INNOCENCE SNATCHED: A CALL FOR A MULTINATIONAL RESPONSE TO CHILD ABDUCTION THAT FACILITATES SEXUAL EXPLOITATION

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I. INTRODUCTION

At age fifteen, a man on a motorbike snatched Ny while traveling from her home to a nearby village to meet her mother.1 Robbed of her childhood, she entered the brothel with no idea that she had been sold into prostitution; she thought that the men were “coming through the door to see a theatrical performance.”2 For her initiation into her new lifestyle, the brothel owner led Ny into a room and beat her continuously with electrical cables. Immediately following the owner’s departure, she was forced to have sex with a client who had watched as the owner beat her. Over the next two years, she was resold several times; if she attempted to escape, she faced severe beatings, food deprivation and weeks inside locked rooms, in addition to an increased number of clients to serve. Following her eventual rescue, Ny stated, “[i]n my mind, in my dreams, I will become a virgin again.”3

Children throughout the world echo Ny’s story of being demeaned and dehumanized as commodities in the sex industry.4 Children involved in sex trafficking and similar activities have their lives snatched away as they are transported across borders and sometimes across continents.5 UNICEF6

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2 Id.

3 Id.


6 UNICEF (United Nations International Children’s Emergency Fund) was created by the U.N. General in 1946 to help children living in poverty in developing countries. The name was later changed to the United Nations Children Fund but the UNICEF acronym was kept. UNICEF’s governing body, consisting of thirty-six nations from across the globe, establishes policies and reviews programs in conjunction with its purpose. UNICEF, available at http://www.unicef.org/uwworde/inex.html (last visited Mar. 31, 2003).
estimates that more than thirty million children worldwide have become victims of sexual exploitation over the last three decades. Furthermore, nearly one million new children become entrapped in the industry annually. These children are commodities in a multi-billion dollar industry where there are few international laws in place.

Most countries, regardless of their type of government, have statutes in place that prohibit these types of activities, classifying violations as crimes. Abduction, also known as kidnapping, is usually defined as the taking away of a person by force, threat, or deceit, with intent to unlawfully detain them against their will. High-profile child abductions, such as the kidnapping and murder of the son of Charles A. Lindbergh in 1932, have led the United States and many other countries to implement statutes prescribing severe penalties, such as death or life imprisonment, for transporting kidnapping victims across state or national boundaries.

According to the National Center for Missing and Exploited Children (NCMEC), abductions by a non-custodial parent or family member are the most common forms of international abduction. While these abductions are shown to have a very harmful effect on the child, children abducted by strangers are subjected to significantly more grave danger. Abductions by total strangers are actually the least common amongst all types of child abductions. However, there is still a need for attention by intergovernmental

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8 Id.
9 Id.
13 NCMEC website, infra note 18 (stating that other categories include parental abductions, runaways, and throwaways).
14 See, e.g., id. Studies report that even abduction by a parent is harmful to the child. Children who have been victims of parental abduction are very likely to exhibit a variety of negative psychological and social effects including depression, inability to interact with society, insecurity, helplessness, and distrust, excessive fearfulness, loneliness, anger, confusion about identity, and fear of abandonment. Id.
15 See id.
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organizations. This is particularly important when these forms of abduction are combined with exploitative abuses of children.\textsuperscript{16}

Despite tougher criminal penalties, the problem of international child abduction persists.\textsuperscript{17} Children are often subjected to illegal practices such as child pornography and child prostitution as a result of their initial abduction.\textsuperscript{18} Not only are these activities in violation of a child’s civil and human rights, but they also serve as the foundation for exposing children to other harmful and illegal activity.\textsuperscript{19}

As the world moves towards globalization, so too does the spread of these illegal activities.\textsuperscript{20} Today, these activities take place against an international backdrop of children being abducted and trafficked across international borders.\textsuperscript{21} “Children are being exploited on a multi-dimensional, multi-leveled, multi-faceted, transcriminal, cross-cultural, and transnational manner. It is a global phenomenon which no international organization seems to fully understand.”\textsuperscript{22} Organizations attempting to address the problem on an international level face several significant obstacles. The first obstacle is the advancement in telecommunications technology and Internet communication.\textsuperscript{23} International travel occurs with greater ease than ever before, with less restrictive border crossing.\textsuperscript{24} Thus, as the spread and complexity of these

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\begin{itemize}
\item \textsuperscript{16} Id.
\item \textsuperscript{17} See Nancy Ayala, World Group Tracks Child Abductions, USA TODAY, Oct. 13, 1993, at A7; see also Patricia Apy, Managing Child Custody Cases Involving Non-Hague Contracting States, 14 J. AM. ACAD. MATRIM. L. 77 (1997) (“Legal scholarship has little empirical data on the actual numbers . . . [t]here are few sources of worldwide statistics.”).
\item \textsuperscript{18} See, e.g., National Center for Missing and Exploited Children (NCMEC), available at www.NCMEC.org (last visited Feb. 24, 2003) [hereinafter NCMEC website].
\item \textsuperscript{19} See International Humanitarian Campaign Against the Exploitation of Children, available at http://www.helpsavеkids.org/scope2.html (last visited Feb. 24, 2003) [hereinafter Humanitarian Campaign]. These activities are often layered with prostitution, drugs, guns, and sometimes tobacco smuggling. The children themselves are often used as commodities for trade.
\item \textsuperscript{20} See Jonathan Todres, Prosecuting Sex Tour Operators in the U.S. Courts in an Effort to Reduce the Sexual Exploitation of Children Globally, 9 B.U. PUB. INT. L. J. 1, 7 (1999).
\item \textsuperscript{21} See Berkman, supra note 10, at 401 (stating that movement of children across international borders is common and that children from Nepal, Bangladesh, and India have been discovered in Pakistan and the Gulf States, while Thai children have been found in Japan); Jacqueline Golub, The International Parental Kidnapping Crime Act of 1993: The United States’ Attempt to Get Our Children Back—How is it Working?, 24 BROOK. J. INT’L L. 797, 803 (1999).
\item \textsuperscript{22} Humanitarian Campaign, supra note 19.
\item \textsuperscript{23} Id.
\item \textsuperscript{24} Id.
\end{itemize}
activities increases, it becomes increasingly difficult for international organizations to monitor and prevent such activities.

Second, it is much easier to elude capture by removing a child from his or her habitual surroundings; this lessens the likelihood of public recognition of the child and the abductor being suspected. Increased demand for children also drives these activities into the international spotlight, and as the market for such activities grows, suppliers of child pornography and prostitution experience a growing desire to meet the demand for such activities. The illicit traffic of young children has expanded through the use of child pornography on the Internet, which offers low cost advertising of the commercial sex trade to attract sex tourists and pedophiles.

Finally, the globalization of international economies and the “increase in international organized crime syndicates with transactional and transcriminal links,” helps to characterize the international nature of the problem. These reasons illustrate why the use of children in transnational sexual exportation cannot be evaluated by a single country’s framework; rather, there must be a global effort.

