THE HAGUE CHILD ABDUCTION CONVENTION TURNS TWENTY: GENDER POLITICS AND OTHER ISSUES

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I. INTRODUCTION

Many of the articles in this symposium issue have discussed the objectives and the operation of the 1980 Hague Convention on the Civil Aspects of Child Abduction1 (Child Abduction Convention), including the experience of a number of countries under the Convention.2 It is fair to conclude from that experience that much of the promise of the Child

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Abduction Convention has been fulfilled through the creation of an internationally recognized remedy for victims of child abduction through which the pre-removal/retention situation of the child is re-established. At the same time, the Child Abduction Convention is far from perfect, and certain of its limitations have been revealed over time. As we enter the next millennium, the Child Abduction Convention faces new challenges and must adapt to a constantly changing legal and social environment.


5. For example, creative types of parenting arrangements upon divorce—such as half-time living arrangements in different countries—do not always mesh well with the Child Abduction Convention. See Johnson v. Johnson, 493 S.E.2d 668, 669-72 (Va. App. 1997) (describing “shuttle custody” arrangement where application of return of child from Sweden to the United States was denied). Also, relocation of custodial parents is occurring
Nonetheless, the Child Abduction Convention’s record in its first twenty years should be applauded. The Convention has dramatically advanced both the deterrence of international abductions and the likelihood of having children returned. The crafting of the “return remedy” offers a real and pragmatic tool for redressing child abductions. Its application to pre-decree situations—that is, in situations where a marriage is deteriorating but there is no formal custody order—has been critical.\(^6\) The Child Abduction Convention has also had an impact in securing voluntary returns and has deterred parents from unlawfully removing children in the first place. Combined with the institutionalization of Central Authorities through which to track children and route information,\(^7\) the Child Abduction Convention has made real headway to secure cooperation in returning children who have been wrongfully taken across national borders.

II. “Gender Politics” and the Convention

One unfortunate new twist with respect to the Child Abduction Convention is a changing political climate around it. Views about the Child Abduction Convention have changed in

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6. For a discussion of some of the pre-decree cases, see Silberman, \textit{Progress Report}, supra note 4, at 221-22.

part because the nature of the abductors has changed. When the Child Abduction Convention was initially drafted, the perception (and to some extent the prediction) was that most abductors were (and would be) non-custodial fathers—that is, it was thought that mothers were more likely to prevail in formal custody disputes with fathers limited to various types of visitation arrangements—and that non-custodial fathers, unhappy about the actual or predicted outcome, were likely to abduct. Over time, however, many “abductors” have turned out to be custodial mothers—mothers who have lived abroad during the marriage, who have obtained custody when the marriage fails, and who desire to return to their home country after the breakdown of the marriage. The couple has often been living in the home country of the husband who is employed there, and when the marriage ends, the mother, seeking family and support networks back home, desires to return to her home country. Often the custodial mother is concerned that she will not be permitted to leave the country of habitual residence with the child because restrictions on relocation have become quite common in many places,8 and thus, the mother decides to take unilateral action to remove the child. In several other high-profile cases, the custodial mother has alleged that the removal has been necessitated by domestic violence on the part of the father.9

Nonetheless, a double standard should not be countenanced in assessing whether there has been a wrongful removal under the Child Abduction Convention; otherwise, the Convention will clearly be undermined. But creative responses directed to concerns about separating children from

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their primary caretaker or protecting children and a spouse from domestic violence are necessary.\textsuperscript{10}

Unlawful unilateral removals—as well as real abductions—are harmful to children, whether the parent who removes is a mother or a father.\textsuperscript{11} Moreover, a wrongful removal or retention occurs only where there has been a violation of “custody rights,” and, under the Child Abduction Convention, a parent with “mere access” rights cannot seek return of the child for violation of those rights.\textsuperscript{12} Thus, the Child Abduction Convention has drawn its line as to when the return remedy is appropriate.

Not surprisingly, the gender politics underlying these questions are generally more atmospheric than formalistic—that is, no double standard has been proposed to suggest that different rules should apply to abducting mothers as opposed

\begin{itemize}
  \item \textsuperscript{10} For a discussion of the use of orders, such as stipulations and undertakings, to facilitate arrangements for return of children, see Beaumont & McCleavy, supra note 3, at 156-72. See also infra notes 77 and 78.
\end{itemize}

A more effective mechanism for enforcement of access rights has been included in the recently negotiated 1996 Hague Convention on the Protection of Children. Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, Oct. 19, 1996, 35 I.L.M. 1391; see infra text accompanying notes 44, 51, & 52. In addition, the Hague Conference is considering the negotiation of a Protocol to the Child Abduction Convention to more effectively deal with the securing and enforcement of access rights.
to abducting fathers. Rather, the impact of the gender issues is more subtle and turns on how the Child Abduction Convention is to be understood, interpreted, and possibly adapted.

A. Ne Exeat Clauses, “Custody Rights,” and Concerns About Relocation

One issue that has come before several national courts is whether to regard a parent, who has access rights under a custody order that explicitly restricts removal of the child, as having “custody rights” within the meaning of the Child Abduction Convention sufficient to trigger a right of return. While most courts have interpreted Convention language providing that “rights of custody” include the “right to determine the child’s place of residence” to encompass a parent who has access rights along with the right to control relocation, a few courts, including the recent decision of the Second Circuit in Croll v. Croll, have concluded otherwise.

To be fair, the Croll decision itself appears to be gender-neutral—albeit, in my view, misguided. On the other hand, dicta in two Canadian Supreme Court opinions, Thomson v. Thomson and D.S. v. V.W., cited by the Croll majority, were

13. See, e.g., C v. C, [1989] 1 W.L.R. 654, 658 (Eng. C.A. 1989) (where mother had custody but father and mother remained “joint guardians” and neither parent could remove the child from Australia without the other’s consent, the father possessed “custody” rights within the meaning of the Child Abduction Convention); Foxman v. Foxman, 92(3) P.D. 2272 (Isr.) (“custody rights” under the Child Abduction Convention include situations where parental consent is required before a child is taken out of the country); David S. v. Zamira S., 574 N.Y.S. 2d 429, 432 (N.Y. Fam. Ct. 1991) (custody order containing a ne exeat clause creates custody rights in father); Janakakis-Kostun v. Janakakis, 6 S.W.3d 843, 849 (Ky. Ct. App. 1999), cert. denied, 148 L.Ed. 2d 13, 121 S.Ct. 32 (2000) (temporary custody order that prevented custodial mother from removing child from Greece conferred custody rights on the father).

