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International Parental Child Abduction (IPCA): Foreign Policy Responses and Implications

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SUMMARY

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International Parental Child Abduction: Foreign Policy Responses and Implications

Decreasing the number of American children affected by international parental child abduction (IPCA) and ensuring their prompt return to the United States has been a longstanding concern for U.S. policymakers. An increase in multinational marriages and heightened divorce and separation rates contribute to the issue. IPCA cases often garner global attention and demands for bilateral or multilateral solutions. This report focuses on the foreign policy aspects of IPCA, including international frameworks, U.S. legislation, and the engagement of Members of Congress on particular cases.

International Frameworks Related to IPCA

Since 1988, U.S. policy has been to support the Hague Convention on the Civil Aspects of International Child Abduction ("Hague Convention" or "Convention") as the principal mechanism for the return of abducted children to the United States. The Convention provides a method to return children to the country of their "habitual residence" for further adjudication of the custody dispute. The Convention does not impose criminal sanctions on the abducting parent. The Convention's procedures are inapplicable in non-signatory nations. Parents and governments must seek other means of resolving international child custody disputes with such nations, an often arduous process. Although 101 countries have become parties to the Hague Convention, some countries, many of which are in the developing world, have thus far declined to accede, citing concerns over domestic violence and potential conflicts with legal systems. In the United States, the Hague Convention was established in U.S. law in 1988 through the International Child Abduction Remedies Act (ICARA; P.L. 100-300).

Congressional Interest in IPCA-Related Issues

Congress has enacted subsequent legislation aimed at strengthening U.S. responses to IPCA. Key among these is the Sean and David Goldman International Child Abduction Prevention and Return Act of 2014 (the "Goldman Act"; P.L. 113-150). Citing the number of child abduction cases and low return rates for abducted children, Congress sought to "provide the Secretary of State with stronger diplomatic tools and a more coherent and transparent U.S. policy." The Goldman Act authorized the Secretary of State to take a series of actions, ranging from démarches to sanctions or extradition requests, in response to countries designated as "noncompliant" with Hague Convention or other obligations to resolve IPCA cases. It also required two annual reports on IPCA from the U.S. Department of State. Other legislation has made IPCA a criminal offense and affirmed interpretations of certain extradition treaties as relating to parental abductions.

Numerous issues may be of interest to Congress as it reviews U.S. policy in this area. Some analysts have debated the merits of establishing memoranda of understanding (MOUs) with nations that do not appear likely to accede to the Hague Convention. Such arguments center on questions of whether a willingness to establish agreements outside of the Convention weakens the Convention or improves options for left-behind parents. Additional questions have arisen regarding the impact criminal charges have on the prospects of returning abducted children. Some Members of Congress have pushed for increased charges, while guidance from the U.S. Department of State and Department of Justice (DOJ) has urged left-behind parents to consider whether charges will affect the likelihood of a child's return.

Some Members of Congress have consistently posed questions as to the most effective means of improving foreign government compliance with IPCA standards and processes, and have at times criticized the State Department for refusing to implement potentially more coercive foreign policy tools, such as sanctions. Such arguments have informed several instances in which high-level engagement, coupled with threats to foreign countries' economic or trading benefits, appears to have preceded the resolution of certain IPCA cases. State

Department officials have generally maintained that they believe diplomatic engagement to be an effective and appropriate remedy.

In considering strategies to prevent IPCA from the United States and to increase the likelihood of the prompt return of abducted children, Congress may devote attention to the varying reasons for noncompliance with IPCA standards. Some states may experience capacity shortcomings and thus benefit from increased U.S. foreign assistance to reform judicial proceedings, while some may be more responsive to the threat of certain punitive measures. Congress may face trade-offs in pursuing these approaches in terms of competing budgetary or foreign policy priorities.

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Introduction

Incidents of international parental child abduction (IPCA) present a challenge with significant implications for the foreign relations of the United States. These abductions continue to be of particular concern to Congress, both as a foreign policy issue and as an issue that can profoundly affect constituents. Many experts and policymakers agree that international displacement of a child from his or her home environment to another, with potentially different social structures, cultures, and languages, can cause emotional and psychological harm to the child.[1]

Rates of parental child abductions from the United States to foreign countries have declined during the past decade. The State Department reports that about 1,500 children were abducted from the United States by parents between 2008 and 2010, but that this figure decreased to below 1,000 by 2014 (see **Table 1**). Approximately 700 children were abducted from the United States by parents in 2018 and 2019, and challenges persist with regard to securing the return of those children who have been abducted.

Table 1. Children Reported Abducted From/Returned to the United States Each Year

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Reported abducted	1,503	1,468	1,364	1,150	1003	851	774	641	679	698	705
Returned	546	661	685	580	509	407	337	308	268	252	255

Source: U.S. State Department, "Reported Abductions and Returns 2009-2019," https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data/data.html.

Notes: The "children returned" figure indicates the number of children returned to the United States during that calendar year, regardless of the year in which the child was reported abducted. According to CRS communication with the State Department, these return figures are more accurate than the (different) figures indicated in annual reports published pursuant to the Goldman Act because returns that occurred in a previous year may continue to be reported to the State Department after data for that year's annual report has been gathered for publication. Also, the "reported abducted" figures refer to the number of children reported abducted, not the number of abduction "cases" referred to the reports; one "case" may involve multiple children, and reported abductions may not always proceed to formal cases.

Responding to this issue, Congress has enacted legislation pertaining to IPCA, engaged in individual cases of abducted children, and conducted oversight of executive branch actions in this area. Congress has held 11 hearings on the subject since 2014, and some Members have on occasion blocked legislation unrelated to IPCA until specific cases were resolved.

This report focuses on the implications of international parental child abductions on U.S. foreign policy, especially with respect to the primary international framework, the Hague Convention on the Civil Aspects of International Child Abduction ("Hague Convention" or "Convention") and prominent U.S. legislation, particularly the Sean and David Goldman International Child Abduction Prevention and Return Act of 2014 ("Goldman Act."). The report concludes with a

[1] See, for example, remarks by Rep. Christopher H. Smith, U.S. Congress, House Foreign Affairs Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations, *Resolving International Parental Child Abductions to Non-Hague Convention Countries*, hearing, 113th Congress., 1st sess., May 9, 2013; and Marilyn Freeman, *International Child Abduction: Research on the Effects of Abduction and Reunification*, International Centre for Family Law, Policy, and Practice, June 10, 2019.

discussion of foreign policy issues for consideration by Congress related to its lawmaking and oversight activities.

Overview of Relevant U.S. Legislation

Law enforcement in the United States historically viewed parental kidnapping as a private family matter. This belief has changed, as reflected by the enactment of several laws that elevate IPCA as a foreign policy priority for the State Department and strengthen the ability for the United States to respond with prosecutorial tools. While the United States may have difficulty enforcing parental kidnapping laws abroad, these laws can act as useful mechanisms to facilitate solutions to international child abductions.[2]

- **Parental Kidnapping Prevention Act of 1980**[3] amended the Fugitive Felon Act[4] to apply to cases of interstate and international parental abduction. The act authorized the issuance of Federal Fugitive Felony Warrants for parental abduction cases in which the abducting parent has fled the United States to avoid prosecution, among other provisions.[5]
- **International Child Abduction Remedies Act (ICARA) of 1988**[6] implemented the Hague Convention in the United States. Among other provisions, ICARA directed the President to designate a U.S. Central Authority and empowered state and federal courts to hear cases under the Hague Convention.
- **International Parental Kidnapping Crime Act (IPKCA) of 1993**[7] criminalized the removal of a child from the United States with "the intent to obstruct the lawful exercise of parental rights."
- **Foreign Affairs Reform and Restructuring Act of 1998**[8] required an annual report from the Secretary of State to Congress on international compliance with the Hague Convention,. The report is to include information on countries that had demonstrated a "pattern of noncompliance," unresolved cases of abductions of American children, and efforts by the State Department to encourage other countries to become signatories to the Convention.
- **Extradition Treaties Interpretation Act of 1998**[9] authorized the United States to interpret extradition treaties listing "kidnapping" as encompassing the offense of parental kidnapping.

