To Comply or Not to Comply? Brazil’s Relationship with the Hague Convention on the Civil Aspects of International Child Abduction

Amanda Michelle Waide*

Table of Contents

I. Introduction .................................................................................................................. 272

II. Brazil’s Application of the Hague Convention on the Civil Aspects of International Child Abduction ......................................................... 275
   A. The Hague Convention on the Civil Aspects of International Child Abduction .............................................................................. 275
   B. Brazil’s History of Noncompliance with the Hague Convention ................................................................................................. 279
   C. The Goldman Case: An Example of Brazil’s Pattern of Noncompliance ...................................................................................... 281

III. Ending the Cycle: An Analysis of the Efforts to Force Brazil into Compliance .................................................................................. 289
   A. Potential Reasons for Brazil’s Pattern of Noncompliance .............................................................................................................. 289
   B. Effectiveness of the Proposed U.S. House Resolutions .......... 294
   C. Ramifications for the United States If It Adopts the House Resolutions ......................................................................................... 299

IV. Conclusion .................................................................................................................. 300

* J.D., University of Georgia School of Law, 2011; B.A., Boston College, 2008.
I. INTRODUCTION

With increasing globalization in today's world, the number of intercontinental marriages is on the rise. Although these relationships are advantageous in that they unite cultures and nations, the children of these unions are at risk when the marriages end. “Easier access to foreign countries... [has] made international hideouts more common,” facilitating parental child abduction. International parental child abduction is a global epidemic that is escalating. Today, there are as many as 10,000 American children living abroad who are the victims of parental child abduction. As of November 2009, the State Department had more than 2,000 child abduction cases involving nearly 3,000 children who were either abducted from the United States or were wrongfully retained abroad. “In 2008, [the State Department] opened 1,082 new files, an increase of more than [twenty-five] percent over 2007.” This increase in child abduction cases is the result of the growing trend of transnational marriages, the rise of transnational divorces, and an increased global awareness of the provisions of the Hague Convention on the Civil Aspects of International Child Abduction. International custody disputes become even more difficult when national courts cannot agree on where and with which parent the child should remain. According to the Director of the Office of Children’s Issues at the U.S. Department of State, the trend of parental child abduction is “not just a U.S. trend, it’s a worldwide trend.”

---

2 Id.
5 Id. at 85.
7 Id.
8 Id.
The Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention) is a multilateral treaty that attempts to remedy the problem of parental kidnapping and provide rights to the parent who is left behind. The Hague Convention was drafted in 1980 to resolve custodial claims between parents involved in international custody battles. Under the terms of the Hague Convention, a signatory nation must promptly return any child abducted from his or her country of habitual residence. The primary intention of the Hague Convention is to preserve whatever child custody arrangement existed before the wrongful removal. Although eighty nations have signed the treaty, many of these nations do not follow the proper procedures set forth by it.

Brazil is one nation that demonstrates a pattern of noncompliance with the Hague Convention. According to Janice Jacobs in the Bureau of Consular Affairs at the U.S. State Department, “[T]here are currently 50 cases involving American parents seeking to have their children returned from Brazil, the fifth most of any country after Mexico, India, Japan and Canada.” The case of David Goldman brought Brazil’s pattern of noncompliance to the forefront, after he waged a five-year battle with the Brazilian courts to secure the return of his son, Sean, to the United States.

---

13 See Hague Convention, supra note 11, pmbl. (“Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access.”).
14 See id. art. 1, para. b (“[One goal is] to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in other Contracting States.”).
15 See U.S. DEP’T OF STATE, REPORT ON COMPLIANCE WITH THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION 13–14 (2009) [hereinafter REPORT ON COMPLIANCE WITH THE HAGUE CONVENTION], available at http://travel.state.gov/pdf/2009HagueCon AbductionComplianceReport.pdf (listing those nations which are compliant with the Hague Convention, those which show patterns of noncompliance, and those which do not comply with the procedures of the Convention).
16 Id. at 16.
Although Goldman and his son were reunited in December of 2009, as of 2010, many American children remain illegally in Brazil. The return of Sean Goldman was a step in the right direction. However, more is needed to ensure that all children kidnapped and retained in Brazil are brought home and reunited with their left-behind parents.

Part II of this Note discusses the Hague Convention and Brazil’s pattern of noncompliance. Part II also analyzes the case of David Goldman and his battle with the Brazilian court system. The problems faced by Goldman and the actions of the Brazilian government are common to almost all parents fighting for the return of a child from Brazil.

Part III of this Note analyzes possible reasons for Brazil’s pattern of noncompliance. Additionally, Part III details two House Resolutions in the United States Congress, H.R. 2702 and H.R. 3240. These resolutions would encourage Brazil to comply with the Hague Convention. H.R. 2702 seeks “[t]o suspend the application of Generalized System of Preferences for Brazil until such time as Brazil complies with its obligations [under the Hague Convention].” H.R. 3240, the International Child Abduction Act of 2009, attempts to ensure that all nations with which the United States enjoys reciprocal obligations follow the procedures established by the Hague Convention. Unlike H.R. 2702, the International Child Abduction Act applies to all nations that have signed the Hague Convention, not just Brazil.

Part III also addresses the reasons these bills would be successful in securing Brazil’s compliance with the Hague Convention. The House Resolutions would help create a “standardized system to prevent international child abduction.” They would also effectively streamline “the

19 See Active Case Index, BRING SEAN HOME FOUND., http://bringseanhome.org/wordpress/active-cases/active-case-index/ (last visited Nov. 20, 2010) (providing a list of current international custody cases where the children have not been returned to their countries of habitual residence).
20 This Note was drafted while H.R. 2702 and H.R. 3240 were being considered in the House. H.R. 3702 and H.R. 3240 were not enacted prior to the end of the 111th Congressional session on January 3, 2011, and therefore expired. During the session, the 111th Congress faced monumental issues, including the global economic crisis and the U.S. health care reform debate. As a result, the issue of international parental child abduction was no longer a central concern. Nonetheless, this Note analyzes the advantages of specific provisions of both H.R. 2702 and 3240. Should Congress decide to introduce similar legislation in the future, this analysis will be a useful tool in considering the potential strengths and weaknesses of the proposed legislation.
21 Suspend Brazil GSP Act, H.R. 2702, 111th Cong. (2009), 2009 CONG US HR 2702 (Westlaw).
government's response when children are abducted [which] will allow families affected by this tragedy to focus on being reunited rather than navigating a bureaucratic maze.\textsuperscript{24} Unless there are consequences for Brazil's noncompliance, Brazil's behavior regarding child abductions is unlikely to change. By imposing economic sanctions on Brazil, the United States can hold it accountable for failing to fulfill its Hague Convention commitments. Accountability may be the only means of returning children to their left-behind parents in the United States.

II. BRAZIL'S APPLICATION OF THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

A. The Hague Convention on the Civil Aspects of International Child Abduction

The Hague Convention, a multilateral treaty developed by the Hague Conference on Private International Law, serves "as the primary tool for facilitating the return of children abducted internationally."\textsuperscript{25} The Convention seeks to ensure the prompt return of children to their country of habitual residence, with the primary intention of preserving the "child custody arrangement in existence at the time the child was abducted."\textsuperscript{26} The drafters of the Hague Convention believed that the child's country of habitual residence should be the decision maker in any custody dispute because it has the strongest interest in resolving the custody dispute and is in the best position to make a decision on the merits.\textsuperscript{27} For this reason, the Convention seeks to maintain the status quo child custody agreement of the parents by prohibiting the country to which the child is abducted from making a custody determination.\textsuperscript{28} Instead of deciding the merits of the custody case, the abducting country must determine only the child's country

\textsuperscript{24} Id.
\textsuperscript{25} McCue, \textit{supra} note 4, at 85.
\textsuperscript{28} See Hague Convention, \textit{supra} note 11, art. 16 ("[T]he Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under the Convention is not lodged within a reasonable time following receipt of the notice.").
of habitual residence and return the child immediately to that country. The Convention makes clear that "[a] decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue."

