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CONVENTION ON THE RIGHTS OF THE CHILD: A POTENTIALLY EFFECTIVE REMEDY IN CASES OF INTERNATIONAL CHILD ABDUCTION

I. INTRODUCTION

It is every parent’s nightmare—the prospect that his or her child has been spirited away to some unknown and distant location by his or her ex-spouse, who has no intention of ever returning. One might consider that such incidents are uncommon, and yet it is with alarming frequency that children of broken marriages are kidnapped by one parent and permanently taken away.

According to one study, it is estimated that in the United States there may be as many as 350,000 cases of child abduction every year.1 Fortunately, the United States has enacted legislation setting forth procedures to remedy this problem. Thus, the chances that a child will be found and returned to the custodial parent if the abducting parent remains somewhere within U.S. boundaries are greatly increased.2

There are, however, a growing number of incidents involving children being abducted and taken overseas, usually to the abducting parent’s country of origin.3 Shara Pang, assistant to former Senator Alan Dixon (D-Ill.), estimates that there are currently 10,000 American children being “held hostage” in foreign countries, the vast majority of whom “are pawns in custody disputes involving one parent of American citizenship and one of a different nationality.”4 If the child is taken to one of the few countries that is a signatory to the

1. See Neil C. Livingstone, Rescue My Child 96 (1992) (quoting two University of Maryland scholars, Geoffrey L. Greif and Rebecca L. Hegar). The Greif and Hegar studies further show that fathers are more likely to abduct children than mothers. Id. This may be because fathers are granted custody less often than mothers in divorce cases. Id. Additionally, boys are slightly more likely to be kidnapped than girls, and three-quarters of all children abducted were six or younger when they were kidnapped, the average age being two. Id. Only six percent of the children abducted were twelve or older. Id. at 96-97.
2. See infra part II.A.
3. See Livingstone, supra note 1, at 95-96.
4. Id.
Hague Convention on the Civil Aspects of International Child Abduction, the State Department will be able to invoke the provisions of the treaty and commence proceedings that will presumably effect the return of the child. If the child is taken to a country that is not a party to the Convention, however, or if the child qualifies under one or more of the numerous exceptions in the document's text, not only will the State Department be unable to assist the parent, but it may also admonish the parent not to attempt a rescue on his or her own. Such rescue attempts are frequently deemed illegal and may precipitate an international incident or exacerbate political tensions between the United States and the other country.

The increase in international child abduction is attributed in large part to a variety of factors, including a growing number of bi-national marriages (many of which are already burdened with cultural and religious differences), the ease of international travel, and the fact that many dual-national children already possess two passports. With these issues in mind, this comment first describes and analyzes the effectiveness of the Hague Convention, enforced in a few countries, which was drafted to address this problem. The comment then presents the Convention on the Rights of the Child and considers its potential as an alternative or, more plausibly, a supplementary means by which to secure the return of children abducted from their homes.


6. See infra text accompanying notes 37-91.

7. See generally LIVINGSTONE, supra note 1.


9. See infra part III.A.

II. BACKGROUND

A. Domestic Remedies Designed to Curb Incidents of Abduction

1. Initial Legislation

Parental kidnapping has been occurring for years in the United States, and there is a vast history of cases and legislative hearings regarding this issue. Interestingly, the government was not always willing or able to prevent or prosecute offenders. One of the first federal anti-kidnapping laws actually served in large part as an obstacle to parents who sought to press charges against parents who had crossed interstate boundaries with their children. The Federal Kidnaping Act was signed into law by President Hoover in 1932 following the public outrage caused that same year by the kidnapping of the Lindbergh baby. The “Lindbergh Act,” as it was commonly known, applied solely to the interstate transportation of a person against his or her will and specifically excluded cases of minors who were “kidnapped” by their parents. As a result, the Federal Bureau of Investigation and other federal agencies determined that it was improper, as a matter of public policy, to become involved in domestic quarrels, and that parents, even acting in violation of existing court orders, should not be criminally prosecuted as a consequence. In addition, the United States Supreme Court is unwilling to interpret the Full Faith and Credit Clause of the Constitution to require states to recognize and enforce the custody decrees of other states.

11. See infra text accompanying notes 12-31.
14. Id.
15. Id. at 6.
17. See, e.g., Ford v. Ford, 371 U.S. 187 (1962) (allowing a court to refuse to grant full faith and credit to custody decree of another state if issuing court was not itself bound by its own decree); Kovacs v. Brewer, 356 U.S. 604 (1958) (holding that custody decree is not entitled to full faith and credit if “changed circumstances” call for a different arrangement); May v. Anderson, 345 U.S. 528 (1953) (deciding that Ohio court did not have to give full faith and credit to Wisconsin decree since Wisconsin court did not have personal jurisdiction over fleeing mother); New York ex rel. Halvey v. Halvey, 330 U.S. 610 (1947) (holding that
2. The Creation of the Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act

In an effort to cure apparent defects in legislative and judicial decisions, the Family Law Section of the American Bar Association, together with the Commissioners on Uniform State Laws, drafted the Uniform Child Custody Jurisdiction Act (UCCJA) in 1968.18 According to Professor Bodenheimer, who served as Reporter on the Act for the National Conference of Commissioners on Uniform State Laws:

[T]he UCCJA plugs three major loopholes of the prior law: in the first place, it eliminates jurisdiction based on the physical presence of the child; second, it prohibits the modification of custody decrees from other states, with very limited exceptions; and third, it requires summary enforcement of out-of-state custody decrees.19

The UCCJA was enacted to deal with custody disputes and incidents of child-snatching involving foreign and U.S. courts.20 If the jurisdictional and notice requirements and the provisions for appearances used by the foreign court are comparable to those required in the United States under the UCCJA, the Act will recognize a foreign decree.21

Yet despite the progress accomplished by the UCCJA, the Act did not resolve the difficulties "created by the existence of multi-state jurisdictions, the difficulty in locating children taken to distant states, and the attitudes of different courts in dealing with a fleeing parent under civil and/or criminal statutes."22 In light of these obstacles, legislators continued to search for additional remedies to end the facility

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New York court had discretion to disregard Florida decree since it had all the parties before it). The United States Supreme Court has not had occasion to consider the issue since Ford. See Stotter, supra note 13, at 3 n.2.

18. UNIFORM CHILD CUSTODY JURISDICTION ACT (1968). See also Stotter, supra note 13, at 4 & n.8. For a full description of the Uniform Child Jurisdiction Custody Act as adopted by each State with section variations, see 1 T. L. McCahey et al., CHILD CUSTODY AND VISITATION LAWS AND PRACTICE, app. 3A (1984).


