Services as the Central Authority of the United States for Purposes of the Convention. Executive Order No. 13752, 81 FED. REG. 90181 (Dec. 8, 2016).
On September 29, 2010, the Senate gave its advice and consent to ratify the Convention subject to the reservations recommended by the administration.\(^{21}\) The Senate added one further understanding introduced by Senator Jim DeMint.\(^{22}\) The preamble to the Convention recalls certain provisions of the UN Convention on the Rights of the Child, a human rights treaty to which the United States is not a party.\(^{23}\) The understanding notes the United States nonparty status, and goes on to state: “[A] mention of the Convention [on the Rights of the Child] in the preamble of this Treaty does not create any obligations and does not affect or enhance the status of the Convention as a matter of United States or international law.”\(^{24}\)

The Senate also expressed its view that the Convention is not self-executing.\(^{25}\) Accordingly, additional steps to implement the Convention were necessary prior to its ratification. During its consideration of the Convention, the Senate Foreign Relations Committee observed that

the Convention is largely consistent with current U.S. federal and state law and practice in the child support enforcement area. As a result, only minimal changes to U.S. law would be required to allow for implementation of the Convention. The requisite changes would be achieved through adoption of an amended version of [the Uniform Interstate Family Support Act (UIFSA)] by states and other relevant jurisdictions, as well as through conforming amendments to Title IV of the Social Security Act.\(^{26}\)

The Committee further stated that “the National Conference of Commissioners on Uniform State Laws . . . [had] approved model state implementing legislation for the Convention through proposed amendments to the UIFSA, referred to as UIFSA 2008.”\(^{27}\) Those amendments “provide [d] guidelines and procedures for the registration, recognition, enforcement and modification [in state courts] of foreign support orders from countries that are parties to the Convention.”\(^{28}\)


\(^{22}\) \textit{Cong. Rec.}, \textit{supra} note 21, at S7720.

\(^{23}\) Hague Maintenance Convention, \textit{supra} note 1, pmbl:

“Recalling that, in accordance with Articles 3 and 27 of the \textit{United Nations Convention on the Rights of the Child} of 20 November 1989,

\begin{itemize}
  \item in all actions concerning children the best interests of the child shall be a primary consideration,
  \item every child has a right to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development,
  \item the parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child’s development, and
  \item States Parties should take all appropriate measures, including the conclusion of international agreements, to secure the recovery of maintenance for the child from the parent(s) or other responsible persons, in particular where such persons live in a State different from that of the child[.]
\end{itemize}

\(^{24}\) \textit{Cong. Rec.}, \textit{supra} note 21, at S7720.

\(^{25}\) Id.


\(^{27}\) Id. at 6–7. \textit{See generally Unif. Interstate Fam. Support Act} (Unif. Law Comm’n 2008).

The Bush Administration submitted a legislative proposal to Congress to effectuate the necessary changes to federal law. In the absence of congressional action, the Obama Administration resubmitted the proposal in October 2009.29

On September 29, 2014, President Obama signed the Preventing Sex Trafficking and Strengthening Families Act (the Act), which contained the implementing legislation for the Convention.30 That legislation amended Section 466(f) of the Social Security Act, which governs the states’ implementation of UIFSA.31 The amended act effectively requires all states to enact the UIFSA 2008 amendments by threatening to withhold federal funds for child support programs from states that fail to make the necessary changes.32 This method of implementing the United States’ treaty obligations is a novel one; OCSE explained the administration’s approach as follows:

Child support enforcement in the United States has traditionally been the province of state and local jurisdictional authorities. . . .

Beginning in 1984, however, Congress determined that because of the tendency of parents to travel from state to state, and the fact that parents of a child often live in different states, it would be highly desirable to have a relatively few “mandatory state laws” that all states must enact. . . .

To assure enactment of these state laws, Congress tied funding for states’ child support and welfare programs to the enactment of such legislation. . . .

Since 1992, states have used UIFSA to process interstate and international child support cases. In 1996, . . . it was mandated that all states enact UIFSA to improve inter-jurisdictional case processing.

Out of deference to the role of states as the locus of jurisdiction for child support and previous success using UIFSA to implement the interstate child support provisions of welfare reform, there was consensus . . . that UIFSA would be the appropriate vehicle to integrate the treaty into U.S. law. Implementation of the treaty through state law is more consistent with existing family law, as well as more efficient and effective, rather than through a federal law that would govern a segregated portion of international child support cases.33

Shortly after the Act was passed, states began enacting legislation to implement the UIFSA 2008 amendments.34 In Idaho, the legislation proved quite controversial. In March 2015, Idaho’s House Judiciary, Rules and Administration Committee voted to table the bill that would implement the Convention, expressing concern that Idaho might be forced to carry out child support decisions


that were based on Sharia law. According to press reports, none of the states that are currently parties to the Convention is formally governed by Sharia law; in addition, the Idaho attorney general pointed out to the House Committee that the Idaho legislation would allow judges to reject cases that fail to meet the state’s standards. Because of the committee’s decision, the bill did not proceed to the full state House of Representatives for a vote, and Idaho risked losing approximately $46 million in federal funding. The Idaho state legislature later changed course and approved the legislation in May 2015 after the governor called for a special session of the legislature to reconsider the UIFSA 2008 implementing legislation. He noted that there was “a compelling public interest in maintaining Idaho’s established child support program” and “a need for Idaho to operate in full compliance with the reciprocal interstate process as provided by [UIFSA].” He also posted a draft version of the bill online because, he said, he “want[ed] every member of the Legislature to have a better understanding of what it does and does not do, and a fuller appreciation of what happens if we fail to act affirmatively.” Despite continued opposition, the state congress approved the legislation on May 16, 2015.

Implementation in the remaining states did not provoke similar controversies. After New Jersey enacted the UIFSA 2008 amendments on March 23, 2016, all states and jurisdictions had implemented the legislation required for compliance with federal law and the Convention. Because “Article 7 of UIFSA becomes effective concurrently with the Convention,” states “will begin to process cases with Convention countries under the requirements of the Convention and article 7 of . . . UIFSA” on January 1, 2017.


36 Associated Press, Sharia, Foreign Treaty Controversy Stalling Idaho Child-Support Bill, WASH. TIMES (Apr. 13, 2015), at http://www.washingtontimes.com/news/2015/apr/13/sharia-controversy-stalling-idaho-child-support-bill; see also Zavadski, supra note 35. The Attorney General appeared to reference a provision in the Idaho legislation that corresponds to Article 22(a) of the Convention, which provides that: “Recognition and enforcement of a decision may be refused if . . . recognition and enforcement of the decision is manifestly incompatible with the public policy (‘ordre public’) of the State addressed[,]” Hague Maintenance Convention, supra note 1.


39 Otter Proclamation, supra note 38.


41 See Turkewitz, supra note 38.
