

International Parental Kidnapping: Combatting Abduction Through Prevention

By: Ashley N. Dowd¹

I. INTRODUCTION

“My children were gone,”² recalled Kristine Uhlman, who had lived a parent’s worst nightmare. Kristine fled the Middle East and a violent husband in 1981, escaping to the United States with her children, two-year old Hani and three-year old Maisoon.³ Less than a year later, her children were professionally abducted from their home in Colorado.⁴ After months of unsuccessful attempts to reclaim her children, she was given some painful but pointed advice and came to a realization:

“I could spend all my money trying to prosecute the professional kidnapers hired by my husband, with little hope of actually having my children returned, *or* I could use my money to fight for my children here, leaving a trail of letters and works of advocacy to show my children how much I loved them. Eventually, they would come looking for me. Why not make it easier for them to find me?”⁵

Nearly 20,000 international abductions take place each year.⁶ The United States routinely experiences the largest percentage of these international abductions, and as result, there are an

¹ Staff Writer, CREIGHTON INTERNATIONAL AND COMPARATIVE LAW JOURNAL (2016-2017).

² Telephone Interview with Kristine Uhlman, Int’l Parental Abduction Consultant and Advocate (June 13, 2016).

³ *Id.*

⁴ Telephone Interview with Kristine Uhlman, Int’l Parental Abduction Consultant and Advocate (June 13, 2016) (In an effort to return to her children, she became the first American woman to be imprisoned in a Saudi Arabian prison, as well as the first to litigate for access to her children in the Islamic, Shari’a’ Court).

⁵ *Id.*

⁶ Blake Sherer, *The Maturation of International Child Abduction Law: From the Hague Convention to the Uniform Child Abduction Prevention Act*, 26 J. Am. Acad. Matrim. Law. 137, 144 (2013).

estimated 10,000 United States children abroad.⁷ This Article claims that the United States should focus on further preventative measures to stop international parental abduction, supporting the idea that “an ounce of prevention is worth a pound of cure.”⁸ Prevention is vital to the protection of children who are at risk of abduction because the United States Federal Government has little power to prosecute an abductor outside the United States or return a child once he or she is brought to a foreign country.⁹

This Article proceeds in three sections. First, the Background examines the Hague Convention on the Civil Aspects of International Child Abduction of 1980 and United States domestic law on international parental kidnappings. This Article then advances the Argument that due to the difficulty in securing the return of a child from either signatory or non-signatory nations to the Civil Aspects of International Child Abduction Convention, the United States should focus on preventative measures rather than post-abduction consequences and reclamation efforts. This Argument also addresses and responds to common objections, including the rights of parents and the right to travel. Finally, this Article concludes with a brief synopsis of the Argument and proposes several options that policymakers could pursue to further current preventative measures domestically and supplement international parental kidnapping legislation.

II. INTERNATIONAL PARENTAL ABDUCTION

⁷ *Id.*

⁸ Office of Juvenile Justice and Delinquency Prevention, *A Report to the Attorney General on Int'l Parental Kidnapping*, (Apr. 1999) at 1; See also Katrina M. Parra, *The Need for Exit Controls to Prevent International Child Abduction from the United States*, 31 Whittier L. Rev. 817, 831 (2010). Office of Juvenile Justice and Delinquency Prevention

⁹ Office of Juvenile Justice and Delinquency Prevention, *A Report to the Attorney General on International Parental Kidnapping*, (Apr. 1999) at 3.

In 2015, over 600 United States children were abducted by a parent and removed to another country.¹⁰ Over the years, the number of international parental abductions has increased with the expansion of globalization and mobility in the world.¹¹ As international travel and long stints abroad have become more commonplace, so have marriages between individuals of differing nationalities.¹² Many bi-national marriages are successful; however there are inevitably some that do not work out.¹³ When bi-national couples divorce one or both of the individuals often return to their home country and often both parents want to retain custody, even if that requires the child to move.¹⁴

A. HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION OF 1980

On October 24, 1980, the Hague Convention on the Civil Aspects of International Child Abduction (“Abduction Convention”) was adopted in a unanimous vote by twenty-three nations.¹⁵ The next day, the text of the Abduction Convention was signed with the purpose of protecting children from the “harmful effects of their wrongful removal or retention,” by establishing procedures to ensure the prompt return of the abducted child to the State of their habitual residence.¹⁶ The signatories understood that “the interests of children are of paramount

¹⁰ U.S. Dept. of State Bureau of Consular Affairs, *Annual Report on International Parental Child Abduction (IPCA)*, (July 2016) at 5 [hereinafter *Annual Report*].

¹¹ Deborah M. Zawadzki, Note, *The Role of Courts In Preventing International Child Abduction*, 13 *Cardozo J. Int'l & Comp. L.* 353, 354 (2005).

¹² *Id.* at 355.

¹³ *Id.*

¹⁴ Zawadzki, *supra* note 11, at 355.

¹⁵ Elisa Perez-Vera, *Explanatory Report of the Hague Convention on the Civil Aspects of International Child Abduction*, 14, 14 (1981).

¹⁶ Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11670, 1343 U.N.T.S. 89 [hereinafter *Hague Abduction Convention*].

importance in matters relating to their custody.”¹⁷ The Convention Members believed the primary objective of the Abduction Convention should be preserving the status quo of custody agreements that existed immediately before the child was wrongfully removed.¹⁸ Since the Abduction Convention acts as a civil remedy to discourage abductions rather than as a means to extradite the offending party, it is the prerogative of individual nations to implement additional legislation and policies regarding international parental abduction.¹⁹

Currently, there are ninety-six signatory parties to the Abduction Convention.²⁰ Nations that were not original Member states but later acceded to the Abduction Convention must be approved and ratified by other Member States.²¹ Only when the Member State formally accepts the new acceding State will the Abduction Convention be enforceable between the two countries.²² Iraq, for example, is a country that was not accepted by a member state, namely the United States.²³ Both countries are party to the convention, but since the United States has not accepted Iraq, there exists no enforceable obligation between the two nations.²⁴

The United States is partnered with seventy-four countries, but even these partnerships do not ensure compliance or cooperation with the Abduction Convention.²⁵ In the 2016 Annual

¹⁷ *Id.*

¹⁸ Perez-Vera, *supra* note 15, at 17.

¹⁹ Katrina M. Parra, *The Need for Exit Controls to Prevent International Child Abduction from the United States*, 31 Whittier L. Rev. 817, 819 (2010).