The Hague Convention also establishes the circumstances that make the removal or retention of a child "wrongful." First, removal or retention is wrongful when it is done "in breach of rights of custody attributed to a person, an institution, or any other body under the law of the state in which the child was habitually resident immediately before the removal or retention." Second, for removal or retention to be "wrongful," the left-behind parent must either have exercised custody rights at the time of the removal, or the left-behind parent would have exercised custody rights but for the removal or retention.

The Hague Convention does not define the term "habitual residence," and, as a result, "courts interpret the phrase according to its ordinary meaning and analyze habitual residence as a mixed question of fact and law, based on the circumstances of the particular case." The Convention does not define the term "habitual residence," and, as a result, "courts interpret the phrase according to its ordinary meaning and analyze habitual residence as a mixed question of fact and law, based on the circumstances of the particular case." Courts should consider the intentions of the parties that are entitled to fix the child's place of residence, the history of the child's location, and the settled nature of the family prior to the request for the return of the child.

Not every wrongfully removed child must be returned to their country of habitual residence. In fact, the Hague Convention provides four defenses that preclude the return of a child: (1) the action to return a child was commenced more than a year after the child was wrongfully removed; (2) the left-behind parent failed to exercise custody rights at the time of the removal; (3) the left-behind parent had no intention of abandoning the child; and (4) the child was wrongfully removed to prevent family reunification. Courts should consider the intentions of the parties that are entitled to fix the child's place of residence, the history of the child's location, and the settled nature of the family prior to the request for the return of the child.

---

29 Estin, supra note 26, at 53.
30 Hague Convention, supra note 11, art. 19.
31 Id. art. 3.
32 Id. art. 3, para. a.
33 Id. art. 3, para. b.
35 See Holder v. Holder, 392 F.3d 1009, 1020 (9th Cir. 2004) (setting out the analytical framework for a determination of a child's habitual residence: first, there must be a settled intention to abandon the left behind parent, and second, there must be an actual change in geography).
36 Id.
37 Mozes v. Mozes, 239 F.3d 1067, 1077 (9th Cir. 2001).
38 Hague Convention, supra note 11, arts. 12–13, 20.
or consented to the removal; (3) returning the child would create a grave risk to the child’s safety; and (4) returning the child would violate fundamental principles of human rights.\(^{39}\)

The first defense, found in Article 12 of the Hague Convention, applies when the return proceedings are commenced more than a year after the child’s wrongful removal.\(^{40}\) In this situation, the child should *not* be returned *if* it is demonstrated that the child has adapted to the new environment.\(^{41}\) However, if the child has not settled into the new country, the child must immediately be returned to his or her country of habitual residence.\(^{42}\) If, on the other hand, the proceedings are commenced within one year from the time of the wrongful removal, “the authority concerned shall order the return of the child forthwith.”\(^{43}\) When proceedings are commenced within the one-year time frame, the child’s relationship to his or her new country and environment are not to be considered.

The second defense, detailed in Article 13 of the Hague Convention, states that a signatory nation has no obligation to return a child if the party protesting the removal can demonstrate one of two things.\(^{44}\) First, “the person, institution or other body having the care . . . of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention.”\(^{45}\) In other words, if a parent did not actively exercise his parental or custodial rights at the time of the removal, or if the parent consented to the removal, the child will not be returned to the country of habitual residence.

“Exercising custodial rights has been broadly construed.”\(^{46}\) As long as a parent does not act in a manner that constitutes a clear and unequivocal abandonment of the child, a court will likely conclude that the parent exercised custodial rights at the time of abduction.\(^{47}\) Once a court determines that the left-behind parent exercised custody rights, “the court should avoid the question of whether those rights were exercised well or badly” and end the inquiry.\(^{48}\)

Under the third defense, a child will not be returned to the country of habitual residence if “there is a grave risk [that the] return would expose the child to physical or psychological harm or otherwise place the child in an

---

\(^{39}\) *Id.*  
\(^{40}\) *Id.* art. 12.  
\(^{41}\) *Id.*  
\(^{42}\) *Id.*  
\(^{43}\) *Id.*  
\(^{44}\) *Id.* art. 13.  
\(^{45}\) *Id.* art. 13, para. a.  
\(^{46}\) *Advisory Committee Report, supra* note 34, at 15.  
\(^{47}\) *Id.*  
\(^{48}\) *Id.*
intolerable situation." The grave risk defense is narrowly construed. This defense was not intended as a vehicle to litigate the child's best interests or to determine the place where the child would be happiest. Instead, the inquiry turns on whether the child will suffer serious abuse if returned. While the defense is often cited in situations where the abducting parent alleges abuse by the left-behind parent, some courts will not consider the grave risk defense if one of the other Hague Convention defenses is simultaneously raised and established. Other courts have gone so far as to find the grave risk defense inapplicable when evidence demonstrates that returning a child will only cause physical harm to the taking parent, concluding that the harm must be directed at the child for the defense to apply.

Article 13 also enables a court to refuse to return a child if the child objects to being returned and the child has reached an age of maturity, so that it is appropriate to take his or her views into account. To apply this defense the child must be capable of understanding the choice he or she is making. This requirement was likely established to prevent parents from coaxing their young and impressionable children into making a statement regarding where they would like to remain. Requiring children to reach an age of maturity before making a decision ensures that children express their interests and not those of the taking parent.

Article 20 of the Hague Convention contains the final defense to returning a child to his or her country of habitual residence. Under that provision, the return of a child "may be refused if [it] would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms." Despite the availability of this defense, the United States has never used it as a justification for denying the return of a child. Although Article 20 is not used in the United States,

---

49 Hague Convention, supra note 11, art. 13, para. b.
50 ADVISORY COMMITTEE REPORT, supra note 34, at 16.
51 Gaudin v. Remis, 415 F.3d 1028, 1035 (9th Cir. 2005); Friedrich v. Friedrich, 78 F.3d 1060, 1068 (6th Cir. 1996) (ruling that the grave risk exception is not license to speculate on where the child would be happiest); Hague Convention, supra note 11, art. 13, para. b; Text and Legal Analysis, Pub. Notice 957, 51 Fed. Reg. 10494, 10510 (Mar. 26, 1986).
52 ADVISORY COMMITTEE REPORT, supra note 34, at 16.
53 Id.
54 In re Walsh, 31 F. Supp. 2d 200, 205 (d. Mass. 1998), aff'd in part, rev'd in part sub nom; Walsh v. Walsh, 221 F.3d 204, 219 (1st Cir. 2000) (explaining that the lower court misconstrued the Hague Convention by ruling that violence must be directed at children to qualify as a "grave risk").
55 Hague Convention, supra note 11, art. 13.
56 Id. art. 20.
57 ADVISORY COMMITTEE REPORT, supra note 34, at 20.
some international signatories of the Hague Convention have applied it. For example, a Spanish court, after determining that a fleeing mother would be deprived of her due process rights, used the fundamental freedoms defense to refuse the return of the child.

The United States does not interpret Article 20 in the same manner as the Spanish court system. According to the U.S. Department of State, Article 20 was meant to be “restrictively interpreted and applied” and invoked “on the rare occasion that return of a child would utterly shock the conscience of the court or offend all notions of due process.”

