

NOTE
INTERNATIONAL CUSTODY BATTLES: THE NOT SO CURIOUS CASE
OF DAVID GOLDMAN

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I. INTRODUCTION

In 2004, Bruna Bianchi called her husband David Goldman from Brazil and told him that she would not be returning to the United States with their only son, Sean Goldman, and that she wanted a divorce.¹ For the next five years, Goldman attempted to use international and Brazilian law to gain custody of Sean; in December 2009, his son finally returned with him to the United States.² Goldman's ordeal is just one example of an international custody battle. Such disputes are becoming increasingly common, resulting in a steady increase of international perspective in family law.³

The Hague Convention on the Civil Aspects of International Child Abduction ("Hague Convention") was adopted in 1980 in response to concerns about a growing number of child abductions into other countries.⁴ The Hague Convention is an international standard for the abduction of children across countries and international custody disputes.⁵ It applies to the wrongful removal or retention of children to the eighty-two countries, including the United States, which have signed the Convention.⁶ The United States has signed additional treaties with sixty-

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¹ *International Child Abduction: Hearing on H.R. 3240 before the Tom Lantos Human Rights Commission* (2009) (Testimony of U.S. House Representative David Goldman), available at <http://bringseanhome.org/wordpress/resources/international-child-abduction-hearings-tom-lantos-human-rights-commission/david-goldman-international-child-abduction-hearings/> [hereinafter Testimony of David Goldman].

² Karen DeMasters, *Back from Brazil, Seeking an Ordinary Life for a Son*, N.Y. TIMES, Dec. 30, 2009, at A24, available at <http://www.nytimes.com/2009/12/30/nyregion/30kidnap.html>.

³ See Leigh Joy Carson, *International Child Custody Cases: A Primer*, 55 ST. LOUIS B.J. 10, 10 (2009); Barbara Stark, *When Globalization Hits Home: International Family Law Comes of Age*, 39 VAND. J. TRANSNAT'L L. 1551, 1553-54 (2006).

⁴ Hague Convention on Civil Aspects of International Child Abduction, Oct. 25, 1980, S. TREATY DOC. NO. 99-11, 19 I.L.M. 1501 (1983) [hereinafter Hague Convention].

⁵ International Child Abduction Remedies Act, Oct. 25 1980, 42 U.S.C. §§ 11601-11, 1343 U.N.T.S 89 (1980).

⁶ See Hague Conference on Private International Law, Status Table: Members of the Organisation, http://www.hcch.net/index_en.php?act=conventions.status&cid=24 (last visited Mar. 28, 2010) (some of the Member States include Australia, Brazil, Canada, Mexico, Norway, Honduras, Chile, Greece, Slovakia, Switzerland, Venezuela, United Kingdom, and the United States).

eight of the eighty-two countries to uphold the Hague Convention.⁷ When a child is wrongfully removed to a different country, a parent can apply through his or her country of origin, as well as the country the child was taken to, to begin the process of returning the child back to their initial country of residence. This process is fraught with problems, as countries may choose not to comply with the Hague Convention or may demonstrate a pattern of noncompliance due to other factors like judicial inefficiency or an inability to enforce through the police force.⁸

Unfortunately the case of David and Sean Goldman is not unique, but it has brought to light the international facet of child custody disputes and the need to look to other alternatives or revise the Hague Convention to prevent misuse of domestic procedures and international law to violate the rights of parents and children. Part I of this Note discusses the international framework of Hague Convention and the case of David and Sean Goldman. Next, Part II discusses the limitations of the Hague Convention and the problems that confront parents who are attempting to gain custody in international disputes. Part III explores changes or alternatives to the Hague Convention. These include pressures by governments, jurisdiction granted to international courts, or amending the Hague Convention to provide for better, more efficient, resolutions, while still protecting the rights of parents and children.

II. HAGUE CONVENTION AND INTERNATIONAL APPLICATION

A. *The Goldman Case*

In June 2004, Bruna Bianchi, Sean Goldman's mother, went to Brazil on a supposed vacation, taking Sean with her. David Goldman, Sean's father and Bruna's husband of six years, had driven Bruna and Sean to the airport and intended to pick them up two weeks later.⁹ Shortly after Bruna arrived in Brazil she called David and told him that she was going to live in Brazil with Sean, and that if David ever wanted to see Sean he would need to fly to Brazil and sign custody papers on file in Brazilian state court.¹⁰

⁷ U.S. Department of State, Hague Abduction Convention Country List, http://travel.state.gov/family/abduction/hague_issues/hague_issues_1487.html (last visited Mar. 28, 2010) [hereinafter Convention Country List] (countries that the United States has not signed reciprocal treaties with include countries like Albania, Belarus, and Macedonia).