[2] For more information about the Convention and relevant U.S. domestic laws, see CRS Report RS21261, *International Parental Child Abductions*, by Alison M. Smith, and U.S. Department of State, International Parental Abduction, Laws and Regulations, at https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/laws.html.

[3] P.L. 96-611, 28 U.S.C. §1738A.

[4] 18 U.S.C. §1073.

[5] Also see U.S. Department of State, *Foreign Affairs Manual*, 7 FAM 1710 International Parental Child Abduction, and U.S. Department of Justice, *Criminal Resource Manual*, §1781 Parental Kidnapping (archived).

[6] P.L. 100-300, 22 U.S.C. §9001 et seq.

[7] P.L. 103-173, 18 U.S.C. §1204.

[8] P.L. 105-277, Division G.

[9] P.L. 105-323.

- **The Immigration Act of 1990,**[10] amended the Immigration and Nationality Act to provide that any alien who, in violation of a custody order issued by a U.S. court, takes or retains a child out of the United States, or who has intentionally assisted such an act, may be excluded from the United States. The exclusion does not apply if the alien is a citizen of a country that has ratified the Hague Convention.[11]
- **Prevention of Child Abduction Partnership Act of 2004**[12] amended ICARA to limit the tort liability of private entities that receive grants or enter into agreements to assist the U.S. Central Authority in carrying out the responsibilities of the Hague Convention.
- **Sean and David Goldman International Child Abduction Prevention and Return Act of 2014**[13] included numerous provisions intended to strengthen the State Department's response to IPCA, including annual reports and the authorization of certain punitive actions by the State Department. For more information, see the "U.S. Legislation and Implementation: The Goldman Act" section of this report.

Relevant laws also exist at the state level, including several "uniform acts," which are designed to establish the same or similar laws across various jurisdictions. Such laws are typically drafted by the National Conference of Commissioners on Uniform State Laws, or the Uniform Law Commission (ULC).[14] Relevant uniform laws include the following:

- **Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)** replaced a previous act, the Uniform Child Custody Jurisdiction Act (UCCJA), and added provisions authorizing law enforcement and state courts to take action to locate or return a child, pursuant to the Hague Convention.[15] UCCJEA was drafted by the ULC in 1997 and has been adopted by 49 states, as well as Washington, DC, Guam, and the U.S. Virgin Islands.[16]
- **Uniform Child Abduction Prevention Act (UCAPA)** provides courts with guidelines for custody disputes in which there is a fear of potential international abduction of the child. UCAPA identifies risk factors that courts may consider to determine whether there is a "credible risk of abduction," including the risk that a parent is likely to take the child to a country that is not party to the Hague Convention or is unlikely to effectively enforce return orders pursuant to the

[10] P.L. 101-649, amending 8 U.S.C. Ch. 12.

[11] 8 U.S.C. §1182(a)(10)(C)(iii).

[12] P.L. 108-370, 22 U.S.C. §9006.

[13] P.L. 113-150, 22 U.S.C. Chapter 98.

[14] The ULC is a nonprofit organization composed of state commissions from each jurisdiction (U.S. states and territories). Per the ULC's website, "Each jurisdiction determines the method of appointment and the number of commissioners actually appointed. Most jurisdictions provide for their commission by statute," Uniform Law Commission, About ULC, Organization, at https://www.uniformlaws.org/aboutulc/overview.

[15] Uniform Child Custody Jurisdiction and Enforcement Act, §301, 302, 315, available at https://www.uniformlaws.org/viewdocument/final-act-no-comments-15?CommunityKey=4cc1b0be-d6c5-4bc2-b157-16b0baf2c56d&tab=librarydocuments.

[16] Massachusetts has not enacted the UCCJEA. For information on enactment by state, see Uniform Law Commission, Child Custody Jurisdiction and Enforcement Act, at https://www.uniformlaws.org/committees/community-home?CommunityKey=4cc1b0be-d6c5-4bc2-b157-16b0baf2c56d.

Convention.[17] UCAPA was drafted by the ULC in 2006 and has been adopted by 14 states and the District of Columbia.[18]

International Framework: The Hague Convention

The Hague Conference on Private International Law (HCCH) concluded the Convention on the Civil Aspects of International Child Abduction on October 25, 1980.[19] Key objectives of the Convention are specified in a series of articles, organized into larger chapters within the Convention text. Objectives include protecting children from wrongful removals and retentions across international borders and providing procedures to aid in their safe and prompt return. The Convention deems a child's removal wrongful when one parent breaches custody rights granted to the other parent in the jurisdiction of the child's "habitual residence."[20] The Senate provided its advice and consent to ratification of the Convention in 1986, and the United States has been a Contracting State and a State Party to the Convention since 1988.[21] There are currently 100 other Contracting States, of which 79 are treaty partners with the United States.[22]

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[17] Uniform Child Abduction Prevention Act, §7, available at https://www.uniformlaws.org/committees/community-home?communitykey=c8a53ebd-d5aa-4805-95b2-5d6f2a648b2a&tab=groupdetails.

[18] The UCAPA has been enacted by Michigan; Pennsylvania; New Mexico; Alabama; Tennessee; Florida; Washington, DC; Mississippi; Nevada; Colorado; Nebraska; Kansas; Utah; Louisiana; and South Dakota. For information on enactment by state, see Uniform Law Commission, Child Abduction Prevention Act, at https://www.uniformlaws.org/committees/community-home?CommunityKey=c8a53ebd-d5aa-4805-95b2-5d6f2a648b2a#:~:text=The%20Uniform%20Child%20Abduction%20Prevention,prevent%20the%20abduction%20of%20children.

[19] The full text of the Convention is available at http://www.hcch.net/index_en.php?act=conventions.text&cid=24.

[20] Article 3 of the Convention states, "The removal or the retention of a child is to be considered wrongful where (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention." HCCH, Hague Convention on the Civil Aspects of International Child Abduction, 1980. According to the Law Library of Congress, "The term 'habitual residence' is not defined in the Hague Convention, but it is a dispositive inquiry in many Hague Convention cases. For a child who is old enough, courts look to the place where the child has 'acclimatized.' Infants, however, are typically deemed too young to have acclimatized anywhere, so courts look to 'shared parental intent' in determining a child's habitual residence. In March 2020, the U.S. Supreme Court ruled that "the determination of a child's habitual residence depends on the totality of the circumstances." Elizabeth Osborne, "United States: Supreme Court Clarifies Standard for Determining Child's Country of Habitual Residence, Affirms Return of Child to Italy," *Global Legal Monitor*, March 5, 2020.