21. Id.

22. Stotter, supra note 13, at 5.
At the urging of a number of Senators, the Criminal Code Reform Act of 1978 was passed. Prior to commencing the floor debate on the Act, Senator Malcolm Wallop (R-Wy) presented a draft that was adopted without objection. His proposal (1) set forth congressional findings summarizing the causes, scope, and consequences of the problem of child-snatching; (2) required states to enforce and not modify custody orders of other states pursuant to the existence and exercise of state jurisdiction drawn primarily from the UCCJA; (3) authorized the Parent Locator Service to look for parents who disappear with children in disregard of rights of custody and obligation; and (4) provided for federal criminal investigation and prosecution of child-snatchers, with some exceptions.

The Family Law Section of the American Bar Association formed a task force aimed at informing and educating the members of the American Bar Association (ABA) House of Delegates about legal problems existing with respect to parental child abduction. This task force proved successful, and with the strong backing of the ABA, considerable debate was commenced on Capitol Hill that ultimately led to new federal legislation signed by President Carter in 1980. These new laws are presented as the Parental Kidnapping Prevention Act of 1980 (PKPA). The PKPA has three principal provisions: "1) permits access to the Federal Parent Locator Service; 2) mandates the application of full faith and credit provisions upon the authorities of the individual states; and 3) establishes the policy of applying the Fugitive Felon Act in states where parental kidnapping is recognized as a felony." As a result of this legislation, parents now

23. See id. at 6.
25. See Coombs, supra note 24, at 408-09.
26. The Parent Locator Service, formerly of the Department of Health, Education and Welfare, is primarily designed to locate parents who disappear in disregard of their obligations to pay child support. Id. at 409-10.
27. Id.
29. Id. at 7.
30. Id. at 7 & n.22. For a full description of the Parental Kidnapping Prevention Act, see 1 McCahey, supra note 18, § 3.01[3].
31. Stotter, supra note 13, at 7. See also Katz, supra note 20, at 124. The Fugitive Felon Act can be found at 18 U.S.C. § 1073 (1934).
have a relatively effective means by which to secure the return of their abducted children within the United States. These conventions are discussed below.

B. *International Remedies Aimed at Curing International Abductions*

Child abduction is not a problem unique to the United States. In fact, concern over incidents of parental child abduction has been felt all over the world. The 1980's produced several conventions on this subject in hopes of providing remedies by which parents could effect the return of their missing children.

1. **The Council of Europe Convention of 1980**

The European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children entered into force in Strasbourg, France in September, 1983.\(^{32}\) As of October 1, 1991, fifteen of the twenty-five Member States of the Council of Europe had ratified or acceded to the Convention, and all twenty-five have signed it.\(^{33}\)

This document provides for the appointment in each member state of a Central Authority to act in carrying out the provisions of the Convention.\(^{34}\) It also calls for recognition and enforcement of decisions among all European States, calls for the restoration of custody of children, and further sets forth procedures to be followed in implementing the Convention.\(^{35}\) Like the UCCJA and the PKPA, however, the Strasbourg Convention is designed to enforce custody decrees, and a party must possess such a decree before attempting to invoke its provisions.\(^{36}\)

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33. Countries that have acceded to or ratified the Strasbourg Convention include: Austria, Belgium, Cyprus, Denmark, France, Germany, Ireland, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. *See Recent Actions Regarding Treaties to Which the United States Is Not a Party*, 30 I.L.M. 1452, 1452 (1991).

34. For information regarding Central Authorities, *see infra* part II.B.2.e.


The convention probably intended to make the biggest impact in the international community regarding child abduction was created at the Hague in October of 1980. The Hague Convention is an attempt at adopting a novel approach by rejecting traditional provisions for the recognition and enforcement of foreign decisions, and focusing instead on methods of fostering cooperation among the central authorities in each country for the prompt return of children. The Convention requires the parent-abductor to return the child to the place where he or she normally resides for resolution of the issues disputed between the parents.

The word "abduction" in the title is somewhat deceptive, since it has a criminal connotation and the Convention is grounded solely in civil international law. There are no extradition or criminal liability provisions contained in the document. "Abduction" refers to the "wrongful removal or retention" of a child, and the phrase recurs throughout the text of the Convention. Generally, "wrongful removal" refers to the taking of a child from a person exercising custody, while "wrongful retention" refers to the act of keeping a child without consent of the custodial parent.

The main purpose of the Hague Convention is to protect children from wrongful international removals or retentions by persons who intend to obtain their physical or legal custody abroad. It was the concern of the drafters that children who are wrongfully moved from country to country are precluded from maintaining stable familial relationships and from continuing to function in environments to which they

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37. This section of the comment is based in large part upon the article cited id.
40. *See* id.
42. 51 Fed. Reg. 10,503.
43. *Id.*
44. *Id.* at 10,504.
are accustomed.\textsuperscript{45} "It is this which the Hague Convention is designed promptly to restore."\textsuperscript{46} Article 2 forces contracting states\textsuperscript{47} to take all appropriate measures to implement the objectives contained in article 1: (1) "to secure the prompt return of children wrongfully removed to or retained in any Contracting State;" and (2) "to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States."\textsuperscript{48}

Although thousands may seek to use this Convention, it unfortunately will not apply to all children who are victims of parental abduction.\textsuperscript{49} Before invoking the provisions of the Convention, one must first determine that the abducted or retained child is subject to its provisions, for it is only then that the administrative and judicial mechanisms of the Convention may be employed.\textsuperscript{50} There are a number of exceptions and specific requirements contained within the document that may render it inapplicable in a variety of cases.

\textbf{a. Age and Residency Requirements}

The Hague Convention applies only to children under the age of sixteen.\textsuperscript{51} This is true "even if a child is under sixteen at the time of the wrongful removal or retention as well as when the Convention is invoked."\textsuperscript{52} The Convention will cease to apply once the child attains the age of sixteen regardless of his or her status.\textsuperscript{53} Moreover, in order for the Convention to apply, the child must have been "habitually resident in a Contracting State immediately before any breach of custody or access rights."\textsuperscript{54} Thus, not only must the child have been habitually resident in a Contracting State, he or she must also have been taken to another Contracting State.\textsuperscript{55} Article 35 further specifies that the Convention will

\begin{itemize}
\item \textsuperscript{45} Id.
\item \textsuperscript{46} Id.
\item \textsuperscript{47} "Contracting states" are those countries that are parties to the Hague Convention.
\item \textsuperscript{48} See Hague Convention, supra note 5, at arts. 1-2; 51 Fed. Reg. 10,504.
\item \textsuperscript{49} 51 Fed. Reg. 10,504.
\item \textsuperscript{50} Id.
\item \textsuperscript{51} Id.; Hague Convention, supra note 5, at art. 4.
\item \textsuperscript{52} 51 Fed. Reg. 10,504. See also Hague Convention, supra note 5, at art. 4.
\item \textsuperscript{53} 51 Fed. Reg. 10,509.
\item \textsuperscript{54} Id. at 10,504. See also Hague Convention, supra note 5, at art. 4.
\item \textsuperscript{55} 51 Fed. Reg. 10,504.
\end{itemize}
apply only after the Convention has entered into force in those Contracting States involved in a dispute.  

b. *The Effect of Custody Orders or Decrees*

According to article 17, a state cannot refuse to return a child to its country of habitual residence based solely on a court order awarding custody to the alleged wrongdoer. This provision ensures that the Convention will take precedence over decrees in favor of abductors before the court to which the abductor applies has notice of the wrongful removal or retention. Therefore, under article 17, the abductor cannot avoid the Convention's return provisions simply by obtaining a custody order in the new country or by seeking to enforce another country's custody order abroad.