⁸ DEP'T OF STATE, REPORT ON COMPLIANCE WITH THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION 13 (2009), available at <http://travel.state.gov/pdf/2009HagueAbductionConventionComplianceReport.pdf> [hereinafter 2009 COMPLIANCE REPORT] (noting that Honduras is not compliant, and Brazil, Chile, Greece, Mexico, Slovakia, Switzerland, and Venezuela demonstrate patterns of noncompliance).

⁹ Testimony of David Goldman, *supra* note 1, at 1.

¹⁰ During his testimony, David Goldman indicated that Bruna demanded that David give full custody to Bruna, not file custody papers in the United States, not file for divorce; and, if he did not comply, Bruna would not allow Sean to see David ever again. *Id.*

Soon after learning of Sean's abduction, David began the long, complex, and emotional battle for his son that lasted over five years. In August 2004, the Superior Court of New Jersey ruled that Bruna Bianchi's actions constituted parental kidnapping and awarded temporary custody to David Goldman until a full decision on custody rights could be made in the United States.¹¹ In September 2004, having obtained the custody order as required by the Hague Convention,¹² Goldman filed an application through the United States and Brazilian Central Authorities under the Hague Convention to obtain a trial in Brazil.¹³ One year later, a Brazilian federal judge ruled that although the removal was wrongful, Sean should remain in Brazil because he had adjusted to his new location since he had been living in Brazil for over one year; David Goldman appealed the decision to the Brazilian Supreme Court.¹⁴ In August 2008, while the appeal to the Brazilian Supreme Court was pending, Bruna died giving birth to her new husband's child. Rather than award custody to David Goldman, Sean's natural father, the Brazilian state court granted temporary custody of Sean to Bruna's new husband.¹⁵ Goldman appealed the decision to grant custody to Bruna's new husband.¹⁶ Sean continued to live with his step-father and maternal grandparents denying David the right to even visit his son.¹⁷

¹¹ David G. Goldman v. Bruna B. Goldman, FD-13-395-05C 3 (N.J. Super. Ct. 2004).

¹² Hague Convention, *supra* note 4, art. 3 (the removal of a child is wrongful if it breaches the custody rights of a person, institution, or other body who had the rights when the child was removed).

¹³ Article 8 of the Hague Convention states that an application shall contain information about the identity of the applicant and child, the date of birth of the child, grounds for return of the child, all available information about the location of the child and identity of the abductor, and may be supplemented by relevant decisions or agreements, affidavits about the relevant laws of the country from which the child was abducted, and any other relevant documentation. *Id.* at art. 8.

¹⁴ Testimony of David Goldman, *supra* note 1, at 1; PETER J. MEYER & CLARE RIBANDO SEELKE, CONGRESSIONAL RESEARCH SERVICE REPORT TO CONGRESS: BRAZIL-U.S. RELATIONS 19 (Aug. 18, 2009), available at http://assets.opencrs.com/rpts/RL33456_20090818.pdf.

¹⁵ Sean's step-father, João Lins e Silva, was a well-connected lawyer in Brazil and came from a respected family. Kirk Semple & Mery Galanternick, *Boy, 9, and Father are Back in U.S. After Reuniting in Brazil*, N.Y. TIMES, Dec. 24, 2009, at A27. The federal court who ordered the return of Sean to the United States noted that custody had been granted to Sean's step-father because Sean had relatives in Brazil including his maternal grandparents and a newly born half-sister. English Translation of Judge Pinto's Ruling in Goldman Case 47-48, June 14, 2009, <http://bringseanhome.org/English-Translation-of-Judge-Pinto-Ruling-with-Introduction-Rev4.pdf> [hereinafter Judgment of Judge Pinto]; see also 16^a Vara Federal do Rio De Janeiro, No. 2009.51.01.018422-0, Relator: Min. Marco Aurélio, June 1, 2009.

¹⁶ MEYER & SEELKE, *supra* note 14, at 19-20.