Both the 1989 and 1993 Special Commissions reviewing the operation of the Hague Convention approved this interpretation. See Second Special Commission Report, supra note 12; Third Special Commission Report, supra note 5. See also Beaumont & McElevy, supra note 3, at 77-78.

14. 229 F.3d 133 (2d Cir. 2000).

undeniably motivated by a concern for the mobility rights of
custodial parents, usually mothers.\textsuperscript{17}

In \textit{Croll}, a custody order issued by a Hong Kong court
granted custody of the child to the mother and gave the father
a right of “reasonable access.”\textsuperscript{18} A separate paragraph of the
order directed that the child not be removed from Hong Kong
until she attained the age of eighteen without leave of court or
consent of the other parent.\textsuperscript{19} Ignoring the order of the Hong
Kong court, the mother came with the child to the United
States and refused to return to Hong Kong. The father then
filed a petition in the United States under the Child Abduc-
tion Convention for return of the child to Hong Kong.\textsuperscript{20}

Because only a violation of “custody rights” (and not
“rights of access” alone) is sufficient to trigger the return rem-
edy under the Child Abduction Convention, the issue facing
the court was whether a non-custodial parent’s right of access
together with a \textit{ne exeat} clause conferred “custody rights” within
the meaning of the Child Abduction Convention. The district
court, relying on cases in the United States and other Conven-
tion States, determined that it did and ordered return of the
child.\textsuperscript{21} On appeal, in a 2-1 ruling, the Second Circuit re-

\begin{thebibliography}{99}
\bibitem{Conference} Conference of the International Association of
\textit{Silberman, Custody Orders}]; Martha Bailey, “Rights of Custody”
\bibitem{id} W. (V.) v. S. (D.), [1996] 2 S.C.R. 108 (Can.).
\bibitem{id} See Martha Bailey, \textit{The Right of a Non-Custodial Parent to an Order for Return of a Child Under the Hague Convention}, 13
the custodial parent was the father, but more often than not the custodial parent is the mother.
\bibitem{id} Croll v. Croll, 229 F.3d 133, 135 (2d Cir. 2000) (quoting Croll v.
Feb. 23, 1999]).
\bibitem{id} Id.
\bibitem{id} Id.
\bibitem{id} Croll v. Croll, 66 F. Supp. 2d 554 (S.D.N.Y. 1999), \textit{rev’d}, 229 F.3d 133
(2d Cir. 2000). It should also be underscored that the relevant “custody
rights” are defined by the law of the habitual residence—in this case, Hong
Kong. The majority in \textit{Croll} failed to engage in a thorough exploration of
“custody” rights under foreign law. \textit{Compare} Whallon v. Lynn, 230 F.3d 450
(1st Cir. 2000). In \textit{Whallon}, the court determined that the civil law concept of\textit{ patria potestas} under Mexican law should be understood as conferring
custody rights under the Convention in light of the Convention’s Explanatory
Report favoring an interpretation that “allows the greatest possible number

versed. The majority found that the *ne exeat* clause conferred only a veto power upon the father and did not give him a "right to determine a child's place of residence." In looking to both Webster's Third and Black's Law Dictionaries as the source for a definition of "custody rights," the Second Circuit majority overlooked the Child Abduction Convention's quite self-conscious goal of creating an autonomous treaty definition for "custody rights" consistent with the structure and objectives of the Child Abduction Convention. Although the majority found support in one early article written shortly after the Diplomatic Session opining that breach of a non-removal clause should not be construed as a breach of custody rights, the court ignored more compelling authority in the other direction, with respect to both the case law and scholarship as well as to the interpretation approved by the Special Commissions that review the operation of the Child of cases to be brought into consideration." Id. at 455 (quoting Explanatory Report, ¶ 67; see infra note 55).

22. Croll, 229 F.3d at 139. Article 3 of the Child Abduction Convention defines a wrongful removal or retention as a "breach of rights of custody" under the law of the state in which the child was habitually resident immediately before the removal or retention. Child Abduction Convention, *supra* note 1, art. 3, T.I.A.S. No. 11,670, at 4, 1343 U.N.T.S. at 98-99. Article 5 then defines "rights of custody" as "rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence." Id. art. 5, T.I.A.S. No. 11,670, at 5, 1343 U.N.T.S. at 99 (emphasis added).


25. Croll, 229 F.3d at 142-43.


27. See Beaumont & McEleaney, *supra* note 3, at 72-73, 75-82 (1999). The authors conclude that "the underlying principle should be that a veto over the removal of a child from its habitual residence should ordinarily amount to a right of custody, and its breach should be sufficient to successfully base a return petition." Id. at 80. See also Silberman, *Custody Orders, supra* note 15, at 236; John M. Eckelaar, *International Child Abduction by Parents, 32 U. Toronto L.J.* 281, 309 (1982).

28. Special Commissions of the Hague Conference to review the operation of the Child Abduction Convention have been convened three times since the adoption of the Child Abduction Convention, with a fourth to take place in March, 2001. Both treaty and observer countries come together to discuss potential problems in the operation of the Child Abduction Convention and to share their collective experiences about how it functions. Without a supranational Convention to provide uniform interpretation of the
Judge Sotomayor’s strong and thoughtful dissent in *Croll* offers an effective rebuttal to the majority’s position. Judge Sotomayor found that substantial international case law supported her conclusion that a restraint on removal of the child combined with access rights was intended to create “custody rights” under the Child Abduction Convention. She also stressed the importance of the return remedy in the context of *ne exeat* violations in advancing the Convention’s goal of “preventing parents from unilaterally circumventing the home country’s custody law.” Moreover, Judge Sotomayor convincingly explained why the definition of “custody rights” must be understood in the specific context of the Child Abduction Convention where the decision as to “whether a child will live in England or Cuba, Hong Kong or the United States, is precisely the kind of choice the Child Abduction Convention is designed to protect.” Finally, she exposed the weakness of the majority’s concern that the child could be returned to Hong Kong without a parent with formal responsibility for the child’s care; she noted the possibility of requiring “undertakings” by the petitioning parent to ensure that children will

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30. *See Croll v. Croll, 229 F.3d 133, 144 (2d Cir. 2000) (Sotomayor, J., dissenting).*

31. *Id.* at 142.

