NOTES

A DIFFICULT SITUATION MADE HARDER: A PARENT’S CHOICE BETWEEN CIVIL REMEDIES AND CRIMINAL CHARGES IN INTERNATIONAL CHILD ABDUCTION

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I. INTRODUCTION

All Kellie Martin needed to do was get to Guatemala with her three children. She attempted to do just that in July 2006, but Mexican officials found her in Oaxaca near the Guatemalan border, carrying her children in her car.¹ Why Guatemala? Was Mexico not “safe” enough to escape American authorities? More than likely, Martin had no other motivation for leaving California and choosing Guatemala other than her husband lived there.² However, a larger legal implication accompanied what may have been a non-legal decision. Guatemala was, at the time, not a signatory³ to the Hague Convention on the Civil Aspects of International Child Abduction (the Convention),⁴ and like many other countries, refused to consider parental kidnapping a crime.⁵ This combination potentially leaves left-behind parents without mechanisms to ensure the quick return of their children if abducted across a foreign border. Countries like the United States, Mexico, and Canada, by subscribing to the Convention, allow parents of abducted children to invoke the Convention return process.⁶ In a time of familial turmoil, the Convention, although arduous, purports to provide a legal alternative that prior to its ratification was simply unavailable.⁷ Issues arise because the process proves not only laborious but nearly impossible to navigate.

² Id.
⁵ Bjelland, supra note 1; see also Hague Abduction Convention Country List, supra note 3.
⁷ See PAUL R. BEAUMONT & PETER E. MCELEAVY, THE HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION 2–3 (P.B. Carter QC ed., 1999) (suggesting that a remedy was not needed before the late twentieth century since the modern era created an intersection of increased travel, international marriages, and divorce rates which led to situations the law had no reason to address before the Convention).
The fathers of Kellie Martin's children were lucky. The children were found within one month of being abducted.8 An arrest warrant allowed police to search a national database of vehicle information which alerted them that Martin had entered Mexico.9 Invoking the Convention seemed to be an afterthought in this case. Perhaps the police only thought about the International Parental Kidnapping Crime Act10 (IPKCA) as an extradition tool for the children’s return. Where was the Convention, the civil remedy, in a situation like this? The police discovered the protocol only after calling the National Center for Missing and Exploited Children (NCMEC).11 Why would officials bother resorting to the Convention if criminal procedure secured the safe and quick return of the children? While the result was joyous using criminal mechanisms, the Convention played no role in the recovery and return plan concerning Martin’s children, although it exists to aid in similar cases.

The reality of this situation seems disjointed. Mexico, for example, is the destination of choice for most abductors of American children.12 Kellie Martin took her children from California. Local police officials admittedly lacked knowledge about international protocols for missing children,13 despite sharing a border with Mexico. Martin is not the first, and will not be the last, parent to take his or her children to another country without permission. Her situation demonstrates the need for a system that brings about just and expedient results.

Despite the passage of the Convention, many parents consider international child abduction a viable option.14 The inevitable intersection of the Convention and criminal laws presents a difficult choice for left-behind

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8 Bjelland, supra note 1; see also NIGEL LOWE ET AL., CARDIFF LAW SCH.CTR. FOR INT’L FAMILY LAW STUDIES, COUNTRY REPORT: MEXICO 16 (2002) (explaining that some Mexican Convention cases are still open two years later because children have not been located), available at http://www.missingkids.com/en_US/publications/Mexico_E.pdf.
9 Bjelland, supra note 1.
11 Bjelland, supra note 1.
13 Bjelland, supra note 1.
14 Janet Chiancone, Linda Girdner & Patricia Hoff, Issues In Resolving Cases of International Child Abduction by Parents, JUV. JUST. BULL. (U.S. Dep’t of Just., Office of Juv. Just. & Delinq. Prevention, Washington, D.C.), Dec. 2001, at 1, available at http://www.nejrs.gov/pdffiles1/ojdp/190105.pdf. The viability of the option stems from many situations, such as domestic violence or a parent’s desire to return to their home country. However, most abductions involve the parent believing they can utilize the legal system of a different country to secure custody of his or her children. Id.
parents. The United States, as well as other countries like Mexico and Canada, advocate civil tactics before pursuing criminal procedures in securing the return of children. This leaves left-behind parents choosing between an international process and expediency. A compromise between the civil remedies and criminal charges proves to be the best solution, especially in situations where the Convention will certainly fail or already has.

The lack of procedural knowledge and cohesive execution by country officials are the two predominant reasons the Convention fails to achieve its goal "to promote a speedy, summary return of children who have been wrongfully removed from, or retained outside, their countries of habitual residence." This Note seeks to first explore the implications of pursuing civil remedies and criminal charges in securing a safe return of an abducted child, and to then find a solution using both options. Part II examines the historical background and structure of the Convention. Part III evaluates the legal implementation in the United States, Mexico, and Canada, as examples of countries that have both Convention and criminal mechanisms. Part IV explores the general reluctance by Convention countries to employ criminal remedies in parental kidnapping cases. Finally, Part V suggests situations where employing criminal charges may successfully impact future situations in light of past cases and current political and legal developments.

II. THE HISTORICAL BACKGROUND AND STRUCTURE OF THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

Prior to the Convention, locating and securing an abducted child was a nearly impossible task. In 1976, multiple countries' leaders agreed a solution was necessary to address concerns regarding abducted children and their delayed return. Twenty-three countries agreed to draft what became the completed 1980 Convention. The Convention provides a civil framework for processing a return or access request from another country in order to quickly

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17 See BEAUMONT & MCELEAVY, supra note 7, at 3.
18 See The Convention, supra note 4, pmbl. (demonstrating the conviction of Convention signatories to address the effects of children).
restore the child's pre-abduction situation without criminal penalties.\textsuperscript{20} The Convention seeks to remedy the wrongful removal of any child from their habitual residence and legal custodian.\textsuperscript{21}

The Convention's drafters specifically rejected the inclusion of any criminal provisions or penalties.\textsuperscript{22} A pre-conference survey showed that the Hague's "private international law approach... would be incapable of dealing with... a legal kidnapping."\textsuperscript{23} Therefore, a civil remedy approach became the basis of the Convention.\textsuperscript{24}

\textbf{A. The Convention Process—A General Overview}

The left-behind parent begins the process by submitting an application to his or her own country's central authority, which transfers the information to the contracting state where the abductor is believed to be.\textsuperscript{25} Article 8 of the Convention outlines the appropriate application information, including identification records, possible location of the child, and grounds for claiming the child's return, such as any custody or court orders.\textsuperscript{26}

Although this appears to be a time consuming application, the Convention actually streamlined a confusing process of finding abducted children and works to deter future abductions.\textsuperscript{27} The application ensures each central authority has all needed information to locate the child in the fastest way possible. Uniform information simplifies the information sharing system.

\textsuperscript{20} GERALDINE VAN BUEREN, THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD 91 (1995); see also The Convention, supra note 4, art. 4 (stating a child will be returned to the habitual residence "immediately before any breach of custody or access rights").