²⁰ Hague Conference on Private Int’l Law, *Convention of 25 October 1980 on the Civil Aspects of Int’l Child Abduction Members Chart*, (July 9, 2016 at 12:48PM), <https://www.hcch.net/en/instruments/conventions/status-table/?cid=24>.

²¹ Michael Walsh and Susan Savard, *International Child Abduction and the Hague Convention*, 6 Berry L. Rev. 29, 31 (2006).

²² *Id.*

²³ Annual Report, *supra* note 10, at 74.

²⁴ *Id.*

²⁵ *Id.* at 3.

Report on International Parental Child Abduction (“Annual Report”), Secretary of State John Kerry noted that twenty-one countries either demonstrated a pattern of noncompliance or failed to comply with any of their obligations under the Abduction Convention.²⁶ The United States returns the child in ninety percent of cases where the child was wrongfully taken, whereas less than a quarter of the internationally abducted children whose habitual residence was the United States were returned.²⁷

Not every child taken by a parent must be returned under the Abduction Convention.²⁸ Article 13 states that countries are not under an obligation to return a child when: (1) The left-behind parent who had physical care of the child “was not actually exercising custody rights at the time of removal or retention, or has subsequently consented to the removal of the child;” (2) “there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation;” or (3) the child objects to being returned and has reached a level of maturity where he or she is qualified to make that decision.²⁹ Under Article 20, authorities can also refuse to return the child if it “would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.”³⁰

In addition to Article 13, children may be kept in the abducted-to country under Article 12 of the Abduction Convention.³¹ Article 12 requires automatic return of a child that has been

²⁶ Annual Report, *supra* note 10, at 3.

²⁷ Walsh & Savard, *supra* note 21, at 31; Annual Report, *supra* note 10, at 13.

²⁸ Hague Abduction Convention, art. 12-13.

²⁹ Hague Abduction Convention, art. 13.

³⁰ Hague Abduction Convention, art. 20.

³¹ Hague Abduction Convention, art. 12.

wrongfully removed to a country for less than a year.³² However, if the child has been retained for longer than one year, the child may remain in the abducted-to country “it is demonstrated that the child is now settled in its new environment.”³³ Since the purpose of the Abduction Convention is in securing the prompt return of a child to his or her place of habitual residence, if the abducted-to country is determined to have become the habitual residence, the Abduction Convention no longer applies.³⁴ In this case, the left-behind parent’s are often left to litigate in the abducted-to country.³⁵

B. UNITED STATES LEGISLATION REGARDING INTERNATIONAL PARENTAL KIDNAPPING

1. *International Child Abduction Remedies Act of 1988*

On April 29, 1988, the United States ratified and became a signatory to the Abduction Convention on the Civil Aspects of International Child Abduction (“ICARA”).³⁶ On the same day, Congress enacted the International Child Abduction Remedies Act, to give full and complete effect to the Abduction Convention in United States.³⁷ The Act mirrors the Abduction Convention and applies the same standard of proof with the exception of the defenses for not returning a child under Article 13 or Article 20, which under the Act must be proven by clear and convincing evidence rather than a preponderance of the evidence.³⁸ Additionally, the petitioner

³² Parra, *supra* note 8, at 819.

³³ Hague Abduction Convention, art. 12.

³⁴ Maryl Sattler, *The Problem of Parental Relocation: Closing the Loophole in the Law of International Child Abduction*, 67 Wash. & Lee L. Rev. 1709, 1735 (2010).

³⁵ See generally Walsh & Savard, *supra* note 21.

³⁶ Executive Order 12648, 53 FR 30637, 3 CFR, 1988 Comp., 579 (Aug. 11, 1988) available at <http://www.archives.gov/federal-register/codification/executive-order/12648.html> (Relating to the implementation of the Convention on the Civil Aspects of International Child Abduction).

³⁷ *Id.*

³⁸ Walsh & Savard, *supra* note 21, at 49-50.

must bear the costs and fees of the incoming Hague proceeding, unless the return is court ordered in which case the respondent must pay the petitioner's costs and fees, including costs of transportation to return the child.³⁹

2. *The U.S. International Parental Kidnapping Crime Act of 1993*

In 1993, Congress passed the International Parental Kidnapping Crime Act ("IPKCA") to address international abductions of children by one of their parents.⁴⁰ The IPKCA was established to (1) demonstrate to the international community that the United States views parental kidnapping as an intolerable crime by making parental kidnapping a federal offense; (2) serve as a deterrent for at least some abductions; and (3) enhance U.S. diplomatic representation and influence in seeking the return of children.⁴¹ The IPKCA is intended to supplement the Abduction Convention, and further to provide a possible remedy in non-Abduction Convention nations.⁴²

Unfortunately, the IPCKA approach applies a domestic solution to an international problem, as a federal criminal offense can only be enforced within the United States.⁴³ IPCKA makes the removal of a child from the United States or retention of a child outside the United States with the intent to obstruct a parent's custodial rights, or to attempt to do so, a federal crime punishable by up to three years in prison.⁴⁴ However, without extradition treaties between the United States and the foreign country where the abductor is located, that country is not required

³⁹ Walsh & Savard, *supra* note 21, at 50.

⁴⁰ International Parental Kidnapping Crime Act of 1993, 18 U.S.C. § 1204 (1995).

⁴¹ Subcomm. on Int'l Child Abduction of the Fed. Agency Task Force on Missing and Exploited Child and the Policy Group on Int'l Parental Kidnapping, *A Report to the Attorney General on International Parental Kidnapping*, NCJ 189382, (Apr.1999) at 34.

⁴² *Id.*

⁴³ *Id.*; Sattler, *supra* note 34, at 1717-1718.

⁴⁴ International Parental Kidnapping Crime Act of 1993, 18 U.S.C. § 1204 (1995).

to enforce or comply with United States law.⁴⁵ Prosecutions may not be pursued under the IPKCA, because the threat of prosecution in the United States may dissuade the abductor from returning with the child to the United States.⁴⁶

3. *Uniform Child Abduction Prevention Act of 2006*

The Uniform Child Abduction Prevention Act (“UCAPA”) was completed in 2006 and has since been enacted in fifteen states.⁴⁷ UCAPA provides courts with guidelines for analyzing custody disputes and divorce proceedings involving a risk of abduction.⁴⁸ Acknowledging that many States have substantial bodies of law regarding child custody issues, the UCAPA was drafted to be compatible with and to expand upon current state law.⁴⁹ Since state lines can prove as big an obstacle as national boundaries, UCAPA focuses on interstate communication and cooperation to return children to their home.⁵⁰

In order to ensure a uniform standard, Article 7 of the UCAPA outlines a variety of factors that should be considered when determining the risk of potential interstate and international abductions.⁵¹ While the list is not exhaustive, it includes: (1) history of abduction or attempted abductions; (2) threats to abduct the child; (3) abduction planning activities, such as applying for a visa, closing bank accounts, or seeking medical records; (4) evidence of domestic violence; (5) refusal to follow a child-custody determination; and (6) lack of strong familial,

⁴⁵ Walsh & Savard, *supra* note 21, at 52.