¹⁷ Alexei Barrionuevo, *Judge in Brazil Stays Order for Boy's Return to U.S.*, N.Y. TIMES, June 3, 2009, at A24.

Finally, on June 2, 2009, a Brazilian federal judge ruled that Brazil must uphold the Hague Convention by making jurisdictional and not substantive decisions concerning the children and ordered that Sean be returned to the U.S.;¹⁸ a day later the Brazilian Supreme Court stayed the order and sent the case back to federal court.¹⁹ The Brazilian federal court allowed David Goldman to live in Brazil and have joint custody.²⁰ David had been commuting to Brazil for the past five years attending every hearing. In a hearing to the Tom Lantos Human Rights Commission, David articulated his pain, “I pray that my personal tragedy will end soon so that my son Sean and I may once again know and love each other as father and son. . . . I appeal and plead to all of you at the most basic level of human decency to respect the sanctity of a parent child relationship.”²¹ In December 2009, after intense pressure from the United States, the Brazilian Supreme Court granted David full custody and Sean was allowed to return to the United States.²²

B. Hague Convention Procedure and Application in Brazil

Brazil, like many countries, continually strays from the purpose of the Hague Convention.²³ The stated purpose of the Hague Convention is to protect children and to “establish procedures to ensure their prompt return to the State of their habitual residence.”²⁴ The requirements for filing an application include that the child is under sixteen, the child was removed from its habitual residence, the parent had a right to custody and had been exercising his or her right to custody,²⁵ and that the country the child was removed to has signed the Hague Convention with the United States.²⁶ In the Goldman case, Sean was under five, both Brazil and the United States had signed the Hague Convention and agreed to uphold it, and David Goldman had a right to custody provided by United States courts and before the abduction David had been a part of Sean’s life. Despite having satisfied

¹⁸ See Judgment of Judge Pinto, *supra* note 15, at 27.

¹⁹ Barrionuevo, *supra* note 17; Stan Lehman, *Brazil Court Rebuffs Bid to Block Boy’s Return*, ASSOCIATED PRESS, June 10, 2009, available at <http://abcnews.go.com/International/wireStory?id=7804304>.

²⁰ Judgment of Judge Pinto, *supra* note 15, at 27.

²¹ Testimony of David Goldman, *supra* note 1, at 4.

²² See discussion *infra* part II.B.2, (discussing the pressure the United States put on Brazil to comply with the Hague Convention).

²³ See 2009 COMPLIANCE REPORT, *supra* note 8, at 12-13 (citing Brazil, Chile, Greece, Mexico, Slovakia, Switzerland, and Venezuela as countries that demonstrate patterns of noncompliance, and Honduras as a country that is not compliant with the Hague Convention).

²⁴ See Hague Convention, *supra* note 4, at Preamble.

²⁵ While the term “parent” is used in this note, the Hague Convention allows for any person, institution or other body who may have custody in the child’s original country to file an application for the return of the child. *Id.* at art. 3.

²⁶ Convention Country List, *supra* note 7.

the Hague Convention requirements, the Brazilian Court failed to adhere to its requirements in the Goldman case, a failure that is not unique.²⁷

When a custody dispute action is filed, the court overseeing the Hague Convention case should determine the jurisdiction, or in which country the custody issue should be heard.²⁸ When addressing a Hague Convention dispute, the initial court should not look to the underlying merits to determine custody, but should determine only which country will rule on the merits of the case.²⁹ However, the judge in the foreign country maintains some discretion in opposing the return of a child to the country of habitual residence for a number of reasons, including if the child objects, has settled into a new environment before the application was filed, if there is a risk of harm to the child, or if the parent consents to removal.³⁰

In particular, Brazil often cites Article 12 of the Hague Convention, which allows for a child to remain in the other country indefinitely if one year has lapsed before the application was filed; this is primarily because the child has settled in the new environment.³¹

In the annual 2009 Congressional Report on the Hague Convention, the State Department Office of Children's Issues stated that it considers Brazil to demonstrate a pattern of noncompliance. The State Department noted a pattern of failed performance, specifically noting the lack of prompt return, by the Central Authority and by the Brazilian judicial system.³²

The United States found that the Brazilian judicial system shows a disturbing trend of treating Hague Convention cases as custody decisions—that is determining the merits of the case rather than the correct jurisdiction for custody decisions.³³ Under Article 16 of the Hague Convention, courts are not to decide the merits of custody until they determine the child is not to be returned under the convention.³⁴ However, Brazilian courts often look at the best interests of a child,

²⁷ See 2009 COMPLIANCE REPORT, *supra* note 8, at 32-33, 40 (listing notable cases for Brazil and statistics on the number of new cases in Brazil).