\textsuperscript{21} The Convention, supra note 4, arts. 1–3. The Convention defines wrongful removal as where "[the removal] is in breach of rights of custody attributed to a person, an institution or any other body... at the time of removal or retention those rights were actually exercised." \textit{Id.} art. 3. Article 4 also sets the applicable age at sixteen at which time the Convention is no longer controlling. \textit{Id.} art. 4.

\textsuperscript{22} BEAUMONT & MCELEAVY, supra note 7, at 17.

\textsuperscript{23} \textit{Id.}

\textsuperscript{24} \textit{Id.}

\textsuperscript{25} \textit{See} The Convention, supra note 4, arts. 6–8. Governments provide the vehicle by which the application process begins. However, for example, the U.S. Department of State makes it clear that the parent is the party to the action and not the government. \textit{See} Hague Convention Abduction Issues, supra note 6.

\textsuperscript{26} The Convention, supra note 4, art. 8.

between contracting states that once used multiple sporadic triggering procedures to begin locating an abducted child.\textsuperscript{28}

\textbf{B. The Difference One Year Makes}

The Convention is based on a one year time frame that outlines the return process.\textsuperscript{29} The drafters adopted a compromise between automatic and discretionary return.\textsuperscript{30} At the Convention drafting, most states refused to support a document that withheld domestic court discretion over Convention merits and the best interests of the child.\textsuperscript{31} The solution is found in Article 12 of the Convention. If a case begins within a year from the date of abduction and the removal was wrongful, the child automatically returns to their habitual residence.\textsuperscript{32} However, if the case begins more than one year from removal, and the contracting state court judge decides that ordering return creates more harm to the child, then the return request can be denied.\textsuperscript{33}

\textbf{C. The Convention Does not Decide Custody}

The drafters attempted to provide a deterrent to abductors.\textsuperscript{34} A decision to return the child is not a final decision on custody.\textsuperscript{35} Any disputes as to custody will be decided in the child’s habitual residence upon return.\textsuperscript{36} Thus, even if return is ordered, the taking parent may legitimately prevail on custody issues later.\textsuperscript{37}

\begin{thebibliography}{9}
\bibitem{28} See \textsc{Jeremy Rosenblatt}, \textit{International Conventions Affecting Children} 37 (2000).
\bibitem{29} The Convention, supra note 4, art. 12.
\bibitem{30} \textsc{Beaumont \\& McElevy}, \textit{supra} note 7, at 18.
\bibitem{31} \textit{Id.} at 18–19.
\bibitem{32} The Convention, \textit{supra} note 4, art. 12.
\bibitem{33} \textit{Id.} (explaining that by showing that a child is “settled in [his or her] new environment,” the taking parent can prevent the return of a child). See also \textit{id.} at pmbl.
\bibitem{34} \textsc{vanBuereen}, \textit{supra} note 20, at 91.
\bibitem{35} The Convention, \textit{supra} note 4, art. 19. \textit{See also Rosenblatt}, \textit{supra} note 28, at 37 (describing different custodial situations possibly included in a Convention request).
\bibitem{36} The Convention, \textit{supra} note 4, art. 19.
\end{thebibliography}
The taking parent may alternatively benefit from safeguards built into the Convention. The Convention seeks to optimize child welfare and operates on the child's best interest standard, and therefore provides a defense to the return of a child. Article 12 of the Convention governs the outcome if the child has been in the contracting country for more than a year; the child shall be returned "unless it is demonstrated that the child is now settled in its new environment." Other defenses are also available to the taking parent who believes his or her children should not return to their pre-abduction status. The person who opposes return will not be forced to comply if they can demonstrate the Convention applicant exercised no custody or access rights prior to abduction or in some way agreed to the removal. Even though the Convention ceases to apply when the child is sixteen, the court of the contracting country may find a child is mature enough to object to his or her return earlier than age sixteen. This so called "Child's-Objection Clause" raises considerable controversy within camps opposed to giving the child too much influence. Others support the clause, claiming the child's voice is suppressed without it.

III. THE CONVENTION IN ACTION

A. The United States

The United States was a leading force in drafting the Convention. The United States codified the Convention as the International Child Abduction Remedies Act (ICARA) in 1988. Congress firmly endorsed the Convention by adopting it without additions or subtractions.

38 VAN BUIEREN, supra note 20, at 91. See also The Convention, supra note 4, art. 13(b) (stating that when a child would suffer physical or psychological damage return may not be ordered).
39 The Convention, supra note 4, art. 12.
40 Id. art. 13(a).
41 Id. art. 13(b).
42 Greene, supra note 27, at 118.
43 Id.
46 Id. § 11601; see also H.R. REP. NO. 100-525, at 5 (1988), as reprinted in 1988 U.S.C.C.A.N. 386, 387 (supporting the general purpose of the Convention to restore the child to factual situation pre-abduction and only resolving disputes on the merit of the Convention).
The United States designated the Department of State as its central authority.\textsuperscript{47} The Department of State website provides general information about issues concerning child abduction.\textsuperscript{48} In practice, however, the National Center for Missing and Exploited Children (NCMEC) functions as the central authority, and the Department of State oversees the NCMEC's work pursuant to federal regulations.\textsuperscript{49} The United States Convention application process generally follows the Convention process described in Part II of this Note.

The United States works to comply with both the general protocols set up by the Convention and those imposed by ICARA.\textsuperscript{50} The latest compliance report by the Department of State evaluated its performance as the U.S. central authority and compared its productiveness of return with other countries.\textsuperscript{51} The report also focused on other countries' responsive readiness to remedy a case immediately\textsuperscript{52} and its ability to carry out the Convention.\textsuperscript{53} The Department of State did not only look at the countries in isolation, but instead considered the countries' pattern of compliance from year to year and noted changes to that effect.\textsuperscript{54}

\textsuperscript{49} 22 C.F.R. § 94.6 (2007) (outlining the functions that NCMEC will carry out per the Department of State's direction including receiving Convention applications, confirming the child's location, ascertaining the child's welfare, working with state officials, seeking information from foreign authorities, and beginning court action).
\textsuperscript{50} The Convention suggests that signatories and contracting parties implement policies to foster the goals of the Convention. The Convention, \textit{supra} note 4, art. 2. In enacting the ICARA, Congress included a provision requiring the United States Central Authority to prepare an annual report on United States' compliance with the Convention. ICARA, 42 U.S.C.A. § 11611.
\textsuperscript{52} "Immediately" is considered to be as little as six weeks under the Convention. The Convention, \textit{supra} note 4, art. 11.
\textsuperscript{53} REPORT ON COMPLIANCE, \textit{supra} note 51, at 8–9.
\textsuperscript{54} \textit{Id.}
B. Mexico

Mexico was not a member of the Hague Convention at the time of drafting, but acceded on September 1, 1991.\textsuperscript{55} The Convention became binding between the United States and Mexico a month later.\textsuperscript{56} Mexico consists of thirty-one states and a Federal District (D.F.).\textsuperscript{57} Article 133 of the Mexican Constitution asserts that each state must adhere to the Convention once the President and Senate have approved it, the Convention applies to all states.\textsuperscript{58} Mexico’s official Central Authority is the Secretaría de Relaciones Exteriores (SRE)\textsuperscript{59} which works together with the Desarrollo de Integral de la Familia (DIF), which is located in most states.\textsuperscript{60} Convention applications must be sent directly to the SRE, which petitions the DIF in the state of the child’s supposed location.\textsuperscript{61} The state’s Superior Court of Justice receives the application and then assigns a family court judge.\textsuperscript{62} A DIF attorney represents the child’s interest in any initial proceedings.\textsuperscript{63}