B. Brazil’s History of Noncompliance with the Hague Convention

The Hague Convention sets forth procedures that must be followed when a child is abducted from the country of habitual residence. However, many signatory nations either ignore the procedures or demonstrate patterns of noncompliance with the procedures. Brazil falls into the latter category. The 2009 Report on Compliance with the Hague Convention on the Civil Aspects on International Child Abduction (2009 Compliance Report) lists Brazil as a nation with a pattern of noncompliance.

There are several factors contributing to Brazil’s troubling trend of noncompliance. First, Brazilian courts have a tendency to treat Convention cases as custody decisions. Under Article 16 of the Hague Convention, “authorities of the . . . state to which the child has been removed . . . shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under [the] Convention.” Brazilian courts deciding Hague Convention cases often find that abducted children have become “adapted to Brazilian culture” and should remain in the country. This type of decision goes to the merits of a custody dispute, and therefore ignores the clear terms of Article 16.

The 2009 Compliance Report indicates that Brazilian courts “exhibit widespread patterns of bias towards Brazilian mothers in Convention cases.” The 2009 Compliance Report also finds particularly troubling data that the “Brazilian courts continue to be amenable to considering evidence relevant to custody determinations but not relevant to the criteria to be

---

58 Id.
59 Id. at 20, n.133.
60 Id. at 21, n.135.
61 REPORT ON COMPLIANCE WITH THE HAGUE CONVENTION, supra note 15, at 13.
62 Id. at 16.
63 Hague Convention, supra note 11, art. 16.
64 REPORT ON COMPLIANCE WITH THE HAGUE CONVENTION, supra note 15, at 16.
65 Hague Convention, supra note 11, art. 16.
66 Id. art. 17.
applied in a Convention case, including looking at what solution is in the ‘best interests’ of the child.\textsuperscript{67} By making such determinations, Brazilian courts disregard Article 16 of the Convention.\textsuperscript{68} Additionally, according to the 2009 Compliance Report, Brazilian law enforcement gives lower priority to Hague Convention cases because wrongful retention is not a criminal offense under Brazil’s penal code.\textsuperscript{69}

Brazil also demonstrates an alarming trend of allowing children who have not yet reached the age of maturity to make statements regarding where they would prefer to reside.\textsuperscript{70} For example, in August 2006, Timothy Weinstein’s children, five-year-old Anna and eight-year-old Paul, were abducted by their mother and taken illegally to Brazil.\textsuperscript{71} In Weinstein’s case, the Brazilian courts ordered psychological tests for his children.\textsuperscript{72} The psychologist repeatedly stated that the Weinstein children were “well-adapted to life in Brazil and [had] developed healthy relationships with friends and family.”\textsuperscript{73} The psychologist ultimately concluded that under the terms of Article 13, returning Weinstein’s children to the United States would likely cause them psychological harm.\textsuperscript{74} Despite the findings of the psychologist, it is unlikely that the drafters of the Convention intended the grave risk defense to apply when children adapt to their new countries. Such an interpretation of the defense is too broad. Instead, thegrave risk defense should be narrowly construed. It should not be used as a mechanism to determine the child’s best interests or where the child would be happiest.\textsuperscript{75} Furthermore, the psychologist noted that Weinstein’s children stated a preference to stay with their mother.\textsuperscript{76} However the children had not reached an age of maturity and, therefore, under the Hague Convention, were incapable of making such a decision.

\footnotesize{\bibitem{67} Id. \\
\bibitem{68} Id. \\
\bibitem{69} Id. \\
\bibitem{70} See Timothy Weinstein, \textit{The Hague Convention: ‘Brazilian Style,’} BRING SEAN HOME FOUND., http://bringseanhome.org/wordpress/?page_id=69 (last visited Nov. 20, 2010) (discussing the difference between U.S. courts that ignore opinions of children younger than age thirteen because they are easily influenced, and Brazilian courts that often consider the opinions of children as young as eight years old when making a determination regarding the child’s permanent residence). \\
\bibitem{71} Id. \\
\bibitem{72} Id. \\
\bibitem{73} Id. \\
\bibitem{74} Id. \\
\bibitem{75} ADVISORY COMMITTEE REPORT, supra note 34, at 16. \\
\bibitem{76} Weinstein, supra note 70.}
C. The Goldman Case: An Example of Brazil’s Pattern of Noncompliance

Brazil demonstrates a troubling pattern of failing to return American children to the United States.77 One example of this trend is the case of David Goldman—a man whose son was illegally retained in Brazil for five years.78 Goldman, a United States citizen, and his wife Bruna Bianchi, a Brazilian national, met in 1997.79 They married in New Jersey in 1999 and moved to the town of Tinton Falls.80 Bruna and David had a son, Sean, in 2000.81 On June 16, 2004, David Goldman drove Bruna and Sean to the Newark airport for a planned two-week vacation to Brazil.82 Goldman was unaware that this would be the last time he would see either one of them for many years. Upon his wife’s arrival in Brazil, David received a phone call informing him that his marriage was over and that if he ever wanted contact with his son again, he would have to sign over custody to Bruna.83 After this conversation, Goldman began his lengthy five-year battle with the Brazilian courts to win back custody of his son—a battle that finally came to an end on December 24, 2009.84

Before David Goldman said goodbye to his wife, Bruna, and his son, Sean, he was “under the impression that [his] home-life was happy and typical of any American family.”85 However, he quickly came to realize that this was not the case. After learning from his wife that Sean would not be returning to the United States, Goldman immediately filed for custody in New Jersey.86 In August of 2004, a Superior Court judge ruled that Bianchi was wrongfully keeping Sean in Brazil and ordered her to return him to the

77 REPORT ON COMPLIANCE WITH THE HAGUE CONVENTION, supra note 15, at 16.
78 See Tyler, supra note 18, at 534–38 (detailing the story of David Goldman and his attempts to use international and Brazilian law to gain the custody of his son, Sean Goldman, and to also ensure Sean’s safe return to the United States).
79 Partlow, supra note 17.
80 Id.
82 Id.
83 Id.
85 Goldman, supra note 81.
United States. The Superior Court also ruled that subject matter jurisdiction for the entry of a custody determination would be in the United States. This ruling was in accordance with the parameters of the Hague Convention because the United States was Sean’s country of habitual residence prior to his removal. However, Bruna refused to return Sean to the United States. As a result, “[i]n 2004, Goldman filed a petition under the Hague [C]onvention to have his son returned.” Bianchi quickly raised the defense under Article 13 that Sean would suffer grave harm if he were returned to the United States. Even though Goldman filed his petition within fifty business days of his son’s departure (which is within the one year requirement of Article 12), Bianchi argued that “Sean would be emotionally damaged if he returned to the United States.”

After the decision by the New Jersey Superior Court, a panel of five judges on the Brazilian Superior Court awarded Bruna custody of Sean. Three of these judges ruled in favor of Bruna while two believed that Sean belonged in the custody of his father in the United States. This decision demonstrates the aforementioned bias Brazilian courts show to Brazilian parents. Goldman initiated his judicial proceeding within one year of Sean’s wrongful removal. Under the terms of the Hague Convention, Brazil was required to immediately order the return of Sean to the United States, his country of habitual residence, because the petition was initiated in a timely fashion.

Instead, the Brazilian federal court determined that Sean “had indeed been wrongly taken and that a U.S. court should decide custody--but that too

88 Id.
89 See Hague Convention, supra note 11, art. 7 (stating that the child should be returned to the country of habitual residence, where any custody dispute should subsequently be determined).
90 Goldman, supra note 81.
91 Partlow, supra note 17.
92 Id.
93 Id.
94 Goldman, supra note 81.
95 Id.
97 Hague Convention, supra note 11, art. 12 (“Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.”).
much time had gone by so [Sean] would be better off with [his] mother in Rio de Janeiro.”