As the sophistication of such activities increases and affects a more global environment, so too does the need for a multi-national response, which is clearly absent. As a result, those who abduct and lure children into these activities have, for the most part, gone unpunished in their illegal activity and have evaded capture and punishment in numerous countries.

There has been some global recognition of this problem, but established procedures by international organizations have been largely ineffective. This

25 See Berkman, supra note 10, at 402 (“[I]n Thailand, which has the world’s largest child sex industry, the supply of young girls is diminishing. Thus, Thai traffickers have made inroads into Burma and China in search of young girls.”).


27 Humanitarian Campaign, supra note 19.

28 See Todres, supra note 20, at 8 (discussing globalization of sex exploitation industry); see also R. Bari Flowers, 575 ANN. AM. ACAD. OF POLIT. & SOC. SCIENCE 147, 152 (2001) (discussing the expanded use of the Internet and failure of countries to adequately respond to these activities); EPCAT, supra note 4 (discussing trafficking of victims across national borders, thereby expanding problem beyond that of one isolated country).

29 See Berkman, supra note 10, at 404 (stating that despite official attempts to curb child sex trade, problem remains prevalent due largely to lack of enforcement on the part of police and government officials).

30 See Flowers, supra note 28, at 154 (“[I]n spite of the existing laws against the sexual exploitation of children in many countries, most countries fall short in adequately reducing the
Note will discuss the failure of the international community to adequately address the problem of international child abduction, which in turn furthers support of illegal activity and exploitation of children. Additionally, this Note will provide guidance for drafting international legislation which aims to ameliorate these problems. The first section will give background information into the problem; more specifically, it will describe how children are plagued by the ills of pornography and child prostitution and how these activities are fostered through child abduction. This section will further elaborate on the international nature of these activities, addressing the connection between abduction and sex trafficking and sex tourism.

The second section will address the current multinational response to international abductions by way of the 1980 Hague Convention on the Civil Aspects of International Child Abduction, and the Child’s Rights Convention, as well as the limitations of these responses. The third section will suggest how the strengths of the 1980 Hague Convention and the Child’s Rights Convention can be further developed to serve as a foundation for new legislation which more appropriately addresses the problem. This Note concludes that new legislation should be created using the 1980 Hague Convention and the Child’s Rights Convention as a foundation. This new treaty should be applicable to all children below the age of 18, utilize an interconnected system of Central Authorities without payment requirements, and include extradition and imprisonment provisions. These expanded provisions in a new treaty would more appropriately address the problems of child abduction leading to sexual exploitation in a multi-national and cooperative approach.

II. BACKGROUND

A. The Problems

1. Child Pornography

Child pornography can be defined as the visual depiction of a minor engaged in sexually explicit conduct. This activity can be either heterosexual
or homosexual, and such depictions can be in the form of photographs, videotapes, films, magazines or computer-generated images. Children involved in child pornographic materials can be of any race or gender, and their age range can be from a few months to eighteen years of age.

Child pornography became increasingly popular in the 1970s, with more than 260 different monthly magazines being distributed. Highly industrialized and globally organized, the child pornography industry generated profits estimated in the multi-million dollar range during this time.

Studies show that the psychological harm to a child as a result of child pornography is great. Furthermore, disruption of the child’s emotional development due to depression, guilt, or psychologically induced somatic disorder can ultimately lead to a life of drug abuse or prostitution.

Due to the seriousness with which most societies view these activities, the types of punishable offenses range from the receipt of child pornography by mail to the production of such materials. As child pornography laws permit stricter enforcement, child pornography occurs in a much more clandestine

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32 Id. § 2256(8).
33 National Center for Missing & Exploited Children, Child Pornography and Prostitution Background and Legal Analysis (1987) [hereinafter NCMEC].
35 Id. at 42.

Pornography poses an even greater threat to the child victim than does sexual abuse or prostitution. Because the child’s actions are reduced to a recording, the pornography may haunt him in future years, long after the original misdeed took place. A child who has posed for the camera must go through life knowing that the recording is circulating within the mass distribution system for child pornography.

Id.

manner today than it did in previous decades. Additionally, the introduction of the Internet has made the volume and distribution of child pornography boundless.

This presents something of a bittersweet victory for law enforcement officials. The decrease in the amount of overt child pornographic production and circulation after the 1970s renders it even more difficult to discover the new and inventive ways in which it is being produced and used. For instance, there has been a growing awareness of mainstream pornographic materials being used to lower the inhibitions of children and as an instructional tool for children. The problem is truly of a global nature while most child pornography is created in European countries such as Switzerland, Sweden and Denmark, 85 percent of the profit in the multi-billion dollar child pornography market is generated in the United States. In fact, it is estimated that more than 260 different magazines are distributed in the United States each month, generating more than $6 billion annually. This serves as evidence that such activities present an international problem in need of global attention.

40 Humanitarian Campaign, supra note 19; NCMEC, supra note 33, at 2 (stating contemporary focus of child pornography is not as likely motivated by profit as in previous years).
41 See Flowers, supra note 28, at 152 ("The use of the Internet by pornographers and other sexual exploiters of children has increased the globalization of child pornography and the child sex tourism industry, while making it more difficult for law enforcement authorities to track down perpetrators.").
42 See Off. of the Surgeon General, U.S. Pub. Health Service, U.S. Department of Health and Hum. Services, Report of the Surgeon General's Workshop on Pornography and Public Health (Aug., 1986) ("Pornography has been used by adults to teach children how to perform sexual acts and to legitimize the children's participation by showing pictures of other children 'enjoying' the activity."); See also Attorney General's Commission on Pornography Testimony, Nov. 20, 1985 ("The primary use of child pornography is to lower the inhibitions of the child, to show the children that other children are engaged in this type of activity, that it's a normal practice, that there is nothing wrong with it."); NCMEC website, supra note 18, Prostitution of Children and Child Sex Tourism: An Analysis of Domestic and International Responses (stating that child pornography may be used by pimps to advertise and by customers who desire them as souvenirs or use them to describe the sexual act they demand of the child).
43 See Flowers, supra note 28, at 152; see also Child Pornography and Pedophilia: Hearing before the Permanent Subcomm. on Investigations, U.S. Senate Comm. on Governmental Affairs, 98th Cong. 23-25 (1985) (Testimony of Elliot Abrams, Assistant Secretary of State for Human Rights and Humanitarian Affairs) (stating that the bulk of child pornography is created in Europe).
44 Flowers, supra note 28, at 152.
2. Child Prostitution

Sexual exploitation of children through prostitution is an age-old global problem that has existed for centuries, and is often deeply embedded in historical and cultural practices. However, it is difficult to measure the magnitude of such illicit activity and, as a result, statistical evidence is somewhat incomplete.

As the information about such activities emerged, several organizations were created to educate and provide information, normally through the Internet. As a result of these efforts, more accurate numbers are now available and it is estimated that more than one million children worldwide are involved in child prostitution, generating more than $10 billion annually.