⁴⁶ Sattler, *supra* note 34, at 1717-1718.

⁴⁷ Unif. Child Abduction Prevention Act, 9 Pt. IA U.L.A. 43 (July 7-14, 2006) available at <http://www.uniformlaws.org/Act.aspx?title=Child%20Abduction%20Prevention> [hereinafter Unif. Child Abduction Prevention Act].

⁴⁸ *Id.*; See generally Patricia M. Hoff, “*Uu*” *Ucapa: Understanding and Using Ucapa to Prevent Child Abduction*, 41 Fam. L.Q. 1, 12 (2007).

⁴⁹ Hoff, *supra* note 48, at 2-3.

⁵⁰ See generally Unif. Child Abduction Prevention Act

⁵¹ *Id.*

financial, emotional, or cultural ties to the United States; but (7) strong familial, financial, emotional, or cultural ties to another country, particularly if that country not a party to or is not in compliance with the Hague Convention on the Civil Aspects of International Child Abduction.⁵²

When there is an alleged risk of international abduction, evidence focusing on citizenship and immigration status that could affect both the legal and practical means for a party to have contact with the child will be considered.⁵³ Courts also consider whether the respondent was raised in another country, has a support system in that country, can speak the language of that country, and can legally work in a foreign country.⁵⁴ Additionally, courts will consider the difficulty of securing the return of children from countries that are not convention members or in compliance with the Abduction Convention.⁵⁵

Courts that find there is a credible risk of abduction may order preventative measures including imposing travel restrictions and prohibiting the removal of the child from the state.⁵⁶ The child's name may be placed in the Child Passport Issuance Alert Program run by the U.S. Department of State, or the parent who wishes to leave the country may be required to obtain an order from a foreign country containing identical terms to the child-custody determination before departure.⁵⁷ In cases where abduction appears imminent, a court may issue a warrant for physical custody of the child that is enforceable in the enacting state even if issued by different state.⁵⁸ In the United States, such a warrant must be served concurrent to or immediately after the child is

⁵² Unif. Child Abduction Prevention Act, at §7.

⁵³ See *generally* Hoff, *supra* note 48.

⁵⁴ Unif. Child Abduction Prevention Act, at §7.

⁵⁵ *Id.*

⁵⁶ Unif. Child Abduction Prevention Act, at §8.

⁵⁷ Unif. Child Abduction Prevention Act, at §8.

⁵⁸ *Id.*

taken into custody and the person on whom the warrant was served must be afforded a hearing no later than the next day.⁵⁹

4. *Sean and David Goldman International Child Abduction Prevention and Return Act of 2013-2014*

In 2004, four year old Sean Goldman was taken to Brazil by his Brazilian mother for a supposed two-week vacation.⁶⁰ Once the mother reached Brazil, she filed for divorce and sole custody of Sean.⁶¹ David Goldman filed proceedings against his wife in the US and Brazil, and petitioned for the return of his son in Brazil pursuant to the Abduction Convention.⁶² The case continued for many years until the Brazilian courts found that the child was settled under the Article 12 exception.⁶³ Four years after the child was taken to Brazil, his mother died in childbirth and the Brazilian court gave his mother's new husband custody.⁶⁴ It was only after the political relationship between the United States and Brazil began to sour over the Goldman case did Brazil's high court order Sean's return to his father in the United States.⁶⁵

After experiencing such blatant noncompliance with the Abduction Convention from Brazil and other partnering nations, the United States Congress enacted the Sean and David Goldman International Child Abduction Prevention and Return Act of 2013-2014.⁶⁶ The act requires the Secretary of State ("Secretary") to submit to Congress an Annual Report on

⁵⁹ Unif. Child Abduction Prevention Act, at §9.

⁶⁰ Rita Wasserstein Warner, *International Child Custody and Abduction Under the Hague Convention*, Int'l L. Practicum, 50, 50 (2010).

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Wasserstein Warner, *supra* note 60, at 51.

⁶⁵ *Id.*

⁶⁶ Sean and David Goldman International Abduction Prevention and Return Act of 2014, Pub L. No. 113-150 (2014).

International Child Abduction.⁶⁷ The United States must also designate at least one official to monitor and assist U.S. parents in resolving abduction cases.⁶⁸ Under the Act, the Secretary is also required to implement strategic plans for engagement with any Convention or non-Convention country in which there are five or more cases of international child abduction.⁶⁹

If the noncompliance continues, the Secretary has the authority to take measures including, but not limited to: the withdrawal, limitation, or suspension of U.S. development or security assistance, or assistance to a central government; a public condemnation; a delay or cancellation of one or more bilateral working, official, or state visits; a formal request to a foreign country to extradite an individual who is engaged in abduction and who has been formally accused of, charged with, or convicted of an extraditable offense; or other commensurate actions.⁷⁰

III. **PREVENTION SHOULD BE THE FOCUS FOR INTERNATIONAL PARENTAL KIDNAPPINGS RATHER THAN RETROACTIVE MEASURES TO RETURN THE ABDUCTED CHILD**

Although the United States is a signatory to the Abduction Convention and has domestic laws and procedures to discourage parental abduction, these measures are woefully ineffective in ensuring the return of abducted children to their left-behind parents, particularly because hundreds of children continue to be abducted each year.⁷¹ Therefore, the focus should be on prevention.⁷²

⁶⁷ *Id.* at §101.

⁶⁸ *Id.* at §102.

⁶⁹ *Id.* at §102.

⁷⁰ *Id.* at §202.

⁷¹ Jason Nitz, *"Splitting the Baby" Internationally: Evaluating the "Least Restrictive" Conundrum When Protecting Children from International Parental Abduction*, 16 *Scholar: St. Mary's L. Rev. & Soc. Just.* 417, 423 (2014).