[21] "Contracting State" refers to a state that has consented to be bound by the treaty, regardless of whether the treaty has entered into force. This distinction stands in contrast to a "State Party," which is a state that has consented to be bound by the treaty and for which the treaty is in force. The treaty enters into force for a country following the country's submission of the instrument of ratification, accession, acceptance, or approval, a process that typically takes several months. See Hague Conference on Private International Law, *FAQ*, at https://www.hcch.net/en/instruments/conventions/specialised-sections/apostille/faq1. The United States ratified the Hague Convention with two reservations. One, pursuant to Article 24, stipulated that documents sent to the U.S. Central Authority should be accompanied by an English translation (as opposed to French, or other language options listed in the Convention). The second reservation, pursuant to Article 26, declared that the United States would not be obligated to assume the costs of legal proceedings for Hague Convention cases. U.S. Congress, Senate, *Text of Resolution of Advice and Consent to Ratification Reported by the Committee on Foreign Relations and as Adopted by the Senate: The Hague Convention on the Civil Aspects of International Child Abduction*, 99th Cong., 2nd sess., October 9, 1986.

[22] Although the Convention is by definition in force between all States that have ratified the Convention, States that accede to the Convention subsequent to its coming into force in 1983 are not automatically accepted as Hague "partners" by Contracting States, including the United States. Each Contracting State must individually approve new accessions, after which point the Convention bilaterally enters into force. In July 2020, the State Department announced that Pakistan would become the 80th Hague partner country of the United States on October 1, 2020. U.S. Department of State, Office of the Spokesperson, "United States and Pakistan to Become Partners Under the Hague

The Convention does not act as an extradition treaty or evaluate the merits of specific custody disputes. Rather, it provides a civil remedy designed to preserve the status quo by quickly returning abducted children to the country of their habitual residence and allowing the judicial authorities in that country to address the merits of a custody dispute. The Convention mandates the designation of a Central Authority in each participating country to process applications for the return of or access to allegedly wrongfully removed children and to cooperate in locating a wrongfully retained child, as determined by the judicial authority in the country of habitual residence, preventing harm to the child, and ensuring his or her prompt return.

The Convention includes an expectation that cases will be addressed "expeditiously," preferably within six weeks from the beginning of proceedings (Article 11). To facilitate judicial communications between domestic courts of different countries on specific cases and to disseminate best practices, the HCCH administers a group of judges known as the International Hague Network of Judges (IHNJ). As of August 2020, the IHNJ is composed of 137 judges from 86 countries, 4 of whom are from the United States.[23] Issues relating to the Convention are also addressed through meetings of the Special Commission on the Practical Operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention, the most recent of which was held in October 2017.

The number of IPCA cases that involve abductions from the United States to Hague Convention partner countries has decreased slightly in recent years, see **Table 2** below. In 2019, there were 216 new cases of abductions from the United States to Hague partner countries, involving 306 children.[24]

Table 2. Reported Hague Partner Outgoing Abduction Cases, 2017-2019

Year	New Outgoing Abduction Cases	Number of Countries Involved	Number of Children Involved	Countries with 10+ New Outgoing Abduction Cases
2017	255	50	361	Mexico (95), Canada (20), United Kingdom (14), Colombia (10)
2018	246	45	364	Mexico (84), Canada (37), United Kingdom (14)
2019	216	42	306	Mexico (83), Canada (16), Colombia (15), United Kingdom (13)

Source: CRS presentation of data published online by the Department of State, Bureau of Consular Affairs, at https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data.html.

Notes: "Outgoing" refers to cases involving abductions of children from the United States to a foreign country that were reported to the U.S. Central Authority. Cases that are reported to the Department of State are not necessarily transmitted to the foreign central authority. Per State Department annual reports, there may be discrepancies in some figures.[25] Case data on the United Kingdom includes British Dependencies Anguilla and Bermuda.

Abduction Convention," July 15, 2020.

[23] Hague Conference on Private International Law, *International Hague Network of Judges*, August 2020.

[24] The State Department has attributed successful efforts to deter and address IPCA cases to the impact of the Hague Convention's provisions for the return of the child. "Further, the existence of the convention's return mechanism has deterred an untold number of abductions, and we are heartened to see the number of new abductions reported to the Department of State has declined by more than 60 percent over the past 10 years." U.S. Congress, House Foreign Affairs Committee, Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations, No Child Left Behind: An Update on the Goldman Act, hearings, 115th Congress, 2nd sess., April 11, 2018, p. 5-6.

[25] "Each year, the Report is based on the information available at the time of publication; for some countries, there may be minor discrepancies in the data between the end of one year and start of another as a result of information obtained

Exceptions to the Return of the Child

Despite the focus on returning a child to his or her habitual residence, several factors may allow for the child to remain with the removing parent, as outlined in the Convention. Per the Explanatory Report to the Convention, these exceptions "are to be interpreted in a restrictive fashion if the Convention is not to become a dead letter."[26]

- If the child is over age 16 at the time of the original taking or retention, or becomes 16 at any time after the taking (Article 4).
- If the child has become "settled in its new environment" and more than one year has passed from the date of the taking or detention (Article 12).[27]
- If the left-behind parent was not actually exercising custody rights at the time of the abduction or consented to the taking of the child, if the child possesses a "degree of maturity at which it is appropriate to take account of its views," or if there is a "grave risk" of harm to the child if returned (Article 13).
- If the return of the child would be against "the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms" (Article 20).

In contrast to standards established in some national laws, many U.S. state laws, and the U.N. Convention on the Rights of the Child (CRC), the Hague Convention does not apply a "best interests of the child" standard to decisions about a child's return.[28] The Explanatory Report to the Convention states that the Convention had intentionally avoided the "best interests" standard in part to discourage estranged parents from seeking out courts they anticipated would be more favorable to their position (known as "forum shopping").[29] Nonetheless, the Explanatory Report points to the Preamble to the Convention, which states that "the interests of children are of paramount importance" and contends that children's interests are served by protection "from the harmful effects of their wrongful removal or retention.[30]

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after the reporting period." U.S. State Department, *2020 Annual Report on International Child Abduction*, April 2020, p. 11.

[26] Elisa Pérez-Vera, *Explanatory Report on the 1980 Hague Child Abduction Convention*, 1980, p. 434. Reportedly, "Article 13 in the most litigated provision while Article 20 is rarely applied." Keelikolani Lee Ho, "The Need for Concentrated Jurisdiction in Handling Parental Child Abduction Cases in the United States," *Santa Clara Journal of International Law*, vol. 14, no. 2 (May 2016), p. 606.

[27] If the reason for the delay was concealment of the child's location, the U.S. custody order may still be considered under the argument that the one-year limit should be disregarded due to the abducting parent's conduct: "If the alleged wrongdoer concealed the child's whereabouts from the custodian necessitating a long search for the child and thereby delayed the commencement of a return proceeding by the applicant, it is highly questionable whether the respondent should be permitted to benefit from such conduct absent strong countervailing considerations." U.S. Department of State, "The Hague Convention on the Civil Aspects of International Child Abduction Legal Analysis," *51 Federal Register 10494*, March 26, 1986, pp.19-20. See also, analysis of U.S. court proceedings which articulate "authority, however, to support an equitable tolling of the one-year period," in Rana Holz, "International Parental Child Abduction Part II: The Respondent's Case," *The Florida Bar Journal*, vol. 77, no. 7 (July/August 2003), p. 62.