Generally, vulnerable children are lured into such practices by deceptive prospects of marriage or work, and others are simply abducted by force. Most of these instances of wrongful removal and retention result in the child being trafficked and sold into prostitution. In countries with a booming sex industry, such as Thailand, child prostitutes serve an average of three customers a day, six to seven days a week.

45 NCMEC, supra note 33, at 47; see also NCMEC website, supra note 18, Prostitution of Children and Child Sex Tourism: An analysis of Domestic and International Responses (defining child prostitution as "performing, offering, or agreeing to perform any act of sexual penetration as defined by state statute or why touching or fondling of the sex organs of one person by another person, for any money, property, token, object, or article of anything of value, for the purpose of sexual arousal or gratification").

46 See id. (explaining that "no reliable estimate exists or is even possible, given the absence of census data on the subject, the inherent limitations of police information and the weaknesses of unsupported estimates by social service providers and popular journalists who reach only a fraction of juvenile prostitutes in highly specific settings). But see Global March Organization, available at http://www.globalmarch.org/worstformsreport/world/childprostitutionandpornography.html (last visited Feb. 12, 2003) (maintaining a very comprehensive and updated country analysis).


50 Id.

51 Berkman, supra note 10, at 402.
Sex tourism and sex trafficking are two major related industries which have grown out of child prostitution. Sex tourism occurs where the resources of the commercial tourism industry are used for child prostitution.\textsuperscript{52} More specifically, "it refers to the growing phenomenon of travel abroad for the purpose of having sexual relations in exchange for money, luxury items, clothing or some other item of value."\textsuperscript{53} Websites and brochures advertise brothels, accommodations, airfare, and even complete packages, which allow individuals to travel to have sex with young children.\textsuperscript{54} The National Center for Missing and Exploited Children (NCMEC), a leading watchdog group on sex tourism which provides services to law enforcement, prosecutors, courts, educators, researchers, families and victims, suggests several reasons for the popularity of sex tourism.\textsuperscript{55} These reasons include consumer anonymity, the readily availability of children, and the lack of social and moral constraints in countries where it may be more culturally accepted.\textsuperscript{56} Moreover, sex tourists are not the only beneficiaries of this exploitation; in many cases, sex tourism comprises an integral component of a nation's international tourism industry.\textsuperscript{57} Many countries implicitly market lax regulation of sex tourism as part of the allure of vacationing or visiting the country.\textsuperscript{58} Furthermore, if tourism is a large source of economic support and foreign exchange for a country, that nations is more likely to welcome the lucrative economic benefits of sex tourism.\textsuperscript{59} However, focus should not only be limited to countries that derive an economic benefit from these activities but should also note the industrialized countries whose citizens fund and create a demand for such activities.\textsuperscript{60}

\textsuperscript{52} NCMEC website, \textit{supra} note 18.


\textsuperscript{54} NCMEC website, \textit{supra} note 18.


\textsuperscript{56} \textit{Id.}; see also Hernandez, \textit{supra} note 53, at 207 ("[S]ex tourism is viewed as ‘safe’ because the sex tourist gets to enjoy sexual access to a racialized ‘other’ without risking the censure of his neighbors, friends and colleagues or without having to confront his desire for the other.").

\textsuperscript{57} See Hernandez, \textit{supra} note 53, at 200.

\textsuperscript{58} See \textit{id.} at 201 (stating that some countries promote sex tourism by marketing women as exotic and sexually enticing).

\textsuperscript{59} See \textit{WORLD TOURISM ORG., TOURISM HIGHLIGHTS 2000}, at 15 (2000) (stating that tourism ranks among the top five industries for more than 83 percent of all countries and is the leading source of foreign exchange in at least 38 percent of countries); see also Hernandez, \textit{supra} note 53, at 202 ("[T]he World Bank actively promotes international tourism to those third world countries to which it makes loans as a source for all-important foreign currency.").

\textsuperscript{60} See Todres, \textit{supra} note 20, at 3; see also Berkman, \textit{supra} note 10, at 408 (stating that
Sex trafficking of children also fuels the child prostitution problem.61 "Trafficking consists of all acts involved in the recruitment or transportation of persons within or across borders, involving deception, coercion or force, debt bondage or fraud, for the purpose of placing persons in situations of abuse or exploitation, such as forced prostitution."62 This illustrates that sex trafficking is often used as a means to facilitate child prostitution across transnational borders making it a global problem. The industry is quite lucrative because the children, who are treated as commodities, can be sold several times, unlike drugs and arms.63 Thus, younger children are often sought out for profit maximization in order to meet customer demand.64

Generally, sex trafficking is driven by three factors: (1) a limitless supply of human beings from economically deprived countries; (2) a limitless supply of customers in both economically deprived countries and economically developed countries; (3) a limitless supply of ruthless sex traffickers.65
Experts estimate that the industry generates billions of dollars annually, operating with impunity.  

B. Multinational Response

International child abductions involve the illicit transport of a kidnapped child across national borders; since these transports result in exploitive activity that reaches a global level, a multinational response seems necessary in order to address these problems because the ability to stop such activity cannot be effective if executed on an isolated basis. "No longer can local law enforcement operate independently. Law enforcement needs to be internationally linked more today than ever before. Presently, law enforcement is no competition for these transcontinental and transcriminal syndicates, which can be more sophisticated than most law enforcement agencies." Thus, if the problem is recognized and addressed on a multinational level, with numerous countries working together to curtail such activity, then the likelihood of eliminating such illicit activity is more promising.

1. The UN Convention on the Rights of the Child

The U.N. Convention on the Rights of the Child, adopted in November 1989, was grounded in the belief that children need special protection. The Child’s Rights Convention defines a child as “every human being below the age of eighteen years.” The exploitation of children around the world is a critical issue addressed by the Child’s Rights Convention, stating unequivocally that children have rights. Moreover, these are rights to which every

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66 Id.
67 See Flowers, supra note 28, at 150 (stating that the greatest limitation in assessing true measure of international child sexual exploitation is lack of cooperation between countries).
68 Humanitarian Campaign, supra note 19.
70 See generally id.
71 Id. art. 1.
72 Id. The Child’s Rights Convention also focuses on the effects that inadequate social conditions, armed conflicts, exploitation, illiteracy, hunger and disabilities have on children. Id. arts. 19, 23, 24, 28, 32, 34, & 38. Furthermore, the Child’s Rights Convention states that children have the right to a name and nationality, to freedom of expression, and to protection from torture and mistreatment. Id. arts. 7, 12, 19, 37.
73 Id. pmbl. (recognizing that children have inherent dignity of the equal and inalienable
child is entitled; they attach regardless of birthplace, sex, religion, or social origin. Finally, the Convention calls for national and international responses. In accordance with these rights, there are several provisions throughout the Convention that deal with the problem of abduction and exploitation of children.

For example, Article 9 provides that 
\[\text{states Parties shall ensure that a child shall not be separated from his or her parents against their will.}\]

The Child’s Rights Convention advocates that children have a right to be given the opportunity to develop and maintain personal relations and direct contact with parents on a regular basis.