The application process parallels the general Convention process described above except that all documents must be translated into Spanish.\textsuperscript{64} Mexican officials also suggest a statement of the anticipated abductor’s location once he learns of the Convention Proceedings.\textsuperscript{65}

Two major obstacles plague Mexico’s ability to process Convention cases quickly. One is based on Mexican law—binding case law in Mexico is scarce, due to the Amparo system. "An Amparo is a procedure that may be taken to review the constitutionality of an action of an executive agency, a court or a

\textsuperscript{55} LOWE ET AL., supra note 8, at 2.
\textsuperscript{56} Id. at 2 (explaining that simply because a state accedes to the Convention, other member states are not obligated to recognize the new state’s accession).
\textsuperscript{57} Id. at 1.
\textsuperscript{58} Constitución Política de los Estados Unidos Mexicanos [Const.], as amended, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.); LOWE ET AL., supra note 8, at 1.
\textsuperscript{60} LOWE ET AL., supra note 8, at 3–4 (explaining that twenty-nine of thirty-one states contracted with Mexican Foreign Ministry to work on Convention Proceedings and, in the D.F., the national DIF handles proceedings).
\textsuperscript{61} Id. at 4.
\textsuperscript{62} Id. at 5.
\textsuperscript{63} Id. at 4.
\textsuperscript{64} Child Abduction-Mexico, supra note 59.
\textsuperscript{65} LOWE ET AL., supra note 8, at 6.
judgment itself. 66 Five successive Amparos with similar holdings create binding precedent. 67 A parent in a Convention proceeding in Mexico can file an Amparo and suspend a decision on the child’s return until the court resolves the Amparo issue. 68 Since the one year mark is paramount to securing the abducted child’s return, a complete application and correct adherence to Mexican law necessarily avoids an Amparo delay. 69

The second delay that usually occurs is locating the child. In Mexico, the child’s location must be known before a case is opened. 70 If the exact location is unknown, SRE sends Convention information to the Procuraduría General de la Republica (PGR) in D.F., which in turn sends it to an office near the child’s supposed location. 71 PGR operates much like NCMEC and maintains a missing children’s website with the NCMEC’s help. 72 Locating missing children is daunting, with some cases remaining unsolved two years after a Convention application was made. 73 A 2001 agreement between missing children organizations and Mexican federal police allowed the organizations access to national information databases, with the expectation of cutting the time it takes to locate a child in some cases to one week. 74 However, the average time of locating a child has not changed. In an April 2006 report, the United States Department of State noted frustration with Mexico’s ability to locate children. 75 Since location starts a case, and a case must begin within a year to warrant automatic return, quickly locating a child in Mexico cannot be overemphasized.

66 Id. at 5.
67 Id. at 1.
68 Id. at 5. While “there have been no Amparos filed questioning the Hague Convention itself,” id., the United States reports that Amparos are excessive and cause undue delay in cases. See REPORT ON COMPLIANCE, supra note 51, at 23.
69 LOWE ET AL., supra note 8, at 5.
70 Child Abduction-Mexico, supra note 59 (explaining that a case cannot be opened without specific location information).
71 LOWE ET AL., supra note 8, at 5.
72 Id. at 5. There are also two missing children organizations in D.F. – LOCATEL and CAPEA. Id. at 6.
73 Id. at 6.
74 Id.
75 See REPORT ON COMPLIANCE, supra note 51, at 23.
C. Canada

Like the United States, Canada also moved for a stronger stance on international child abduction. Canada originally proposed a Convention to the Hague and was the second country to ratify the Convention. Each province then ratified the Convention, which proved an integral step since custody is solely a provincial matter in Canada. The Federal Central Authority acts as an information forwarding agent that works with individual provincial central agencies. Applicants may send requests to the suspected province if it is the child’s known location.

Canada’s unique custody laws create a twist on the Convention. In Canada, like in the United States, both legitimate and legal parents generally enjoy custody. But each province differs on its specific laws. For example, British Columbia recognizes equal rights as long as the parents lived together at the time of the child’s birth. Another province, Ontario, provides access to custody for both parents regardless of marriage or living arrangements. The variance in custody laws potentially makes a difference in final custody agreements as examined under the Convention. A custody agreement is integral to determining if the removal of a child was wrongful, even though a Convention decision is not a final decision on custody. Due to the varying provincial laws, location of the left-behind parent or a child abducted to Canada plays a key role in determining whether a removal was wrongful under

77 FOREIGN AFFAIRS CANADA MANUAL, supra note 37, at 12.
78 Id.
79 See HUTCHINSON ET AL., supra note 16, at 70 (displaying a chart to identify when each province adopted the Convention—most did so between 1986 and 1987).
80 Department of Justice Canada, supra note 76.
81 HUTCHINSON ET AL., supra note 16, at 73. Canada’s central authority is the Department of Justice and the provincial authorities are “Ministries of Justice and/or Attorneys General.” Department of Justice Canada, supra note 76.
82 HUTCHINSON ET AL., supra note 16, at 73.
83 Id. at 71.
84 Id.
85 Id.
86 See The Convention, supra note 4, art. 3 (explaining that removal or retention of a child is wrongful if it is “in breach of rights of custody attributed to a person . . . either jointly or alone”).
the Convention, which may in turn determine whether the Convention can recover the child.

One primary obstacle exists in the Canadian Convention process. Canada has "no uniform Convention procedure." Each province approaches the Convention in a different way, with one exception. Each province, joined by the Department of Justice, attempts to negotiate the return of the child regardless of legal proceedings. Outside of voluntary return negotiations, the court process is sporadic because each state determines where a Convention case is heard. For example, in Manitoba, the United Family Law Division hears Convention cases. But in Alberta, some members of the Queen’s Bench simply assumed the role of hearing Convention cases. Cases in Nova Scotia and Ontario go to superior courts. Which court hears a request depends on the type of Convention case—in other words, whether the child’s location is known or not.

Legal Aid provides lawyers to needy applicants, with eligibility and cost depending on the applying parent’s country. Overall, Canadian officials seem familiar with and receptive to working on Convention issues. Literature published by the government also attempts to accurately portray the process to parents involved in Convention proceedings.

IV. GENERAL RELUCTANCE TO USE CRIMINAL CHARGES

Due to the stated Convention purpose of securing the return of children, contracting countries generally discourage utilizing criminal laws. The
United States, Mexico, and Canada are no different, and warn of negative
effects associated with pursuing criminal charges, even though each country
has federal laws criminalizing international parental kidnapping.