[28] In the United States, "Whenever a court makes [a determination that affects a child], it must weigh whether its decision will be in the 'best interests' of the child." U.S. Department of Health and Human Services (HHS), Child Welfare Information Gateway, *Determining the Best Interests of the Child*, March 2016, p. 1. According to Article 2 of the CRC, "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." The United States has signed, but not ratified the CRC.

[29] Elisa Pérez-Vera, *Explanatory Report*, pp. 430-432.

[30] Some observers question whether an automatic preference for the return of a child fulfills a "best interest" standard.

The "Grave Risk" Exception and Domestic Violence

Some observers have argued that the Convention's mechanisms for the return of a child disadvantage vulnerable parents, particularly mothers living abroad who wish to leave unhappy or abusive marriages. Concerns over the treatment of domestic violence in Hague cases has reportedly contributed to some countries' decisions not to accede to the Convention, despite efforts on the part of the United States and other countries.

These critics posit that the Convention was drafted with the understanding that most cases of parental abduction would involve a noncustodial parent, likely the father, committing the abduction, and therefore is ill-fitting for the increasing frequency of mothers who abduct their children and allege they are escaping abuse.[31] A HCCH review of Hague Convention cases from 2015 found that 73% of the taking parents were mothers and 58% of taking parents travelled to a country of which they were a citizen.[32] According to a 2010 report for the U.S. Department of Justice (DOJ), which focused on women who left marriages abroad to return to the United States, mothers who had abducted their children had "often experienced severe violence from the left-behind fathers" prior to departure and that "U.S. authorities and courts were not receptive to mothers' safety concerns."[33] The report also identified issues that may contribute to women fleeing to a different country rather than initiating divorce proceedings or other custody arrangements in the state of their and the child's habitual residence, including a lack of ability to find employment due to visa restrictions, limited social services for domestic violence victims, and social isolation due to cultural or linguistic differences.[34]

Increasing concerns relating to domestic violence and the Convention have led it to be the topic of numerous high-level meetings in recent years, along with the publication of a "Guide to Good Practice on Article 13(1)(b) on the 1980 Convention" in March 2020. The guide clarifies that the "grave risk" exception "does not require, for example, that the child be the direct or primary victim of physical harm if there is sufficient evidence that, because of a risk of harm directed to a taking parent, there is a grave risk to the child."[35]

Some countries, including Japan and Switzerland, have addressed these concerns by inserting provisions relating to domestic violence in implementing legislation.[36] In India, concerns over domestic violence were reportedly significant factors in the Government of India's refusal to accede to the Convention in late 2016.[37] Despite efforts

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See for example, Hannah Loo, "In the Child's Best Interests: Examining International Child Abduction, Adoption, and Asylum," *Chicago Journal of International Law*, vol. 17, no. 2 (December 2016), pp. 621-622.

[31] Although the Convention does not refer to the gender or sex of parents, a report included in the working documents of the Hague Convention listed "typical elements of the situation which results in an abduction" as including a "non-custodial parent who abducts because of frustration due to diminished influence and access to the child," Adair Dyer, "Child Abduction," *Tome III Actes et documents de]a Quatorzieme Session*, October 6-25, 1980, p. 19. Scholars have found that many countries anticipated the mother as maintaining primary custody and therefore assumed noncustodial parents to be fathers. See Merle H. Weiner, "International Child Abduction and the Escape from Domestic Violence," *Fordham Law Review*, vol. 69, no. 2, 2000, and Sawako Yamaguchi and Taryn Lindhorst, "Domestic Violence and the Implementation of the Hague Convention on the Civil Aspects of International Child Abduction: Japan and U.S. Policy," *Journal of International Women's Studies*, vol. 17, no. 4 (July 2016), p. 18 (hereafter Yamaguchi and Lindhorst, "Domestic Violence and the Implementation of the Hague Convention").

[32] Nigel Howe and Victoria Stephens, "Part III—A statistical analysis of applications made in 2015 under the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*—National Reports," HCCH and International Centre for Missing and Exploited Children, July 2018, p. 3.

[33] Most, but not all, of the women whose experiences were documented in the report were U.S. citizens. Jeffrey Edleson et al., "Multiple Perspectives on Battered Mothers and Their Children Fleeing to the United States for Safety: A Study of Hague Convention Cases," DOJ, National Institute of Justice (NIJ), #2006-WG-BX-0006, December 2010, p. ix;

[34] Ibid., pp. 69-93.

[35] HCCH, "Guide to Good Practice on Article 13(1)(b) on the 1980 Convention," 2020, p. 28.

[36] For a comparison of Japanese and U.S. policies regarding domestic violence and the Hague Convention, see Yamaguchi and Lindhorst, "Domestic Violence and the Implementation of the Hague Convention." See also Marilyn Freeman and Nicola Taylor, "Domestic Violence and Child Participation: Contemporary Challenges for the 1980 Hague Child Abduction Convention," *Journal of Social Welfare and Family Law*, vol. 42, no. 2 (2020).

[37] For a study of Indian law relating to domestic violence and the implications for accession to the Hague Convention, see Sai Ramani Garimella, "International Parental Child Abduction and the Fragmented Law in India – Time to Accede to the Hague Convention?" *Macquerie Law Journal*, vol. 17 (2017).

by other countries, notably the United States and the United Kingdom, and the issuing of a bill that would have implemented the Convention in India by the Women and Child Development (WCD) Ministry, the WCD Minister and Ministry of External Affairs ultimately declined to ratify the Convention. According to the Law Library of Congress, a "WCD Ministry official stated that signing [the Convention] would be to the disadvantage of Indian women in that there were far more cases of Indian women escaping bad marriages abroad and returning 'to the safety of their homes' in India than non-Indian women who are married to Indian men leaving India with their children."[38] Some Indian media sources linked the decision to concerns over domestic violence specifically.[39]

Muslim-Majority Countries and the Malta Process

The Hague Convention's prioritization of the return of a child over other considerations is reportedly an obstacle for the accession to the Hague Convention of countries with legal systems based on religion or cultural values, for which the return of a child to a parent with a different background could be problematic. Some observers have paid particular attention to Muslim-majority countries, of which 12 are parties to the Convention.[40] While treatment of parental abduction cases differs between Muslim-majority countries, many countries' custody laws reflect a preference for the mother to maintain custody over young children, and for the children to be raised in Muslim environments or by Muslim parents. Some commentators have attributed the reticence of some Muslim-majority countries to become parties to the Hague Convention to a desire not to return children to non-Muslim parents.[41]

Since 2004, the HCCH has supported a series of conferences and other events, known together as the Malta Process, to improve processes for the resolution of IPCA cases that involve "non-Contracting states whose legal systems are based on or influenced by Islamic law."[42] The number of participating states has increased, from 14 at the first Malta Conference in 2004 to 34 at the fourth conference in 2016. The United States has participated since the second Malta Conference, in 2006. Typically, the conferences include discussions of non-Hague mediation structures, encouragement for non-Hague countries to review the Convention, and pledges to improve transnational judicial communication. While the Malta Process focuses on countries with Islamic jurisprudence, it has also provided a forum for countries with different cultural or religious objections to the Convention to discuss concerns and mediation alternatives.[43]

The Role of the State Department's Office of Children's Issues

Within the State Department, the Bureau of Consular Affairs' Office of Children's Issues leads U.S. efforts relating to IPCA, including by executing obligations under the Convention as the

[38] Lerner, Barry, *India: Decision Not to Sign Hague Treaty on Child Abduction*, Library of Congress, Global Legal Monitor, January 23, 2017.