Article 20 of the Child’s Rights Convention mandates that the state must provide special protection and assistance to children when a determination has been made that it is not in the best interest of the child to remain in his or her current environment. Therefore, Articles 9 and 20 establish that a child has a right to be with his or her family, unless there has been a legal determination that the best interests of the child lie elsewhere. Yet in the instances where a child is not permitted to remain with his or her parents, the child is nonetheless entitled to a safe alternative environment. Thus, child abductions directly violate international mandates issued by the Convention.

The Child’s Rights Convention also condemns exploitation of children. Article 36 specifically states that 
\[\text{states Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare.}\]

Furthermore, Article 34 implores the states to protect children from all forms of sexual exploitation and sexual abuse. It reads:

rights of all members of the human family, which is the foundation of freedom, justice and peace in the world).

74 See generally id.
75 See generally id.
76 Id. arts. 9, 20, 34, 36.
77 Id. art. 9. The article does provide for a limited exception, stating that “except when competent, authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.” Id.
78 Id.
79 Id. at art. 20.
80 Id. arts. 9, 20.
81 See generally id. arts. 34, 36.
82 Id. art. 36.
83 See generally id. art. 34.
For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials.84

Finally, The Child's Rights Convention contains two specific provisions addressing the need for an international response to such issues.85 Article 11 states that "parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements" in order to combat the problem of illicit transfer and non-return of children abroad.86 Much more directly than Article 11, Article 35 requires contracting parties to commit to the ratification and implementation of local laws and multinational treaties that combat the problem.87 It specifically states that they must "take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form."88

All United Nations member states, with the exception of the United States and Somalia, have ratified the Child's Rights Convention.89 The two-step process for countries wishing to adopt the standards of the convention and commit to its terms: signature and accession.90 Article 46 of the Convention states that it is "open for signature by all States."91 Articles 47 and 48, respectively, add that the Convention is "subject to ratification" and is "open for accession."92 The signature constitutes a preliminary, general endorsement

84 Id. art. 34.
85 Id. arts. 11, 35.
86 Id. art. 11.
87 See id. art. 35.
88 Id.
89 See id. The United States is the only industrialized nation which has not ratified The Child's Rights Convention. However, the United States has indicated its intention to ratify by signature. Somalia is currently without governmental representation. See also Cara Finan, Convention on the Rights of the Child: A Potentially Effective Remedy in Cases of International Child Abduction, 34 SANTA CLARA L. REV. 1007, 1033-34 (1994) (stating that United States' unwillingness to ratify human rights treaties is due largely to federalism and policy of allowing human rights issues to be addressed domestically).
90 See generally Child's Rights Convention, supra note 69, art. 46.
91 Id.
92 Id. arts. 46-48.
of the Child’s Rights Convention.  It is not a legally binding step, but is an indication that the country intends to undertake a careful examination of the treaty in good faith to resolve issues in light of its requirements.

Moreover, Articles 47 and 48 of the Child’s Rights Convention state that its provisions may legally bind a country who has agreed either by ratification or accession. The countries that ratify the Child’s Rights Convention must report to the Committee on the Rights of the Child concerning “the measures they have adopted which give effect to the rights recognized [by the Child’s Rights Convention] and on the progress made on the enjoyment of those rights.” These reports are made within two years of ratification and every five years thereafter. The Committee is made up of ten members of “high moral standing” from different countries and legal systems, as well as experts in the field of children's rights. Though nominated and elected by the governments that have ratified the Convention, members of the Committee do not act as representatives of their countries but rather in their personal capacities. The Committee on the Rights of the Child evaluates whether governments are successfully establishing the Convention’s standards for the well being of children and families.


The 1980 Hague Convention on the Civil Aspects of International Child Abduction seeks to protect children from the harmful effects of abduction and retention across international boundaries. The Hague Convention seeks to

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93 See id.
94 See id.
95 Id. arts. 47-48.
96 Id. art. 44(2).

Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfillment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

Id.
97 Id. art. 44(1)(a), (b).
98 Id. art. 43(2).
99 Id.
100 Id. art. 43(1).
101 See Finan, supra note 89, at 1013-14 (stating that “[i]t was the concern of the drafters that
alleviate the problem by providing a procedure to bring about their prompt return.\textsuperscript{102} Essentially, this is an agreement between countries to cooperate in returning abducted children to the custody situation that existed before the abduction.\textsuperscript{103} The Hague Convention is a procedural device; it does not provide for a substantive custody determination.\textsuperscript{104} It simply provides a procedure for returning children so that a proper custody determination can be made based on the child's best interest.\textsuperscript{105}

The Hague Convention is applicable to all children under the age of sixteen who have been kidnapped and transported across national borders.\textsuperscript{106} This convention, however, is limited solely to parental abductions in violation of a custodial agreement.\textsuperscript{107} "A removal or retention is deemed wrongful if it violates custody or access rights arising from operation of law, a judicial or administrative decision or a legal agreement."\textsuperscript{108} Thus, the Hague Convention is applicable where a member state's laws or courts have made a custodial

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children who are wrongfully moved from country to country are precluded from maintaining stable familial relationships and from continuing to function in environments to which they are accustomed\textsuperscript{109}.
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\textsuperscript{103} See Anna Sapone, Note, \textit{Children as Pawns in Their Parents' Fight For Control: The Failure of The United States to Protect Against International Child Abduction}, 21 WOMEN'S RIGHTS L. REP. 129, 133 (2000) ("The Hague Convention seeks to minimize the trauma of the abduction to the child by effecting the prompt return of the child to preabduction circumstances . . . . Accordingly, if a child is abducted from the United States to a nonsignatory nation or vice-versa, no redress under the Hague Convention exists.").


\textsuperscript{105} See generally Hague Convention, supra note 102.

\textsuperscript{106} See Golub, \textit{supra} note 21, at 800 (explaining "the purpose is not to decide underlying custody disputes or to provide criminal punishment for the parental abductor. Its objective is simply to return the child to his or her own country in order to ensure that any litigation concerning custody is heard in that country.").

\textsuperscript{107} See A.E. Anton, \textit{The Hague Convention on International Child Abduction}, 30 INT'L & COMP. L.Q. 537, 544 (1981) (stating that there is "nothing . . . in the Convention [that] would preclude a State from applying its principles to older children if it considered that course to be desirable").

\textsuperscript{108} Cathy S. Helzick, \textit{Returning United States Children Abducted to Foreign Countries: The Need to Implement the Hague Convention on the Civil Aspects of International Child Abduction}, 5 B.U. INT'L L.J. 119 (1987); see also Anton, \textit{supra} note 106, at 542 (stating that the Hague Convention is primarily concerned with custody rights rather than custody decisions because subsequent custody decrees after the abduction are considered void).
determination and a child has been abducted by the non-custodial parent in violation of these laws or judicial determinations.