32. *Id.* at 147-48.

33. An “undertaking” is defined as an official promise, or an agreement or concession by a party to perform a particular task. An example of an undertaking is a father who is requesting return of his abducted child who promises or “undertakes” to pay transportation costs of the mother back to the state of habitual residence. In order to make such undertakings enforce-
be cared for properly pending disposition by the courts in the habitual residence.\textsuperscript{34} It can only be hoped that Judge Sotomayor’s dissent—and not the Second Circuit’s majority opinion—will emerge as the prevailing view in future case law development.

As noted above, leading decisions in Australia, the United Kingdom, Israel, and France had all interpreted \textit{ne exeat} clauses as conferring “custody rights” within the meaning of the Child Abduction Convention.\textsuperscript{35} The Canadian Supreme Court, in two decisions, was the first important court to introduce uncertainty about the impact of both express and implied restrictions on removal as they affect the definition of “custody rights” within the Child Abduction Convention. In \textit{Thomson v. Thomson}, the first Child Abduction Convention case to come before the Supreme Court of Canada, a mother with an \textit{interim} order of temporary custody was prohibited from removing the child from Scotland until the final hearing.\textsuperscript{36} Although an or-

\textsuperscript{34} The majority argues that because a custodial parent is not required to return with the child, the return of a child to a parent because of the breach of a non-removal clause could lead to a situation where there is no responsible caretaker for the child. \textit{Croll}, 229 F.3d at 140-41. But, as the dissent points out, in numerous cases the courts have used mirror-image orders or undertakings to protect the child and to ensure that the child is cared for until the state of habitual residence is able to assess the longer-term custodial situation. \textit{Id.} at 148-49. What the majority overlooks is the basic objective of the Child Abduction Convention—to return the child to the country of habitual residence so that the courts there may make the appropriate custodial arrangements for this family—whether that be to eliminate the restriction on relocation for Mrs. Croll while making new arrangements on access or to grant custody to Mr. Croll if Mrs. Croll refuses to return. Unfortunately, the result of the majority’s approach is to allow the initial decision and arrangement of the Hong Kong court to be flouted. It also undermines the Child Abduction Convention’s goal of preserving the child’s relationship with both parents.

\textsuperscript{35} See cases cited \textit{supra} note 13.

der of return was upheld, the Canadian Supreme Court believed that it was the Scottish court that had the “rights of custody” that were breached. Even more troubling was the dicta in Thomson, suggesting that restrictions on removal in final custody orders were designed to protect access and “not intended to be given the same level of protection by the Child Abduction Convention as custody.”

In a later case, D.S. v. V.W., the Canadian Supreme Court expanded on Thomson to decide that an implicit restriction on movement was insufficient to transform a non-custodial parent’s “access rights” into “custody rights,” and therefore a father who had a final custody order from Maryland was free to move without fear of an order of return under the Child Abduction Convention. Moreover, Justice L’Heureux-Dubé, writing the opinion in D.S. v. V.W., also expressed the view that even an explicit non-removal clause would not give the access parent “rights of custody.” This ruling was consistent with her view that custodial parents have all the rights and responsibilities with respect to the child, including the right to determine the child’s place of residence. However, there are numerous reasons to refrain from reading D.S. v. V.W. broadly and from adopting Justice L’Heureux-Dubé’s dicta with respect to explicit ne exeat clauses. First, the Supreme Court of Canada in D.S. v. V.W. actually upheld the order to return the child to the United States on the alternate ground that return was in the best interests of the child under the relevant domestic provincial law. Second, six of the nine Supreme Court Justices expressed reservations about Justice L’Heureux-Dubé’s analysis of custodial rights and obligations. Third, the dicta in D.S. v. V.W. on the impact of removal restrictions

37. Id. at 281.
39. Justice L’Heureux-Dubé wrote:

[R]ights of custody within the meaning of the Act cannot be interpreted in a way that systematically prevents the custodial parent from exercising all the attributes of custody, in particular that of choosing the child’s place of residence, but, on the contrary, must be interpreted in a way that protects their exercise.

Id. at 499.
40. Id. at 484.
41. Id. at 483, 519.
has been criticized by scholars of the Child Abduction Convention, both within and without Canada.\footnote{42. See Bailey, \textit{supra} note 2, at 31; Silberman, \textit{Custody Orders, supra} note 15, at 236. The reasoning in the \textit{Thomson} case has also been subject to question. See Vaughan Black and Christopher Jones, \textit{Thomson v. Thomson}, 12 \textit{Canadian Fam. L. Q.} 321 (1994-1995).}

Concerns about mobility rights of custodial parents are better addressed by individual countries through national laws relating to relocation by custodial parents. Restrictions on relocation, which were prevalent in the 1980s, have given way to greater accommodation for the right of custodial parents to relocate with their children, at least in the domestic context.\footnote{43. For example, in \textit{Tropea v. Tropea}, 665 N.E.2d 145 (N.Y. 1996), the New York Court of Appeals altered its rule that relocation was permitted only upon a showing of “exceptional circumstances” and adopted a broader multi-factored analysis. Even more dramatically, in \textit{In re Marriage of Burgess}, 913 P.2d 473 (Cal. 1996), the California Supreme Court recognized a “presumptive right of a custodial parent to change the residence of the minor children, so long as the removal would not be prejudicial to their rights or welfare.” \textit{Id.} at 478. See generally Edwin J. Terry et al., \textit{Relocation: Moving Forward or Moving Backward}, 31 \textit{Tex. Tech. L. Rev.} 983, 987-1008 (2000).}

Of course, with no assurance that access rights will be enforced abroad,\footnote{44. In general, enforcement of access rights is a matter of national law. As observed earlier, the Child Abduction Convention does not provide a return remedy for breach of access rights; and its provisions for securing and enforcing access rights at all are limited. However, the situation could improve if countries ratify the recently negotiated 1996 Protection Convention, which includes an effective mechanism for the enforcement of access rights. \textit{See Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, Oct. 19, 1996, 35 I.L.M. 1391, 1396 [hereinafter 1996 Protection Convention]. The 1996 Protection Convention is discussed in DeHart, \textit{supra} note 2. See also Linda Silberman, \textit{The 1996 Hague Convention on the Protection of Children: Should the United States Join?}, 34 \textit{Fam. L.Q.} 239, 265-66 (2000) [hereinafter Silberman, \textit{Protection of Children}].}} courts may be more reluctant to allow relocation by the custodial parent to another country for fear that the child’s relationship to the non-custodial parent may become even more attenuated.\footnote{45. For a thoughtful discussion on the issues involved in international relocation cases, see \textit{Garbolino, Handling Hague Cases, supra} note 33, at 170-76.}