In order for a parent to seek the return of his or her child through the Convention, it is not necessary that there be a custody order in effect. Under the Convention, the child will be ordered returned to the person with whom he or she was residing before the removal took place regardless of the existence of a custody decree. For this reason, the Hague Convention can be distinguished from the Strasbourg Convention and domestic U.S. law, specifically the UCCJA and the PKPA, all of which provide for the enforcement of custody decrees. Although the UCCJA, PKPA, and Strasbourg Convention attempt to restore the legal status quo ante, the Hague Convention seeks to effect the factual status quo ante: it seeks to return the child to its country of habitual residence so that a court there can review the merits of the custody dispute and make a determination with respect to the child's custody.

c. *When Conduct Will be Deemed “Wrongful” Under the Convention*

As mentioned above, the Convention does not contain criminal provisions and is not an extradition treaty. Hence,
the "wrongful" removal or retention of children is wrongful in a civil, as opposed to a criminal, sense.\textsuperscript{64} The Hague Convention merely works to secure the safe return of the child to the aggrieved parent and is not concerned with the question of whether the person found to have wrongfully removed or retained the child returns to the child's country once the child has been returned.\textsuperscript{65}

Clearly, "the removal or retention must be wrongful within the meaning of article 3, as further clarified by article 5(a), in order to trigger the return procedures established by the Convention."\textsuperscript{66} The removal or retention is wrongful if it is in violation or breach of existing custody rights, provided these custody rights are being exercised.\textsuperscript{67} Because "the child's role in the proceedings is passive," it is the duty of the person who "'actually exercised custody' prior to the abduction, or who would have exercised custody but for the abduction, to invoke the Convention."\textsuperscript{68} This person need not be a parent; it is sufficient that the person be a legal guardian who is exercising control over the child.\textsuperscript{69}

Although a custody decree is not a prerequisite to obtaining relief through the Convention, there are two situations in which the aggrieved parent may benefit by securing one in advance. First, to the extent that an award of custody to the "wronged" parent is based upon a court finding that the child’s removal was wrongful, the applicant may be requested to produce a court determination to that effect pursuant to article 15, and having a custody decree may accelerate this process.\textsuperscript{70} A custody decree is regarded as evidence of the custody rights that the petitioning party must possess to succeed under the Convention.\textsuperscript{71} Second, a non-resident of the United States who obtains a custody decree from a foreign court after the child's abduction may be able to invoke the

\begin{itemize}
\item \textsuperscript{64} \textit{Id.}
\item \textsuperscript{65} \textit{Id.}
\item \textsuperscript{66} \textit{Id.} \textit{See also} Hague Convention, \textit{supra} note 5, at arts. 3, 5(a).
\item \textsuperscript{67} 51 Fed. Reg. 10,505; Hague Convention, \textit{supra} note 5, at art. 3.
\item \textsuperscript{68} 51 Fed. Reg. 10,505.
\item \textsuperscript{69} \textit{Id.} at 10,505-06.
\item \textsuperscript{70} \textit{Id.}
\item \textsuperscript{71} \textit{Id.} at 10,506.
\end{itemize}
Convention and the UCCJA to secure the child’s return from the United States.\footnote{72}

d. Proceedings to Effect the Return of the Child

The Convention sets forth two ways in which the child may be returned.\footnote{73} The wronged parent may apply directly to a court in the contracting state to which the child is taken or in which the child is being held.\footnote{74} Alternatively, the wronged parent may apply to the Central Authority that must be established by every contracting state.\footnote{75} The parent is free to pursue both methods if he or she so desires.\footnote{76}

Although the parent generally has a fair amount of time to file his or her case without losing rights under the Convention,\footnote{77} there are several reasons to avoid delay. First, the parent will want to prevent the abducting parent from obtaining an adjudication of custody on the merits in another country.\footnote{78} Second, the parent can “maximize the chances for the child’s return by reducing the alleged abductor’s opportunity to establish that the child is settled in a new environment.”\footnote{79} According to article 12, if the petition is filed more than one year after the child is removed and there is sufficient evidence to demonstrate that the child has become adjusted to his or her new home, the court may refuse to order the return of the child.\footnote{80}

Article 16 precludes a court in the country to which the child has been taken or the country from which the child has been removed from examining the merits of a custody claim once it has received notice of the child’s removal or retention.\footnote{81} If the Convention is to succeed in preventing abduc-
tions, it is essential that the alleged abductor not be afforded preferential treatment by courts in his or her country of origin, which might be likely to favor "home forum" litigants.\footnote{82}

Under the Convention, courts are granted broad discretion in applying the various exceptions and limitations contained within the document.\footnote{83} Courts are further given discretion not to order the return of the child if there is a grave risk that the child may be subjected to physical harm or would otherwise be placed in an "intolerable" situation.\footnote{84} The defendant may not use this provision to argue that return would not be in the child's best interests, as "only evidence directly establishing the existence of a grave risk . . . is material to the court's determination."\footnote{85} The person invoking this exception must prove that the risk to the child is grave, not just serious,\footnote{86} and it must be proven that it is the child—not the abductor—who would be placed in an intolerable situation.\footnote{87} In its discretion, the court may permit the child to express his or her views regarding the living arrangements he or she prefers, providing the child has reached an appropriate level of maturity.\footnote{88}

e. The Central Authority Requirement

The Convention not only fashions a judicial remedy for cases of wrongful removal and retention, it further requires that every contracting state establish a Central Authority to assist applicants in securing the return of their children.\footnote{89} In the United States, the duties of the Central Authority were assigned to the Department of State's Office of Citizens Consular Services within the Bureau of Consular Affairs.\footnote{90} Prior to the U.S. implementation of the Hague Convention, this office assisted parents in locating and effecting the return of children taken abroad, and was therefore a logical choice for becoming a Central Authority. Article 7 specifies that the

\footnotesize{82. 51 Fed. Reg. 10,509.}
\footnotesize{83. Id.}
\footnotesize{84. Id. at 10,510; Hague Convention, supra note 5, at art. 13, ¶ b.}
\footnotesize{85. 51 Fed. Reg. 10,510.}
\footnotesize{86. Id.}
\footnotesize{88. 51 Fed. Reg. 10,510; Hague Convention, supra note 5, at art. 13.}
\footnotesize{89. 51 Fed. Reg. 10,511; Hague Convention, supra note 5, at arts. 1, 6, 10, 21.}
\footnotesize{90. 51 Fed. Reg. 10,511.}
Central Authority is to take "all appropriate measures" to execute the responsibilities enumerated therein, although contracting states are not required to amend their internal laws to carry out the Convention tasks more effectively.91