Another restriction imposed by the Hague Convention is that it does not impose any criminal liability; rather, it is grounded solely in civil international law.109

Concerning the possibility of criminal proceedings and extradition intersecting with the Hague Convention:

In cases where the main intention was to use a civil action to ensure the return of the abducted child, as envisaged under the Convention, the experts agreed that recourse to criminal procedures ought not to be encouraged. The object was not to punish . . . . Furthermore, criminal proceedings might prove to have detrimental effects upon the civil proceedings.110

Article 1 summarizes two fundamental purposes of the Convention: (1) “to secure the prompt return of children wrongfully removed or retained in any Contracting State”; and (2) “to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in other Contracting States.”111 While the objectives of the Convention are clearly laid out via mandates, Contracting States are nonetheless given some leeway in implementing the convention.112 States employ a Central Authority, as authorized by the Convention, to interpret and apply the mandates at their discretion.113

Article 7 of the Hague Convention clearly delineates the duties of the Central Authority:

The Central Authorities shall take all appropriate measures:
(a) to discover the whereabouts of a child who has been wrongfully removed or retained;

109 See Finan, supra note 89, at 1013 (“There are no extradition or criminal liability provisions contained in the document.”); see also Golub, supra note 21, at 800 (“The Hague Convention creates only a civil remedy and does not act as an extradition treaty.”).
111 See Hague Convention, supra note 102, arts. 1-2.
112 Id. art. 2.
113 Id. art. 6.
(b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;
(c) to secure the voluntary return of the child or bring about an amicable resolution of the issues;
(d) to exchange, where desirable, information relating to the social background of the child;
(e) to provide information of a general character as to the law of their state in connection with the application of the Convention;
(f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;
(g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;
(h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;
(i) to keep each other informed with respect to the operation of this convention and as far as possible, to eliminate any obstacles to its application.  

When a parent believes that their child has been abducted, they may seek assistance from the Central Authority in their state or to the Central Authority of the country to which they believe the child has been transported. After a child has been located, parties initiate procedures to return the child to his or her habitual residence. However, there are some exceptions to the general

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114 Id. art. 7.
115 See id. at art. 8 (stating that when seeking assistance of Central Authority, parent essentially makes application to Central Authority which contains information about the applicant parent, the missing child, the person who removed the child, and any other relevant information including records of court decisions, agreements, or affidavits).
116 While the term 'habitual residence' is used in the Convention text, the Convention does not define the term. However, it has commonly become known as the child's pre-abduction location. See Feder v. Evans-Feder, 63 F.3d 217, 224 (3d Cir. 1995) (stating that child's habitual residence is the "place where he or she has been physically present for an amount of time sufficient for acclimatization and which has degree of settled purpose from the child's perspective"); see also Lynda R. Herring, Comment, Taking Away the Pawns: International Parental Abduction & the Hague Convention, 20 N.C. J. INT'L L. & COM. REG. 137, 152-53 (1994) (stating that concept of domicile was too technical to be appropriate criterion).
rule of restoration of the pre-abduction custody situation embodied in Article 13 of the Convention.\textsuperscript{117}

Specifically, if the abducting parent can establish to the national courts in the child's pre-abduction jurisdiction that the person who is bringing the claim was not actually exercising custody rights or had consented to the removal, then the restoration of original custody is void.\textsuperscript{118} The Convention will not return a child to pre-abduction custody if there is a risk of physical and psychological harm to the child.\textsuperscript{119} This grave risk exception is construed quite narrowly and it is very difficult to fall within the requirements or the exception.\textsuperscript{120}

The grave risk exception of Article 13(b) has been considered in several cases; however, there is only one case where a petition for return has been denied under the grave risk exception.\textsuperscript{121} This is largely because courts have refused to consider substantive factors regarding custody, distinguishing the exception from a best interest of the child determination by looking only to specific and substantial occurrences which create a risk of danger to the child.\textsuperscript{122} The only case to fall within the Article 13(b) grave risk exception was a Scottish case where the father seeking return of the child suffered from a history of alcoholism and depression.\textsuperscript{123}

\textsuperscript{117} See Hague Convention, supra note 102, art. 13.
\textsuperscript{118} See id. art. 13(a).
\textsuperscript{119} See id. art. 13(b).
\textsuperscript{120} See Linda Silberman, Hague Convention on International Child Abduction: A Brief Overview and Case Law Analysis, 28 Fam. L.Q. 9, at 26-28 (1994) (stating that it is rare for a court to actually deny return based on Article 13(b); see also Herring, supra note 116, at 168 (stating that the risk of harm to the child must be "of an extreme and compelling nature"); Caroline LeGette, Note, International Child Abduction and The Hague Convention: Emerging Practice and Interpretation of the Discretionary Exception, 25 Tex. Int'l L.J. 287, 297-98 (1990) (stating that only where child is threatened with sexual or physical abuse is situation intolerable). But see Harper, supra note 104, at 260 ("The exception does not qualify the threshold level of 'physical or psychological harm.' Moreover, the exception only requires that the possibility of harm be great, it does not require that the harm itself be severe."); Sharon Nelson, Turning Our Backs on the Children: Implications of Recent Decisions Regarding the Hague Convention on International Child Abduction, 2001 U. Ill. L. Rev. 669, at 676 (2001) (stating that grave risk exception must be proved by clear and convincing evidence, rather than merely a preponderance of the evidence).
\textsuperscript{121} LeGette, supra note 120, at 298.
\textsuperscript{122} Id. at 297-304.
\textsuperscript{123} Id. at 304.
Finally, if the child has reached the age of sixteen, the child is considered mature and may therefore object to the return. However, the Hague Convention does not set an age threshold in determining when a child is mature enough to object.

III. LEGAL ANALYSIS

A. Limitations of Existing International Responses

Both the Hague Convention and the Child's Rights Convention are strong mechanisms for dealing with the problems of child abduction and exploitation, respectively. Given that the problems this Note addresses occur in the context of international child abduction and result in abuse to children's human and civil rights, multinational responses should be evaluated within the context of these two existing treaties. Each treaty contains some effective provisions, but they are also plagued by limitations which inhibit them from effectively addressing the problem. This Note maintains that child sexual exploitation resulting from child abduction cannot properly and fully be addressed in the limited context of this existing legislation. Instead, it is a distinct and equally important issue, and as such, separate legislation needs to be introduced which adequately addresses this specific problem. However, given that some effective provisions are included in the Hague Convention and Child's Rights Convention, this Note advocates new legislation which would also include and expand upon currently available remedies.

124 See Hague Convention, supra note 102, art. 13 (providing exception where “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”). But see Hague International Child Abduction Convention, 51 Fed. Reg. 10494, at 10510 (Mar. 26, 1986) (stating that courts must ensure that views expressed by the child are clearly their own and not influenced by someone else).