One interesting approach was adopted by a California appellate court in \textit{Condon v. Cooper},\footnote{46. \textit{See Condon v. Cooper, 73 Cal. Rptr. 2d 33 (Ca. 1998).}} which recognized the diffi-
culty of ensuring the non-custodial father’s rights if the mother were permitted to relocate from California to Australia. The trial court granted physical custody to the mother with “physical custody” during school holidays to the father and allowed the mother to relocate to Australia. On review, the appellate court expressed concern that the father’s rights—whether they were rights of custody or access—could not be effectively protected. Because enforcement was within the sole province of the Australian courts and outside of any treaty obligation, Australia, by refusing to enforce or by modifying the California order, could completely upset the balance struck by the California order and potentially erode the father’s relationship with the children. Acknowledging that many courts might refuse to permit relocation to a foreign country in these circumstances, the California appeals court chose a more creative route; it permitted the mother to relocate, subject to certain conditions: the mother had consented to (and the court accepted) continuing jurisdiction of the matter in the California courts, and the court imposed a bond to ensure the mother’s compliance with the concession as well as with the other conditions attached to the order permitting relocation.

Although one might take issue with the unilateral exercise of future judicial authority by the California court, the court did craft a creative compromise that accommodated relocation of a custodial parent while protecting the non-custodial parent’s continuing relationship with the children. A more effective and cooperative method for dealing with relocation and access issues is possible if the United States and other countries eventually sign and ratify the 1996 Hague Convention on the Protection of Children, the provisions of which

47. Prior to the proceedings in the California court in Condon, the mother had wrongfully removed the children from California to Australia. The Australian court ordered return to the United States under the Child Abduction Convention. Condon involved the subsequent matrimonial and custody proceedings in California, the state of habitual residence, after the return. Id. at 38-39.

48. See 1996 Protection Convention, supra note 44. See also Condon, 73 Cal. Rptr. 2d at 38.

49. See Condon, 73 Cal. Rptr. 2d at 47-48.

50. Id. at 52-53.

51. See 1996 Protection Convention, supra note 44.
provide for the enforcement of custody and access orders of Contracting States and establish formal methods of cooperation, communication, and mutual assistance between those States.\footnote{52}

B. The Convention’s Response to Alleged Domestic Violence

Another set of cases that have raised gender sensibilities involve wrongful removals of children taken as a response to spousal or child abuse.\footnote{53} Article 13(b) of the Child Abduction Convention provides for a defense to return when there is “grave risk” that return would “expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.”\footnote{54} Both the Report accompanying the Child Abduction Convention\footnote{55} and subsequent decisions in the United

\footnote{52. The 1996 Protection Convention rejects exclusive continuing jurisdiction in the decree state, but its principle of enforcement of custody and access rights offers greater protection than now exists. For more on these issues, see Silberman, \textit{Protection of Children}, supra note 44, at 263-67; DeHart, supra note 2.}

\footnote{53. For a comprehensive analysis of cases involving abductors alleging domestic violence and recommendations for dealing with the issue under the Child Abduction Convention, see Weiner, \textit{Escape from Domestic Violence}, supra note 5.}

\footnote{54. Child Abduction Convention, \textit{supra} note 1, art. 13(b), T.I.A.S. No. 11,670, at 8, 1343 U.N.T.S. 98, 101.}


[The exceptions] concerning the return of the child must be applied only so far as they go and no further. This implies above all that they are to be interpreted in a restrictive fashion if the Convention is not to become a dead letter. In fact, the Convention as a whole rests upon the unanimous rejection of this phenomenon of illegal child removals and upon the conviction that the best way to combat them at an international level is to refuse to grant them legal recognition. The practical application of this principle requires that the signatory States be convinced that they belong, despite their differences, to the same legal community within which the authorities of each State acknowledge that the authorities of one of the them—those of the child’s habitual residence—are in principle best placed to decide upon questions of custody and access. As a result a systematic invocation of the said exceptions, substituting the forum chosen by the abductor for that of the child’s residence, would lead to the collapse of the whole structure of the
States and elsewhere have indicated that the defense should be narrowly construed, both substantively and procedurally. In Friedrich v. Friedrich, the United States Court of Appeals for the Sixth Circuit captured the essence of the inquiry that should be made by a court faced with an Article 13(b) defense on a return application:

[W]e believe that a grave risk of harm for the purposes of the Convention can exist in only two situations. First, there is a grave risk of harm when return of the child puts the child in imminent danger prior to the resolution of the custody dispute—e.g., returning the child to a zone of war, famine, or disease. Second, there is a grave risk of harm in cases of serious abuse or neglect, or extraordinary emotional dependence, when the court in the country of habitual residence, for whatever reason, may be incapable or unwilling to give the child adequate protection.

The court in Friedrich suggested that, whatever the nature of the harm, the child should be returned so long as there is assurance that the courts in the country of habitual residence are in a position to assess the merits of the harm posed to the child and to protect the child if necessary. One method of providing that protection is to include undertakings and/or mirror safe harbor orders to ensure the return of the child to a protective environment while the allegations are assessed in the state of habitual residence.

Closely related to the Article 13(b) standard of grave risk (of harm or of creation of an intolerable situation) are the procedures adopted by the court in which the application for Convention by depriving it of the spirit of mutual confidence which is its inspiration.

Id. at 434-35.

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56. See cases discussed in Beaumont & McClenahan, supra note 3, at 138-56. See also Linda Silberman, Progress Report, supra note 4, at 235-44. In the United States, the International Child Abduction Remedies Act, 42 U.S.C. §§ 11601-11610 (1989) (implementing legislation), requires that the Article 13(b) and Article 20 defenses be proved by clear and convincing evidence. Id. § 11603.

57. 78 F.3d 1060 (6th Cir. 1996).