In 1993, the United States further strengthened its stance on international
crad abduction by passing IPKCA. The purpose of IPKCA essentially
mirrors that of the Convention: to deter removal of children from the United
States to other countries. Punishment under IPKCA carries no more than
three years imprisonment, a fine, or both. Congress also attempted to deter
parents from pursuing criminal charges for reasonable mistakes or situations
out of their control.

Congress had no intention of replacing the Convention with IPKCA. Congress explicitly established a hierarchy of pathways to the recovery of an
abducted child. The message was clear: when it is possible to use the
Convention, use it first. Why did Congress pass such a law if the
Convention remains in play? There may be two answers. One is presented in
IPKCA's legislative history. International parental kidnapping was not a
federal crime before IPKCA, and state law provided a poor vehicle for parents
to seek return of abducted children. Some states still do not have parental
kidnapping laws. A federal law allows United States officials to petition
other countries on behalf of the individual states, and sends a message to other

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96 Hague Convention Abduction Issues, supra note 6; FOREIGN AFFAIRS CANADA MANUAL, supra note 37, at 19–20.
100 Id. § 1204(c). This section provides affirmative defenses including the defendant having a valid court order concerning rights of custody or visitation. It also provides a defense in the case of domestic violence. Again, these are affirmative defenses and their effectiveness in practice is beyond the scope of this Note.
101 Id. § 1204(d) (stating "This section does not detract from [the Convention]").
   It is the sense of Congress that, inasmuch as use of [the Convention] has resulted in the return of many children, those procedures [in applicable circumstances] should be the option of first choice for a parent who seeks the return of a child who has been removed from the parent.
President Clinton also reinforced this sentiment upon signing the IKPCA into law. Id.
103 H.R. REP. No. 103-390, at 2.
104 See, e.g., United States v. Fazal-Ur-Raheman-Fazal, 355 F.3d 40, 44 (1st Cir. 2004) (explaining that under Massachusetts law the defendant violated no law because there was no court proceeding in process at the time of taking).
countries and abductors that America is serious about international parental kidnapping.105

A second, and more subtle, reason to pronounce the Convention as a first choice is the protection and safe return of abducted children. Advocates of the Convention feel that if returning the child involves a criminal charge against the abductor, then the criminal law can exacerbate the problem by forcing the abductor, and the abducted child, into hiding.106 With the purpose of the Convention to secure the child’s return, punishing the abductor seems secondary to securing the child’s return. While criminal and civil actions can be pursued simultaneously, United States consulates warn that pursuing both may have adverse results and slow the process.107

According to the United States Department of State, Mexican prosecutors occasionally work with the DIF to secure the return of the child.108 Like the United States, Mexico passed a federal law criminalizing international parental kidnapping.109 Only those with parental rights can request action under this law.110 A warrant is issued which allows the police to search for the child.111 Punishment includes “18 months to 5 years imprisonment and a fine the equivalent of 200 to 500 days pay.”112 The law also contains an extradition provision.113

Canadian law also provides for criminal mechanisms in child abduction. The Canadian child abduction laws apply to any person who “unlawfully takes, entices away, conceals, detains, receives or harbours [a child] with intent to deprive a parent . . . of the possession of that person.”114 The law only applies to minors fourteen years old and younger,115 whereas the Convention applies

106 VAN BUEREN, supra note 20, at 91.
108 Child Abduction-Mexico, supra note 59.
109 LOWE ET AL., supra note 8, at 11.
110 Codigo Penal Federal [C.P.F.] [Federal Criminal Code], Diario Oficial de la Federación [D.O.], 12 de Junio de 2000 (Mex.). See also LOWE ET AL., supra note 8, at 11.
111 LOWE ET AL., supra note 8, at 11.
112 Id.
113 Id.
115 Id.
to those sixteen years old and younger.\textsuperscript{116} The maximum penalty is ten years imprisonment.\textsuperscript{117}

Since lawful and unlawful removals often depend on the specifics of custody orders, Canada provides penalties for abducting children regardless of the abductor's belief in the custody agreement's validity.\textsuperscript{118} This provides reciprocity by courts as well, recognizing custody agreements made "by a court anywhere in Canada."\textsuperscript{119} Because custody procedures differ by province, a parent may find comfort in knowing that the end result is recognized nationwide-leaving one less hurdle to the child's return. The government recommends having multiple certified copies of the agreement on hand to give to necessary parties.\textsuperscript{120}

One difference between Canada and other countries is the scope of its abduction law. Canada's law applies to anyone who takes a child, regardless of where the child is taken.\textsuperscript{121} Because the law includes both international and local kidnapping, there is no double standard like the one IPKCA remedied in the United States. Hopefully, this deters parental kidnapping regardless of destination. However, the Canadian government still suggests that parents and law enforcement agents discuss other options before pursuing criminal charges.\textsuperscript{122} The central authorities will also discuss the options with law enforcement.\textsuperscript{123}

With Mexico, Canada, and the United States having similar provisions, it seems that pursuing criminal charges should be easier. But the countries' Central Authorities urge using the Convention process first. The Convention provides civil mechanisms, which are preferable to criminal charges, even to those signatory countries with criminal statutes. One reason, according to the United States, is that most countries do not consider parental kidnapping a crime, much less an extraditable offense.\textsuperscript{124} "Courts in some countries, including the United States, have denied return of children solely because the

\textsuperscript{116} The Convention, \textit{supra} note 4, art. 4.
\textsuperscript{118} \textit{Id.} §§ 282–283. The abductor may not say that he believed the custody order was invalid as defense to taking the child. \textit{Id.} § 282(2).
\textsuperscript{119} \textit{Id.} § 282(1).
\textsuperscript{120} \textit{FOREIGN AFFAIRS CANADA MANUAL}, \textit{supra} note 37, at 6.
\textsuperscript{121} \textit{HUTCHINSON ET AL.}, \textit{supra} note 16, at 74.
\textsuperscript{122} \textit{FOREIGN AFFAIRS CANADA MANUAL}, \textit{supra} note 37, at 10.
\textsuperscript{123} Canada's Response, \textit{supra} note 88, question 19.
\textsuperscript{124} \textit{BEAUMONT & MCELEAVY}, \textit{supra} note 7, at 28 n.2 (explaining that in 1999 only three countries had federal parental kidnapping laws and these countries are members of the Convention; no non-party country was noted as having federal parental kidnapping laws).
taking parent would be arrested if they accompanied the child home.\footnote{Hague Convention Abduction Issues, supra note 6.} Canada also dissuades parents from using its criminal system unless necessary, especially if dealing with a civil law country.\footnote{FOREIGN AFFAIRS CANADA MANUAL, supra note 37, at 20.} Notwithstanding a judge’s refusal to order a child’s return simply because the parent would be arrested, Canada states that many civil law countries simply will not extradite their own nationals.\footnote{Id. at 19 (stating Canada has very few extradition treaties that include extradition for parental child abduction).} Countries without extradition treaties may also influence the use of criminal remedies.\footnote{Id. at 5.} The seemingly worldwide reluctance towards criminal charges provides the backdrop for the general support of using the Convention first, including its primary use in the Convention signatory countries.