[39] Shalini Nair, "India Will Not Ink Hague Treaty on Civil Aspects of Child Abduction," *The Indian Express*, November 27, 2016.

[40] To date, Albania, Bosnia and Herzegovina, Burkina Faso, Guinea, Iraq, Kazakhstan, Morocco, Pakistan, Tunisia, Turkey, Turkmenistan, and Uzbekistan are parties to the Convention.

[41] For examples of custody laws and concerns of Muslim-majority countries, see Abdul Ghafur Hamid, Nora Abdul Hak, Najibah Mohd Zin, and Hidayati Mohamed Jani, "The Applicability of the 1980 Hague Abduction Convention in Muslim Countries: Particular Reference to the Malaysian Position," *Arab Law Quarterly*, vol. 32, no. 2 (January 2018).

[42] HCCH, *10th Anniversary of the Malta Process*, March 24, 2014.

[43] See, for example, the summary of remarks made by Yuko Nishitani on "why few East Asian countries have become party to the 1980 Child Abduction Convention" as part of a Malta Process-associated working group in HCCH, "Meeting of the Working Party on Mediation," March 4, 2019.

U.S. Central Authority and preparing materials required by the Goldman Act.[44] Michelle Bernier-Toth, a career civil servant, is currently the Special Advisor for Children's Issues to the Secretary of State. For outgoing cases involving American children abducted to Hague Convention partner countries, the State Department accepts and facilitates new applications. In all reported abduction cases, the State Department can provide left-behind parents through diplomatic channels with relevant information for locating missing children; report on the status of pending cases; facilitate communication with other U.S. government agencies, law enforcement, and nongovernmental organizations; and advocate on behalf of left-behind parents.[45] The State Department also maintains a Hague Convention Attorney Network, which is composed of attorneys who will take Hague Convention cases on a pro bono or reduced-fee basis, to which it may refer interested parents. U.S. Embassy consular officials may also monitor the welfare of the kidnapped child and assist with return arrangements.[46]

For abductions in progress, in which a child is en route to another country, the State Department may work with law enforcement officials to prevent the child from departing the United States, direct relatives to the National Center for Missing and Exploited Children (NCMEC), and coordinate with overseas embassies and foreign government officials to halt travel plans.[47] In addition, the State Department administers the Children's Passport Issuance Alert Program (CPIAP), a tool designed to prevent IPCA by protecting against passport issuance without parental consent or notification. In 2019, over 4,500 children were enrolled in the CPIAP.[48]

In addition, the State Department encourages cooperation on abduction cases and improved treaty compliance through bilateral exchanges between relevant government officials and judges. The State Department has also negotiated nonbinding memoranda of understanding (MOUs) related to this issue with non-Hague countries: Egypt (2003), Lebanon (2004), Jordan (2006), Saudi Arabia (2017), and also supported the reaching on an MOU with Taiwan (2019).[49] For further discussion, see "Promotion of Hague Convention Accession."

Proceedings of Hague Return Cases Heard in the United States

In the United States, NCMEC works under the direction of the State Department to receive applications for the return of children wrongfully brought to or kept in the United States. NCMEC seeks to identify the location of removed children, including through communication with state

[44] More generally, the office is tasked with "lead[ing] U.S. government efforts to prevent abductions and to respond when international abductions or wrongful retentions happen," regardless of whether an abducted child is taken to a Convention partner country or a nonpartner country. See U.S. Department of State, Office of Children's Issues, *2020 Annual Report on International Child Abduction*, April 2020, p. 5.

[45] 22 C.F.R §94.7 and Foreign Affairs Manual, *7 FAM 1710.*

[46] Foreign Affairs Manual, *7 FAM 1710.*

[47] U.S. Department of State, Bureau of Consular Affairs, *International Parental Child Abduction – Prevention*, at https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/prevention.html. NCMEC serves as an information and resource center on issues relating to missing and exploited children and is funded under the Missing and Exploited Children's program grant administered by DOJ's Office of Juvenile Justice and Delinquency Prevention. U.S. Department of State, Office of Children's Issues, *2020 Annual Report on International Child Abduction*, April 2020, p. 5, and U.S. Department of Justice, *National Center for Missing & Exploited Children*, at https://ojjdp.ojp.gov/programs/national-center-missing-and-exploited-children.

[48] U.S. State Department, 2020 Annual Report on International Child Abduction, pp. 1.

[49] Because of the unique political status of Taiwan and the unofficial nature of U.S.-Taiwan bilateral relations, the American Institute in Taiwan (AIT) and the Taipei Economic and Cultural Representative Office (TECRO) signed the relevant memorandum. American Institute in Taiwan, "AIT and TECRO Sign MOU on Cooperation on International Parental Child Abduction (IPCA)," press release, April 13, 2019.

social service agencies, and may assist applicants by connecting them with such services and state attorneys general and private attorneys.[50]

ICARA provides for jurisdiction in both state and federal courts, though most Hague cases are held in federal courts.[51] In 2015, the United State received 313 return applications from 51 countries. Of those applications, more than half were from three countries: Mexico (122 cases), Canada (19 cases), and the United Kingdom (19 cases).[52] According to the HCCH review of Hague Convention cases from 2015, the United States averaged 208 days to reach a final settlement, compared with a global average of 164 days, both of which are longer than the Convention's preference for a resolution within six weeks.[53]

Withholding of Foreign Assistance Provisions in Appropriations

Since FY2012, annual Department of State, Foreign Operations, and Related Programs (SFOPS) appropriations legislation has included a provision authorizing the Secretary of State to withhold certain bilateral economic assistance funds for the central government of countries that the Secretary determines are "not taking appropriate steps" to comply with the Hague Convention.[54] The Secretary must report to the Committees on Appropriations within 15 days of making any such determination. To date, the Secretary of State has not withheld funds pursuant to this provision.[55]

U.S. Legislation and Implementation: The Goldman Act

The Sean and David Goldman International Child Abduction Prevention and Return Act of 2014 (the "Goldman Act"; P.L. 113-150) became law in August 2014. Congress, citing the number of child abduction cases and low return rates for abducted children, sought to strengthen the U.S. response to abductions beyond previous reporting requirements by "[providing] the Secretary of State with stronger diplomatic tools and a more coherent and transparent U.S. policy."[56] The Goldman Act includes the following key provisions:

- Requiring a more comprehensive annual report from the State Department on IPCA, including a list of countries determined to have demonstrated a "pattern of non-compliance" with their Hague Convention obligations, their agreed bilateral

[50] 22 C.F.R §94.6.

[51] Jennifer Baum, "Ready, Set, Go to Federal Court: The Hague Child Abduction Treaty, Demystified," *American Bar Association*, July 15, 2014.

[52] Nigel Howe and Victoria Stephens, "Part III—A statistical analysis of applications made in 2015 under the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*—National Reports," HCCH and International Centre for Missing and Exploited Children, July 2018, p. 142.

[53] Ibid., p. 147.