58. Id. at 1069.

59. Id.

60. See Garbolino, Handling Hague Cases, supra note 33, at 64-67.
return is made for investigating and ascertaining the alleged risk. If extensive and full-scale hearings replete with expert testimony become the norm whenever allegations of spousal and/or child abuse are raised, the summary nature of return proceedings—an important objective of the Child Abduction Convention—will be frustrated. Allegations of abuse of various kinds are frequently made in custody disputes, and the truth of the allegations is often hard to evaluate. Rather than taking it upon itself to hear expert testimony to sort out whether the allegations are true and what the impact is on the child, a court hearing a Hague application should determine whether a threat of harm to the child can be averted if a return order is made and should direct its efforts to fashioning return arrangements. As Friedrich instructs, the central question should be whether the state of habitual residence will do so and can be trusted to assess the situation in a fair and competent way so as to ensure the ultimate protection of the child.

Recent cases in the United States involving allegations of abuse directed at the child and/or the spouse continue to test the limits of the Article 13(b) defense, and several have failed

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61. In one recent case, *Matter of LL. Children*, the judge, after hearing extended testimony from both parents with respect to personal and family history, including allegations that the father had physically abused both his spouse and the children, concluded that:

there is no way to reconcile the content of their testimony standing alone, which was sharply divergent. Other parts of the record suggest that neither parent was completely candid with the Court. The Court had the impression that significant aspects of the personal business, and family history many have been withheld by each of the parties either individually or collusively.


62. Such an approach was endorsed by the Third Special Commission, which stated that the requesting State should be trusted to make a proper custody determination upon return of the child and that the child could be protected during the pendency of the custody proceeding by allowing the child to return in the custody of the abducting parent or by placing the child in the custody of a third party. *See Third Special Commission Report*, *supra* note 5, at 36-37.

63. *See Friedrich*, 78 F.3d at 1068.
to honor the narrow interpretation of Article 13(b). The very recent decision by the Second Circuit Court of Appeals in *Blondin v. Dubois* (*Blondin IV*)—the second time the case reached the circuit—is one such example. *Blondin* involved allegations that the Hague applicant father had physically abused the children and his spouse; the abducting mother, asserting an Article 13(b) defense, resisted return of the children to France.

On the first appeal to the circuit (*Blondin II*), the court reversed the district court’s denial of the Hague return application. Although it did not disturb the finding that a return to the custody of the father would expose the children to a “grave risk of harm,” the Second Circuit panel directed the district court to consider “the range of remedies that might allow both the return of the children to their home country and their protection from harm, pending a custody award in due course by a French court with proper jurisdiction.” The court of appeals suggested that the district court communicate with the French government regarding the availability of ameliorative placement options in France and offered the aid of the Department of State to facilitate that inquiry.

On remand, however, the district court followed its own course and once again refused to return the children to

64. See, e.g., Steffen F. v. Severina P., 966 F. Supp. 922, 927-28 (D.C. Ariz. 1997) (refusing return because the child had become emotionally dependent on the mother and to separate the child would create a grave risk of harm irrespective of the mother’s ability to return with the child); Rodriguez v. Rodriguez, 33 F. Supp. 2d 456, 462 (D.C. Md. 1999) (physical abuse of child by father sufficient to satisfy grave risk of harm defense without exploration of alternative placements for the child). Just as this article went to press, a second appeal of the *Blondin v. Dubois* case (*Blondin IV*) was decided by the Second Circuit, 2001 U.S. App. LEXIS 77 (Jan. 4, 2001), and is discussed in the text above.

65. 2001 U.S. App. LEXIS 77 (Jan. 4, 2001). Without my knowledge, I appear to have been listed as “of counsel” for Mr. Blondin on the appeal; I did not authorize the use of my name on any papers nor did I directly participate in the writing of any of the briefs. I did, however, read some early drafts of the briefs and made suggestions to the lawyers representing Mr. Blondin.

66. Blondin v. Dubois, 189 F.3d 240 (2d Cir. 1999) [hereinafter *Blondin II*].

67. Id. at 250.

68. Id. at 249.
France. The district court found that because the children had become deeply rooted in the United States, returning them to the place in which they suffered abuse and to the uncertainties of the pressure of custody proceedings there would present a grave risk of psychological harm or place them in an intolerable situation. Indeed, in somewhat unusual fashion, the district court expressed its disagreement with its own appellate court’s interpretation of Article 13(b) in standing by its original decision not to order return. The district court conceded that “France could protect the children from further abuse” but insisted that France could not “protect them from the trauma of being separated from their home and family and returned to a place where they were seriously abused, amidst the uncertainties of court proceedings and being on public assistance.” The court relied heavily on the opinion of an expert psychoanalyst who examined the children and whose testimony and report stressed the risk of post-traumatic stress disorder in any proposed arrangement for returning the children to France.

On review of the district court’s action on remand (Blondin III), the Second Circuit in Blondin IV affirmed the court’s refusal to return on the basis of the factual record before it. While some aspects of the court’s decision are quite fact-specific, other aspects of the opinion are more troubling. To its credit, the court in Blondin IV, reaffirmed its earlier insistence that the “full range of options that might make possible the safe return of a child to the home country” must be examined. On the other hand, it accepted the conclusory, albeit uncontroverted, expert testimony that the children faced seri-
ous traumatic stress if made to return to France. By equating a finding of “traumatic stress disorder” resulting from return for further custody proceedings with “grave risk of psychological harm,” the court greatly expands the possibilities for non-return under the Convention. In addition, the court of appeals provided additional ammunition for would-be abductors by permitting consideration of whether the children were settled in their new environment following the abduction as an additional factor in the Article 13(b) “grave risk” analysis. Therefore, whether the children were settled in their new environment was relevant only under Article 12 of the Convention, when a Hague petition had been filed more than a year after the wrongful removal or retention. Finally, the court of appeals opened the gates for broad use of a child’s testimony.

The decision of the Second Circuit in Blondin IV threatens the basic framework and objectives of the Child Abduction Convention. The Blondin IV approach transforms what should be a summary Hague proceeding into a conventional custody hearing—replete with individual “best interest” assessments and extensive psychological testimony. Under the Child Abduction Convention, those issues—including a full inquiry into the child’s background and lifestyle, relationships with parents, allegations of harm or abuse, as well as the wishes of the child—should be the province of a plenary custody hearing to be held back in the country of habitual residence. By usurping the issue of the long-term best interests of the child for itself, the decision in Blondin IV pulls the first thread in unraveling the fabric of the Child Abduction Convention.