But practical questions remain. What happens when a child cannot be found within a year? What happens when the Convention fails in securing a child’s return? The United States emphasizes that its choice to close a Convention case or mark an application as inactive does not necessarily mean an end to the case.\footnote{REPORT ON COMPLIANCE, supra note 51, at 5.} The Department of State, as the official United States Central Authority, will help “the parent to achieve a more satisfactory solution through non-Convention remedies . . . depending on the parent’s goals.”\footnote{Id. at 5.} Mexico appears to follow a similar course as no criminal action is taken without the parent’s request.\footnote{Id.} But again, if a child cannot be located in Mexico, Convention proceedings are not begun, and the burden falls on the left-behind parent to secure the child’s return.\footnote{Id. at 19 (stating Canada has very few extradition treaties that include extradition for parental child abduction).} Unlike Mexico, Canadian provinces need not know the location of the child before starting proceedings.\footnote{Id. at 14 (stating the information requirements of a Convention application requests as much location information as the applicant can provide, but even without specific location, paperwork may begin in the territory). If the child’s location is unknown, the Federal Central Authority will follow the claim.} This ensures prompt response from Canadian authorities which may lead to a recovery within the integral one year time period. Regardless, the burden often falls on the left-behind parent regardless of whether the taking parent is in a contracting country or not. Examples from
countries employing both methods show how cases arrive in court under civil and criminal remedies.

A. Examples from the United States

Even though a majority of states’ official statements dissuade the use of criminal remedies, left-behind parents have been able to utilize both criminal and convention remedies in some cases. In 2003, the U.S. Ninth Circuit allowed the use of both remedies. In *United States v. Ventre*, a United States citizen, Toni Dykstra, had married Carlo Ventre, an Italian citizen, but the couple separated shortly after the birth of their daughter. Ventre shared custody with Dykstra while retaining physical custody of the child. In the custody order, Ventre agreed not to take his daughter from the Los Angeles, California area without her mother’s permission. However, Ventre took his daughter to Italy “for the purpose of obstructing Dykstra’s lawful exercise of her parental rights.”

Dykstra successfully invoked assistance under the Hague Convention since both Italy and the United States are signatories. Dykstra traveled to Italy to secure the return of her daughter, but was found dead in Ventre’s home one day prior to their scheduled return. The child was then placed in foster care. Dykstra’s father took on her petition under the Convention and custody was eventually split between him and Ventre’s brother.

In May 1999, a warrant was issued in Los Angeles for Ventre under the IPKCA, and he returned to the United States later that year. After an attempt to dismiss the indictment, Ventre pled guilty to child abduction under the IPKCA. Ventre appealed his conviction under the case or controversy requirement of Article III of the United States Constitution.

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134 United States v. Ventre, 338 F.3d 1047 (9th Cir. 2003).
135 *Id.* at 1048–49.
136 *Id.*
137 *Id.*
138 *Id.*
139 *Id.*
140 *Id.*
141 *Id.*
142 *Id.* at 1050.
143 *Id.*
144 *Id.*
145 *Id.* (explaining that Article III, section 2 of the United States Constitution mandates that an appellant have “suffered, or be threatened with, an actual injury traceable to the [United
contested the interplay of a criminal conviction with the purpose of the Hague Convention. The IPKCA states that the law does not detract from the Convention or its proceedings. Ventre’s main argument rested on his participation in the Italian Hague proceeding concerning Dykstra’s request. He claimed a criminal conviction detracted from the Convention because of his participation in Convention proceedings in Italy. Ventre also claimed the IPKCA’s purpose was to provide a remedy for non-signatories to the Convention, and was not intended to apply to cases where the removal is to signatory country.

The Ninth Circuit rejected Ventre’s claims after examining the IPKCA’s plain meaning and legislative history, and upheld the conviction. The court definitively stated “there is no provision in the IPKCA deferring criminal charges against an individual who abducts a child to a Hague-participating country.” The IPKCA’s legislative history expressed a strong American stance against international parental kidnapping to non-signatory countries, but abducting a child to a signatory country does not preclude using the IPKCA. The purpose of the IPKCA is to stop international abduction. The court suggested criminal remedies were available regardless of the destination country’s Convention status.

The court also stated that “[a] criminal conviction under the statute has no bearing on Hague proceedings.” This statement provides an interesting question. If a criminal conviction has no effect on the Convention, then why dissuade parents from using it? As stated earlier, the IPKCA legislative

States] and [that injury is] likely to be redressed by a favorable judicial decision”). Ventre was not a United States’ citizen, so his conviction affected his immigration status. Id. at 1050–51.

Id. at 1051.


Ventre, 338 F.3d at 1051.

Id. at 1051–52.

Id. at 1053.

Id. at 1052–54.

Id. at 1054.

Id. at 1052.

Id. at 1053.

Id. at 1053.

Id.

Id. (discussing United States v. Amer, 110 F.3d 873 (2d Cir. 1997), where pursuing criminal charges under the IPKCA did not detract from the Convention when the child had been taken to a non-contracting country).

Id.
history provides those answers. These concerns help to understand the timeline of the Ventre case. Even though a United States judge had awarded Dykstra full custody in March 1998, and the Italian Court of Minors ruled Ventre’s daughter’s retention was wrongful, Ventre failed to turn over the child. The child was in the state’s custody at the time Los Angeles authorities filed charges. Since no threat of hiding or harm to the child existed, filing charges was safe.

Ventre is very different from Kellie Martin’s case. Dykstra knew where Ventre had taken her daughter, and the Convention process moved quickly. A warrant, at first, seemed unnecessary to bring the child home. In Martin’s case, a warrant was integral. If there was no warrant, there would have been no probable cause to stop her car and prevent her from reaching Guatemala. Thus, the authorities’ efforts resulted in two successful returns, brought about in two different ways. Both seemed to work effectively on the facts of each individual case, but how do we know what facts should definitely precede which course of action? No two cases will ever be alike, but looking at other examples may shed light on the problem.

B. Examples from Canada

Two recent cases demonstrate Canada’s willingness to use both Convention and criminal procedures to secure the return of abducted children.

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159 Hague Convention Abduction Issues, supra note 6; FOREIGN AFFAIRS CANADA MANUAL, supra note 37, at 19–20.
160 Ventre, 338 F.3d at 1049.
161 Id. at 1050.
162 Id. at 1049 (stating that Ventre first took the child in January 1998 and the court in Rome announced the removal wrongful in July 1998).
163 See Bjelland, supra note 1.
164 For the purposes of Ventre, success can be viewed as securing the return of the child since Dykstra was found murdered in Ventre’s Italian home a day before her flight to America. The murder is still under investigation. Ventre, 338 F.3d at 1049 n.1.
1. The Case of Nathalie Gettliffe

In April 2006, Nathalie Gettliffe stepped off a plane in Vancouver, British Columbia to attend her dissertation defense. Instead, officers arrested her for child abduction. Gettliffe had taken her children to France nearly five years earlier despite a court order providing access to her ex-husband, Scott Grant.

The couple divorced in 2000 and the initial custody agreement awarded Grant access to the children. However, when a court denied Getliffe’s request to take her children to France to visit their grandmother, she took them anyway. Grant pursued Convention proceedings in France, and in February 2006, a judge ruled that Getliffe violated the Convention by taking her children. The judge ordered the children’s return to Canada. Getliffe refused to obey the order, instead keeping the children in a small French village. Grant traveled to France and brought the children home in summer 2006.