[54] According to S.Rept. 112-85, this provision was added due to concerns from the Senate Appropriations Committee that "many countries, including Costa Rica, are failing to meet their commitments under the [Hague Convention.]" The provision has typically pertained to funds appropriated under Title III of annual SFOPS appropriations bills, Bilateral Economic Assistance. For FY2012-2014, the provision stated that the Secretary of State "may" withhold the specified funds. For FY2015-FY2020, the provision states that the Secretary "should" withhold the funds.

[55] CRS correspondence with U.S. State Department Office of Children's Issues, September 4, 2020.

[56] U.S. Congress, Senate Committee on Foreign Relations, S.Rept. 113-204 accompanying the Goldman Act.

procedures with the United States, or a failure to "work with the Central Authority of the United States to resolve abduction cases."[57]

- Requiring an additional report to Congress on actions taken regarding noncompliant countries within 90 days of the publication of the annual report.
- Mandating diplomatic or sanctions actions be taken by the Secretary of State against governments of countries with a "pattern of non-compliance," subject to exceptions and waivers.
- Requiring that the Secretary of State pursue bilateral agreements on procedures with those countries "that are unlikely to become Convention countries in the foreseeable future" and with Convention signatory countries "that have unresolved abduction cases that occurred before the Hague Abduction Convention entered into force with respect to the United States or that country."
- Mandating the creation of an interagency working group on child abduction prevention composed of representatives from the State Department, Department of Homeland Security, and Department of Justice.[58]

Reporting Requirements

The State Department has produced an annual report pursuant to the Goldman Act since 2015; the most recent report, covering calendar year 2019, was released in April 2020. The reports include information on developments and statistics on outgoing (from the United States) abduction cases in each "pattern of noncompliance" country, as well as other countries with at least one abduction case.[59] Since 2015, the State Department has also published an Action Report on IPCA, which fulfills Goldman Act requirements that the Secretary report on specific actions in response to countries identified as engaging in a pattern of noncompliance. [60]

According to the most recent annual report, the Office of Children's Issues handled 716 abduction cases in 2019, 295 of which were new cases. The report also indicated that 33% of the children involved in abduction cases opened in 2017 had been returned to the United States. Of the cases (each of which can involve multiple children) opened in 2017, 48% had been resolved "either judicially or voluntarily," 45% were "resolved for other reasons or had been closed administratively," and 7% remained unresolved by the end of 2019.[61]

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[57] This report replaced the prior annual report required under Section 2803 of the Foreign Affairs Reform and Restructuring Act of 1998 (Division G of P.L. 105-277). The newer required report is more comprehensive and detailed in its requirements and is broader in scope, in that it includes reporting on countries that are not signatories to the Hague Convention, thereby broadening the number of countries that may be designated as non-compliant.

[58] The act also mandated that U.S. Customs and Border Protection establish a program to prevent the departure from the United States of children when presented with a court order prohibiting their removal. Information about this program is available at https://www.cbp.gov/travel/international-child-abduction-prevention-and-return-act.

[59] The Goldman Act requires more detailed information for countries with five or more abduction cases than those with less, but in recent years the State Department has included the detailed information for all countries with at least one abduction case.

[60] Pursuant to the Goldman Act, the annual report is due by April 30; the action report is due no later than 90 days after the submission of the annual report, P.L. 113-150, §101(a), 202(c)(4), 22 U.S.C. §9111(a), 9211(c)(4). These reports are accessible under the "Action Reports on International Child Abduction" heading at https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data/reported-cases.html.

[61] U.S. State Department, *2020 Annual Report on International Child Abduction*, April 2020. A case is considered "resolved" if it meets one of six criteria: (1) the child is returned to the country of habitual residence; (2) the judicial or administrative branch where the child is located is complying with the provisions of the Hague Convention or relevant

Pattern of Noncompliance

Pursuant to the Goldman Act, countries determined to have demonstrated a pattern of noncompliance "may be evidenced by" the presence of one or more of four criteria:

1. 30% or more of the total abduction cases to that country are unresolved;
2. the country's central authority "regularly fails to fulfill its responsibilities" under the Hague Convention or under relevant bilateral procedures;
3. the relevant judicial or administrative branch of a Hague Convention signatory country or a country under bilateral procedures with the United States "fails to regularly implement and comply with" the Convention or those procedures; or
4. the country's law enforcement authorities "regularly fail to enforce return orders or determinations of rights of access" by the country's judicial or administrative authorities.[62]

As shown in **Table 3**, the number of countries identified as demonstrating a "pattern of noncompliance" has generally decreased, from 22 countries in the report covering calendar year 2014 (the first report produced pursuant to the Goldman Act) to 10 countries in the most recent report. Some U.S. policymakers have questioned decisions to remove certain countries from the noncompliant list, arguing that the list and potential associated punitive actions pursuant to the Goldman Act present a powerful tool to resolving IPCA cases. See the "Improving Compliance" section of this report.

bilateral procedures; (3) the left-behind parent comes to a voluntary agreement with the other parent; (4) the left-behind parent withdraws the request for assistance from the Department of State; (5) the left-behind parent cannot be located for more than one year; or (6) the left-behind parent or the child is deceased.

[62] 22 U.S.C. 9101. Pursuant to the act, the State Department's annual reports have included brief explanatory determination information reflecting these criteria.

Table 3. Countries Demonstrating a "Pattern of Noncompliance," 2014-2019

2014	2015	2016	2017	2018	2019
Argentina	Argentina	Argentina	Argentina	Argentina	*Argentina*
The Bahamas	The Bahamas	The Bahamas	The Bahamas	Brazil	*Brazil*
Brazil	Brazil	Brazil	Brazil	Ecuador	Costa Rica
Colombia	Colombia	Dominican Republic	China	Egypt	*Ecuador*
Costa Rica	Costa Rica	Ecuador	Dominican Republic	India	Egypt
Dominican Republic	Dominican Republic	Guatemala	Ecuador	Jordan	*India*
Ecuador	Ecuador	India	India	Lebanon	*Jordan*
Egypt	Egypt	Jordan	Japan	Peru	*Peru*
Guatemala	Guatemala	Nicaragua	Jordan	United Arab Emirates	Romania
Honduras	Honduras	Panama	Morocco		United Arab Emirates
India	India	Peru	Peru		
Jordan	Jordan	Romania	United Arab Emirates		
Lebanon	Lebanon	Tunisia			
Nicaragua	Nicaragua				
Oman	Oman				
Pakistan	Pakistan				
Peru	Peru				
Poland	Romania				
Romania	Tunisia				
Saudi Arabia					
Slovakia					
Tunisia					

Source: State Department annual reports on international child abduction.

Notes: Italicized 2019 countries are those that have been listed as non-compliant in every annual report since the Goldman Act's enactment. Years indicated correspond with the calendar year reported, not the year of the report issuance.

Escalating Options for the Secretary of State

For countries determined to have demonstrated a pattern of noncompliance, the Goldman Act requires that the Secretary of State take one or more of a prescribed list of punitive actions against the government in question.[63] These actions range in severity from a démarche (a formal diplomatic representation of one government's official position, views, or wishes on a given subject to an appropriate official in another government)[64] or an official public statement to restrictions on development or security assistance, as well as extradition requests for individuals engaged in abduction (see text box below).[65] The law provides the Secretary with discretion to

[63] The Secretary of State is also to "inform senior officials in the foreign government of the potential repercussions" of the determination and to direct the Chief of Mission to "directly address the systemic problems that led to such determination" (22 U.S.C. 9122). Similar actions are to be taken in cases that are unresolved longer than 12 months when the Secretary determines that the relevant government has failed to take appropriate steps to resolve the case. See 22 U.S.C. 9121.