Brazilian officials treated this case as a simple custody dispute where “the mother always gets the child” because “the mother is the most important bond.” Judge Tenenblat, the Brazilian Federal Court judge, cited Article 12 of the Hague Convention which permits a judicial authority to allow the child to remain in the second country if “it is demonstrated that the child is now settled in its new environment” and if more than a year has passed since the abduction and the start of legal action in the second country.”

According to Judge Tenenblat, Sean would be better off in Brazil since he “attended one of [Rio de Janeiro’s] best schools, had many friends and was ‘a normal and happy child.’” The judge’s reasoning demonstrates one of the factors cited for Brazil’s pattern of noncompliance with the Hague Convention. Brazil interprets the grave risk exception broadly, even though the defense should not be used as a tool to determine where the child is happiest.

Under the parameters set forth in the Hague Convention, the Brazilian court should have only determined Sean’s country of habitual residence and returned him to that country because the petition for return was filed within a year from the date of abduction. Sean’s country of habitual residence would have then decided the merits of the custody dispute.

Although Bruna and Goldman were still legally married in the United States, Bruna obtained a divorce under Brazilian law without Goldman’s presence or knowledge. Bruna became pregnant and married a man named João Paulo Lins e Silva, a prominent Brazilian attorney who practices international family law in Brazil. Shortly after her marriage to Lins e Silva, Bruna died during childbirth, in 2008. Goldman only learned of her death through the research of one of his friends. Because Goldman is Sean’s biological father and because the only basis for keeping Sean in Brazil was the court’s belief that a child should be with his mother, Goldman

---

98 A Boy in Brazil, supra note 1.
99 Goldman, supra note 81 (describing the decision of the Brazilian federal court in Goldman’s custody case).
100 Id.
102 Id.
103 Friedrich v. Friedrich, 78 F.3d 1060, 1068 (6th Cir. 1996).
104 Hague Convention, supra note 11, art. 12 (stating that when the proceeding has been commenced within one year, the child must be returned).
105 Id. art. 7.
106 Semple, supra note 101.
107 Id.
108 Id.
109 Goldman, supra note 81.
believed that Sean would immediately be returned to the United States.\textsuperscript{110} As a result, he flew to Brazil and attempted to set up visitation with Sean, but Bruna's Brazilian husband and Bruna's parents denied him contact with the child.\textsuperscript{111} "[A] Family Court judge granted guardianship and custody of Sean to Mr. Lins e Silva, to ‘fully guarantee’ Sean’s ‘personal and emotional development.’ The court also denied Mr. Goldman’s request to visit his son."\textsuperscript{112} Goldman learned that Bruna's Brazilian husband had filed to replace Goldman as Sean's biological father on a birth certificate issued for Sean in Brazil.\textsuperscript{113} Sean’s Brazilian relatives argued that because Sean had resided in Brazil since he was four-years-old, it would be traumatizing to remove the now nine-year-old Sean from what had been his home for the majority of his life.\textsuperscript{114} In effect, Sean’s Brazilian family argued that Sean’s case should fall within the “grave risk” exception to the Hague Convention.

On February 9th and 10th of 2009, Goldman was able to visit Sean for a total of twelve hours.\textsuperscript{115} These meetings were monitored and occurred in the common areas of the residential complex where Sean’s stepfather resided.\textsuperscript{116} Regarding the meeting, Goldman stated, “After four years of separation, our bond was not broken, even under extremely strained circumstances.”\textsuperscript{117} That same month Goldman received positive news when a panel of judges determined that his custody battle would be heard in federal court in Brazil rather than in state court.\textsuperscript{118} Goldman requested this move because of the federal court’s familiarity with the provisions of the Hague Convention.\textsuperscript{119} Goldman also felt that the shift to federal court would make the proceedings less subject to the influence of Sean’s Brazilian stepfather who was a prominent family law attorney and had many allies in the lower court system.\textsuperscript{120}

\begin{footnotesize}
\begin{enumerate}
  \item Id.
  \item Id.
  \item Semple, supra note 101.
  \item Goldman, supra note 81.
  \item Semple, supra note 101.
  \item Id.
  \item Id.
  \item Id.
  \item Id.
\end{enumerate}
\end{footnotesize}
In May 2009, a Brazilian federal judge ordered Sean’s immediate return to the United States. Judge Rafael de Souza Pereira Pinto acknowledged that Sean “held habitual residence in the United States of America since his birth” and that in taking Sean to Brazil, Bruna had violated the rights of custody stipulated in the Hague Convention. The judge further clarified that his decision did not address “the material legal situation” of Sean Goldman. In acknowledging this fact, Judge Pinto was likely attempting to comply with the terms of the Hague Convention that prohibit the court in which a Hague Convention action is filed from considering the merits of any underlying child custody dispute. The court instead may only determine the country in which those issues should be heard.

The ruling of Judge Pinto also acknowledged that Sean’s original retention in Brazil was illegal because David Goldman had custodial rights of Sean at the time of the removal. Under Article 3 of the Hague Convention, the removal of a child is considered wrongful if “it is in breach of rights of custody attributed to a person ... under the law of the State in which the child was habitually resident immediately before the removal.”

Because Goldman had custodial rights to Sean before Bruna took him to Brazil, the initial abduction of Sean was wrongful. Thus, according to the judge, despite the fact that Sean may have settled in Brazil, the second retention, carried out by Sean’s stepfather, was also unlawful. Following this reasoning, “if the first retention of Sean proved to be illegal — and it has been seen that the answer is yes — there is no doubt that this second retention, now carried out by the stepfather, could never be considered otherwise. It is also unlawful.”

The Brazilian federal court noted that the exception contained in Article 12 of the Hague Convention, involving the adaptation of a minor, was not applicable because that exception is only triggered if proceedings are

---

122 Id. at 2.
123 Id. at 23.
124 Hague Convention, supra note 11, art. 16.
125 English Translation Ordering Return of Sean Goldman to the USA, supra note 121, at 26.
126 Hague Convention, supra note 11, art. 3.
127 See English Translation Ordering Return of Sean Goldman to the USA, supra note 121, at 27 ("If the first retention of Sean proved to be illegal — and it has been seen that the answer is yes — there is no doubt that this second retention, now carried out by the stepfather, could never be considered otherwise. It is also unlawful.").
128 Id.
initiated more than one year after the wrongful removal.\textsuperscript{129} The federal court determined that the illegal retention of Sean in Brazil started with Bruna’s death on August 22, 2008.\textsuperscript{130} Under the circumstances of this case, David Goldman filed suit just thirty days after his ex-wife’s death, and thus the Article 12 exception did not apply.\textsuperscript{131}

The “grave risk” exception of Article 13 was also inapplicable. The court held that this exception is meant to avoid sending children back “to a dangerous or abusive family, [or] to a social or national environment that is dangerous, like a country in complete upheaval.”\textsuperscript{132} Sean’s stepfather argued that this exception should apply because Goldman would not be able to pay for his son’s health plan, an allegation that the judge found ridiculous in light of his interpretation of Article 13.\textsuperscript{133} The decision also emphasized that Sean Goldman had a living biological parent who never abandoned him.\textsuperscript{134} Furthermore, the judge pointed out that the only reason Sean was initially unable to return to the United States was because he was living with his mother in Brazil.\textsuperscript{135}