²⁸ Carson, *supra* note 3, at 10-12. See also Hague Convention, *supra* note 4, at art. 12.

²⁹ Hague Convention, *supra* note 4, at arts. 16, 19.

³⁰ *Id.* at arts. 12, 13, 20.

³¹ *Id.* at art. 12. A uniform approach to determine whether a child is settled has not been determined by any jurisdiction. The United Kingdom and the United States have interpreted the Convention as having a heavy burden of proof to establish settlement. See *In re N* (1991) 1 FLR 413 (Austl.); *Cannon v. Cannon*, [2004] EWCA (Civ.) 1330 (appeal taken from Eng.) (U.K.); *In re Interest of Zarate*, No. 96 C 50394, 1996 U.S. Dist. LEXIS 19047 (N.D. Ill. Dec. 23, 1996), available at http://www.brandeslaw.com/hague_Cases/Unreported%20hague%20cases/zarate.pdf. Australia has favored a literal interpretation of settlement and multiple countries have determined that settlement is considered from the perspective of the child. See also C.J. Nicholson et al., *Dir.-Gen., Dep't of Comm. Serv. v. M. & C.*, 24 FAM. L. REP. 178 (1998) (Austl.); CA 000111/07 *Ploni v. Almonit*, [2007] IsrDC 938; Judgment of Judge Pinto, *supra* note 15, at 29 (looking at the exception to Article 12 of the Hague Convention).

³² 2009 COMPLIANCE REPORT, *supra* note 8, at 16.

³³ *Id.* at 17.

³⁴ *Id.*

going to criteria that are relevant for custody disputes, but not determinations of whether the child is to be returned.³⁵ The Brazilian courts “often deny Convention applications upon finding that the children have become adapted to Brazilian culture.”³⁶ Non-compliance often occurs after a backlog of cases has delayed the determination under the Convention until years later, when the Brazilian courts determine that children have adapted and their habitual residence has become Brazil. Additionally, the courts have shown a pattern of bias towards Brazilian mothers in Convention cases.³⁷ As of 2009, three abductions reported in 2004 remained unresolved, remaining in legal limbo for over five years.³⁸

Brazil’s non-compliance with the Hague Convention is neither a unique issue nor a simple problem to address. The Goldman case illustrates both the difficulties families see when seeking the return of a child and the emotional pain that parents and children suffer in international child abduction cases. Countries must next look at the problems that have appeared since the adoption of the Hague Convention, then discuss and implement solutions, including enforcement mechanisms, to protect children and families.

III. PROBLEMS AND POTENTIAL SOLUTIONS FOR THE HAGUE CONVENTION

The Hague Convention is the first treaty to protect the rights of children and parents involved in custody disputes and the only treaty that addresses child abduction on an international level.³⁹ While it addresses many issues regarding child protection, certain shortcomings do not fully protect parents and children. For example, there are no mechanisms to ensure compliance from countries that have agreed to follow the Hague Convention. The result is that countries like Brazil fail to uphold their treaty obligations, circumventing the Hague Convention by interpreting it in contrary ways.⁴⁰ However, the use of external judicial, economic,

³⁵ *Id.*

³⁶ *Id.* at 16. In the initial Hague Convention determination, the Brazilian court stated that Sean had become adapted to Brazil and lived in Brazil with his mother; therefore, even though David Goldman had complied with the application Sean was to remain in the country because he had adapted and the right of a child to live with his mother overcame other arguments. Judgment of Judge Pinto, *supra* note 15, at 35. However, if a parent files an application under the Hague Convention after one year has passed, a court may determine that a child has settled in a country. Hague Convention, *supra* note 4, art. 12.

³⁷ 2009 COMPLIANCE REPORT, *supra* note 8, at 17. *See id.* at 43-45 (describing five different cases where a child had not returned all involving the mother taking or keeping the child in Brazil).

³⁸ *Id.* at 16.