[64] U.S. Department of State, Foreign Affairs Manual, 5 FAH-1 EXHIBIT H-611, Diplomatic Terms.

[65] 22 U.S.C. 9122.

substitute commensurate actions or to delay or waive the application of actions based on U.S. national security interest, or in light of ongoing negotiations or the anticipation of corrective action on the part of the offending country.[66]

Actions Available to the Secretary of State Pursuant to Section 202(d) of the Goldman Act, 22 U.S.C. Section 9122

(1) a demarche;

(2) an official public statement detailing unresolved cases;

(3) a public condemnation;

(4) a delay or cancellation of one or more bilateral working, official, or state visits;

(5) the withdrawal, limitation, or suspension of U.S. development assistance in accordance with Section 116 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n);

(6) the withdrawal, limitation, or suspension of U.S. security assistance in accordance with Section 502B of the Foreign Assistance Act of 1961 (22 U.S.C. 2304);

(7) the withdrawal, limitation, or suspension of assistance to the central government of a country pursuant to chapter 4 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2346 et seq.; relating to the Economic Support Fund); and

(8) a formal request to the foreign country concerned to extradite an individual who is engaged in abduction and who has been formally accused of, charged with, or convicted of an extraditable offense.

Of the punitive actions specifically called for in the Goldman Act, the State Department has generally chosen to deliver a démarche to noncompliant countries, in addition to undertaking other diplomatic actions to encourage compliance. In the July 2020 Action Report on noncompliant countries, for example, the State Department indicated that it had delivered démarches or diplomatic notes and had raised the issue at various meetings with the 10 noncompliant countries concerning their pattern of noncompliance.[67] According to the Office of Children's Issues, the State Department had "not yet taken any of the specific actions relating to the withdrawal, limitation, or suspension of development or security assistance, or assistance to a foreign central government" as of September 2020.[68] Occasionally, actions not explicitly included in the Goldman Act are taken. In testimony before the Tom Lantos Human Rights Commission ("Lantos Commission") in July 2019, Assistant Secretary of State for Consular Affairs Carl Risch stated that for the first time, the State Department would include a country's status relating to IPCA as a factor for consideration for H-2 country eligibility, a temporary non-immigrant worker visa program.[69]

Issues for Congress

Numerous issues may be of interest to Congress as Members engage on casework and policy solutions relating to IPCA. Key among these issues are the impact of U.S. efforts to promote accession to the Hague Convention and bilateral agreements, the use or threat of punitive actions

[66] 22 U.S.C. 9122; 22 U.S.C. 9124. Such actions are subject to humanitarian exceptions.

[67] U.S. State Department, "Action Report on International Child Abduction," July 2020. The State Department, in its determination of "pattern of noncompliance" countries in the annual report, is to "indicate whether noneconomic policy options designed to resolve the pattern of noncompliance have reasonably been exhausted." The annual reports issued to date do not appear to comment on this question when discussing noncomplying countries.

[68] CRS correspondence with U.S. State Department Office of Children's Issues, September 24, 2020.

[69] Testimony of Assistant Secretary of State Carl Risch, in U.S. Congress, Tom Lantos Human Rights Commission, *The Goldman Act at Five Years*, hearings, 116th Congress, 1st sess., July 25, 2019.

to incentivize international cooperation on IPCA cases, and the potential implications for left-behind parents in pursuing criminal charges against abducting parents.

Promotion of Hague Convention Accession

Although Congress has generally supported the State Department's advocacy for states to join and abide by the provisions of the Hague Convention, some Members have supported the development of MOUs with countries that have not acceded to the Hague Convention. Some observers have questioned whether the pursuit of bilateral relations outside the Convention risks undermining efforts to encourage more countries to join the treaty.

Some State Department officials have opposed MOUs or other bilateral arrangements, arguing that prioritizing Hague Convention accession is more effective. In response to questions during a 2014 Senate Foreign Relations Committee (SFRC) hearing on IPCA, then-Special Advisor for Children's Issues Susan Jacobs stated that MOUs "provide no consistent basis for returning children," were not "a realistic alternative to the Convention," and "divert resources from promoting the Convention."[70] Ambassador Jacobs cited the three existing MOUs (with Egypt, Lebanon, and Jordan) and explained that no successful returns of abducted children had been negotiated through those agreements. Furthermore, she contended that MOUs "actually undermine the Convention as countries do not see the need to take further action once they have signed the nonbinding MOU."[71] Some stakeholders have added to Ambassador Jacobs' concerns, contending that numerous bilateral treaties could incentivize abducting parents to engage in "forum shopping" to find a country with the most lenient MOU, or by undermining U.S. relations with states that may be frustrated by perceived inconsistencies in the stringency of MOU terms relating to IPCA.[72]

More recent statements from the State Department have affirmed the primacy of the Hague Convention but have lessened criticism of MOUs. Recent annual reports have called the Convention "the best means of ensuring that countries establish procedures to address abduction cases." Assistant Secretary Risch affirmed to the Senate Judiciary Committee in 2018, however, that "for those countries that are not likely to accede to the Convention in the foreseeable future, we seek opportunities to sign Memoranda of Understanding.,"[73]

Other observers have refuted assertions that MOUs necessarily dilute the Convention. In testimony before the House Foreign Affairs Committee (HFAC) in 2018, a lawyer specializing in international law argued that MOUs serve as opportunities to "address specific problems and to provide diplomatic solutions;" these could include agreeing on objective goals that foreign countries can meet to lead to their removal from the noncompliant list and to facilitating a Hague Convention partnership with the United States.[74] Some Members of Congress continue to express

[70] U.S. Congress, Senate Committee on Foreign Relations, *International Parental Child Abduction*, hearings, 113th Cong., 2nd sess., February 27, 2014, p. 52.

[71] Ibid., p. 62.

[72] Ericka Schnitzer-Reese, "International Child Abduction to non-Hague Convention Countries: The Need for an International Family Court," *Northwestern Journal of International Human Rights*, vol. 2, no. 1 (Spring 2004), pp. 11-12.

[73] Questions for the Record by Assistant Secretary of State Carl Risch, in U.S. Congress, Senate Judiciary Committee, 115th Congress, 2nd sess., April 24, 2018.

[74] U.S. Congress, House Foreign Affairs Committee, Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations, *No Child Left Behind: An Update on the Goldman Act*, hearings, 115th Congress, 2nd sess., April 11, 2018, p. 56.

interest in MOUs, including for states that join the Hague Convention, as Convention procedures do not apply to pre-Convention cases. For instance, some Members remain interested in the idea of an MOU with Japan that would apply to cases initiated prior to Japan acceding to the Convention.[75]

To date, no countries that have MOUs on IPCA with the United States have become parties to the Hague Convention. Countries with MOUs have demonstrated different patterns regarding noncompliance (see **Table 4**). To support their views, observers on various sides of the argument have pointed to the existence of a 2003 protocol between the United Kingdom and Pakistan. In 2014, then-Ambassador Susan Jacobs stated that no return cases were successfully resolved according to this protocol, a fact that some subsequently attributed to a lack of enactment in Pakistani law.[76] However, in light of Pakistan's accession to the Convention in 2017, one lawyer credited the protocol with "establishing the legal culture that allows now the [Hague Convention] to become part of a normalized concept of the law there."[77] In July 2020, the State Department announced that Pakistan would become a Hague Convention treaty partner with the United States.