Gettliffe finally pled guilty to charges of child abduction and avoided a trial. She was sentenced to sixteen months in prison, including the ten

166 Rod Mickleburgh, France Tunes in to Mother’s Guilty Plea in B.C., GLOBE & MAIL (Can.), Nov. 3, 2006, at A11.
167 Id.
168 Id.
169 Mother Pleads Guilty in Battle Over Custody: British Columbia Kidnapping Case—She Had Taken Children to France, SEATTLE TIMES, Nov. 4, 2006, at B2.
170 Elianna Lev, Accused of Abducting her Children, Mother Jailed, GLOBE & MAIL (Can.), May 12, 2006, at S3.
171 Id.
172 Id.
173 See Mickleburgh, supra note 166; see also Lev, supra note 170 (stating that Getliffe’s mother organized the entire town as a resistance group to prevent the children’s return to Canada).
174 Mickleburgh, supra note 166.
175 Id.
months she had already served.\textsuperscript{176} She was then transferred to a French prison to complete her term and to be near her family.\textsuperscript{177}

Gettliffe’s situation provides a unique backdrop to a Convention case. She stated that she took her children to France to limit their exposure to the “alleged cult-like” Vancouver Church of Christ.\textsuperscript{178} On the other hand, Scott Grant stated Gettliffe disapproved of the church because she is Catholic.\textsuperscript{179} Many couples have conflicts over religion, but this case turned into much more.

Gettliffe became a martyr in France and even had some supporters in Canada. While in France, Gettliffe remarried and became a professor at a French university.\textsuperscript{180} She was pregnant when she returned to defend her dissertation.\textsuperscript{181} The thought of a pregnant woman in prison for conduct that many countries find legal incited the French people and media.\textsuperscript{182} Gettliffe’s current husband appeared “regularly on French TV to plead his wife’s case.”\textsuperscript{183} He also called the prison conditions “worse than Guantanamo.”\textsuperscript{184} Canadians also supported Gettliffe by writing letters to their local newspapers.\textsuperscript{185} Surely Gettliffe believed her children were in some danger or she would not have resorted to such drastic measures; but taking children is not the best answer. The Convention is in place to ensure the correct habitual residences of children. If she felt the children were in danger, a court order deciding where they belonged provided the best method to prevent any harm instead of abducting her children.\textsuperscript{186} Now, she has no access to her children.


\textsuperscript{177} Id.

\textsuperscript{178} Mickleburgh, supra note 166.

\textsuperscript{179} Lev, supra note 170.

\textsuperscript{180} Mickleburgh, supra note 166.

\textsuperscript{181} Id.

\textsuperscript{182} Id.

\textsuperscript{183} Id.

\textsuperscript{184} Id. (referring to inhumane treatment toward enemy combatants held in Cuba by the United States).

\textsuperscript{185} See Eric Wicherts, Letter to the Editor, A Bizarre Case, GLOBE & MAIL (Can.), Nov. 4, 2006, at A22 (providing an example of Canadian support for Gettliffe as a victimized mother and urging her immediate release).

\textsuperscript{186} There is no evidence showing Getliffe attempted to prevent the return of the children by invoking either the psychological damage exception in article 13(b) or the one year “settled into their new environment” exception in article 12 of the Convention.
Grant also experienced another overlooked consequence of Convention procedure—time and money. Getliffe abducted the children in 2001, but Grant did not receive a final Convention decision until February 2006. He also paid approximately $200,000 in legal fees to pursue his request. Four years and a large amount of money were spent on a case where the applying parent knew where the children were located. Few families could undertake a similar type of expenditure for as long as Grant pursued his claim. This hurdle may prove the determining factor in the success of a Convention case, regardless of the legal implications, solely because the left-behind parent cannot afford to pursue his or her claim.

A slight difference exists between Getliffe’s case and Ventre’s case. Criminal charges were pressed, and officials arrested Getliffe before Grant traveled to get the children. In the Getliffe case, the abducting parent was in police custody, so, similar to the Ventre case, the chances of further hiding of the children was decreased. Both cases, despite Getliffe’s case being different because of the protest it raised, really presented the same issue—when to vehemently pursue criminal charges and when to let the Convention work.

2. The Case of Myriam Bédard

The most recent case in Canada of child abduction concerns the two-time Olympic gold medalist, Myriam Bédard. Bédard, along with her partner, Nima Mazhari, took her daughter to the United States. At first, the police did not consider the case a child abduction. The child’s father, Jean Paquet, was simply concerned about his child’s whereabouts and notified the police. Bédard openly admitted her intent to go to the United States and escape Canada’s “bureaucratic terrorism.”

187 Lev, supra note 170 (noting that the final decision was given by France’s highest court).
188 Id.
189 Mickleburgh, supra note 166.
190 Louise Leduc, Bedard Probed Over U.S. Trip; Daughter Believed to Have Gone Along, Father Alleges His Consent Not Given, TORONTO STAR, Nov. 8, 2006, at A22.
191 Id.
192 Id.
193 Id.
194 Id. Bédard and Mazhari wrote letters to United States Ambassador, head of the International Olympic Committee and the United Nations Secretary General, Kofi Annan, announcing their desire to travel to the United States to tell their story.
195 Id. The “bureaucratic terrorism” supposedly stemmed from issues surrounding Mazhari’s
Suspicion turned into charges in December 2006. Paquet had talked to his daughter only briefly, but otherwise did not know her location when he filed the complaint. He stated that he simply wanted access to the child and knowledge of her whereabouts. Paquet raised no fears of his daughter’s safety or treatment.

Bédard was arrested in late December 2006 in Maryland and officials placed her daughter into protective services. Officials returned the child to Paquet a day after Bédard’s arrest. After waiving an extradition hearing, United States officials released her on January 6, 2007. Bédard’s release prompted her to speak out. She proclaimed her innocence based upon her position of custodial parent and retention of “the right to travel with her daughter.” She also stated she attempted to cooperate with authorities by turning herself in when she discovered the warrant, but the authorities refused to acknowledge her effort. The terms of Bédard’s bail allowed her to see the child under supervision and forced turnover of her passport.

Just as in the case of Kellie Martin, the timeline of Bédard’s case moved relatively quickly. Bédard first abducted her daughter in October 2006 and involved in stealing twenty paintings. Id.

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196 Gold Medalist Sought-Olympic Champion Wanted on Kidnap Charge, TORONTO SUN, Dec. 14, 2006, at 38. Paquet filed a formal complaint on December 5, 2006. Id.
199 Bedard’s Ex Frets Over Missing Girl, supra note 197.
201 Gorham, supra note 198.
204 Id.
205 Id.
206 Id.; Bédard stood trial in September 2007, and was found guilty of abducting her daughter. Rhéal Séguin, Bédard Guilty of Abducting Daughter; Stunned by Verdict, Lawyer Vows to Seek Absolute Discharge; Crown Mum on Possible Sentence, GLOBE & MAIL (Can.), Sept. 21, 2007, at A5. On October 9, 2007, Bédard was sentenced to two years probation, and she had to relinquish her passport and firearms to Canadian authorities. Former Olympian is Given Probation, BROCKVILLE RECORDER & TIMES (Can.), Oct. 10, 2007, at A5.
Paquet reunited with her in December of the same year.\textsuperscript{207} The fathers of Kellie Martin's children reunited with them less than one month after the abduction.\textsuperscript{208} But the cases have another important common feature; neither used the Convention. The children were abducted to Convention countries, but criminal mechanisms brought about the quick and safe return of the children.