125 See Rania Nanos, The Views of A Child: Emerging Interpretation and Significance of the Child's Objection Defense Under the Hague Child Abduction Convention, 22 BROOK. J. INT'L L. 437, 445 (1996). Because the Convention fails to specify a threshold age at which it is appropriate for the authorities to consider the child’s views, it invites potential subjective and arbitrary decision making. The inherent, discretionary nature of the Child's Objection Clause is aggravated further by the Convention's failure to delineate objective criteria for the courts to assess when exercising discretion.

Id.
1. Limitations of the Child's Rights Convention

The Child's Rights Convention recognizes the dangerous and exploitative problems related to the abduction of children. The Convention approaches all of these problems from the perspective of what is in the child's best interests. Recognizing that children have rights which are more easily susceptible to violation, distinguishes the Child's Rights Convention from preceding human rights treaties. Furthermore, there are provisions within the Child's Rights Convention which specifically address global issues such as child pornography, sex trafficking, and child abduction.

The treaty is limited, however, in that it does not put in place any laws or guidelines to govern the problems mentioned in the above provisions. Instead, it seems to merely recognize that these problems exist and that there should be a multinational response to help cure these problems. The Child's Rights Convention provides the contracting states with general directions as to which problems they should address; however, it does not place any binding rules upon the contracting states who have ratified the treaty. Rather, it simply suggests what goals each Member State should aim to achieve with respect to children's rights without prescribing any guidelines as to meeting these standards, or imposing any penalty for failing to do so.

One advantage of the Child's Rights Convention in abduction cases is that nearly all U.N. Member States have ratified it. The treaty is supported in Middle Eastern as well as developing countries where many of these exploitive problems seem to propagate. It is quite possible that so many countries have adopted the Child's Rights Convention because of its breadth. Not all

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126 Hague Convention, supra note 102, art. 7.
127 See generally The World Conference on Education for All (Jomtien, 1990); the World Summit on Children (New York, 1990); the Conference on Environment and Development (Rio de Janeiro, 1992); The Conference on Human Rights (Vienna, 1993); The Conference on Population and Development (Cairo, 1994); The World Summit on Social Development (Copenhagen, 1995); The Fourth World Conference on Women [which focused to a limited extent on the female child] (Beijing, 1995); and The First World Congress Against Commercial Sexual Exploitation of Children (Stockholm, 1996); see also Rochelle D. Jackson, Note, The War over Children’s Rights: And Justice for all? Equalizing Rights of Children, 5 Buff. Hum. RTS. L. REV. 223, 236 (1999) (stating that though similar to prior documents, the Child’s Rights Convention can be distinguished because of its contemporary redefinition of the child and focus on civil, political, economic, social, and cultural rights).
128 See generally Child's Rights Convention, supra note 69, arts. 11, 34-36.
129 See supra notes 88, 89.
130 See generally Hague Convention, supra note 102.
countries experience the same problems, and certainly not all Member States have equal resources, so it may be quite difficult to hold all the Member States to the same standard.\textsuperscript{131} The generally broad nature of the directives allows countries to implement their individualized means of combating the problems recognized by the Child's Rights Convention.\textsuperscript{132} However, if the Child's Rights Convention is so broad and expansive that it lacks clear and concise goals, many problems may persist. Giving too much independence to signatory nations may lead to a situation where there is no uniformity or sense of a common goal in combating certain global ills.

The Child's Rights Convention seems to be a perfect predecessor for a multinational initiative to address these problems. There is support throughout the treaty for the creation of other agreements that will effectively deal with these problems.\textsuperscript{133} However, despite the treaty's support of subsequent agreements, there have been none.

2. Limitations of the Hague Convention

The Hague Convention is advantageous for parents seeking the return of their missing child because it works within an organized structure. Every contracting country has a Central Authority; thus, authorities from the child's habitual residence and authorities from the country to which the child may have been abducted can effectively work together to secure the safe return of the child.\textsuperscript{134} The parents therefore have a designated agency to contact that is able to work with other Central Authorities and tap into resources that might not be available if the parents were to seek aid alone.\textsuperscript{135} For example, one advantage is that the Central Authority, rather than the parents, would absorb the costs associated with finding and returning the child.\textsuperscript{136} Thus, the parents of the missing child are able to receive legal aid in situations where they may

\textsuperscript{131} See, e.g., \textit{supra} notes 39, 40, 52, 55. Evidence suggests that countries approach the sexual exploitation of children differently. For instance, the focus of the countries that benefit financially from such activities should be different from those countries whose citizens create the demand for such activities. \textit{Id.}

\textsuperscript{132} See Child's Rights Convention, \textit{supra} note 69, arts. 11, 35.

\textsuperscript{133} See \textit{id.}

\textsuperscript{134} Hague Convention, \textit{supra} note 102, art. 8.

\textsuperscript{135} \textit{Id.}

\textsuperscript{136} \textit{Id.}
not have been able to afford the cost of legal help in an international proceeding.\textsuperscript{137}

However, the greatest limitation of the Hague Convention is that it is only applicable in cases where there has been a parental abduction; it provides no recourse for abductions occurring outside the immediate family.\textsuperscript{138} While parental abductions do comprise the largest percentage of abductions, other abductions occur frequently and are just as threatening to a child's well-being.\textsuperscript{139} Parental abductions usually occur after or during a divorce, when one parent wants complete custody of a child.\textsuperscript{140} However, abductions by strangers usually occur because the abductor wants to subject the child to exploitive or dangerous activities.\textsuperscript{141} While this is not to suggest that parental abductions do not expose the child to harm as well, the international response to other, more dangerous abductions has been extremely limited and largely inadequate in comparison.

A second limitation of the Hague Convention is that it is solely a civil remedy.\textsuperscript{142} There are neither punishment nor extradition provisions attached to the treaty. However, there is some indication that enacting such remedies would be difficult in light of the international tensions toward allowing criminal extradition for human rights violations.\textsuperscript{143} It is fundamental in international law that a state cannot maintain sovereignty over another state.\textsuperscript{144}

\textsuperscript{137} Hague Convention, \textit{supra} note 102, art. 26; \textit{see also} Anton, \textit{supra} note 106, at 554 (stating that the United Kingdom has entered a reservation regarding costs and only follows this article if the costs are being absorbed by legal aid).

\textsuperscript{138} \textit{See generally} Hague Convention, \textit{supra} note 102.

\textsuperscript{139} \textit{See} NCMEC website, \textit{supra} note 18.

\textsuperscript{140} \textit{See} Harper, \textit{supra} note 104, at 257 (stating, "[t]he desire to obtain custody of a child, for love of the child or simple spite toward the other spouse, can cause parents to pursue detrimental means to retain or regain custody"). \textit{See also} Dana R. Rivers, \textit{Comment, The Hague International Child Abduction Convention and the International Child Abduction Remedies Act: Closing Doors to the Parent Abductor, 2 TRANSNAT'L LAW. 589, 591 (1989) (stating that parents who resort to child abduction often fear losing a court battle or are dissatisfied with a custody decision; the abducting parent hopes to obtain a right of custody from the authorities of the country to which the child is taken).