3. The United Nations' Convention on the Rights of the Child

On November 20, 1989, the United Nations General Assembly adopted the Convention on the Rights of the Child without a vote.92 Like the Hague Convention, the Child's Rights Convention is an international agreement that focuses on children. But the documents actually differ greatly, because the Hague Convention deals solely with child abduction, whereas the Child's Rights Convention is a human rights treaty conferring a wide variety of rights on children.93 "The Convention on the Rights of the Child is special because, for the first time in international law, children's rights are set out in a treaty which will be binding for those states that ratify it."94

The Convention sets forth specific, enumerated rights for children, who in turn "are supposed to be active in exercising them in accordance with their growth and evolving capacities."95 The provisions are "aimed at securing the right of all children in matters of importance to their fundamental needs and interests" and in giving "protection to children in especially difficult situations,"96 such as when a child is separated from his or her parents and in incidents of international child abduction.97 Generally, the Convention's goal is to emphasize the child's best interests in all actions concerning him or her, and these best interests are considered in the context of

91. Id. at 10,511-12.
93. See infra part II.B.4.b.
95. Id.
96. Id.
97. Child's Rights Convention, supra note 10, at arts. 9-11, 35.
the child's family ties; continuity in upbringing; and ethnic, religious, cultural, and linguistic background.  

a. Background of the Child's Rights Convention

Precipitated by the 1979 International Year of the Child, the Convention on the Rights of the Child can be traced to the Declaration of Geneva, "the first international instrument recognizing that children are entitled to special care and protection." Proclaiming that "mankind owes to the child the best that it has to give," the Declaration was adopted by the League of Nations in 1924, and thereby became the broadest expression of concern for the protection of children's rights.

The United Nations gave official recognition to the human rights of children in 1959 when it adopted the Declaration of the Rights of the Child, a ten-principle document that expanded on the rights promulgated in the 1924 Declaration. It was in commemoration of the twentieth anniversary of this 1959 Declaration that 1979 was designated as the International Year of the Child. During the celebration, Poland suggested that an international treaty be created that would essentially place the principles set forth in the 1959 Declaration in legally binding terms. The Commission on Human Rights was selected to prepare a draft of the Child's Rights Convention, and a Working Group established by

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98. See DCI/UNICEF Briefing Kit, supra note 94, at document no. 3; Child's Rights Convention, supra note 10, at arts. 3, 9, 17-18, 20-21, 40.

99. This section is based in large part on Cohen, supra note 92.

100. Id. at 1448.

101. See id.


103. See Cohen, supra note 92, at 1448.

104. Id.

105. Id.

106. This Working Group was composed primarily of representatives of the 43 member states of the Human Rights Commission, but delegates from any other U.N. member country were permitted to attend the meetings as "observers" and could further participate fully in the debates. DCI/UNICEF Briefing Kit, supra note 94, at document no. 2. Additionally, inter-governmental agencies such as the International Labour Organization (ILO), the United Nations Office of the High Commissioner on Refugees (UNHCR), the United Nations International Children's Emergency Fund (UNICEF), and "non-governmental organizations (NGOs) in consultative status with the UN Economic and Social Council (ECOSOC) could also be represented and participate fully in the discussion of the draft." Id.
this Commission completed its first draft in February of 1988.\textsuperscript{107}

After the first draft was completed, the Working Group asked the Secretary-General to perform a "technical review" of the Convention to obtain comments and recommendations for textual alterations from various branches of the United Nations.\textsuperscript{108} These comments included, among other things, a "switch to gender-free language," which in turn forced the Group to make considerable changes to the text.\textsuperscript{109}

Interestingly, the Child's Rights Convention was not immediately welcomed by all.\textsuperscript{110} "Some Western nations, the United States in particular, viewed the Convention as an Eastern bloc project focusing mostly on economic, social and cultural rights; rights which are considered by many governments as not being rights at all but merely 'good social policy.'"\textsuperscript{111} By 1983 these prejudices were reduced to a large extent, because the original Convention proposed by Poland was slowly expanded to include more civil and political rights.\textsuperscript{112}


\textsuperscript{107} See Cohen, supra note 92, at 1448.
\textsuperscript{108} Id. at 1449.
\textsuperscript{109} Id.
\textsuperscript{110} Id.
\textsuperscript{111} Id.
\textsuperscript{112} Id.
There were, however, those who argued against the drafting of the Convention from the beginning, claiming that there were already sufficient existing human rights treaties under which children were protected.\textsuperscript{113} While this is true to a certain extent, the applicability of the rights contained in these other treaties was greatly "enhanced by their reiteration in the Convention."\textsuperscript{114} Existing treaties created rights that applied to individuals in general, but the Child's Rights Convention made these rights expressly applicable to children.\textsuperscript{115} There were those who expressed concern about the concept of distinguishing between children and other human beings in the context of human rights, feeling that this was an inherently dangerous precedent.\textsuperscript{116} In response, the proponents of the Child's Rights Convention contended that the issue should be approached from the standpoint that "children have special human rights rather than having special rights as opposed to other human beings," and further argued that "standards frequently must be made higher for children than for adults."\textsuperscript{117} In the long run, the proponents of the Convention succeeded in accomplishing their mission, and the Convention has since enjoyed a warm reception by the international community.\textsuperscript{118}

\begin{footnotes}
\item[113] Id. at 1449-50. Other binding human rights treaties that cover children include: the Red Cross Geneva Conventions, International Labor Organization Conventions, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. DCI/UNICEF Briefing Kit, supra note 94, at document no. 2.
\item[114] Cohen, supra note 92, at 1450.
\item[115] Id.
\item[116] See DCI/UNICEF Briefing Kit, supra note 94, at document no. 2.
\item[117] Id.
\item[118] As of October 7, 1991, ninety-two countries had ratified the Child's Rights Convention: Argentina, Angola, Australia, Bahamas, Bangladesh, Barbados, Belize, Benin, Bhutan, Bolivia, Brazil, Bulgaria, Burkina Faso, Burundi, Byelorussian Soviet Socialist Republic, Chad, Chile, Colombia, Costa Rica, Cote D'Ivoire, Cuba, Cyprus, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, El Salvador, Egypt, Ethiopia, Finland, France, Gambia, Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Holy See, Honduras, Indonesia, Italy, Jamaica, Jordan, Kenya, Lebanon, Madagascar, Malawi, Maldives, Malta, Mauritania, Mauritius, Mexico, Mongolia, Myanmar, Namibia, Nepal, Nicaragua, Niger, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Rwanda, Saint Kitts and Nevis, Sao Tome & Principe, Senegal, Seychelles, Sierra Leone, Spain, Sri Lanka, Sudan, Sweden, Togo, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Republic of Tanzania, Uruguay, Venezuela, Viet Nam, Yugoslavia,
\end{footnotes}
b. Specific Children's Rights Conferred by the Convention