The court then considered the second defense available through Article 13. Under this defense, if the child objects to being returned to his or her country of habitual residence, a court may allow the child to remain in the new country.\textsuperscript{136} In order to satisfy this exception, Sean’s stepfather pointed to Sean’s answers to psychological tests, indicating that he preferred to stay with his maternal family in Brazil.\textsuperscript{137} However, because Sean had not attained the age of maturity when he made the statements, this defense was not applicable.\textsuperscript{138} The judge determined that Sean was not capable of determining what was in his best interest. According to the opinion,

Sean is not fit to decide on what he really wants, be it for the limitations in maturity inherent to his young age, be it for the fragility of his emotional state, be it, still, for the fact of being subjected to a process of parental alienation on the part of the Brazilian family . . . \textsuperscript{139}

\begin{flushright}
\textsuperscript{129} Id. at 30.
\textsuperscript{130} Id.
\textsuperscript{131} Id.
\textsuperscript{132} Id. at 43 (citation omitted).
\textsuperscript{133} Id. at 44.
\textsuperscript{134} Id. at 33.
\textsuperscript{135} Id. at 36.
\textsuperscript{136} Hague Convention, supra note 11, art. 13.
\textsuperscript{137} \textit{English Translation Ordering Return of Sean Goldman to the USA,} supra note 121, at 47.
\textsuperscript{138} Hague Convention, supra note 11, art. 13.
\textsuperscript{139} \textit{English Translation Ordering Return of Sean Goldman to the USA,} supra note 121, at 47.
The decision also noted that Sean suffered from Parental Alienation Syndrome—a syndrome that is commonly seen in children who have been abducted by one parent and separated from their other parent—and it would only progress if Sean was kept from his father.\textsuperscript{140} This determination was based on the testimony of experts who stated that “the minor is undergoing a process of hearing or understanding negative things about his father.”\textsuperscript{141} Additionally, experts felt that the Parental Alienation Syndrome arose because Sean trusted what his stepfather and maternal grandparents told him, namely that his father abandoned him.\textsuperscript{142} Judge Pinto ruled that Sean needed to be returned to Goldman immediately because the greater the delay, the greater the damage to Sean.\textsuperscript{143}

On appeal, a Brazilian federal court unanimously ruled that Sean should be returned to Goldman’s custody.\textsuperscript{144} “A Brazilian federal judge ruled that Sean belonged in the custody of his father Monday through Saturday.”\textsuperscript{145} However, the ruling came with the stipulation that Sean remain in Brazil until other appeals were decided, a stipulation that was not present in the decision of Judge Pinto.\textsuperscript{146} Like the lower court, the Brazilian Supreme Court said there was no doubt that legal custody of Sean Goldman belonged to his father, David.\textsuperscript{147} The Court also stated that Sean appeared to be suffering from “Parental Alienation Syndrome.”\textsuperscript{148} Because of this, the Judge felt that the transition period between father and son would be better suited to occur in Brazil due to Sean’s familiarity with the country.\textsuperscript{149}

On December 16, 2009, a Brazilian court finally ordered the return of Sean to the United States.\textsuperscript{150} The ruling of the Federal Regional Tribunal

\textsuperscript{140} Id. at 71.
\textsuperscript{141} Id.
\textsuperscript{142} Id.
\textsuperscript{143} See id. at 72 (“The greater the delay in the execution of jurisdictional protection, greater could be the damage inflicted to this small individual, as well as greater also will be the time that the father of Sean will continue to be deprived — illicitly — of the company of his son and, moreover, that this same son will remain alienated — also illicitly — from the company of his father.”).
\textsuperscript{145} Id.
\textsuperscript{146} English Translation Ordering Return of Sean Goldman to the USA, supra note 121, at 72 (demonstrating that Judge Pinto ordered Sean to be reunited with his father with no stipulation that such a reunion occur in Brazil).
\textsuperscript{148} Id. at 7.
\textsuperscript{149} Id. at 10.
\textsuperscript{150} Dougherty & Reiss, supra note 114.
upheld the June decision of a Brazilian court ordering Sean’s return to New Jersey in accordance with the Hague Convention.\textsuperscript{151} Despite this new favorable ruling, David Goldman remained cautiously optimistic as Sean’s stepfather and Brazilian grandparents immediately appealed.\textsuperscript{152} Goldman stated that “he was heartened by the news, but would not consider his efforts successful until he and his son [were] reunited.”\textsuperscript{153}

Shortly after Goldman arrived in Rio de Janeiro to bring Sean home, one of the Supreme Court justices issued a stay, requiring Sean to remain in Brazil until the high court could consider the case.\textsuperscript{154} Sean’s maternal grandmother, Silvana Bianchi, wrote a letter to the Brazilian President explaining that the Brazilian judiciary overlooked Sean’s own desires.\textsuperscript{155} She stated:

I feel threatened by losing my grandson Sean because of international pressures that don’t consider the interest of a 9-year-old child who passionately desires to remain among those that gave him comfort in the mother’s death. . . . They allege that the Hague Convention determined to hand him over immediately. I am not a lawyer. But what I know is that the Convention establishes as priority the interest of the child, and the child wasn’t heard.\textsuperscript{156}

In spite of the continued resistance from Sean’s maternal grandparents and stepfather, supporters of David Goldman in the United States Senate quickly took action to ensure that the decision of the Brazilian Supreme Court was carried out. Senator Frank Lautenberg of New Jersey placed a hold on a trade bill that would have economically benefited Brazil.\textsuperscript{157} On December 22, 2009, the Chief Justice of the Brazilian Supreme Court upheld the previous decision, lifting the stay and finally paving the way for Goldman to be reunited with his son.\textsuperscript{158} Sean’s Brazilian family stated that they would “not file any more appeals after the Brazilian Supreme Court

\textsuperscript{151} Id.
\textsuperscript{152} Id.
\textsuperscript{153} Id.
\textsuperscript{154} Id.
\textsuperscript{155} Id.
\textsuperscript{156} Id.
\textsuperscript{157} Id.
\textsuperscript{158} Id.
ruled against them. On December 24, 2009, David and Sean were finally reunited and traveled together back to the United States.

Although the return of Sean to the United States was a step in the right direction, Brazil has a long way to go on its path toward Hague Convention compliance. Many American children remain in Brazil and few, if any, of those parents who remain separated from their children will ever garner the same national attention as David Goldman. In the Goldman case, extraordinary pressures were required to make Sean Goldman the first unlawfully abducted American child returned to the United States by Brazil. Measures included unanimous resolutions in the House and Senate, a senatorial hold on the reauthorization of trade privileges for developing nations...two trips to Brazil by a New Jersey Congressman, and multiple personal interventions by President Obama and Secretary of State Hillary Clinton.

Not every left-behind parent will have these measures at their disposal. As a result, the United States must take action to provide every left-behind parent the same opportunity to reunite with their children as David Goldman.

III. ENDING THE CYCLE: AN ANALYSIS OF THE EFFORTS TO FORCE BRAZIL INTO COMPLIANCE

A. Potential Reasons for Brazil’s Pattern of Noncompliance

Because of Brazil’s noncompliance with the Hague Convention, the United States is often unable to facilitate the successful return of American children from Brazil. There are three factors that lead to Brazil’s noncompliance: (1) Brazilian law enforcement’s treatment of Hague Convention cases, (2) the structure of the Brazilian court system, and (3) Brazil’s manipulation of the defenses to returning a child under the Hague Convention.