⁷² *Id.*

It is a common misconception that children will be returned if they are taken to a nation that is a signatory to the Abduction Convention, whereas in reality ensuring return from a signatory country can be as just as difficult as ensuring return from a non-signatory nation.⁷³ The Abduction Convention was created not to adjudicate the merits of custody disputes, but to secure the prompt return of wrongfully removed or retained children to their country of habitual residence.⁷⁴ Under Article 11, the judicial or administrative authorities must act expeditiously in proceedings for the return of children.⁷⁵ However, there are exceptions.⁷⁶

Under Article 13, the court can refuse to return a child if there is a grave risk that “return would expose the child to physical or psychological harm.”⁷⁷ This defense has been applied quite liberally at times, allowing courts to circumvent a return which would otherwise be obligatory.⁷⁸ Additionally under Article 12, when a child has been in the abducted-to country for over a year, the child will not be returned to his or her country of habitual residence if it is demonstrated that the child is now settled in his or her new environment.⁷⁹ For many, ordering that a child remain in the abducted-to country seems wrong, and for the left-behind parents it can be heartbreaking.⁸⁰ Unfortunately, the purpose of the Abduction Convention is to establish the place of habitual residence, and once that is determined the only recourse is to litigate in the abducted-to country.⁸¹

⁷³ Wasserstein Warner, *supra* note 60 at 50-51.

⁷⁴ Hague Abduction Convention, at preamble.

⁷⁵ Hague Abduction Convention, art. 11.

⁷⁶ Hague Abduction Convention, art. 12-13, 20.

⁷⁷ Hague Abduction Convention, art. 13.

⁷⁸ Parra, *supra* note 19, at 826; Courtney E. Hoben, *The Hague Convention on International Parental Kidnapping: Closing the Article 13(b) Loophole*, 5 J. Int'l Legal Stud. 271, 272 (1999).

⁷⁹ Hague Abduction Convention, art. 12.

⁸⁰ Hoben, *supra* note 78, at 271.

⁸¹ Hague Abduction Convention, at preamble.

Lady Catherine Meyer, wife of the former United Kingdom Ambassador to the United States, is a champion for the rights of left behind parents and the need to raise awareness of international parental abductions.⁸² In 1992, Lady Meyer was legally separated from her former husband, Hans-Peter Volkmann.⁸³ The couple had two sons, ages nine and six, who lived with their mother in London and spent holidays with their father in Germany.⁸⁴ In July 1994, the children left to spend the summer with their father in Germany, but they never returned.⁸⁵ For the next nine years, Lady Meyer saw her two children for a total of only twenty-four hours.⁸⁶

Lady Meyer was denied the return of her sons by the German Courts under the Article 13 which is considered by many to be one of the loopholes for non-compliance within the Abduction Convention.⁸⁷ The German appellate court claimed under Article 13 that the children were able to make a mature decision and wished to remain with their father in Germany.⁸⁸ After a series of hearings, the court held that returning the children to their mother would also cause them “severe psychological harm” because the children had “adapted to their new

⁸² Hoben, *supra* note 78, at 271 (Lady Meyer is the former Co-chair of the International Centre for Missing & Exploited Children, in Washington D.C., and the author of two books, *They Are My Children, Too, and Two Children Behind A Wall*); *Catherine Meyer Fought a Bitter 10-year Battle to see her Children. Now She 's Striving to Save Other Families from the Same Fate*, THE HERALD (Nov. 3, 2006), http://www.heraldsotland.com/news/12396583.Catherine_Meyer_fought_a_bitter_10_year_battle_to_see_her_children_Now_she_apos_s_striving_to_save_other_families_from_the_same_fate_INTERVIEW/. [Hereinafter *Hearings*]

⁸³ Hoben, *supra* note 78, at 271..

⁸⁴ Hoben, *supra* note 78, at 271; *Hearings*.

⁸⁵ Hoben, *supra* note 78, at 271.

⁸⁶ *Child Abduction: 'My World Collapsed' When My Boys Were Taken*, BBC NEWS, (June 12, 10:03 AM), <http://www.bbc.com/news/uk-17599918>.

⁸⁷ Hoben, *supra* note 78, at 272.

⁸⁸ *Id.*

environment.”⁸⁹ Despite both nations being compliant members to the Abduction Convention, Lady Meyer was forced to litigate in a foreign court and was ultimately denied the return of her abducted children.⁹⁰ Lady Meyer’s experience is not unique, as hundreds of United States parents face the uncertainty of indefinite separation from their children every year.⁹¹ Fortunately, established preventative measures that can be utilized by the courts offer a possible solution to an otherwise desperate situation.⁹²

The first method of prevention is the education of lawyers and judges on the established “flight risk factors” of parents.⁹³ While only enacted in fifteen states, the Uniform Child Abduction Prevention Act outlines a set of risk factors based on numerous case studies that when present highlight a likelihood of parental abduction.⁹⁴ While Lady Meyer was legally separated with an established custody order when her children were kidnapped, many children are abducted in the midst of custody battles.⁹⁵ Therefore, it is important to bring to the court’s attention any UCAPA factors that exist at the time of divorce or custody proceedings.⁹⁶

⁸⁹ *Id.* (Article 12 of the Abduction Convention states Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child).

⁹⁰ *Id.*

⁹¹ Annual Report, *supra* note 10, at 5.

⁹² Office of Juvenile Justice and Delinquency Prevention, *Characteristics of Parents More Likely to Abduct Their Children Announced by Justice Dept.*, DOJ 01-62 (2001).

⁹³ *Id.*; Unif. Child Abduction Prevention Act, at §7; Nitz, *supra* note 71, at 440; Walsh & Savard, *supra* note 21, at 57-58.

⁹⁴ Unif. Child Abduction Prevention Act, at §7.

⁹⁵ Hoben, *supra* note 78, at 271-72.

⁹⁶ Office of Juvenile Justice and Delinquency Prevention, *Characteristics of Parents More Likely to Abduct Their Children Announced by Justice Dept.*, DOJ 01-62 (2001); Unif. Child Abduction Prevention Act, at §7.

When examining the individual, the UCAPA looks at any history of abduction or threats to abduct the child.⁹⁷ Often, abducting parents disregard the value of the other parent's relationship with the child or the other parent's culture in the child's upbringing.⁹⁸ These individuals are at an elevated risk of kidnapping their children and this risk is particularly high when other factors are also present, including immediate plans to leave the country.⁹⁹ The UCAPA also examines any abduction planning activities, including applying for a visa, closing bank accounts, or seeking medical records.¹⁰⁰ These activities are indicative that a parent may be planning to abduct the child and courts should take this into account, especially if the child has dual nationality and multiple passports.¹⁰¹

While an individual's personal risk factors are an important consideration, an analysis of the potential abducted-to country is vital.¹⁰² The court should consider personal risk factors, including a lack of strong familial, financial, emotional, or cultural ties to the United States in conjunction with strong familial, financial, emotional, or cultural ties to another country, but also recognize the repercussions of abduction to particular countries.¹⁰³ Courts should pay attention to those countries noted in the Annual Report as lacking diplomatic relations with the United States or having a history of noncompliance with the Abduction Convention.¹⁰⁴ Ensuring the return of abducted children from those countries is unlikely and sometimes nearly impossible.¹⁰⁵

⁹⁷ Unif. Child Abduction Prevention Act, at §7, §8 comments.