Traditionally, human rights have been classified under five headings: civil, political, economic, social, and cultural. \(^{119}\) Children's rights are similarly categorized. \(^{120}\)

Among the civil and political rights contained in the Child's Rights Convention are the rights to a name and nationality, to freedom of expression, and to protection from torture and mistreatment; the Convention also contains special rules concerning the circumstances and conditions under which children may have their liberty taken away or be separated from their parents. \(^{121}\) Children are also granted certain economic rights, such as the rights to benefit from social security, to a standard of living adequate to ensure proper growth and development, and to protection from labor exploitation in the work place. \(^{122}\) Social rights of children include rights to the highest attainable standard of health care, to access to medical services, to special care for handicapped children, to protection from sexual exploitation and abduction, and to regulated adoption. \(^{123}\) The Convention also provides for various cultural rights, such as the rights to education, to access to appropriate media information as well as information concerning the child's rights, to recreation and leisure, to participation in the child's own culture, to the practice of his or her own religion, and to the use of his or her own language. \(^{124}\)

It was further decided that the child obtained certain "participation" rights. These generally cover two areas. \(^{125}\) First, the child is given the right to freely express his or her opinions and to have those opinions taken into account in

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\(^{119}\) See DCI/UNICEF Briefing Kit, supra note 94, at document no. 1.

\(^{120}\) Id.

\(^{121}\) Id.; Child's Rights Convention, supra note 10, at arts. 7, 9-10, 12-13, 19, 37.

\(^{122}\) DCI/UNICEF Briefing Kit, supra note 94, at document no. 1; Child's Rights Convention, supra note 10, at arts. 26-27, 32.

\(^{123}\) DCI/UNICEF Briefing Kit, supra note 94, at document no. 1; Child's Rights Convention, supra note 10, at arts. 20-21, 23-25, 34-36.

\(^{124}\) DCI/UNICEF Briefing Kit, supra note 94, at document no. 1; Child's Rights Convention, supra note 10, at arts. 17, 28-31, 42.

\(^{125}\) DCI/UNICEF Briefing Kit, supra note 94, at document no. 1.
matters directly affecting the child's life.  

Second, children have the right to play an active role in the community and society through freedom of association and participation in other activities. These are a few of the many rights contained in the Convention's text, all of which are considered to be of equal significance.

c. Who Is Covered by the Convention

The Child's Rights Convention is designed to apply to all children based on the principle of non-discrimination. Specifically, it applies to all children "irrespective of the child's . . . race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status." As mentioned above, the Convention confers these rights directly on the children, and it is expected that the children will be active in exercising these rights to the extent they are able to do so. Children are defined by article 1 as "every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier." With respect to national law, the Convention permits local and cultural interpretations of the "universal rights" contained in the document, provided the best interests of the child are protected. By deferring to some extent to particular national laws, the drafters felt that the Convention would appeal to a greater number of countries.

d. Implementation

The implementation provisions of the Convention are set forth in articles 42 through 45 and are "designed to give special emphasis to creating a setting for global cooperation and development in the realization of the provisions and ideals of

127. Id. at art. 15.
128. DCI/UNICEF Briefing Kit, supra note 94, at document no. 1.
130. Id.
131. DCI/UNICEF Briefing Kit, supra note 94, at document no. 3.
133. DCI/UNICEF Briefing Kit, supra note 94, at document no. 1.
134. Id.
the Convention." Its purpose is to facilitate compliance to 
"ensure that States Parties' obligations are respected." \(^{136}\)

A Committee on the Rights of the Child was created to 
review reports submitted by the various governments of 
States Parties to the Convention regarding their adherence to 
the document's provisions, and to further consider information 
received from specialized agencies and United Nations 
organs. \(^{137}\) This Committee is to "consist of ten experts of 
high moral standing and recognized competence in the field 
covered by the Convention." \(^{138}\) The members are elected 
from a list of persons nominated by State Parties. \(^{139}\)

States Parties must submit "reports on the measures they have adopted which give effect to the rights recognized herein [by the Convention] and on the progress made on the enjoyment of those rights" within the first two years of the Convention's entry into force in the Party's country, and every five years thereafter. \(^{140}\) If the Committee has concerns about any aspect of the reports or other information it receives, or if it wishes to respond to any difficulties encountered by the governments, it will initiate dialogue with officials of the country involved in attempting to resolve or improve the situation. \(^{141}\) States Parties are further required to make the Convention's rights "widely available" to adults and children in their countries, \(^{142}\) since "awareness of one's own and other people's rights is fundamental to ensuring the most favorable conditions for their respect." \(^{143}\)

The Child's Rights Convention, through the actions of its 
Committee, seeks to achieve a unique objective when compared with other human rights treaties. \(^{144}\) "[T]he emphasis is clearly more on facilitating compliance—in part through fostering international cooperation—in a non-confrontational atmosphere than on denunciation and 'finger-pointing.'" \(^{145}\)

\(^{135}\) Id. at document no. 3.
\(^{136}\) Id. at document no. 4.
\(^{137}\) Id.; Child's Rights Convention, supra note 10, at arts. 43-45.
\(^{138}\) Child's Rights Convention, supra note 10, at art. 43, ¶ 2.
\(^{139}\) Id. at art. 43, ¶¶ 2-3.
\(^{140}\) Id. at art. 44, ¶ 1.
\(^{141}\) DCI/UNICEF Briefing Kit, supra note 94, at document no. 4. See also Child's Rights Convention, supra note 10, at art. 45.
\(^{142}\) Child's Rights Convention, supra note 10, at art. 44, ¶ 6.
\(^{143}\) DCI/UNICEF Briefing Kit, supra note 94, at document no. 4.
\(^{144}\) Id.
\(^{145}\) Id.
The Committee is designed to assist "States Parties with their treaty compliance, rather than penalizing or pressuring States Parties that fail to comply." To this end, the Committee may refer requests of States Parties for technical assistance to "the specialized agencies, the United Nations Children's Fund and other competent bodies."

III. Analysis

A. A Critical Examination of the Hague Convention

1. The Hague Convention's Many Exceptions

The Hague Convention was prompted specifically by concern over the large number of incidents of international child abduction occurring throughout the world. The document's terms provide a good basis to gradually diminish, if not eliminate, this tremendous problem. The drafters undoubtedly undertook the task of creating and refining this document with the best of intentions. Yet it appears that the many exceptions contained within the Convention, intended to confer power on the individual courts by granting them discretion, actually serve to lessen the Convention's overall effectiveness by limiting the cases under which children will be covered.

Article 4 of the Hague Convention specifies that it will "cease to apply when the child attains the age of 16 years." This not only means that the Convention applies solely to children younger than sixteen; it also means that when the child reaches sixteen, the Convention will no longer apply—even if a petition was filed with the Central Authority or in the courts prior to the child's sixteenth birthday.