\textsuperscript{141} \textit{See} NCMEC website, \textit{supra} note 18.

\textsuperscript{142} \textit{See generally} Hague Convention, \textit{supra} note 102.


\textsuperscript{144} \textit{See} Christopher M. Pilkerton, \textit{Traffic Jam: Recommendations for Civil and Criminal Penalties to Curb the Recent Trafficking of Women From Post-Cold War Russia, 6 MICH. J. GENDER & L. 221, 249 (1999).}
The fear that international criminal courts will limit state sovereignty, leading to the release of sensitive information related to state security, dissuades many nations from supporting international criminal laws.\textsuperscript{145}

Adopting such provisions may also help to deter those who recklessly remove children, including parents, without regard for the child’s best interest. If countries and intergovernmental agencies are going to address the problem of international abductions, then they must implement legislation which clearly communicates that this is a problem that will not be tolerated. If one can abduct a child with few or no repercussions, then the problem will only become exacerbated.

Currently, the Hague Convention merely provides that the abducted child be returned to the pre-abduction location, but does not require that the abductor also return. Thus, the abductor is permitted to remain in the location where the child is found, or to return to the pre-abduction location, without penalty. Creating concrete penalties, not limited to fines or imprisonment, will assist in achieving deterrence. These adjudications may be made by an international court or by individual nation courts.

Another limitation of the Hague Convention is that only contracting states can work together for the safe return of children.\textsuperscript{146} If a child is abducted and transported to a non-contracting country, there is no redress under the Convention and a “safe harbor” has been created.\textsuperscript{147} Presently, fewer countries have adopted the Hague Convention than the Child’s Rights Convention.\textsuperscript{148} The limited number of Contracting States, and the fact that most abductions are to non-contracting states, serve to severely limit the effectiveness of the Hague Convention.\textsuperscript{149} In fact, the Hague Convention may serve to encourage abductions to “safe haven” states; there are reports that the number of

\textsuperscript{145} Id. at 243. But see Charles P. Wallace, Widening the War on Child Sex; weak local enforcement has helped South Asia’s Vice Trade Flourish; Now the U.S. and European ‘consumer’ countries are joining the Battle to Keep Men from Seeking Young Prostitutes Overseas, L.A. TIMES, July 13, 1994, at A1.

\textsuperscript{146} See generally id. (describing various fears of signatory nations).


\textsuperscript{148} See Hague Convention, supra note 102 (stating that the Hague Convention currently applies to thirty-five states and territories as a result of ratification, acceptance, or approval and forty-one states and territories as a result of accession; Cf. supra notes 88-95 and accompanying text).

\textsuperscript{149} See Ayala, supra note 17, at A7 (stating that the U.S. State Department reports that more than 85 percent of all child abductions since 1973 have been to non-contracting states).
international kidnappings to non-contracting countries has increased, while those to Contracting States have decreased.  

Furthermore, the Hague Convention contains several other provisions that make it less effective. The first is the one year statute of limitations embodied in the Convention, which provides that "the judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year... shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment." Generally, in order to avoid the invocation of Article 12, proceedings must be commenced within one year. If a parent waits longer than one year to initiate proceedings, then the child may have already become acclimated to a new environment. However, in order for proceedings to commence with Central Authorities, there must be evidence of the child's whereabouts. Thus, the parent must pinpoint the child and initiate proceedings within one year or essentially forfeit any aid which may be offered by the Hague convention. Therefore, the Hague Convention provides no recourse whatsoever in dire situations where the abducting parent takes the child to an unknown locale and the custodial parent cannot locate the child within the first year.

Finally, the Hague Convention's age limitation considerably limits its effectiveness because it legally defines a child as anyone below the age of sixteen. Even more limiting is that the applicability of the Convention, including the assistance of the Central Authorities, ceases when the child reaches the age of sixteen, regardless of how close the parent may be to recovering the missing child.

B. Proposal for New Legislation

Despite the limitations within the Child's Rights Convention and the Hague Convention, they are both well-meaning efforts to address difficult problems.

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150 See Jim Pinkelman, Child Custody Unit Helps Parents Keep Track, U.S. Dep't of State Dispatch, Jan. 21, 1991, at 49.
151 Hague Convention, supra note 102, art. 12.
152 Id.
153 See Frank, supra note 147, at 450.
154 Id.
155 Hague Convention, supra note 102, art. 12.
156 See id. art. 4; see also infra notes 160-61 and accompanying text.
However, in order to address the problem of international child abduction effectuating child exploitation, countries must actualize the provisions of the Child’s Rights Convention by creating and implementing a treaty that specifically addresses the problems. Such a treaty would seek to curtail child abduction for purposes of sex trafficking, child pornography, child prostitution, or any other equally lewd and exploitive purposes. Such an act would likely be an amalgamation of certain provisions in both the Hague Convention and the Child’s Rights Convention. Utilizing the most effective aspects of each treaty while eliminating the more restrictive provisions could lead to a more operative method of addressing the problem.

The purpose of such a treaty should be premised on several provisions concerning child abduction, sexual exploitation, and other related activities addressed directly in the Child’s Rights Convention. A hybrid of Articles 11, 32, 33, 34, 35 and 39 is proposed as follows:¹⁵⁸

States Parties shall take measures to:

(1) combat the illicit transfer and non-return of children abroad;
(2) recognize the right of the child to be protected from economic exploitation;
(3) protect children from the illicit use of narcotic drugs and to prevent the use of children in the illicit production and trafficking of such substances;
(4) protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:
   (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
   (b) The exploitative use of children in prostitution or other unlawful sexual practices;
   (c) The exploitative use of children in pornographic performances and materials.
(5) implement appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of, or traffic in children for any purpose or in any form.
(6) promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploita-

¹⁵⁸ Child’s Rights Convention, supra note 69, arts. 11, 32-35, 39.
ition, or abuse. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.\textsuperscript{159}

Article 1 of the Child's Rights Convention, which defines a child as anyone below the age of eighteen, should be adopted.\textsuperscript{160} Since the purpose of the treaty is to deal with and curtail the damaging effects to children, such an adoption would provide greater protection to affected children. This would also eliminate the restrictive enforcement of the Hague Convention, which does not apply once children reach the age of sixteen.\textsuperscript{161}

Furthermore, the provisions of Article 4 of the Child's Rights Convention should be adopted as well:

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.\textsuperscript{162}

This provision would allow a variety of nations to adopt the Convention without committing themselves to impossible goals based on limited resources. In its present form, the Child's Rights Convention contains numerous directives, such as a child's right to have a birth name and nationality, and a disabled child's right to be treated with dignity. The proposed treaty provision, however, would be limited solely to the rights mentioned above.\textsuperscript{163} The provisions are straightforward and there would be no danger that an adopting country would have to commit itself instantaneously to the implementation of a multitude of directives to achieve the aims of the treaty. Instead, it would allow a Contracting State to work within its own individualized limitations when implementing specific legislation to enforce the provisions of the agreement.