What should be critical to the inquiry made by a court entertaining a Hague petition and confronted with an Article 13(b) defense, including allegations of domestic violence, is whether the court in the habitual residence state can be trusted to take action to ensure the protection of the spouse and child, and whether undertakings77 by the petitioning par-

77. Although undertakings are not authorized by the Child Abduction Convention itself, they have been adopted by a number of courts and are a practical mechanism for effecting returns. See Michael Nicholls, Dealing with International Child Abduction in the United Kingdom, Implementing the Hague Child Abduction Convention: A Practical Guide for Judges ¶ 15 (1997) (on file with the author). See also Beaumont & McEleavey, supra note 3, at 156-72.

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ent or the issuance of safe harbor orders\textsuperscript{78} are sufficient to protect the child. If so, there should generally be no “grave risk” of harm if the child is returned to that state for further proceedings.

Such an approach does not mean return is appropriate in every case. For example, in \textit{Walsh v. Walsh},\textsuperscript{79} where the father had previously violated past court orders of both the Irish and the U.S. courts, had engaged in violent behavior toward the family, and was under indictment for threatening to kill someone in an unrelated case, it is understandable why the First Circuit concluded that a “grave risk of harm” could not be avoided and therefore denied return.\textsuperscript{80} But an important Connecticut Supreme Court decision, \textit{Turner v. Frowein},\textsuperscript{81} stressed that such an inquiry should be made. In \textit{Turner}, an abducting mother claimed that the father had sexually abused the child and argued that return should be refused. On the basis of its finding of sexual abuse by the father, the trial court denied the petition for return.\textsuperscript{82} On appeal, the Connecticut Supreme Court reversed and remanded for further proceedings.\textsuperscript{83} Relying on the Second Circuit’s initial appellate decision in \textit{Blondin II}, the Connecticut court held that, before a court could refuse a return application under the Convention, it must “undertake a complete analysis of protective arrangements and legal safeguards that might allow the safe repatriation of the child pending a final custody determination by a court with proper jurisdiction.”\textsuperscript{84}

\textsuperscript{78} A “safe harbor” order in the requested state imposes an enforceable obligation on the party who undertakes protective measures for the child. To ensure enforceability of that order in the State of habitual residence, a “mirror” or “back-to-back” can be obtained there. \textit{See Beaumont & Mcevoy, supra note 3, at 167-68.}

\textsuperscript{79} \textit{Walsh v. Walsh}, 221 F.3d 204 (1st Cir. 2000).

\textsuperscript{80} The appeals court reversed the order of return issued by the district court, stating that “we believe that the district court underestimated the risks to the children and overestimated the strength of the undertakings in this case. The Article 13(b) exception must be applied and the petition must be dismissed.” \textit{Id.} at 221.

\textsuperscript{81} \textit{Turner v. Frowein}, 752 A.2d 955 (Conn. 2000).

\textsuperscript{82} \textit{Turner}, 752 A.2d at 969, 974. \textit{See also Matter of LL. Children, supra note 61.}

\textsuperscript{83} \textit{Turner}, 752 A.2d at 969, 978.

\textsuperscript{84} \textit{Id.} at 971.
A similar approach was followed in Matter of LL. Children, a particularly difficult case because the objection of the fifteen-year-old daughter (the half-sibling of the other children) to return to the Netherlands was acknowledged by the court to justify non-return of that child. With respect to return of the other two children, the abducting mother claimed that the children had suffered psychiatric disorders as the result of domestic violence and excessive physical punishment by the father. Rejecting the approach of the district court in Blondin—a case it described as one with “some similarities”—the court in Matter of LL. emphasized that return should not be denied unless the risk to the child “is grave, not merely serious.” To that end, the court pointed to the “clear commitment of the Dutch government to institute an intensive investigation of the abuse allegations within the auspices of the Dutch judicial system” and to the well-established child protection system in the Netherlands. Addressing the specific argument that “post-traumatic stress” was likely to occur on return, the court wrote:

Familial domestic violence and excessive corporal punishment are not infrequent, and are commonly accompanied by associated psychological disturbances in the affected children. Were all such claims to be routinely granted Article 13(b) exception status—particularly when the country of habitual residence is made aware of the claims and is willing to use an established child protection apparatus to address them—exception will begin to swallow the rule.

Keeping in mind that the best interests of the child are in fact served by preventing abductions and ordering return of

86. The second paragraph in Article 13 of the Child Abduction Convention permits a refusal of return if it is found that “the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.” Child Abduction Convention, supra note 1, art. 13, T.I.A.S. No. 11,670, at 8, 1343 U.N.T.S. at 101. For further discussion of this defense, see infra Section II.C.
88. Id.
89. Id.
children,90 the Hague Special Commissions and recent Judicial Conferences on the Child Abduction Convention have urged the use of various kinds of orders to facilitate return and alleviate Article 13(b) concerns.91 Caution must be exercised to ensure that a practice of issuing such orders does not reward abducting parents by offering them a means to exact concessions on unrelated matters. However, if the orders are limited in scope and duration, address short-term issues, and remain in effect only until such time as a court in the country to which the child is returned takes control, they are a valuable tool that complements and strengthens the Child Abduction Convention.92

C. “Children’s Rights” and Other “Human Rights” Issues

A particularly sensitive area of the Child Abduction Convention is the provision on the child’s objection to return.93 Numerous difficulties have arisen with respect to this provision. In addition to deciding at what age a child’s views are relevant, each country determines procedurally how those views are to be ascertained and whether or not the child is to be represented by separate counsel.94

90. See Perez-Vera Report, supra note 55, at 431. See also Linda Silberman, Progress Report, supra note 4, at 267-69.


92. This conclusion was one of several set forth by delegations from Australia, Canada, Ireland, New Zealand, United Kingdom, and the United States at a judicial conference held at the U.S. Department of State, Washington, D.C., September 17-21, 2000. See Best Practices, supra note 91, ¶ 6. See also Third Special Commission Report, supra note 4, annex 1.

93. Child Abduction Convention, supra note 1, art. 13(b), T.I.A.S. No. 11,670, at 8, 1343 U.N.T.S. at 101. Article 13 of the Child Abduction Convention permits the authorities to refuse to return the child if “it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.” See generally Beaumont & McEleney, supra note 3, at 177-202.