There is a limit on the amount of time during which the parent may file a petition to have a child returned home. According to article 12, the judicial or administrative authority must order the child returned home if "at the date of the commencement of the proceedings . . . a period of less than one year has elapsed from the date of the wrongful removal or

146. Cohen, supra note 92, at 1452.
147. Child's Rights Convention, supra note 10, at art. 45, ¶ b.
148. Hague Convention, supra note 5, at art. 4.
149. Although the decision to extend the application of the Convention to children who exceed age 16 is left to the discretion of the courts, this discretion is not always without bias. See infra part III.A.2.
retention." After one year, the court has discretion to order the return of the child but is permitted to consider evidence presented by the defendant that the child is "settled in its new environment." This exception considerably increases the likelihood that a child will be permitted to remain with the abductor. Recently, a district court denied a German citizen's second petition for a "warrant in lieu of writ of habeas corpus" (essentially a request that his children be "arrest[ed]" in New York where they had been taken by their mother), in order to compel their appearance before the court for Hague Convention proceedings. The court cited the one-year exception contained in the Convention as its reason for denying relief to the father. Although the father first petitioned the court within eight months, his petition was denied at that time, and his second attempt to petition the court for the warrant was not filed until nine months after the first petition—in all, a year and five months after the mother abducted the children and moved to New York. It is quite likely that courts in other countries will similarly utilize this exception to deny relief to American citizens who seek the return of their abducted children.

The terms of the Hague Convention specify that it may be invoked by the citizens of one contracting state in seeking the return of children taken to, or wrongfully retained in, another contracting state. On its face, this would appear to pose no problem. The fact that there are currently only eighteen countries that have ratified or acceded to the Convention since it first came into force on December 1, 1983, however, renders the Hague Convention of very limited value. The effectiveness of the Convention depends less on its precise
terms than it does upon its adoption by a relatively large number of states.\textsuperscript{159} Moreover, no Middle Eastern or Third World country ratified the treaty, yet it is in these countries that "the problem is most acute."\textsuperscript{160} By way of illustrating the problem, in Mohsen v. Mohsen,\textsuperscript{161} a federal district court refused to grant relief to the father under the Hague Convention simply because the child last resided in Bahrain, which is not a signatory to the Convention.\textsuperscript{162} The court therefore found it unnecessary to address the evidentiary issues concerning whether the child was wrongfully removed.\textsuperscript{163} Clearly, because so few countries are parties to the Convention, this exception is likely to become one of the most frequently invoked to deny relief to foreign petitioners.

2. \textit{Evidence of the Hague Convention's Weaknesses}

The courts, in exercising the discretion conferred upon them, will quite probably continue to use these exceptions and others in the Convention for justifying their decisions to refuse to return children to the parent petitioner. The courts' only role under the Convention is to "determine whether there has been a wrongful removal or abduction and, if so, whether the abductor has established one of the specific exceptions."\textsuperscript{164} The best interests of the child are not within the court's considerations, and they are implicitly rejected by articles 12 and 13.\textsuperscript{165} Rather, determination of the merits of each case is left to the courts of the "former habitual resi-

\begin{itemize}
\item \textsuperscript{159} See Anton, supra note 87, at 556.
\item \textsuperscript{160} LIVINGSTONE, supra note 1, at 98.
\item \textsuperscript{161} 715 F. Supp. 1063 (D. Wyo. 1989).
\item \textsuperscript{162} Id. at 1065.
\item \textsuperscript{163} Id. It is interesting to note that in another recent case, Adkins v. Antapara, 850 S.W.2d 148 (Tenn. Ct. App. 1992), the court, applying the Uniform Child Custody Jurisdiction Act (UCCJA), ordered the return of two children to their father in Panama after they had been taken to the United States by their mother because the father previously obtained a custody decree in Panama. \textit{Id.} at 150-53. In a dissenting opinion in the same case, Judge Franks stated that he would have applied the Hague Convention and refused to return the children to the father based solely on the fact that Panama is a non-signatory to the Convention. \textit{Id.} at 154 (Franks, J., dissenting). It therefore appears that the UCCJA is, in some cases, a more effective means for obtaining judicial relief in the United States, since it permits fewer exceptions. The UCCJA, however, applies only to the enforcement of existing custody orders and decrees. See 1 McCahey, supra note 18.
\item \textsuperscript{164} Anton, supra note 87, at 553.
\item \textsuperscript{165} Id. See also Hague Convention, supra note 5, at arts. 12-13.
\end{itemize}
dence of the child after its return to that country."\textsuperscript{166} This raises the question of when and by whom the best interests of the child are considered if it is determined that the child will not be returned to his or her former country.

There is a genuine concern that courts will take advantage of the discretion granted them and utilize the exceptions in the Convention to favor their own nationals' cases. When asked about custody proceedings in foreign countries, former Senator Dixon (D-Ill.) responded that the abducting parent is likely to have a "home court" advantage.\textsuperscript{167} "'Almost without exception, a foreign court rules in favor of their [sic] own citizen's case, even if the country is a close friend of the United States.'"\textsuperscript{168} There are further problems with foreign court proceedings because a number of countries, especially Islamic countries, will not recognize the custody rights of women.\textsuperscript{169} In these situations, custody is often granted to the father regardless of the mother's claim.\textsuperscript{170} There are cases in which courts have granted custody to another male relative rather than to the foreign mother if the father is dead and the mother wishes to leave the country.\textsuperscript{171} If this is true of custody proceedings, it seems equally probable that these sorts of problems will be encountered in proceedings brought under the Hague Convention for the return of a child, because in each case, the same courts are utilized.\textsuperscript{172} It thus appears that the amount of discretion given to courts may actually serve to hinder the Convention's objectives.

In their desperation to seek the return of their children taken abroad, some people are resorting to self-help methods

\textsuperscript{166} Anton, supra note 87, at 553. See also Hague Convention, supra note 5, at art. 19.
\textsuperscript{167} See LIVINGSTONE, supra note 1, at 96.
\textsuperscript{168} Id. (quoting Senator Alan Dixon).
\textsuperscript{169} See id.
\textsuperscript{170} See id.
\textsuperscript{171} Id.
\textsuperscript{172} United States courts are no less likely to favor their own citizens' cases. See, e.g., supra notes 152, 163.
Despite the fact such methods are often illegal and are vehemently opposed by the United States State Department. One organization, Corporate Training Unlimited (CTU), has been instrumental in "re-kidnapping" children and returning them to their parents in the United States. Wholly comprised of ex-Delta Force commandos, the individuals risk their freedom and sometimes their lives to locate children taken to other countries, frequently Middle Eastern countries, and help them escape and return home. But even this "alternative" is not readily available to all. Parents who seek CTU's services may pay up to $100,000 for an overseas mission, and if the parents (or the CTU commandos) are caught by the local authorities, there would be little, if anything, that the United States could do to help them. Clearly, with parents going to such extremes to rescue their children, this problem cannot be permitted to continue.