\textsuperscript{159} Id.
\textsuperscript{160} Id. art 1.
\textsuperscript{161} See Hague Convention, supra note 102, art. 4.
\textsuperscript{162} Id.
\textsuperscript{163} Id. arts. 7, 23.
Although the new treaty would allow Contracting States freedom in decision-making in attaining the goals, it should contain more pointed suggestions and initiatives designed to achieve the goals of the treaty than do the existing documents. For instance, the treaty could call for stricter standards at border crossings and international airports. The treaty could suggest that countries engage in better training of officials to recognize common abduction situations, or invest in computer systems which contain current information, such as pictures and descriptions of recent missing children. It could also require that each country appoint a special task force to seek out multi-level exploitive activities, such as child prostitution rings.

The new treaty should expand the use of Central Authorities embodied in the Hague Convention to non-parental kidnapping situations. In the alternative, it could implement a similar body that focuses solely on cases involving abductions by strangers. Either way, the treaty should allow for an interconnected system whereby each ratifying state has a centralized and recognizable body that deals with these situations. Such a treaty, like the Hague Convention, should also allow for the absorption of costs associated with the work so as not to deter poorer families from seeking the return of their missing children.

The aid and provisions of such a treaty should be available and effective for as long as the missing child remains under the age of eighteen or has not reached an age of majority. Furthermore, the treaty should allow proceedings to be brought before officials without first knowing the child’s whereabouts. The treaty should be premised on helping to find and return the child safely, rather than restricting search efforts on the basis that an abductor has failed to leave any evidence as to the child’s whereabouts. With this provision in place, the one-year statute of limitations of the Hague Convention should be included in such a treaty, not because a parent waiting longer than a year to initiate proceedings has acquiesced to the removal, but because the treaty should encourage people to take immediate action. The longer someone waits to inform authorities, the more difficult it becomes to find both the child and the abductor.

Finally, very strict criminal penalties, including, but not limited to extradition, imprisonment, and possibly capital punishment for individuals who abduct children for exploitive purposes should be a staple of the treaty. Recognizing that such a provision may thwart ratification and raise concerns regarding the overreach of international criminal law, the treaty should alternatively include extraterritorial provisions which allow states to use their own criminal laws to punish citizens engaging in the sexual exploitation of
children.\textsuperscript{164} Some countries have already adopted laws that effectively do this, and an expansion of these laws to an international scope would be more effective and less controversial.\textsuperscript{165} Hopefully, such a feature would serve as a deterrent to such activities. The extradition article would also help to eliminate “safe haven” states where the abductor may escape capture simply because they have fled to a country that has not adopted the treaty. This is a current problem under the Hague Convention; however, ratification of the proposed treaty should not be necessary in order for two nations to agree to an extradition.

IV. CONCLUSION

As the world moves towards globalization, there is an increasing problem of international child abductions where children are abducted and transported across national borders. Further exacerbating the problem is that these child victims are often subjected to highly dangerous and illegal commercial sex trade activities such as child pornography, sex tourism and trafficking, and child prostitution, after being lured away by kidnappers.

As global advancements in telecommunications, Internet technology, and greater ease in international travel occur, it becomes easier for abductors to elude capture. Furthermore, as demand for these exploitive activities increases, so too do the abductions. International response to the problem has been slow, and no initiatives, treaties, or agreements have been implemented which specifically address the problem. Two treaties, The Hague Convention and The Child’s Rights Convention, contain some relevant provisions but neither is directly on point.

The Child’s Rights Convention calls for redress against exploitation of children, abduction of children, and other human rights related issues. This Convention specifically recognizes the problem of sexual exploitation of children and states that parties to the convention shall work to prevent children from being subjected to such activities. The Child’s Rights Convention also states that no child should be separated from his/her family, and condemns the illicit transfer and non-return of children. Finally, it calls for international

\textsuperscript{164} See generally supra notes 142-45.
\textsuperscript{165} See Berkman, supra note 10, at 412-16 (describing Swedish, German, Australian and U.S. extraterritorial statutes which prosecute and penalize citizens based on activity related to sex tourism and pornography).
response by way of bilateral or multilateral agreements or accession to existing agreements.

The Hague Convention of the Civil Aspects of International Child Abduction seeks to protect children from the harmful effects of abduction and facilitate the return of children through a centralized system. Each ratifying country agrees to implement a Central Authority which absorbs the costs, works with authorities in other countries, and initiates legal proceedings so that the child will be returned to the habitual residence for proper determination of custody proceedings. The Hague Convention is merely a civil remedy and does not impose any criminal liability. Furthermore, the Hague Convention is only applicable to parental abductions and does not apply to abductions by strangers or persons over the age of sixteen.

The Child’s Rights Convention is advantageous in that it specifically recognizes exploitive practices and classifies them as human rights violations. The Convention approaches sexual exploitation and other activities from the standpoint that they are global issues that require a multilateral response. However, the Child’s Rights Convention provides few guidelines for solving the problems of sexual exploitation and child abduction. The treaty seems to merely recognize that such practices constitute a violation of a child’s rights and should be eradicated.

The Hague Convention provides for a highly organized and efficient method for “left behind parents” to have their missing children returned. The Central Authorities are specialized agencies committed to the return of internationally abducted children. The treaty provides for true international cooperation by encouraging the Central Authorities of all nations to work together; it also provides for legal proceedings to determine the proper custody of children. The biggest limitation to the Hague Convention is that it is limited solely to parental abductions. The age limitation imposed by The Hague Convention provides those missing children above the age of sixteen, and their families, no recourse or protection. Finally, the Hague Convention is further limited by the fact that it provides for only a civil remedy and does not impose any criminal liability.

In order to properly address the problems of both child abduction and sexual exploitation, a separate and distinct act should be created. Such an act should incorporate the most effective aspects of the Child’s Rights Convention and the Hague Convention. Furthermore, such a treaty should eliminate some of the limitations associated with these acts. The new treaty should require states to combat the abduction, sale, or traffic of children, use of children for economic exploitation, while protecting children from sexual exploitation and
abuse such as child pornography and prostitution. By recognizing that there is a problem, the treaty may lead to better information and more reliable figures as to those affected by the problem.

The treaty should be applicable to all children under the age of eighteen. Countries adopting the Convention should implement local and national laws, which further the purpose of the treaty based upon the country—specific issues and resources. In connection with this concept, the treaty should offer some specific directives as to how countries can achieve the purposes of the treaty. The use of Central Authorities as embodied in the Hague Convention should be a mainstay of the treaty so that there can be an interconnected system of centralized and specialized agencies addressing the problem. Parents should be able to utilize the assistance of the Central Authority without payment and without knowing the specific whereabouts of the missing child, so long as they seek aid within one year of the abduction. Finally, the treaty should include extradition and imprisonment provisions and should enact stricter criminal penalties.

These measures will likely help deter child abduction. Implementing these policies under a new treaty will specifically address the problems of child abduction and sexual exploitation and seek to remedy areas in which past treaties have failed.