⁹⁸ Linda D. Elrod, *Uniform Child Abduction Prevention Act*, 41 Fam. L.Q. 23, 42 (2007).

⁹⁹ *Id.*

¹⁰⁰ Unif. Child Abduction Prevention Act, at §7, §8.

¹⁰¹ Parra, *supra* note 19, at 822-23.

¹⁰² Nitz, *supra* note 71, at 440.

¹⁰³ Unif. Child Abduction Prevention Act, at §7.

¹⁰⁴ *See generally* Hoff, *supra* note 48, at 2.

¹⁰⁵ *Id.*

Therefore, if evidence shows that one or more risk factors are present in conjunction with an unfavorable country report, the court should take a stricter approach to determining custody and regulating the child's travel.¹⁰⁶

A. THE USE OF PREVENTATIVE RISK FACTORS AND DIFFICULTIES OF ENSURING THE RETURN OF ABDUCTED CHILDREN FROM SIGNATORY NATIONS TO THE ABDUCTION CONVENTION

Japan is a member of the Abduction Convention and became a U.S. Treaty Partner under the Hague Convention in 2014.¹⁰⁷ However, Japan currently fails to comply with one or more obligations under the Convention.¹⁰⁸ As of 2015, forty pre-Convention abduction cases remained open.¹⁰⁹ Of these cases, thirty-two had been open for more than twelve months with the Japanese Ministry of Foreign Affairs.¹¹⁰ In 2015, Japan made the first Convention return order to the United States, but authorities were unable to administer the court order by December 31, 2015.¹¹¹

While Japan may be unable to enforce return orders, issues of enforcement are only one obstacle for left-behind parents.¹¹² Family systems that are judicially defined in abducted-to countries can also be a problem.¹¹³ The Japanese view of family under its legal system is that the

¹⁰⁶ Nitz, *supra* note 71, at 440.

¹⁰⁷ Annual Report, *supra* note 10, at 32.

¹⁰⁸ *Id.* at 30.

¹⁰⁹ Annual Report, *supra* note 10, at 32.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Robin S. Lee, *Bringing Our Kids Home: International Parental Child Abduction & Japan's Refusal to Return Our Children*, 17 *Cardozo J.L. & Gender* 109, 114-115 (2010).

¹¹³ Takao Tanase & Translated by Matthew J. McCauley, *Divorce and the Best Interest of the Child: Disputes over Visitation and the Japanese Family Courts*, 20 *Pac. Rim L. & Pol'y J.* 563, 564-567 (2011); Michelle Boykin, *A Comparison of Japanese and Moroccan Approaches in Adopting the Hague Convention on the Civil Aspects of International Child Abduction*, 46 *Fam. L.Q.* 451, 455 (2012); G.M. Filisko, *When Global Families Fail As Family Law Takes on Global*

parents and child are a member of only one family or “koseki”.¹¹⁴ A couple creates a new koseki through marriage, and if they divorce the children are assigned to one parent's koseki.¹¹⁵ There is an emphasis on a clean break for all parties involved.¹¹⁶ Since the Japanese do not follow a joint-custody tradition, the non-custodial parental rights are often insufficient to maintain a meaningful relationship with the children following divorce.¹¹⁷ In this system, the law may even prohibit the other parent from visiting the child.¹¹⁸ Recently, the U.S. Embassy in Tokyo reported thirty-one additional cases where both parents lived in Japan, but one parent was forbidden from seeing the children.¹¹⁹ In the case of a bi-national divorce, Japanese courts almost never grant custody to foreign parents, especially fathers.¹²⁰ Unfortunately, for over ninety percent of divorced fathers this means never seeing their children again.¹²¹

Christopher Savoie was one such father.¹²² In 2009, his ex-wife abducted their two children to her native country of Japan, which was not a signatory Abduction Convention at that time.¹²³ Savoie's children were United States and Japanese nationals and were taken out of the country despite a United States custody order granting Savoie sole custody.¹²⁴ A month later, Savoie was arrested in Japan while attempting to bring his children to a U.S. Consulate, but was

Dimensions, International Treaties May Hold the Key to Resolving Disputes, ABA J., 56, 62 (2010).

¹¹⁴ Filisko, *supra* note 113, at 62.

¹¹⁵ *Id.*

¹¹⁶ Sattler, *supra* note 34, at 1711.

¹¹⁷ *See generally* Tanase, *supra* note 113.

¹¹⁸ Sattler, *supra* note 34, at 1711.

¹¹⁹ Boykin, *supra* note 113, at 455.

¹²⁰ Tanase, *supra* note 113, at 594.

¹²¹ Sattler, *supra* note 34, at 1711.

¹²² Parra, *supra* note 19, at 817.

¹²³ *Id.*

¹²⁴ *Id.*

later released.¹²⁵ His children were returned to their mother by Japanese authorities.¹²⁶ While Japan became a U.S. Treaty Partner under the Abduction Convention five years later, his children's abduction case is among the pre-Convention abduction cases remaining open with little hope of compliance by the Japanese Authorities.¹²⁷

Using the personal risk factors and the country report, the judge would have been on notice that the wife was likely to leave with the children and could have done more to prevent the abduction.¹²⁸ Before Christopher Savoie's children were abducted, he warned the judges that his ex-wife threatened to take the children to Japan, a risk factor established under UCAPA.¹²⁹ He feared she would disregard the court order and flee with the support of her family in Japan.¹³⁰ The mother had stated that the children were becoming too American and were losing their Japanese identity.¹³¹ Not only did she view her ex-husband's culture negatively, but expressed the intent to deprive him of a relationship with his children.¹³²

Additionally, the children had dual nationality with Japan, a country not then a signatory to the Abduction Convention.¹³³ The mother had strong financial and cultural ties to Japan, and knew she would be supported by her family who lived there.¹³⁴ The mother also knew Japan

¹²⁵ *Id.*

¹²⁶ *Id.* (At that time, international custody disputes were decided under Japanese domestic law as Japan had not yet ratified the Hague Convention on the Civil Aspects of International Child Abduction).