Incredible differences exist between the cases of Bédard, Martin, Ventre, and Getliffe. Bédard and Martin chose to cross a border common to their countries. Ventre and Getliffe took their children to Europe. Did that make the difference? In the case of Bédard, Ventre, and Getliffe, locating the children proved a non-issue. Is that the missing link? These cases provide a starting point for discovering when criminal charges and the Convention should intersect.

V. SOLUTIONS FOR EMPLOYING BOTH CIVIL REMEDIES AND CRIMINAL CHARGES TO SUCCESSFULLY IMPACT FUTURE CASES

A. When to Use Both Remedies

The above cases demonstrate four successful uses of criminal mechanisms in child abduction cases. Two displayed successful returns using the Convention. Even though using the Convention was successful, the returns took from six months in the Ventre case to five years in the Getliffe case. Although the time period in Getliffe was one of the longest in Canadian history,\textsuperscript{209} parents should expect the process to be lengthy.\textsuperscript{210} The process takes time, but the Convention has an integral one year benchmark built into it,\textsuperscript{211} and parents should not sit silently. In certain instances, parents should insist on pressing charges. The highlighted cases provide a backdrop for determining the best use of criminal charges.

\textsuperscript{207} Montgomery, supra note 202.
\textsuperscript{208} Bjelland, supra note 1.
\textsuperscript{209} Lev, supra note 170.
\textsuperscript{210} FOREIGN AFFAIRS CANADA MANUAL, supra note 37, at 15 (explaining that final decisions can be lengthy "depending on the nature of the legal proceedings involved").
\textsuperscript{211} The Convention, supra note 4, art. 12 (stating that after one year lapses the return is no longer mandatory).
1. When the Parent Knows the Location of the Child

In three of the four cases, the parents knew to a certainty where their children had been taken. The Bédard case was the only one where criminal charges were pursued as soon as the father filed an abduction complaint. The child was returned within a month of filing charges. The Convention application would have taken at least that long to complete, transmit to the U.S. Department of State, and for the NCMEC to begin the search process. Paquet knew that Bédard fled to the United States. Canada and the United States have criminal provisions. Pursuing charges proved not only administratively easy, but led to a safe and quick return of the child. Another parent may not encounter a similar quick outcome, but the chance of a quick recovery should lead law enforcement to pursue criminal charges when the left-behind parent definitely knows the child’s location. Charges should be pursued simultaneous to, or independent of, any Convention procedure started by the parent when the location of the child is known.

Early criminal charges may also help in situations like the Martin case. The fathers guessed Martin’s Guatemalan destination because her current husband lived there. Pursuing criminal charges allowed officials to check databases containing tag information of cars that entered Mexico. The tag information then alerted Mexican officials to Martin’s car, and the children were returned. Quick action by police decreased Martin’s chances of reaching Guatemala where there was no Convention or parental kidnapping criminal laws. Criminal charges saved the fathers of Martin’s children possibly months of turmoil and expense. Pursuing criminal charges early when location is generally known or suspected could save other parents of abducted children time and money as it did for the fathers of the Martin and Bédard children.

2. When the Six Week Mark Has Passed

The Convention should be pursued first, only when circumstances warrant fear that criminal charges will force the abductor into hiding. The Convention encourages negotiation of voluntary returns and cooperation. If the abductor refuses to cooperate, or other attempts to regain custody prove unsuccessful, the Convention text provides an important six week benchmark. If the Convention process fails to produce a decision after six weeks, a Central
Authority from the parent’s country may request that the Central Authority in the abductor’s destination country explain the delay.\textsuperscript{214} The Convention requires that agencies “act expeditiously” to resolve cases.\textsuperscript{215} Given this initial six week period’s failure, criminal charges should be pursued so law enforcement in both countries can begin utilizing resources such as databases, missing children agencies, and other techniques that are not available under a civil remedy. A warrant may also permit a widened search area if the specific location is unknown, such as in the Martin case.

3. \textit{When the Abductor Has Undue Influence on the Foreign Court Proceedings}\textsuperscript{200}

An abductor is unlikely to have strong influence over court proceedings, but the possibility exists and it could happen to anyone. For example, Catherine Meyer, wife of a former British ambassador to the United States, had her children taken to Germany by their father, Hans-Peter Volkmann in July 1994.\textsuperscript{216} Reflecting on the events, Catherine stated she could piece together signs of trouble.\textsuperscript{217} When Volkmann took the children, he had supporters and plans in place.\textsuperscript{218} He was a member of small community, lived on the local judge’s premises, and had a close-knit family.\textsuperscript{219} Meyer’s conversations with her children were brief, and her reconciliation efforts were stifled. She traveled to Germany for court proceedings but Volkmann refused to attend or to produce the children. The legal system and the town were on his side. Even as the wife of a British Ambassador to the United States,\textsuperscript{220} Meyer’s efforts faltered in securing the return of her children.\textsuperscript{221} German officials sided with

\begin{flushright}
\textsuperscript{214} \textit{Id.}\\
\textsuperscript{215} \textit{Id.}\\
\textsuperscript{216} \textit{See generally Catherine Meyer, They Are My Children Too: A Mother’s Struggle for Her Sons (1999).}\\
\textsuperscript{217} \textit{Id.} ch. 9 (citing in the chapter called “The Nightmare Begins” the brainwashing of the children and the communication issues she faced with Volkmann).\\
\textsuperscript{218} \textit{Id.} at 122.\\
\textsuperscript{219} \textit{Id.} chs. 10, 11.\\
\textsuperscript{220} \textit{See PACT Directors and Associates, Catherine Meyer Bio,} \url{http://www.pact-online.org/html/directors__associates.html} \textit{(last visited Mar. 24, 2008).}\\
\textsuperscript{221} Michael Bernier-Toth, Director, Office of Children’s Issues, Overseas Citizens Services, Bureau of Consular Affairs, Lady Catherine Meyer, Founder of PACT (Parents and Children Together) and author of “They Are My Children Too,” Foreign Press Center Briefing on the topic of “International Child Abduction” (Feb. 20, 2003) \textit{(transcript available at} \url{http://fpc.state.gov/fpc/17872.htm}).
\end{flushright}
Volkmann by using the children's stability as the basis for the decision—Volkmann had manipulated his children and the law.\textsuperscript{222} However, she persevered and became an advocate "to give a voice to other children" since she has not been able to reunite with hers.\textsuperscript{223} She also started a non-profit agency called PACT (Parents and Abducted Children Together) in 2000 to raise awareness of international parental kidnapping.\textsuperscript{224}

Meyer did not pursue criminal charges. She considered any attempt futile because of Germany's refusal to consider parental abduction a crime.\textsuperscript{225} It was unlikely that pressing charges in London would have mattered because Volkmann had no reason to leave Germany and be subject to that charge. But criminal charges could have made a difference. Why let the Convention sit idle and not try another mechanism? Meyer's hands were tied because of her unique situation, but this may not be true for other parents. If the Convention is not working in signatory countries parents should not let any more than six weeks pass without action. This is especially true when the abductor commands an influence on the court system. In cases like Meyer's, criminal charges should not remain unused, even if their effects are uncertain. Left-behind parents encountering similar obstacles should pursue every method available to bring their children home.