94. Contrast the German practice where the court hears the child’s views as a matter of course and usually finds it necessary to see the child in order properly to ascertain its views, with the procedure in England, where the courts investigate the child’s views only in exceptional circumstances because those views are usually relevant only to a consideration of the merits. See Alison Perry, Report on the Anglo-German Judicial Conference on Fam-
A number of difficulties have resulted. First, “objection” to return “for further proceedings” is often confused with objection to the return to the other parent. Second, even when the “correct” question is asked, the abducting parent has substantial influence over the child, which is exacerbated by the willingness of many courts to consider the views of relatively young children. Finally, the proper climate for ascertaining the child’s views sometimes involves a role for experts as well as independent representation for the child. Such trappings are inconsistent with a summary Hague proceeding, and thus the threshold even for entertaining the child’s objections should be set high.

In one sense, the role for the child’s objections in the Convention has been distorted by the emerging international human rights conventions, specifically the U.N. Convention on the Rights of the Child (U.N. Convention). The “objections” provision in the Child Abduction Convention was adopted as a corollary to its sixteen-year-old age limit. Recognizing that children of a certain age had minds of their own that as a practical matter could not be ignored, the drafters of the Child Abduction Convention limited its coverage to children up to the age of sixteen. For children just slightly younger, they included a discretionary “objections” provision.

96. Consider the case that has spawned worldwide attention because the left-behind mother—now the wife of the English Ambassador to the United States—brought the issue of parental child abduction to center stage. Under her maiden name, Catherine Laylle, she wrote a book, Two Children Behind a Wall (1998) and under her married name, Lady Catherine Meyer, she published They Are My Children Too: A Mother’s Struggle for Her Sons (1999), and her story has been featured in the British, French, German, and U.S. press. The German court allowed the views of the children—at eight and ten—to be taken into account and accepted their “express and decisive objection not to return to England.” OLG Celle, NJW, 48 (1995), 1222 (F.R.G.).
98. See Pérez-Vera Report, supra note 55, at 433. See also Beaumont & McEleney, supra note 3, at 177-80.
as an “escape route’ for mature adolescents.”99 In the years since the negotiation of the Child Abduction Convention, however, the concept of “children’s rights” has gained momentum, reflected by both the U.N. Convention100 and the European Convention on the Exercise of Children’s Rights.101 Certain tensions have been created, for example by Article 12 of the U.N. Convention,102 which recognizes the right of the child to express its views and the right of the child to be heard in proceedings directly or through a representative. But the statement of broad principle in the U.N. Convention needs to be applied in context and should not be interpreted as an absolute requirement that would interfere with the summary Hague return proceeding. Of course, it might well be a defense to return under Article 13—or under Article 20, the human rights exception—of the Child Abduction Convention if the courts of the habitual residence would refuse to give any consideration to the views of a mature child.103

What must be kept in mind about the Child Abduction Convention is that an application for return under the Convention is not itself a custody hearing. Thus, a Hague proceeding should be differentiated from a later plenary custody hearing, at which stage “best interests” will be the focus of the inquiry, expert testimony will be introduced, the child’s view will be considered, and independent representation for the child may even on occasion be appropriate. However, these trappings should not be imposed on a Hague proceeding because it is not a custody case. Unfortunately, the distinction is sometimes lost on the parties, the courts, and critics of the Child Abduction Convention. Consequently, challenges to Hague proceedings as violating domestic constitutions and/or international human rights conventions are increasingly common. For the most part, the Child Abduction Convention has sur-

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100. U.N. Rights of the Child Convention, supra note 97.  
vived these attacks\textsuperscript{104} but will continue to do so only if Hague proceedings are properly understood.

III. IMPROVING THE CONVENTION: LOOKING AHEAD

Other aspects of the Child Abduction Convention will need greater attention in the next millennium. I detail a few of them with brief suggestions for future action.

A. Inconsistency in Interpretation and Practice

Uniform interpretation of the Child Abduction Convention is difficult in the absence of any supranational institution to provide authoritative answers to common questions that arise under the Child Abduction Convention, as for example, the European Court of Justice does with respect to issues arising under the Brussels Convention\textsuperscript{105}. Thus, interpretation of the Child Abduction Convention occurs only through national law by national courts deciding cases within their own legal

\textsuperscript{104}. See, e.g., Germany: Constitutional Court Decision, 35 I.L.M. 529 (1996) (rejecting arguments that return of the child to the United States would violate rights under the German Constitution in several respects, including the right to the free development of personality, the right not to be extradited, the right to a hearing, and the child’s right to dignity). Several cases are discussed in the Second Special Commission Report, supra note 12, at 235. A more extensive discussion of these issues is found in Silberman, Cooperative Efforts, supra note 4. See also Coester-Waltjen, supra note 2, at 60-74.

traditions. As discussed above, many of the significant terms used by the Child Abduction Convention—habitual residence, custody rights, grave risk of harm—are inherently ambiguous and subject to varying interpretations. But sources do exist to aid in achieving uniformity in interpretation. Both the Pérez-Vera Report and the preparatory materials from the Child Abduction Convention\textsuperscript{106} are sources of guidance, but in many cases they do not provide definitive answers. The Special Commissions that review the operation of the Child Abduction Convention are a more contemporary resource for “best practices” or “approved interpretations” to aid courts faced with interpreting the Child Abduction Convention that reflect a mix of different legal concepts and traditions.\textsuperscript{107} Also, several international judicial conferences on the Child Abduction Convention have adopted conclusions and/or “best practices” that offer the considered wisdom of practitioners of the Convention as to types of approaches which would, in their view, facilitate the operation of the Convention.\textsuperscript{108}

Even within judicial systems, problems of interpretation are pervasive. In countries such as the United States, where Child Abduction Convention cases are entrusted to “generalist” judges of which there are thousands, the process of educating judges about the Convention is a difficult one. The English judiciary has designated a limited number of judges who hear Hague cases, and that specialization has created a sophisticated body of law and a culture of speedy returns. Recently, Germany has significantly reduced the number of judges who hear Hague cases, and early reports indicate that the change has had a salutary effect on the handling of Hague cases there.\textsuperscript{109} Of course, the structure of the judiciaries is quite different in individual countries and reflects broader national

\textsuperscript{107} See, e.g., Second Special Commission Report, supra note 12.
\textsuperscript{109} For a discussion of some of the earlier problems with Germany’s handling of abduction cases in this respect, see Nigel Lowe & Alison Perry, The
philosophies about the nature of judging and the judicial role. Nonetheless, greater judicial specialization, however implemented, would improve the operation of the Child Abduction Convention.