¹²⁷ Annual Report, *supra* note 10, at 32; Parra, *supra* note 8.

¹²⁸ *See generally* Unif. Child Abduction Prevention Act, at §7.

¹²⁹ Barbara Stark, *Foreign Fathers, Japanese Mothers, and the Hague Abduction Convention: Spirited Away*, 41 N.C.J. Int'l L. 761, 767–68 (2016).

¹³⁰ *Id.*

¹³¹ Stark, *supra* note 129, at 767–68.

¹³² *Id.*

¹³³ Parra, *supra* note 19, at 828; Annual Report, *supra* note 10, at 32.

¹³⁴ Parra, *supra* note 19, at 828.

practiced a family custody arrangement that would be very unfavorable to her ex-husband, and it was likely she would be granted sole custody upon filing for divorce.¹³⁵ Under these personal risk factors and the country factors specific to Japan, this evidence would have shown a great risk of abduction, particularly in light of the mother's immediate plans to leave the country.¹³⁶

B. THE USE OF PREVENTATIVE RISK FACTORS AND DIFFICULTIES OF ENSURING THE RETURN OF ABDUCTED CHILDREN FROM NON-SIGNATORY NATIONS TO THE ABDUCTION CONVENTION

Today, 120 non-signatory nations exist, who have no obligation to honor a U.S. court's custody order.¹³⁷ In cases involving these countries, left-behind parents have no means to regain access to their abducted children unless they litigate in that nation.¹³⁸ Unfortunately, it is difficult for a foreigner to regain custody through litigation in foreign courts.¹³⁹ Even though the State Department tries to assist United States parents seeking the return of their children, most children abducted to non-signatory countries do not return.¹⁴⁰ In countries such as these, courts should note the Annual Report and recognize the extreme difficulty of returning children abducted and take a stricter approach to custody determinations and regulating the degree of travel allowed with the child.¹⁴¹

¹³⁵ Unif. Child Abduction Prevention Act, at §7; Sattler, *supra* note 34, at 1711.

¹³⁶ Unif. Child Abduction Prevention Act, at §7.

¹³⁷ *Compare* Annual Report, *supra* note 10, at 33, with Hague Conference on Private Int'l Law, Convention of 25 October 1980 on the Civil Aspects of Int'l Child Abduction Members Chart, (July 9, 2016 at 12:48PM), <https://www.hcch.net/en/instruments/conventions/status-table/?cid=24>.

¹³⁸ Annual Report, *supra* note 10, at 33; Sattler, *supra* note 34, at 1734.

¹³⁹ Hoben, *supra* note 78, at 272.

¹⁴⁰ *See generally* Annual Report, *supra* note 10.

¹⁴¹ Hoff, *supra* note 48, at 2; Nitz, *supra* note 71, at 440.

China is a high risk country for abduction because it is not a signatory to the Convention and has a history of international parental kidnappings.¹⁴² In 2015, seven children whose habitual residence was the United States were abducted to China.¹⁴³ None of those cases were resolved.¹⁴⁴ Under Chinese law, China is not obligated to enforce foreign judgments and does not require recognition of custody orders from the United States.¹⁴⁵ In fact, it is extremely rare for China to recognize and enforce foreign court judgments from any nation, regardless of that nation's relationship with China.¹⁴⁶ For Chinese courts to even consider reciprocity there must be a treaty or comity between the two nations.¹⁴⁷ However, China does not adhere to any protocols or have any treaties with the United States regarding international parental child abduction.¹⁴⁸ Therefore, in an effort to improve the resolution of abduction cases in China, the State Department recommends that the United States work with China through public diplomacy and outreach activities to combat abduction.¹⁴⁹

The Islamic Republic of Iran is another high risk country for abduction.¹⁵⁰ Iran is not party to the Abduction Convention, and the Iranian government does not have diplomatic relations with the United States.¹⁵¹ Without diplomatic relations, U.S. citizens, including children abducted to Iran, have no consular services or protection from the United States while in Iran.¹⁵²

¹⁴² Annual Report, *supra* note 10, at 69.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ Donald C. Clarke, *The Enforcement of United States Court Judgments in China: A Research Note*, Geo. Wash. L. Faculty Publ. & Other Works 1067, 1, 1 (2004).

¹⁴⁶ *Id.* at 3.

¹⁴⁷ *Id.* at 2.

¹⁴⁸ Annual Report, *supra* note 10, at 69.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 73.

¹⁵¹ *Id.* (Iran severed diplomatic relations with the United States April 07, 1980).

¹⁵² *Id.*

In 2015, there were eleven reported abductions to Iran of children whose habitual residence was the United States.¹⁵³ Due to diplomatic and security considerations, no applications for return were submitted to the Iranian government by the U.S. government.¹⁵⁴ That year, no abduction cases were resolved.¹⁵⁵

Without diplomatic ties in Iran, left behind parents are forced to litigate the abduction cases in Iran.¹⁵⁶ Under these circumstances, understanding the laws that govern abducted children and the parents while in Iran is of utmost importance.¹⁵⁷ Iranian civil legislation is codified and civil courts are designated to resolve custody issues.¹⁵⁸ As a theocratic republic, all aspects of Iranian law must constitutionally be based in Islam.¹⁵⁹ The vast majority of Iran's population follows the Shi'a school of Islam.¹⁶⁰ Under Iranian theocratic system of law, the father has the right of guardianship of a minor or *hizanat* for all children over the age of seven.¹⁶¹ Mothers maintain an important role in the child's life, and are said to have priority of all children

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 13, 73 (For purposes of the Annual Report, "resolved" means cases that were sent to the Foreign Central Authority and were later closed for the following reasons: the judicial or administrative authority complied with the Hague Abduction Convention; the parents reached a voluntary arrangement; the left-behind parent withdrew the application for return; the left-behind parent could not be located for greater than one year; or the left-behind parent or child passed away.).

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ D. Marianne Blair and Merle H. Weiner, *Resolving Parental Custody Disputes-A Comparative Exploration*, 39 *Fam. L.Q.* 247, 254 (2005).

¹⁵⁹ *The World Factbook: Iran*, U.S. Cent. Intelligence Agency, (Aug. 12, 2016 at 2:18PM), <https://www.cia.gov/library/publications/the-world-factbook/geos/ir.html>.