According to the 2009 Compliance Report, law enforcement in Brazil assigns low priority to cases under the Hague Convention because wrongful retention is not a criminal offense that is regularly punished under the

---

159 Castillo et al., supra note 84.
Brazilian Penal Code. 162 "Under the Brazilian Penal Code, the punishment for any person who takes and keeps a minor from the control of his parents or guardian, or from any other person in charge of [the child], is imprisonment from [two] months to [two] years." 163 Even though the Penal Code states that "any parent who takes and keeps the child away of the control of the other parent" is committing a crime, 164 parents continue to abduct and take children to Brazil regardless of the potential punishments. This continuation is likely because the punishment for parental abduction remains insignificant. Courts do not consider parental abductions to be high priorities, especially when the court determines that abducted children are not in danger. 165 Furthermore, Brazilian judges may decide to ignore the penalties of the Penal Code if "the child has been returned to his residence with no evidence of bad treatment during the period of abduction." 166 Because parents are rarely punished for abducting their own children (so long as the children remain safe), there are incentives for these parents to abduct their children to Brazil.

The structure of the Brazilian court system is another factor that encourages Brazil's noncompliance with the Hague Convention. Brazil is a federated republic with a civil law system. 167 According to Article 92 of the Brazilian Constitution, Brazil's judicial powers are vested in the Federal Supreme Court, the Superior Court of Justice, the Federal Regional Courts of second and first instance, and the Special Courts (Labor, Electoral and Military) of second and first instance. 168 When Brazil is the requested country under the Convention (meaning when a nation is requesting the return of a child from Brazil), and the minor is not voluntarily returned, the competent courts for the return proceedings are the Federal Regional Courts of first and second instance. 169 However, "[b]efore Brazil became a party to the [Hague] Convention, judicial petitions were decided by the ordinary State Courts (Family Courts) in Brazil." 170 Because the Federal Regional Courts did not make custody determinations prior to the enactment of the Hague

162 REPORT ON COMPLIANCE WITH THE HAGUE CONVENTION, supra note 15, at 17.
164 Id.
165 Id. (stating that judges often fail to apply penalties when there is no evidence that the child was badly treated during the abduction period).
166 Id.
169 Freitas, supra note 163.
170 Id.
Convention, the courts do not have the proper resources or knowledge to make accurate custody decisions in accord with the Convention.

The most important factor leading to Brazil’s noncompliance is the Brazilian Courts’ interpretation of Articles 12, 13, and 16 of the Hague Convention. Article 12 of the Hague Convention outlines the procedure that Contracting States must follow when faced with a Hague Convention case. It states:

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

This provision enumerates the possible ways to return a removed child to his or her country of habitual residence. If the proceeding is commenced within one year from the date of the wrongful removal, the Contracting State’s judicial authority must order the child’s immediate return to the country of habitual residence. Subsequently, the child should be promptly returned to that location.

However, in many cases, Brazil refuses to abide by the clear terms of Article 12, and instead uses another subsection of Article 12 to keep children in Brazil. Brazilian courts often rely on a subsection of Article 12, which provides that even if the proceeding is commenced after the expiration of one year, the child must be immediately returned to the country of habitual residence unless it is demonstrated that the child has become settled in its new environment. Article 12 is the provision that was cited by the Federal Court handling Goldman’s 2005 custody petition. The Federal Court recognized that although Sean Goldman was abducted and illegally brought to Brazil, “because more than one year had passed since the date of abduction and the date of ruling, the child was to remain in Brazil.” However, a court can only invoke the one-year provision of Article 12 when

---

171 Weinstein, supra note 70.
172 Hague Convention, supra note 11, art. 12.
173 Id.
174 Id. art. 7.
175 Weinstein, supra note 70.
176 Hague Convention, supra note 11, art. 12.
177 A Boy in Brazil, supra note 1.
178 Weinstein, supra note 70.
the requesting parent waited more than one year to commence proceedings, a factor that was not present in the Goldman case.  

179

The Hague Convention is concerned with the time period between the abduction and the initiation of return proceedings, rather than the period between the abduction and the ultimate disposition of the case. By using the time period between the abduction and the ultimate disposition of the case, Brazilian courts are able to frequently rule that a child is accustomed to Brazilian culture because of the length of time that the child has spent in Brazil.  

180 Thus, Brazil effectively manipulates the clear parameters of the Hague Convention.

181 Brazil also fails to properly implement the Hague Convention by delaying rulings on Hague Convention cases. While the country to which the child was removed should not make custody decisions, the signatory nation does have a responsibility to make a determination as to the child's country of habitual residence.  

182 Subsequently, the child should be returned to that location. However, in many instances, Brazil makes no decision at all.  

183 This maneuvering leaves the abducted children in Brazil indefinitely. Delaying a ruling gives the taking parent the opportunity to claim that the child has become settled in the new environment.  

184 In practice, the longer a child is in the new residence, the more likely it is that a Brazilian court will be reluctant to send the child back to the country of habitual residence.

185 As mentioned above, Brazil incorrectly applies the provisions of Article 12.  

186 Because Brazil measures the time period between the abduction and

179 Id.  
180 A Boy in Brazil, supra note 1 (noting that a Brazilian federal court determined that Sean "had indeed been wrongly taken and that a U.S. court should decide custody--but that too much time had gone by so [Sean] would be better off with [his] mother in Rio de Janeiro").  
181 Hague Convention, supra note 11, art. 8 (listing information to be used in making a decision).  
182 Id. art. 7.  
183 See, e.g., Weinstein, supra note 70 (describing how Brazilian judges passed off the case of Ariel Ayubo without rendering a decision).  
184 See Alain Gerber, Active Case Index: Nicolas, Laetitia, and Anthony Gerber, BRING SEAN HOME FOUND., http://bringseanhome.org/wordpress/active-cases/active-case-index/the-gerber-children/ (last visited Nov. 20, 2010) (explaining one parent's theory behind the actions of Brazilian courts); Tyler, supra note 18, at 538 (stating "non-compliance often occurs after a backlog of cases has delayed the determination under the Convention until years later, when the Brazilian courts determine that children have adapted and their habitual residence has become Brazil").  
185 See, e.g., A Boy in Brazil, supra note 1 (detailing that the Brazilian judge in the Goldman case initially refused to return Sean to his father because too much time had gone by and Sean was better off with his mother).  
186 See supra text accompanying notes 178–83 (detailing the Brazilian courts' consideration of the length of time between the abduction and the ultimate disposition of a case, instead of the period of time between abduction and the initiation of the Hague Convention proceedings).
the ultimate disposition of the case, it is more likely that the one-year period will pass and Brazil will claim that the child is accustomed to Brazilian culture and should thus remain in the country. For example, since Ariel Ayubó's son was abducted in August of 2004, thirteen judges have been assigned to his case.187 "According to Mr. Ayubó, it appears that no judge wants to make a ruling on this issue and [each judge] simply passes [the case] off to the next judge after [three] months."188 There are other cases similar to that of Ayubó. Alessandra Oliveira's custody case "is now on the third judge since her two children were abducted in December, 2007."189 The 2009 Compliance Report noted that this stall tactic is an ongoing problem with the Brazilian judiciary.190 It can take "many months before a court receives a case to analyze and many more months before a court issues a decision."191 By failing to immediately proceed with a case, the Brazilian courts manufacture a delay, and then use the delay as a reason for keeping the child in Brazil.