B. The Child's Rights Convention as a Supplemental Solution for Dealing with Cases of Abduction


As a human rights treaty, the Child's Rights Convention is designed to grant a large and varying number of rights to children around the world on an equal basis. At the same time, it proposes remedies for dealing with the problems children face each day. Although not as specifically directed toward solving the problem of international child abduction as is the Hague Convention, the Child's Rights Convention contains some provisions for dealing with this problem.

Article 9 of the Child's Rights Convention addresses the issue of children being forcibly separated from their parents. Paragraph 1 of the article declares that, "States Parties shall ensure that a child shall not be separated from his or her parents against their [sic] will, except when competent

173. See generally Livingstone, supra note 1.
174. Id.
175. Id. In most of the countries in which these people undertake rescue operations, their apprehension by the local authorities would result in their immediate imprisonment or execution. Id.
176. Id.
177. Id. at 110.
178. See generally Child's Rights Convention, supra note 10.
179. Id.
authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child."\textsuperscript{181} Examples of when separation might be in the best interests of the child include instances of child abuse by the parent, or when the parents are living separately and it must be determined with whom the child should reside.\textsuperscript{182} Additionally, the child must be granted the opportunity to "maintain personal relations and direct contact with both parents on a regular basis."\textsuperscript{183}

Once a child is separated from his or her parent or a member of his or her family, article 10 serves as an extension of the child's rights under article 9 of the Convention by requiring that "applications by a child, or his or her parents to enter or leave a State Party for the purpose of family reunification, shall be dealt with by States Parties in a positive, humane and expeditious manner."\textsuperscript{184} Furthermore, "States Parties shall respect the right of the child and his or her parents to leave any country, including their [sic] own, and to enter their [sic] own country."\textsuperscript{185} This right is "subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order, public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention."\textsuperscript{186} In this way, children (and in some instances their mothers) may find it easier to leave countries in which it is traditionally necessary to obtain the father's consent prior to departure.

Article 11 addresses the problem of the illicit transfer and non-return of children abroad and requires that States Parties take measures to combat this troubling phenomenon.\textsuperscript{187} "To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements."\textsuperscript{188} Although this article can be interpreted to deal with situations of international child ab-

\textsuperscript{181} Id.
\textsuperscript{182} Id.
\textsuperscript{183} Id. at art. 9, ¶ 3.
\textsuperscript{184} Id. at art. 10, ¶ 1.
\textsuperscript{185} Id. at art. 10, ¶ 2.
\textsuperscript{186} Id. (emphasis added).
\textsuperscript{187} Id. at art. 11, ¶ 1.
\textsuperscript{188} Id. at art. 11, ¶ 2.
duction, it appears that article 35 is more on point. Article 35
requires States Parties to "take all appropriate national, bi-
lateral and multilateral measures to prevent the abduction
of, the sale of or traffic in children for any purpose or in any
form."\(^{189}\) Article 35 thus serves to force States Parties to im-
plement national legislation to better deal with the problem
locally, while simultaneously requiring them to ratify or ac-
cede to existing treaties, such as the Hague Convention. It is
perhaps through this route that the Hague Convention will
become a more useful tool in dealing with incidents of
abduction.

Throughout the Child's Rights Convention, the emphasis
is repeatedly on promoting the best interests of the child in
every situation that could potentially affect him or her.\(^ {190}\) In
order that the child's best interests factor into every decision
concerning the child, article 12 states that children who are
capable of expressing their own views must be afforded the
opportunity to do so.\(^ {191}\) The child's views shall be "given due
weight in accordance with the age and maturity of the
child."\(^ {192}\) "Child" is defined by the Convention as "every
human being below the age of eighteen years"\(^ {193}\) as compared
to the Hague Convention's definition of sixteen years of
age.\(^ {194}\) Although the Hague Convention similarly permits
the child's views to be taken into consideration in deciding his
or her fate, the Child's Rights Convention allows considera-
tion of a child's view as an option left to the discretion of the
court.\(^ {195}\)

2. Parties to the Child's Rights Convention

Perhaps one of the great advantages in utilizing the
Child's Rights Convention to effect the return of children ab-
ducted and taken abroad is that, as of October 7, 1991, it had
been ratified by ninety-two countries,\(^ {196}\) with others expected
to follow. Included among the parties are several Middle

\(^{189}\) Id. at art. 35.
\(^{190}\) Id. at art. 3.
\(^{191}\) Id. at art. 12, ¶ 1.
\(^{192}\) Id.
\(^{193}\) Id. at art. 1.
\(^{194}\) Hague Convention, supra note 5, at art. 4.
\(^{195}\) Id. at art. 13, ¶ b.
\(^{196}\) See supra note 118.
Eastern countries and also some Third World countries. It is interesting to note that in ten years the Hague Convention only succeeded in obtaining eighteen countries' acceptance, and yet, in only one year, the Child's Rights Convention was ratified by a large number of states.

At present, there is one significant obstacle in the path of any U.S. citizen who wishes to invoke the Convention: it has not yet been ratified by the United States. It is true that the United States initially viewed the Convention as an "Eastern bloc project" consisting mainly of economic, social, and cultural rights, and it is also true that the drafting sessions were not without incident. But reluctance to sign the Convention stems more from the United States' history in dealing with human rights treaties in general than from the content of Convention itself.

According to Professor Dinah Shelton, of Santa Clara University School of Law, the United States' unwillingness to ratify human rights treaties is due in large part to the concept of federalism on which this country was built. Once a treaty is ratified, it becomes the "supreme Law of the Land"

197. See supra note 118.
198. See supra text accompanying note 111.
199. With respect to the United States' participation in the drafting process, one author commented:

   Generally, the United States State Department has played a positive and active role in the preparation of the Convention on the Rights of the Child and has been involved in the drafting process since the beginning. Indeed, the United States has been instrumental in ensuring that such rights as the freedom of association and the freedom of thought, conscience and religion are prominently listed.

   On December 7, 1988, however, the United States delegate to the United Nations working group shocked the diplomatic world by blocking an [international] initiative supported by twenty-four other countries which wished to raise the age at which children can be used as front line troops from fifteen to eighteen years old. The delegate was acting on instructions from the Pentagon and had received no advice on this matter from Congress.

   As this article goes to press, members of Congress both houses are urging the secretary of state to review his position and to ensure that the United States takes the lead in raising the standards for the protection of children.