¹⁶⁰ *Id.*

¹⁶¹ S.N. Ebrahimi, *Child Custody (Hizanat) under Iranian Law: An Analytical Discussion*, 39 *FAM. L.Q.* 459, 467-68 (2005).

under seven years old.¹⁶² However, mothers may lose their right of *hizanat* if they choose to remarry.¹⁶³

The Kingdom of Saudi Arabia is another nation that does not adhere to the Abduction Convention and is therefore neither a convention member nor a partner with the United States.¹⁶⁴ In 2015, seven children whose habitual residence is the United States were reportedly abducted to Saudi Arabia.¹⁶⁵ However, unlike with Iran, the United States has diplomatic relations with Saudi Arabia and submitted three applications for return to the Saudi government.¹⁶⁶ Unfortunately, no cases were resolved that year.¹⁶⁷

In 1981, Kristine Uhlman fled from a marriage of escalating domestic violence in Saudi Arabia, taking her son Hani, age two, and daughter Maisoon, age three, with her to the United States.¹⁶⁸ In response to their departure and for the hand the United States government played in her escape, the US Ambassador to Kuwait and personnel from US State Department were deported from the region.¹⁶⁹ On September 11, 1981, Kristine's children were abducted from their home in Denver and flown back to Saudi Arabia.¹⁷⁰ Almost two years later, the Saudi Ambassador to the United States sponsored Kristine to travel to Saudi Arabia to litigate for custody.¹⁷¹ Once she arrived she was repeatedly told by her husband that she would never see her

¹⁶² *Id.* at 648.

¹⁶³ *Id.* at 472.

¹⁶⁴ Annual Report, *supra* note 10, at 81.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ Telephone Interview with Kristine Uhlman, Int'l Parental Abduction Consultant and Advocate (June 13, 2016).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* (A hired man dressed as Santa in the middle of September abducted the children from the front yard of their home in Denver, Colorado).

¹⁷¹ *Id.*

children.¹⁷² A few days later, Kristine was arrested and imprisoned under a false claim made by her husband in an effort to keep her from the children.¹⁷³

Eventually the government released Kristine and she continued to fight for her children, becoming the first American woman to seek custody in the Saudi Islamic court system.¹⁷⁴ In custody disputes, the Saudi court's primary concern is that the child is raised according to the Islamic faith.¹⁷⁵ Due to this focus, Saudi courts will rarely award custody to non-Muslim women, and Muslim women can lose custody for moving outside of the country or remarrying.¹⁷⁶ In Kristine's case, the court ruled that a foreign mother would harm the children's religious upbringing.¹⁷⁷ In many cases, this would be the end of all contact.¹⁷⁸ However almost sixteen years after he was abducted, Kristine's son came to the States to attend college and contacted his mother.¹⁷⁹ Both children have since reunited with their mother.¹⁸⁰

Several risk factors were present in Kristine's case, including domestic violence, threat to abduct, and denigration of the other parent's home country, language, and family.¹⁸¹ Before Kristine left, her husband routinely beat her and eventually prohibited her from leaving their

¹⁷² *Id.*

¹⁷³ *Id.* (Kristine Uhlman was the first American woman to be imprisoned in Saudi Arabia. Her husband claimed she was traveling under a false passport. This claim was later found to be fraudulent.).

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*; see generally Kristine Uhlman, *Custody Abduction Risk Factors Unique to Islamic Countries*, 11 *The Cal. Int'l Prac.*, 38, 42 (2001).

¹⁷⁶ Telephone Interview with Kristine Uhlman, Int'l Parental Abduction Consultant and Advocate (June 13, 2016).

¹⁷⁷ *Id.*

¹⁷⁸ Australian Embassy Saudi Arabia, *Custody Disputes*, (July 20, 3:04 PM), <http://saudiarabia.embassy.gov.au/ryad/custody.html>.

¹⁷⁹ Telephone Interview with Kristine Uhlman, Int'l Parental Abduction Consultant and Advocate (June 13, 2016).

¹⁸⁰ *Id.*

¹⁸¹ Unif. Child Abduction Prevention Act, at §7; Elrod, *supra* note 98 at 39-42.

home.¹⁸² In one instance he accused Kristine of making her children look too American.¹⁸³ Her daughter was tall and skinny, and at the age of three she wore blue jeans and T-shirts.¹⁸⁴ “My husband claimed she was starving their daughter to look skinny like Americans, and then grabbed the Maisoon by her hair and stuffed rice in her mouth.”¹⁸⁵ The little girl screamed and screamed until rice was coming out of her nose. She ran to her room and locked the door.¹⁸⁶ “At that point I knew I had to take my children to safety, away from the violence,” recalled Kristine.¹⁸⁷

He told her would beat her until she left but he would never grant her a divorce or let her leave with the children.¹⁸⁸ Saudi Arabian laws regarding custody of children, similar to Iranian laws, are based on the child’s age and gender.¹⁸⁹ Due to the children’s young age, Kristine would have been awarded physical custody until the children were seven years old.¹⁹⁰ Knowing this, her husband used their marriage as a tool to keep the children.¹⁹¹ Divorce granted outside of Saudi Arabia, even if it is an Islamic divorce, may not be recognized in Saudi court.¹⁹² A woman who travels to Saudi Arabia to visit her children, mistakenly believing she was divorced, may be

¹⁸² Telephone Interview with Kristine Uhlman, Int’l Parental Abduction Consultant and Advocate (June 13, 2016).

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* (Kristine Uhlman’s daughter is a physician in Saudi Arabia and had reconnected with her mother).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ Telephone Interview with Kristine Uhlman, Int’l Parental Abduction Consultant and Advocate (June 13, 2016).

¹⁹¹ *Id.*

¹⁹² Kristine Uhlman, *Shari’a and Prevalent Customs in Islamic Societies - Divorce and Child Custody*, Cal. St. B. Winter Sect. Edu. Instit. (2004).

prohibited from leaving the country by her legally recognized husband.¹⁹³ For reasons such as this, it is of vital importance that the courts utilize the UCAPA personal risk factors and examine the potential abducted-to country before making travel and custody determinations.¹⁹⁴

C. DUE TO THE DIFFICULTY ENSURING THE RETURN OF A CHILD FROM EITHER SIGNATORY OR NON-SIGNATORY NATIONS TO THE ABDUCTION CONVENTION, THE FOCUS MUST BE ON PREVENTION

In cases where the personal and country risk factors suggest potential parental abduction, the court must impose strict travel and visitation safeguards.¹⁹⁵ The child must be prohibited from leaving the state or country and the child's passport should be turned over to the custodial parent.¹⁹⁶ Additionally, the noncustodial parent should turn over his or her passport to the court while visiting the child, even if the visitation is supervised.¹⁹⁷ While a request for a United States passport for a citizen child under the age of fourteen years requires the consent of both parents, many children have dual nationalities and therefore two passports has also been recommended by the Department of Justice.¹⁹⁸ Some foreign nations are also more lax with passport regulation and may distribute multiple passports to replace a passport claimed to be lost.¹⁹⁹

Flagging passports or school, medical, and birth records so that both parents need to approve the release of, or at least be advised of, the other parent's request to see these materials

¹⁹³ *Id.*

¹⁹⁴ Unif. Child Abduction Prevention Act, at §§7-8.