The Brazilian courts also manipulate the grave risk exception under Article 13 of the Hague Convention. Judges in Brazil order psychological evaluations of abducted children that have not reached an age of maturity.192 "In the United States, recognizing that young children are easily influenced, a child's opinion is often ignored by the courts until they are [teenagers]."193 In Brazil, courts have considered statements made by children as young as eight years old.194 In the case of Timothy Weinstein's children, a Brazilian psychologist reported that the young children had become accustomed to life in Brazil and formed healthy relationships with family and friends.195 The psychologist concluded that, under Article 13 of the Hague Convention, psychological harm would result if the children were returned to their home country.196 Such a determination is consistent with the determination made by the psychologist that interviewed Sean Goldman.197

187 Weinstein, supra note 70.
188 Id.
189 Id.
190 REPORT ON COMPLIANCE WITH THE HAGUE CONVENTION, supra note 15, at 16.
191 Id.
192 Weinstein, supra note 70.
193 Id.
194 Id.
195 See id. (describing the results of the psychological evaluations performed on Weinstein's children).
196 Id.
Although children may state that they prefer to stay with their families in Brazil, in many cases such statements result from Parental Alienation Syndrome. Thus, they do not reflect the actual beliefs of the children. The Brazilian judge ruling on the Goldman case recognized the damaging effect of Parental Alienation Syndrome on children when he concluded that the grave risk exception did not apply to Sean.

In attempting to take advantage of the loophole in part “a” of Article 13, most taking parents accuse the left-behind parents of either negligence or abuse. “Local Brazilian judges often accept these accusations at face value and order custody to the taking parent.” This response, in effect, legitimizes the illegal retention of the child in Brazil.

B. Effectiveness of the Proposed U.S. House Resolutions

In order to force Brazil into compliance, two U.S. House Resolutions were proposed to encourage Brazil to follow the parameters set out by the Hague Convention. H.R. 2702, the Suspend Brazil GSP Act, seeks “to suspend the application of Generalized System of Preferences for Brazil until such time as Brazil complies with its obligations toward the United States under the [Hague] Convention on the Civil Aspects of International Child Abduction.” The stated purpose of the Bill is to “impress upon Brazil the importance of abiding by their obligations under the Hague Convention with respect to international child abduction cases involving children from the United States.” “The U.S. Generalized System of Preferences (GSP) is a program designed to promote economic growth in the developing world by providing preferential duty-free entry for about 4,800 products from 131 designated beneficiary countries and territories.” H.R. 2702 gives the President of the United States the ability to suspend the duty free treatment that the United States gives to Brazil. Once the judicial system of Brazil

---

198 Id.

199 See, e.g., English Translation Ordering Return of Sean Goldman to the USA, supra note 121, at 47 (explaining that Sean Goldman suffered from Parental Alienation Syndrome and therefore his statements might not reflect his true preferences).

200 Id. at 43, 71.

201 Weinstein, supra note 70.

202 Id.

203 Suspend Brazil GSP Act, H.R. 2702, 111th Cong. (2009), 2009 CONG US HR 2702 (Westlaw).


206 H.R. 2702 § 3(b).
complies with its obligations under the Hague Convention with respect to international child abduction cases involving children from the United States, the President is free to reinstate the duty-free treatment.\footnote{Id. § 3(c)(2).}

According to Mark DeAngelis, Founder of the Bring Sean Home Campaign, if Brazil’s GSP status is revoked, Brazil would lose approximately $2 billion annually in trade benefits.\footnote{E-mail from Mark DeAngelis, Founder, Bring Sean Home Campaign, to author (Sept. 24, 2009, 11:08 EST) (on file with author).} Fathers’ rights attorney Jeffery Leving notes, “By imposing sanctions on countries like Brazil, whose judges have brazenly disregarded the Hague Convention, the [U.S.] shows that [it] will not stand idle while American children remain separated from their parents in foreign lands.”\footnote{Attorney Jeffery Leving Urges Lawmakers: Fight for US Children Abducted Abroad, supra note 23.} Brazil is unlikely to modify its current actions unless it is threatened with economic consequences. The Hague Convention is based upon the concept of reciprocity, which means that the United States will return children if Brazil does the same.\footnote{E-mail from Mark DeAngelis, supra note 208.} Since the Hague Convention became effective between the United States and Brazil in December 2003, the United States has returned seven abducted children under the Convention.\footnote{Id.} Until the return of Sean Goldman on December 24, 2009, Brazil had not returned any of the United States’ abducted children.\footnote{Id.}

Sanctions imposed on Brazil may be the only hope American parents have for getting their children back from Brazil. The monetary sanctions of H.R. 2702 are similar to the sanctions imposed under the United States’ Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), which calls for sanctions on countries that do not comply with international laws on human trafficking.\footnote{Victims of Trafficking and Violence Protection Act (VTVPA) of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000).} The sanctions in the VTVPA are imposed at the discretion of the President and provide a means of unilateral action to address a global issue.\footnote{Swati Deo, The Effectiveness of Victim Protection Measures in U.S. Human Trafficking Legislation: MPP Professional Paper 10 (2009), available at http://conservancy.umn.edu/bitstream/50388/1/Deo,%20Swati.pdf.} These sanctions have been very successful against countries deemed to violate these laws.\footnote{E-mail from Mark DeAngelis, supra note 208 (stating that the threat of economic sanctions against countries that have violated those laws have proved very successful).} The VTVPA demonstrates that sanctions can work. Without some type of incentive, the United States is merely hoping that Brazil will comply with an international treaty agreement.
Furthermore, the circumstances surrounding Sean Goldman's return to the United States demonstrate that sanctions will likely provide an effective means of compelling Brazil to comply. In December 2009, days after the Brazilian Supreme Court issued a ruling that allowed Sean to be reunited with his father, one justice issued a stay, meaning that David Goldman would have to wait even longer before being reunited with his son. In response to the stay, U.S. Senator Frank Lautenberg placed a hold on a trade bill that would have "provide[d] export tariff relief to 130 countries, of which Brazil would be the fifth largest recipient. . . . Lautenberg's hold was designed to exert additional pressure on Brazilian authorities to abide by the court order and return Sean to his father." Subsequent to the hold on the trade bill, "Brazilian Attorney General Luis Inacio Adams said the executive branch [would side] with Goldman" on the custody determination. Adams stated, "Once [Brazil] stop[s] cooperating and start[s] breaking our treaties and international obligations, Brazil risks the chance of not having its own requests in the matters regarding international judicial help granted, based on the principle of international reciprocity." This statement demonstrates that Brazilian government officials understand the economic consequences Brazil risks if it does not honor its international commitments. Adams went on to say that "[n]ot releasing the minor into the custody of his father could bring sanctions against Brazil [which] could damage Brazil's image before the international community."

Shortly after the hold was placed on the trade bill, the Brazilian Supreme Court lifted the stay and allowed David Goldman to be reunited with his son.

The outcome of the Goldman case exhibits the effectiveness of sanctions and the potential benefits of H.R. 2702. Because the Brazilian Supreme Court returned Sean Goldman after the United States threatened to revoke its trade benefits, it is likely that Brazil will be influenced to comply with the Hague Convention and return other illegally retained children when faced with the potential loss of its GSP status.

H.R. 3240, the International Child Abduction Prevention Act of 2009, contains a number of provisions which, taken together, would have likely proved effective in forcing noncompliant nations to follow the procedures of

216 See supra text accompanying notes 154–57 (discussing the stay and a statement made by Sean's maternal grandmother).
217 Castillo & Reiss, supra note 154.
218 Id.
219 Id.
220 Id.
221 Id.
222 Id. (explaining that Brazilian federal court finally ordered the return of Sean to the United States after a United States' Senator placed a hold on a trade bill that would have benefited Brazil economically).
the Hague Convention. Unlike H.R. 2702, H.R. 3240 did not apply to Brazil exclusively. H.R. 3240 aimed to address all nations that are either noncompliant or have demonstrated patterns of noncompliance with the multilateral treaty. The Bill attempted to remedy the problems caused by international parental child abduction. According to the Congressional findings, "[P]arental child abduction jeopardizes the child and has substantial long-term consequences for both the child and the left-behind parent." The findings also state that "[a]bducted children are at risk of serious emotional and psychological problems and have been found to experience anxiety, eating problems, nightmares, mood swings, sleep disturbances, aggressive behavior, resentment, guilt and fearfulness, and as adults may struggle with identity issues, their own personal relationships, and parenting." The Congressional report also describes the problems faced by a left-behind parent:

Left behind parents may encounter substantial psychological, emotional, and financial problems, and the majority have no means to generate the enormous financial resources required to pursue individual civil or criminal remedies to attempt to secure the return of their children, even if such remedies were available or effective in foreign courts or political systems. Left-behind parents also often have to pursue child custody and other protective orders through expensive litigation at home.