³⁹ PAUL R. BEAUMONT & PETER E. MCELEAVY, *THE HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION* 3 (Oxford Univ. Press 1999). Since the adoption of the Hague Convention there are several other treaties that have been created to protect the rights of children including the Convention on the Rights of the Child which contains optional protocols addressing child soldiers and child prostitution and slavery.

⁴⁰ *See supra* Part I.B.

or political pressures in addition to amending the Hague Convention would allow enforcement of the convention.

A. Problems with the Application of the Hague Convention

While the Hague Convention has provided a method for parents to obtain relief and custody of their child, it has several problems that impede on the rights of both children and parents. The first difficulty is the lack of prompt return due to procedural delays. The second difficulty is a lack of enforceability and ability to encourage countries to comply with the Hague Convention in a prompt manner. These two issues, illustrated in the Goldman case, show that adjustments need to be made to allow for better protection of children and parents.

In the case of Sean Goldman, the Brazilian courts initially determined that Sean had adapted to Brazilian culture and should not be removed from the country to return to the United States.⁴¹ Under Article 12 of the Hague Convention a judge *only* has discretion to determine if a child is settling in a new country when the application under the Hague Convention was filed after the child had been in the country for over a year.⁴² However, in the Goldman case (as in many similar cases in Brazil),⁴³ David Goldman filed the application for the Hague Convention well within a year of learning that his son would not be returning to the United States.⁴⁴ Nevertheless the Brazilian judge did not require Sean's return, as is typically required by the Hague Convention. Sean was allowed to stay because the judge ruled that he had adapted to the country and become settled in.⁴⁵ The judge provided no supporting evidence that there was any other reason permitted by the Hague Convention—such as the possibility of harm to Sean—that would have given the judge the discretion to allow Sean to stay in Brazil.⁴⁶

The Goldman case exemplifies the issues that parents face in child abduction cases. Like Brazil, many countries have ignored their duties under the Hague Convention to benefit their own citizens. The current Hague Convention creates no mechanism to encourage countries to uphold their duties, leaving parents and individuals in a situation where the result violates international law and cannot be corrected.

⁴¹ Judgment of Judge Pinto, *supra* note 15, at 33-34.

⁴² Hague Convention, *supra* note 4, art. 12.

⁴³ See 2009 COMPLIANCE REPORT, *supra* note 8, at 32-33, 40 (listing notable cases for Brazil and statistics on the number of new cases in Brazil).

⁴⁴ Testimony of David Goldman, *supra* note 1, at 2.

⁴⁵ Judgment of Judge Pinto, *supra* note 15, at 33-34.

⁴⁶ In order for Sean to stay in Brazil under the Hague Convention, the court would have needed to provide evidence that David waited a year to file the report, did not have custody, or that returning Sean would expose him to physical or psychological harm. Hague Convention, *supra* note 4, at arts. 12-13.

B. Alternative Methods to Encourage Enforcement of the Hague Convention

There are several ways to encourage countries that are in contravention to the treaty to comply with the objections and duties of the Hague Convention. First, in rare cases, a country may threaten diplomatic and economic sanctions to encourage compliance, similar to what the United States did in the Goldman case. Second, the United States or another country could propose an amendment to the Hague Convention to provide for more direction to the duties of the country and provide an enforcement mechanism, including providing for an international forum for resolution of disputes, for countries that fail to comply with their duties under the Hague Convention. The current framework does not provide the necessary protection for children and families.

In order for a country to take any action in the international arena, there must be some violation of international law. Under the Vienna Convention on the Law of Treaties, Article 26, a treaty is binding on both parties and it must be performed in “good faith.”⁴⁷ Good faith in the context of international law is a general principle that is enshrined in the United Nations Charter, as well as other resolutions.⁴⁸ Black’s Law Dictionary defines good faith as “faithfulness to one’s duty or obligation.”⁴⁹ In Brazil, the courts continually fail to uphold the Hague Convention in good faith in accordance with international law and the treaties they have signed. For example, the Hague Convention requires that if an application is filed before a year has past, Brazil has a duty to promptly determine the child’s case.⁵⁰ In the Goldman case, it took the Brazilian courts over five years to make a final determination about Sean; Article 11(2) of the Hague Convention states that if a decision is not made within six weeks, the applicant can request an explanation of the delay.⁵¹