200. See infra text accompanying notes 201-208.
201. Interview with Professor Dinah Shelton, Professor of Law, Santa Clara University, in Santa Clara, Cal. (Jan. 21, 1993).
through Article VI of the Constitution.202 It has been the U.S. government’s policy in the past to treat human rights issues as domestic problems to be dealt with by the individual states as they deal with numerous other issues within their jurisdiction.203 Some have argued that “treaties are objectionable because, to the extent that they would call upon the United States to observe higher human rights standards than are provided by our domestic law, they improperly intrude into an area which should be left to domestic legislation . . . [and] thus tend to upset the Federal-State balance.”204

It appears that concern regarding the participation of the United States in human rights treaties originated in the 1950s when race relations were particularly odious in the southern states, and it was feared that Americans would be charged and tried by foreign tribunals under the provisions of the Genocide Convention.205 Many now recognize that these fears were largely exaggerated, and that in any case “federal civil rights legislation has now rendered this issue obsolete.”206 It is clear that anxiety with respect to any anticipated interference in U.S. sovereignty still exists,207 however, as the United States is still a party to very few of the numerous human rights treaties currently in force in the world.208

202. “[A]ll Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. CONST. art. VI.

203. Examples of issues that are considered to be within the states’ jurisdiction are education, marriage, and welfare legislation. See U.S. CONST. amend. X.


205. Id. at 102 (statement of Oscar Schachter, Professor, Columbia School of Law).

206. Id.

207. It has been strongly suggested that the U.S. cannot continue to espouse this sort of “keep out” foreign policy. As one author notes:

The United States cannot avoid involvement in [the] “internal affairs” of other countries and it cannot keep other nations out of ours. The price of international influence and concern is reciprocity. Indeed, the price of United States leadership in world affairs may involve our own “internal affairs” in our foreign relations even more than the “internal affairs” of others.


208. See supra text accompanying note 201.
One superior court in Connecticut decided to utilize the Convention's terms notwithstanding the fact that the United States is not yet a party to it. In *Batista v. Batista*, the court cited article 12 of the Convention, regarding the child's right to express his or her views, as a means of emphasizing the importance of this concept in a custody hearing. Although the United States was not a party to the Convention, Spain (the resident state of the child's mother) was a party, and because of proceedings regarding the child's custody in Spain, the court felt obligated to reiterate the significance of the child's right to be heard in the Spanish court. The court did note, however, that "[i]t is of great concern and embarrassment that the United States of America is not a signatory to that convention."212

C. An International Forum

Another advantage to the Child's Rights Convention is that it shifts the dispute from the courtroom of a particular country to a permanent international forum presided over by a panel of human rights experts. This may enable parents to overcome the problem of national bias that they frequently encounter in the courts, because the panel consists of ten individuals who are to be selected with consideration being given to "equitable geographical distribution, as well as to the principal legal systems."214

A problem persists in that the Convention does not provide for consideration of individual petitions. At present, only the States Parties themselves can submit reports regarding their compliance with the Convention's terms or difficulties that they have faced in integrating the human rights provisions into their own laws and procedures. But it is a recognized "shortcoming of the Convention's implementation

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210. Id.
211. Id.
212. Id. at *17.
213. Child's Rights Convention, supra note 10, at art. 43.
214. Id. at art. 43, ¶ 2.
215. Id. at arts. 44-45.
216. Id. Other international organizations may submit information to the Committee regarding state compliance or suggestions for remedying problems encountered according to article 45. Id. at art. 45.
mechanism . . . [that it provides no] method for reviewing the individual complaints of children whose rights have been violated."217

IV. PROPOSAL

A. The United States Must Ratify the Child's Rights Convention

In order for U.S. citizens to be able to utilize the Child's Rights Convention as a weapon against international child abduction, it is essential that the government put aside its concern over the federalism issue and ratify the treaty. National concerns, although important, must be balanced not only with the immediate concerns faced by its citizens, but with the concerns confronting people all over the world. Human rights has been the principal topic of a great number of international treaties for decades, and it is time that the United States, arguably the wealthiest and most powerful country in the world, provided its support in this area.

With respect to the United States' past unwillingness to become a party to human rights treaties, it appears that this trend is slowly changing. Because the United States has ratified the Convention on the Prevention of the Crime of Genocide218 and several others, it is probably only a matter of time before the Child's Rights Convention will be ratified as well.219 Even if the United States decides not to ratify the Convention, it is possible that over time its terms may come to be viewed as customary international law, thus binding the entire international community. Should this occur, the Convention "will become a guide to interpreting law even in those countries that do not ratify it."220

217. Cohen, supra note 92, at 1452.
220. Jupp, supra note 199, at 22.
B. The Child's Rights Convention Must Be Amended to Include a Provision for Individual Petitions

In order for the Child's Rights Convention to reach its full potential both as a human rights document and as a means to curtail international child abduction, it must be amended to include a method for reviewing individual complaints made by children and/or their parents. This objective may be accomplished either through the addition of an amendment to the Convention, as provided for in article 50,\(^{221}\) or through the creation of an Optional Protocol.\(^{222}\)

There are a number of human rights treaties currently in force that utilize such individual petition provisions to ensure the enforcement and full realization of human rights. Among such treaties are the International Covenant on Civil and Political Rights of 1966,\(^{223}\) the European Convention on Human Rights of 1950,\(^{224}\) the American Convention on Human Rights of 1969,\(^{225}\) and the International Convention on the Elimination of all Forms of Racial Discrimination of 1966.\(^{226}\) Although most of these treaties make the acceptance of individual petitions subject to the fulfillment of certain prerequisites, such as the exhaustion of all domestic remedies, it has proven to be a relatively successful device in furthering international human rights.\(^{227}\) Allowing for individual complaints to be made directly to the Committee on the Rights of the Child would greatly decrease incidents of international child abduction, because the cases would be handled directly and more efficiently by one body rather than by several countries. Moreover, potential abductors might be

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221. Child Rights Convention, supra note 10, at art. 50.
222. Cohen, supra note 92, at 1452.
225. The American Convention on Human Rights, done Nov. 22, 1969, 1144 U.N.T.S. 123 (at present there are 21 parties, though the United States is not one). This Convention is unique because the acceptance of individual petitions is mandatory, as opposed to most conventions, which make acceptance optional with the reviewing committee. Id.
deterred from child-snatching when they realize that there are international laws in force to hinder their attempts.

V. CONCLUSION

Now that the Child's Rights Convention has entered into force, there is reason to believe that the phenomenon of international child abduction may become a more manageable problem. The Convention applies to a larger number of children, creates fewer loopholes through which abductors are permitted to succeed with their objectives, and moves the issue out of the domestic courts and into an international arena. In an international forum, countries that refuse to stand in the way of their abducting citizens will be openly scrutinized by the rest of the world. But more importantly, governments will not be forced to challenge other governments regarding these issues, thus avoiding political tensions, since it will be the individuals who are taking direct action to effect their child's return.

All this may be achieved if the United States decides to ratify the Child's Rights Convention, and if sufficient individual petition provisions are added to the implementing mechanism in the text. The world stands to gain a great deal by treating international child abductions as human rights violations, and in actively working to assure that its children will be allowed to come home.

Cara L. Finan