This Note certainly advocates that parents take control over their cases, but re-abduction should not be attempted. The option may seem more attractive now that Melissa Hawach's case garnered international attention, book deals, and Hollywood interest. In July 2006, Hawach allowed her estranged husband an Australian-Lebanese citizen, to take their daughters on an Australian vacation.\textsuperscript{226} Her husband had alternate plans and traveled to Lebanon with the girls.\textsuperscript{227} Despite hiring multiple lawyers,\textsuperscript{228} being granted sole custody, and her

\textsuperscript{222} MEYER, supra note 216, at 163.
\textsuperscript{223} PACT Directors and Associates, supra note 220. Meyer basically ran out of time—her children aged out of the Convention's jurisdiction. She can only hope her children will seek her out when they are able. \textit{Id}.
\textsuperscript{224} \textit{Id}.
\textsuperscript{227} \textit{Id}.
\textsuperscript{228} James Stevenson, Canadian Mom Says Tougher Immigration Policies Needed to Stop Child Abduction, CANADIAN PRESS NEWS WIRE, May 24, 2007, \textit{available at} http://www.macleans.ca/article.jsp?content=n052495A.
husband being charged with child abduction in Canada, Hawach's children remained missing. Hawach felt she had one choice: get her children back herself. After beginning an email network of friends and contacts, she discovered her children were at a resort in Lebanon. Hawach flew to Lebanon with her father and hired private investigators and former soldiers to assist her. She observed her girls playing unsupervised, and a day later she walked up to them and calmly reclaimed them. Locals and Canadian officials helped her hide until she could safely leave the country, while her husband filed complaints of forced kidnapping. Two soldiers were jailed for assisting Hawach, but have since had bail set and their charges reduced to misdemeanors.

Melissa Hawach's efforts have been heavily applauded. She has been offered book deals, and Hollywood has shown interest in a movie based on the abduction and recovery. This attention makes Hawach's choice seem easy and preferable, especially to desperate parents confronted with non-Hague, non-parental kidnapping crime countries. Parents must remember one thing: Melissa Hawach was lucky. If the Convention or criminal charges are to bring about the safe return of children, the legal system must be respected. Hawach's decision appears successful only in retrospect. Other parents must proceed with caution and weigh their legal options carefully for they may not be as lucky as Hawach.

B. New Developments

The United States mandated passport reform in the Intelligence Reform and Terrorism Preventions Act of 2004. The Western Hemisphere Travel Initiative (WHTI) proposed changes to the United States system. As of January 23, 2007, U.S. citizens traveling to Canada, Mexico, Bermuda, and the

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230 Id.
231 Lee, supra note 226.
232 Id.
233 Id.
Caribbean region by air must present a passport. The requirement affects all such travel as of January 2008. The initiative has attracted opposition, especially concerning economic impact and identity security. Regardless of the technology or economic impact surrounding the new passports, children will have to present passports. WHTI presents another hurdle for abducting parents to cross. If the child has never been out of the country, or the parent hurriedly takes the child, the initiative slows down the abducting parent's progress since passport presentation is mandatory. The initiative buys the left-behind parent precious time to find his or her child. WHTI may be a small step to curbing abduction, but it may prove integral to left-behind parents in an extremely volatile and fragile time.

Unlike the United States, Mexico and Canada provide assistance to the families involved in a Convention proceeding. On May 24, 2007, U.S. Representative Nick Lampson introduced the “Bring Our Children Home Act” that provides money and training for legal services attorneys representing families in child abduction cases. Providing for legal assistance would amend Section 7 of ICARA. The proposed legislation also hopes to streamline Convention litigation by “encourag[ing] . . . every [s]tate . . . to designate a single court, or a limited number of courts, in which cases brought under the Convention may be heard.” This bill is far from becoming law. Hopefully, the U.S. government realizes that officially endorsing the Convention in lieu of criminal charges necessarily involves providing assistance to parents applying for a Convention recovery, and will pass the current legislation. Congress must examine the reality and cost of implementing the bill. Without adequate funding from Congress, the bill will

238 Id.
240 Western Hemisphere Travel Initiative, supra note 237.
241 DIF, in Mexico, provides an attorney to represent the child’s best interest. LOWE ET AL., supra note 8, at 6. Canada provides legal aid attorneys to families who demonstrate need. HUTCHINSON ET AL., supra note 16, at 76.
243 Id. § 5(a). The legislation also proposes that the U.S. Central Authority pay court costs of both petitioner and respondent. Id. § 5(c).
244 H.R. 2518, § 5(a).
do nothing more to bring our children home than the Convention’s current labyrinth of choices and issues.

VI. CONCLUSION

Legitimate reasons sometimes exist for parents to run away with their children. This Note does not propose a perfect solution for those parents running from domestic abuse or other hostile environments. Instead, this Note strives for a solution in situations where parents spend months, and incredible amounts of money, but still feel hopeless in securing their children’s return. This Note attempts a solution for parents who implement the application process of the Convention, and yet their children remain missing.

The drafters of the Convention provided a wonderful tool to the international community. Their effort resulted in an instrument that revolutionized the way parents and governments work together to locate abducted children. The pre-Convention system was completely disjointed with no policy of any kind. The Convention worked to provide a common starting point for each country involved in an abduction. Advances made by the Convention should not be overlooked. However, neither should its shortcomings be ignored. Invoking the Convention alone is often not enough.

A combination of the Convention and criminal remedies where available is the best solution. The Martin and Bédard children returned home solely because of criminal remedies. Their quick return did not occur because the Convention failed to work. Instead, criminal charges brought about the safe return before the Convention even became an issue. In the Gettliffe and Ventre cases, despite the left-behind parents securing favorable Convention decisions, the permanent return of their children did not occur until after officials pursued criminal charges. If Catherine Meyer had felt criminal charges were a viable mechanism in a system dominated by her ex-husband, the ending of her story may have included reunification with her children. Instead, she spent years fighting an unsuccessful battle.

Criminal charges may not be right for every situation, but the sheer implication of their ability to successfully return children warrants more consideration than generally given now. Not every parent will go into hiding. Some parents with a warrant pending may turn themselves into authorities. Criminal charges provide more ways to search for missing children than using the Convention in isolation. If the purpose of the Convention is the safe and expedient return of children, why deny parents the choice to use every option available? Convention signatories should make a difficult decision easier by
allowing and utilizing criminal mechanisms alongside the Convention earlier and more often. The choice, although difficult, just may bring a child home.