B. The Problem of Delay

The delay involved in proceedings, and ultimately in having children returned, is another obstacle to the successful operation of the Child Abduction Convention. Notwithstanding the requirement in Article 12 of the Convention that a child be returned “forthwith,” Hague proceedings are dependent upon national law and the procedural system in place in any particular country. Thus, in some countries, the length and delay of proceedings has been identified as a serious concern. Even when a decision is reached expeditiously in the first-instance proceeding, the losing party usually has a right of appeal, and a stay is quite common. As a result, the child remains with the abducting parent for an even longer time, making an ultimate return more difficult for the child. Indeed, it is not uncommon for the abducting parent to invoke the “grave harm” exception to prevent return at this point in time. Solutions to this dilemma rest in reform through national laws, which may need to devise legislation or court rules to address methods for expediting Hague cases. Among the possibilities for such internal reform are allocation of cases to specialized judges or courts, establishment of summary procedures for Hague cases, and development of interim relief and/or provisional measures when return is ordered but a stay is granted.

C. Issues of Enforcement

Even when a Hague proceeding results in an order of return, the order is never enforced in some countries. Indeed, there is a suggestion that as many as a quarter of all return orders are not enforced. Favorable court rulings under the Child Abduction Convention are meaningless if the order for

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110. See Second Special Commission Report, supra note 12, conclusion 7, at 229.
return is never carried out.\textsuperscript{111} In the United States, availability of a contempt remedy provides at least some method of obtaining compliance, but such remedies are not necessarily used in civil law countries. Countries that do not presently execute return orders must be encouraged to find appropriate mechanisms for the legal systems so that the Convention is not merely an abstract ideal, but an effective tool to combat international child abduction.

D. The Problem of Obtaining Legal Representation

A continuing problem in the United States and several other countries is the securing of legal representation for Hague applicants.\textsuperscript{112} The general proposition of the Child Abduction Convention that Contracting States bear the costs and expenses of Hague proceedings, including the participation of legal counsel,\textsuperscript{113} is subject to an exception. By making a reservation, a Contracting State may declare that it is not bound to assume any costs resulting from the participation of legal counsel or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.\textsuperscript{114}


One recent development in the European Court of Human Rights evidences a broad international concern on this issue and possibly added international pressure to comply with obligations under the Convention. In \textit{Af\textsuperscript{a}aire Ignaccolo-Zenide c. Roumanie}, No. 31679/96 (Eur. Ct. H.R. 2000), the European Court of Human Rights determined that Romania’s failure to take adequate and sufficient steps in effecting an ordered return of the children to the mother constituted a breach of Article 8 of the European Convention on Human Rights.

\textsuperscript{112} See Second Special Commission Report, \textit{supra} note 12, at 230.


\textsuperscript{114} Article 26 states that a reservation can be made “in accordance with Article 42,” declaring that the Contracting State shall not be bound to assume any costs “resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.” \textit{Id.}

A second exception for alleviating costs to the State permits a Contracting State to require payment from the applicant of the expenses incurred in implementing the return of the child, such as transportation costs.
The United States has made the reservation, and because the United States does not have a comprehensive legal aid system, the problem of obtaining legal representation for Hague applicants is exacerbated;\textsuperscript{115} the U.S. Central Authority has had to spend extensive time and effort trying to obtain pro bono counsel for applicants who cannot afford to retain a private attorney.\textsuperscript{116} In several recent cases, an additional kind of unfairness has occurred: because the Hague applicant has been represented by a single-practitioner pro bono counsel\textsuperscript{117} against an unrepresented abductor, the court has looked for appointed counsel to represent the abductor. On several occasions where large law firms have agreed to represent the abductor on a volunteer basis, the resource allocation has tended to favor the abductor—a situation inconsistent with the general philosophy of the Child Abduction Convention.

A systematic method of assuring legal representation of Hague applications must be provided by Contracting States. One possibility in the United States is to have states adopt legislation authorizing its officials to take action to locate or return a child, or both. For example, in California, district attorneys are authorized to bring Hague petitions for return of children in California and to assist left-behind parents in pursuing a Hague remedy abroad.\textsuperscript{118}

IV. CONCLUSION

This twentieth anniversary of the Hague Child Abduction Convention calls for celebration and best wishes for a long and healthy future. The successful longevity of the Convention into the twenty-first century depends on the interpretation and
implementation by individual Convention States and the ability of those States to mesh their own national laws and legal traditions with the obligations imposed by the Convention. As a greater number of countries join the Child Abduction Convention, care must also be taken to ensure that countries who become Parties to the Convention are countries that can be trusted not only to abide by the obligations of the Convention but also to make fair and appropriate decisions on the merits of the custody of the children when they are returned. In some sense, the success of the Child Abduction Convention, as evidenced by the large number of countries that have joined it, also reflects its greatest danger. The underlying issues raised both by the return remedy of the Child Abduction Convention and the eventual custody hearing are fraught with subjective notions of morality and sociology as well as nationalism. The broader the cultural and political diversity, the greater the possibility for subjective judgments by Contracting States that could undermine the formal and structural cultural neutrality for which the Convention strives. Still, international cooperation—at least with countries that share a set of basic values and ideals—continues to offer the best hope for dealing with the problem of international child abduction.

119. Some protection is provided in the ratification and accession provisions of the Child Abduction Convention. Only States that were members of the Hague Conference at the time of the adoption of the Child Abduction Convention can “ratify” the Convention and only ratifications must be respected by all other Contracting States. See Child Abduction Convention, supra note 1, art. 37, T.I.A.S. No. 11,670, at 13, 1343 U.N.T.S. at 104. Other countries can accede to the Child Abduction Convention, but the Convention is only in effect between the acceding State and those Contracting States that accept the accession. See id. art. 38, T.I.A.S. No. 11,670, at 14, 1343 U.N.T.S. at 104. The United States has not yet accepted the accessions of certain States that have acceded to the Convention.