Additionally, the Brazilian courts have found that a child is settled after they have been living in the country for over one year, even if the application was filed before the year deadline. This type of ruling goes against the Hague Convention and Brazil’s duties to uphold the Convention in good faith. Because of this

⁴⁷ The Vienna Convention is a general convention that applies to the interpretation of any treaty. Vienna Convention on the Law of Treaties, May 22, 1969, 1155 U.N.T.S. 331, 8 I.L.M. 679 (1980), available at http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

⁴⁸ U.N. Charter art. 2, para. 2. See also G.A. Res. 2625 (XXV), U.N. GAOR, 25th Sess., Supp. No. 28, U.N. Doc. A/8082 (1970), available at <http://www.whatconvention.org/en/conv/0703.htm> (also known as the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations).

⁴⁹ BLACK’S LAW DICTIONARY 713 (8th ed. 2004) (defining “good faith”).

⁵⁰ Hague Convention, *supra* note 4, at arts. 2, 16.

⁵¹ *Id.* at art. 11, para. 2; HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, GUIDE TO GOOD PRACTICE: PART II—IMPLEMENTING MEASURES § 4.2.2.7 (2003), available at http://hcch.e-vision.nl/upload/abdguide2_e.pdf.

violation, the United States may utilize the means discussed below to enforce the treaty. The current framework does not provide the necessary protection for children and families; the use of economic and diplomatic pressures or an amendment to the Hague Convention providing a forum for settling disputes would help encourage countries to uphold their duties to children and parents.

1. Economic and Diplomatic Pressures

The United Nations Charter provides that “members shall settle their international disputes by peaceful means.”⁵² There are several methods the United States can use, including diplomatic negotiation and economic pressures to enforce the Hague Convention. The Goldman case exemplifies the use of economic and political pressures to encourage Brazil to uphold its obligations under the Hague Convention.

Using economic and diplomatic means can be more effective than others, because countries rely on each other for funding, and the reputation of a country is related to the power that the country has in the international arena. The threat of losing economic power or diplomatic power can be a powerful tool of negotiation for upholding treaties. In the Goldman case, movement from Congress pressured Brazil to take action. In February 2009, Representative Holt of New Jersey stated that he was working with State Department and Brazilian authorities to conclude the matter.⁵³ On February 4, 2009, Representative Smith of New Jersey submitted a resolution calling on Brazil to “immediately discharge all its duties under the Hague Convention” and noted that the government of Brazil was obligated to uphold the Hague Convention.⁵⁴ The House of Representatives asked that Brazil take action to return Sean to his father, and fulfill its obligations under international law.⁵⁵ Similarly, in February, the Senate submitted a resolution that called upon Brazil to do the same.⁵⁶ In March, the Senate noted in Resolution 74 the economic ties between the United States and Brazil, emphasizing that the United States is the largest direct investor in Brazil and that both countries have enjoyed a long economic partnership.⁵⁷ In June 2009, Representative Smith introduced a bill that would have suspended the United States preference system for Brazil, until Brazil complied with the Hague Convention.⁵⁸ Within eleven months of Congress’s actions, Sean Goldman had been returned to his father after four-and-a-half years of delays. The power of the diplomacy and economic threats encouraged Brazil to speed up the process for the Goldman case.

⁵² U.N. Charter art. 2, para. 3.

⁵³ Holt Statement on Discussion with Secretary of State Clinton, Feb. 6, 2009, <http://bringseanhome.org/wordpress/goldman-case/u-s-government-action/holt-statement-on-discussion-with-secretary-of-state-clinton/>.

⁵⁴ H.R. 125, 111th Cong. (2009).

⁵⁵ *Id.*

⁵⁶ S. Res. 37, 111th Cong. (2009) (enacted).

⁵⁷ S. Res. 74, 111th Cong. (2009) (enacted).

⁵⁸ H.R. 2702, 111th Cong. (2009).

While this is a very effective approach, unfortunately it is limited in its power. Practically, the United States cannot propose legislation for every child that is part of a Hague Convention case that has been delayed nor has it demonstrated that it would. In the 2009 Hague Convention Compliance Report, the United States indicated that in 2008 Brazil had twenty-five new cases of child abduction filed under the Hague Convention, and Mexico had over 500.⁵⁹ The report indicated that in 2008 the Central Authority for the United States helped in over 1,000 cases, of which 776 were wrongfully removed.⁶⁰ The United States simply cannot intervene using diplomatic or economic pressures in many of these cases, despite that doing so would likely result in a prompt outcome. The United States needs to look to other solutions to create more effective and practical long-term enforcement mechanisms for enforcing the Hague Convention.