The potential effectiveness of H.R. 3240 came from the provisions that allowed the United States to take stronger actions when children are abducted from their countries of habitual residence. H.R. 3240 served as an opportunity for parents, advocates, and judges to resolve disputes using legal procedures. This bill would have likely reduced the number of parental child abductions by facilitating legal solutions, thus lessening the motivation to resort to international abduction.

H.R. 3240 also intended to help parents whose children have already been abducted. The proposed bill sought to "establish effective mechanisms to

---

223 See International Child Abduction Prevention Act of 2009, H.R. 3240, 111th Cong. (2009), 2009 CONG US HR 3240 (Westlaw) (stating that under H.R. 3240, the United States is able to take stronger measures to secure the return of abducted American children).
224 Id. § 2(a)(4) (stating that the Bill is also targeted at nations that show patterns of noncompliance including Honduras, Brazil, Chile, Mexico, Slovakia, Switzerland, and Venezuela).
225 Id.
226 Id. § 2(a)(7).
227 Id. § 2(a)(8).
228 Id. § 2(a)(9).
provide assistance to and aggressive advocacy on behalf of parents whose children have been abducted from the United States to a foreign country [and] from a foreign country to the United States ... This provision would have been very useful to parents who desperately want to secure the return of their child, but do not have the proper means to go about achieving that result.

H.R. 3240 also “promote[d] an international consensus that the best interests of children” are the most important issue in a custody dispute and “that it is in the best interest of a child to have issues of custody determined in the State of their habitual residence immediately prior to the abduction ...” This provision avoids the problems faced by David Goldman and other parents whose children are illegally retained in Brazil and other noncompliant nations. A presumption in favor of returning children to their country of habitual residence prevents a nation from favoring its own citizens and from using the grave risk defense to retain children.

H.R. 3240 would have enabled the President of the United States to take several actions against nations showing patterns of noncompliance with the Hague Convention. These actions included “[a] statement of nonreciprocity under the Hague Convention,” “[a] public condemnation,” “[t]he delay or cancellation of one or more cultural [or scientific] exchanges,” “[t]he denial of one or more working, official, or state visits,” and “[t]he restriction of the number of visas to nationals of such [a] country ...”

H.R. 3240 also planned to establish an Office on International Child Abductions to be headed by an Ambassador at Large. The proposed Ambassador’s duties included:

(A) promot[ing] measures to prevent the international abduction of children from the United States; (B) advocate[ing] on behalf of children whose habitual residence is the United States and who have been abducted to another country; (C) assist[ing] left-behind parents in the resolution of abduction or refusal of access cases; and (D) advance[ing] mechanisms to

229 Id. § 2(c)(3).
230 Id. § 2(c)(4).
231 Id. § 204.
232 Id. § 204(a)(1)–(10).
233 Id. § 101(a).
prevent and resolve cases of international child abduction abroad.\textsuperscript{234}

The new role of the Ambassador at Large would have influenced the secure return of abducted children. The Ambassador would have served as an emissary to parents that lack the generous support David Goldman received. By establishing an Office of International Abductions, the United States would send a message to the international community that child abductions are unacceptable and that the United States will fight to bring American children home.

\section*{C. Ramifications for the United States If It Adopts the House Resolutions}

Although sanctions may have successfully forced Brazil to comply with the Hague Convention, there is a possibility that the relationship between the United States and Brazil could become strained. The U.S. government must decide whether Brazil's failure to properly handle the fifty open child abduction cases\textsuperscript{235} is sufficient to justify potential conflict with Brazil, a nation with which the United States enjoys good trade relations. Because of the high stakes involved—the lives of children—the United States should take such a risk.

The proposed House Resolutions should have been considered in the context of the United States' international relations. The only nation that would have been affected by H.R. 2702 was Brazil.\textsuperscript{236} The United States would likely not hamper its trade relations with any other nation and would benefit from the return of its children. Accountability is critical and something more than moral persuasion is necessary to encourage noncompliant countries to follow the procedures set forth by the Hague Convention. Real, tangible, economic consequences are essential for compliance.

If the United States had passed these House Resolutions, or passes similar provisions in the future, Brazil would not only be forced to comply with the Hague Convention, but pressure would be placed on the United States to similarly comply with Hague Convention procedures. Although the United States is much more compliant with the Hague Convention than Brazil, it does not have a 100% return rate.\textsuperscript{237} Additionally, the United States shows a

\textsuperscript{234} Id. § 101(c)(1)(A)-(D).
\textsuperscript{235} Partlow, \textit{supra} note 17.
\textsuperscript{236} Suspend Brazil GSP Act, H.R. 2702, 111th Cong. (2009).
\textsuperscript{237} Karl E. Hindle, \textit{International Child Abductions are a Two-Way Street—US Compliance Is Not a Rule but an Exception!}, EZINE ARTICLES (Apr. 24, 2009), http://ezinearticles.com/?In
bias toward American parents in the same way that Brazilian courts show a bias toward Brazilian mothers. If the United States plans to eliminate Brazil's trend of bias and force Brazil to comply with the Hague Convention, the United States must be prepared to similarly eliminate its bias toward American parents in Hague Convention cases, and also comply with the Hague Convention more consistently. Abductions are a "two way street."

The United States must critically consider the domestic ramifications before passing a law that forces another nation to follow proper procedures. However, both H.R. 2702 and H.R. 3240 would have opened the door for reciprocity in the international community, likely securing the return of abducted children to their left-behind parents in both the United States and abroad.

IV. CONCLUSION

Parental child abduction is a global problem that is only increasing. Every year, thousands of children are taken abroad illegally, leaving a left-behind parent to battle against a bureaucratic maze. The Hague Convention has, in large part, reduced the ability of parents to illegally retain a child in a foreign nation. However, problems still exist. Not all nations are signatories of the Hague Convention, and those that have signed the Hague Convention are not always compliant. Brazil is one nation that continuously demonstrates a pattern of noncompliance. Brazilian courts ignore the return provisions of the Hague Convention and manipulate the available defenses in an effort to ensure that abducted children remain in Brazil. The return of Sean Goldman to his father in the United States was a step in the right direction, but Brazil has a long way to go before it becomes compliant with the Hague Convention. The threat of sanctions, combined with a stronger awareness of parental rights will eventually encourage Brazil to honor its obligations. H.R. 2702 and H.R. 3204 provided potential solutions to the problems faced by the United States in securing the return of children from Brazil. Despite H.R. 2702 and H.R. 3204's lack of success, the United States has begun to demonstrate its commitment to securing the return of American children. If similar resolutions are adopted in the future, the United States could send a message both to Brazil and to other Hague signatories that it will not sit idly by while its children are illegally retained abroad. H.R. 2702 and H.R. 3204 provided the groundwork for future provisions that might successfully force noncompliant countries to abide by the clear provisions of the Hague Convention. Should similar provisions pass, the United States


238 Id.
will see a rise in the number of returned children and witness more reunions similar to that of Goldman and his son.