¹⁹⁵ Walsh & Savard, *supra* note 21, at 57-59.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ James D. Garbolino, *The 1980 Hague Convention on the Civil Aspects of International Child Abduction: A Guide for Judges*, Federal Judicial Center International Litigation Guide, 1, 136 (2012).

is also important.²⁰⁰ Keeping copies of these documents, as well as the other parent's information including physical description, passport, bank account, social security, driver's license numbers, and photo is advised.²⁰¹

Finally, the court must require the potential abducting parent to obtain a mirror image order for the custody and divorce orders from the country they will be traveling to or residing in.²⁰² For example, a woman whose child is taken to Egypt should secure documentation that the divorce granted in a United States mosque and by US law, is recognized in the foreign court.²⁰³ Likewise, mirror orders regarding child custody should also be secured when they are likely to be enforced.²⁰⁴ While mirror orders can be a vital resource, they are often difficult and expensive to acquire.²⁰⁵ Parents should be aware of the practical likelihood of enforcement as a foreign court may subsequently change its order.²⁰⁶

D. POINTS OF OBJECTION TO RESTRICTING PARENTAL RIGHTS

The United States values the rights of parents, recognizing that "the interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty

²⁰⁰ Janet Johnston, Inger Sagatun-Edwards, Martha-Elin Blomquist, and Linda K. Girdner, *Early Identification of Risk Factors for Parental Abduction*, Office of Juv. Just. and Delinquency Prevention, 6, 12 (2001); See also Annual Report, *supra* note 10, at 5 (In 2015 the Department enrolled 4,064 children in the Children's Passport Issuance Alert Program (CPIAP), one of the Department of State's most important tools for preventing international parental child abduction. If a passport application is submitted for a child who is enrolled in the CPIAP, the program allows the Department's Office of Children's Issues to attempt to contact the parent(s) who enrolled the child to help verify whether the parental consent requirement for minors has been met.).

²⁰¹ Walsh & Savard, *supra* note 20, at 57-58.

²⁰² Elrod, *supra* note 98, 49-50.

²⁰³ See generally Kristine Uhlman, *Custody Abduction Risk Factors Unique to Islamic Countries*, 11 The Cal. Int'l Prac. (2001).

²⁰⁴ Elrod, *supra* note 98, at 49-50.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

interests.”²⁰⁷ However, parental rights are not paramount in light of the court’s consistent adherence to the best interest of the child.²⁰⁸ Children are some of the most vulnerable members of society.²⁰⁹ The wrongful taking or retention of children outside their country of habitual residence is harmful to their well-being.²¹⁰ Therefore, courts generally conclude that the access right of a parent may be taken away as a result of the parent’s independent illegal action.²¹¹

While legally the parent may have lost their rights to the child, this is irrelevant if the child and parent are no longer in the country and the court order cannot be enforced.²¹² Therefore, the difficulty often lies in travel, because parents argue that they have the right to travel with their children.²¹³ Parents that are citizens of the United States may have the right of interstate travel, but there is no inalienable right to travel internationally.²¹⁴ Therefore, the best interest of the child must always be taken into account, as depriving a child of access to his or her parent could be incredibly harmful to the child.²¹⁵

IV. PREVENTION IS THE MOST EFFECTIVE MEANS TO COMBAT INTERNATIONAL PARENTAL KIDNAPPINGS

With thousands of children internationally abducted each year, it is important to understand the law and social structures of other countries.²¹⁶ In 1980, the Hague Convention on the Civil Aspects of International Child Abduction was part of an international effort to protect

²⁰⁷ *Troxel v. Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054, 2060, 147 L. Ed. 2d 49 (2000).

²⁰⁸ Annual Report, *supra* note 10, at 3.

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *See generally* Sattler, *supra* note 34, at 1731-33.

²¹² *Id.*

²¹³ *See generally* Parra, *supra* note 19, at 834.

²¹⁴ Immigration and Nationality Act of 1952, 8 U.S.C. §1185.

²¹⁵ *See generally* Annual Report, *supra* note 10.

²¹⁶ Sherer, *supra* note 6, at 143.

children and to facilitate the return of children to their habitual residence.²¹⁷ However, international parental kidnappings still occur throughout the world, prompting scholars and legislatures to find a solution.²¹⁸ Given the fact that international conventions and domestic legislation fails to adequately discourage international parental abduction of United States children, the United States must focus on prevention rather than retroactive policies.²¹⁹ Preventative measures include the court's examination of flight risk factors, strict travel and visitation safeguards, and mirror image orders.²²⁰ These restrictions will inevitably limit the broad discretion parents have to raise their children, but this is necessary to ensure the court's primary focus in custody disputes remains the best interest of the child.²²¹

As international parental kidnapping cases reach the court's docket, judges must be educated in both the Convention and the history of compliance of other nations to the Abduction Convention. Both the United States Annual Report on International Child Abduction and the Judges Guide to International Parental Abduction are helpful resources in that regard. However, measures to prevent the wrongful removal of children from their habitual residence by a parent need to be the focus of the courts. It is incredibly difficult to return and sometimes locate a child that is taken to a foreign country. In many cases, left-behind parents are never reunited with their abducted children. Therefore, prevention measures must coincide with custody and divorce proceedings if a risk is present. Additionally, due to the broad scope of international parental

²¹⁷ Hague Abduction Convention, at preamble.

²¹⁸ *See generally* Sean and David Goldman International Abduction Prevention and Return Act of 2013, H.R. 1951, 113th Cong. (2013); *See Also* Nitz, *supra* note 71, at 423.

²¹⁹ Nitz, *supra* note 71, at 423.

²²⁰ DOJ 01-62 (D.O.J.), 2001 WL 564622; Walsh & Savard, *supra* note 21, at 57-58; Elrod, *supra* note 98, at 49-50.

²²¹ *See generally* Annual Report, *supra* note 10.

kidnapping issues, a smaller number of judges well educated in the risk factors and preventive measures would be more effective to review custody cases where the potential risk of abduction is raised.