2. *Amending the Hague Convention to Include a Jurisdictional Requirement*

The long-term solution to encourage countries to uphold their Hague Convention obligations would be to amend the Treaty to include enforcement mechanisms. Amendments to the Hague Convention would allow countries to provide input into what is working and what needs to be changed, in addition to allowing input about an enforcement mechanism.

First, an amendment to the Hague Convention could provide a jurisdiction where countries could take disputes, like the International Court of Justice, to obtain a decision. This would mean that two countries would submit to jurisdiction if an incident arose, and if there was an issue, the countries could be provided with relief from the international community. For the International Court of Justice, the court would make a decision based on violation of the Hague Convention Treaty and would not intervene in an individual case except to merely ask that the countries uphold the treaty in good faith and comply with all of the Hague Convention's requirements. This amendment would mean that in individual cases there may be no direct involvement by the international courts but on a bigger scale, the international community would encourage the country to comply with its treaty obligations.

Many countries are wary of submitting to international jurisdiction on any issue and cases at the International Court of Justice often involve territorial disputes and some treaty interpretation.⁶¹ The International Court of Justice has so far never accepted a case dealing with family law issues or even discussed the

⁵⁹ 2009 COMPLIANCE REPORT, *supra* note 8, at 11.

⁶⁰ *Id.* at 10.

⁶¹ Stanimir A. Alexandrov, *Accepting the Compulsory Jurisdiction of the International Court of Justice with Reservations: An Overview of Practice with a Focus on Recent Trends and Cases*, 14 LEIDEN J. OF INT'L L. 89, 89-90 (2001). It should be noted that some countries, including Brazil, generally have not accepted compulsory jurisdiction, making it almost impossible to take the case to an international forum. RENATA SZAFARZ, *THE COMPULSORY JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE* 84 (Kluwer Academic Publishers 1993).

Hague Convention.⁶² Additionally, the difficulty in amending the Hague Convention would be the time involved in amending it. Amending a treaty requires that all parties agree to the amendment and vote on it.⁶³ Here, all sixty-eight countries would have to agree to an amendment and then ratify it.

While the amending process would be long and undoubtedly difficult, nonetheless the long-term result would minimize problems when a country fails to comply with its obligations. Moreover, abducted children would be better protected as would the rights of custodial parents to protect and see their children. Without an amendment to implement effective enforcement, there is no incentive for countries to comply with the Hague Convention. The result is lengthy cases, like the Goldman case, where because there was no enforcement mechanism David had to fight for over five years, rarely seeing Sean, in order for the Brazilian courts to uphold the duties of the Hague Convention.

IV. CONCLUSION

Currently the Hague Convention is the only international treaty that provides for the return of an internationally abducted child. Without the Hague Convention, there would be no protection for children or parents. Yet, the Hague Convention alone does not do enough. The Goldman case is but one example of a successful return of a child. There are many more children that have not been returned to their parents, are not allowed to see a parent, or are currently in legal limbo regarding their citizenship and custody status.

The lack of an enforcement mechanism is one of the primary issues facing countries and individuals who are attempting to gain the return of abducted children. The use of economic and diplomatic pressures or an amendment to the Hague Convention provide alternatives that would protect children and parents in addition to encouraging long-term compliance with the Hague Convention. The use of international courts, like the International Court of Justice, would provide an additional method of enforcement and could provide a broad solution for noncompliance of the Hague Convention between countries. However, taking a case to the international arena could be incredibly difficult. The Goldman case exemplifies the struggles that families go through, but for each successful Goldman case there are hundreds more that have not been resolved and deny children and parents their rights. Changes must be made to truly serve the best interests of children of all countries.

⁶² BEAUMONT & MCELEAVY, *supra* note 39, at 238-39.

⁶³ The Hague Convention does not provide for an amendment process, however, the Vienna Convention on the Law of Treaties, *supra* note 47, at art. 40, governs amendments of multilateral treaties in the absence of provisions in the treaty. The Vienna Convention states that all parties shall be notified of an amendment and may participate in the creation of an amendment; however, an amended treaty is not binding on a country unless it agrees to accept the amended treaty. *Id.*