Table 4. IPCA MOU Countries/Entities and Patterns of Noncompliance 2014-2019

Years for which the State Department Annual Report identified countries as demonstrating a pattern of noncompliance

Country (Year of MOU)	2014	2015	2016	2017	2018	2019
Egypt (2003)	x	x	—	—	x	x
Lebanon (2004)	x	x	—	—	x	—
Jordan (2006)	x	x	x	x	x	x
Saudi Arabia (2017)	x[a]	—[a]	—[a]	—	—	—
Taiwan (2019)	—[a]	—[a]	—[a]	—[a]	—[a]	—

Source: State Department annual reports on international child abduction.

Notes: x indicates years marked as noncompliant. Years indicated correspond with the calendar year reported, not the year of the report issuance. Because of the unique political status of Taiwan, the memorandum was signed by the American Institute in Taiwan (AIT) and the Taipei Economic and Cultural Representative Office (TECRO).

a. Indicates years prior to the signing of an MOU with the United States.

[75] See comments by Rep. Chris Smith in Tom Lantos Human Rights Commission, *The Goldman Act at Five Years*, hearings, 116th Congress, 1st sess., July 25, 2019. According to the 2020 Annual Report, "The [State] Department continues to work with Japan to resolve the 13 pre-Convention abduction cases that remained open at the end of the year, all of which have been outstanding for many years." U.S. State Department, *2020 Annual Report on International Child Abduction*, p. 84.

[76] In the same hearing, Ernie Allen, CEO of the International Centre for Missing and Exploited Children, cited reports to the contrary: "At the Malta meeting in 2010 Pakistani Supreme Court Justice Tassaduq Hussein Jillani cited 150 cases successfully resolved through this process." U.S. Congress, Senate Committee on Foreign Relations, *International Parental Child Abduction*, hearings, 113th Cong., 2nd sess., February 27, 2014, p. 52, and Elisabeth Andrews, *Lower Tier Members of the Hague Club?*, Family Law Week, April 4, 2018.

[77] U.S. Congress, House Foreign Affairs Committee, Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations, *No Child Left Behind: An Update on the Goldman Act*, hearings, 115th Congress, 2nd sess., April 11, 2018, p. 56. Also of note, in 2013, Pakistan, which had participated in the Malta Process since 2009, designated a judge to the International Hague Network of Judges, the Honourable Mr. Justice Tassaduq Hussain Jillani, the former Chief Justice of Pakistan's Supreme Court. HCCH, *Pakistan Joins the 1980 Hague Child Abduction Convention*, December 22, 2016.

In some cases, countries' decisions to accede to the Hague Convention have reportedly reflected efforts to improve bilateral relations with the United States in light of other foreign policy events. For instance, some observers partly attribute Japan's accession to the Hague Convention in 2014 as a step to strengthen the bilateral relationship after the breakdown of talks about certain U.S. military installations in Japan, as well as negotiations on the Trans-Pacific Strategic Economic Partnership Agreement.[78]

As part of its oversight responsibilities, Congress may consider issues of MOU effectiveness in its interactions with the State Department. Congress may also consider factors that have reportedly contributed to countries' decisions to join the Hague Convention, including lobbying by the United States and other countries, the use of cooperation on IPCA cases to strengthen bilateral relationships in light of other foreign policy developments, and precedent established through MOUs, the Malta Process, or other agreements.

Improving Compliance

U.S. policymakers have expressed frustration at the lack of enforcement actions relating to noncompliant countries, including Hague Convention partners, in the context of delayed or nonexistent return orders. Some Members of Congress have demonstrated interest in better understanding reasons for noncompliance and for implementing a broad range of policy tools to improve outcomes related to IPCA, both for Hague partners and other countries. As shown in **Table 2**, over 200 new outgoing cases to Hague Partner countries have been reported to the U.S. Central Authority in recent years. Argentina, Brazil, and Peru—all Hague Convention partners of the United States prior to the 2014 enactment of the Goldman Act—have been listed as noncompliant since 2014. Non-Hague countries, including those with MOUs mentioned previously, have also been listed as noncompliant.

Lack of or delays in enforcement may be due to a range of factors. In 2019, Consular Affairs Assistant Secretary Carl Risch explained that countries in Latin America tend to have compliance issues due to the speed of judicial processes, including appeals. Japan, Risch said, experienced issues relating to the enforcement of court orders.[79] According to the 2020 Annual Report, India has "no clear legal procedure for addressing international parental child abduction cases under Indian law," and frequently saw drawn-out court proceedings, as well as a frequent "default to granting custody to the taking parent."[80] Mexico had the most outgoing cases from the United States in 2019; 38% of existing outgoing cases to Mexico remained open at the end of the calendar year; in several cases "competent [Mexican government] authorities delayed taking appropriate steps to locate a child after a Convention application was filed."[81]

Some Members of Congress, experts, and parents of abducted children have advocated for stronger responses to noncompliant countries. In some cases, Members have criticized the State Department's apparent reticence to draw on the full range of actions authorized by the Goldman Act.[82] Generally, State Department officials concur that such actions merit consideration, but they

[78] Yamaguchi and Lindhorst, "Domestic Violence and the Implementation of the Hague Convention," p. 21.

[79] Assistant Secretary Risch explained that Japan had recently passed legislation to address the issue, which contributed to the removal of Japan from the noncompliant list in the most recent annual report. See comments by Assistant Secretary Risch in Tom Lantos Human Rights Commission, *The Goldman Act at Five Years*, hearings, 116th Congress, 1st sess., July 25, 2019.

[80] U.S. State Department, *2020 Annual Report on International Child Abduction*, pp. 28-29.

[81] Ibid., pp. 93-94.

[82] Speaking of the sanctions provisions in the Goldman Act, Rep. Chris Smith said, "But in one case where sanctions

argue in favor of the efficacy of diplomatic actions.[83] In the 2018 HFAC hearing, then-Special Advisor Suzanne Lawrence cited the example of Tunisia, which was designated as non-compliant pursuant to the Goldman Act in annual reports covering 2014-2016. According to Lawrence, the State Department "consistently held frank discussions with all levels of [the Tunisian] government, including the President," about IPCA and the Hague Convention, which contributed to Tunisia's decision to improve action on IPCA cases and accede to the Hague Convention in 2017.[84] Tunisia has not been identified as non-compliant in subsequent reports.[85]

Some Members of Congress have suggested that further legislation may help improve compliance with regard to IPCA. In the 115th Congress, the Bindu Philips and Devon Davenport International Child Abduction Return Act of 2017 (H.R. 3512), would have amended the Trade Act of 1974 to prohibit the President from providing a country with a designation that would lead to Generalized System of Preferences (GSP) privileges if the country was noncompliant under the Goldman Act. Other Members of Congress have called for drafting new or amending existing legislation to ensure that the State Department implements additional punitive actions authorized by the Goldman Act.[86]

In considering future legislation to improve the outcomes of outgoing IPCA cases, Members of Congress may consider the impact of different levels of State Department discretion on actions taken to address IPCA. Congress may also consider how to address the range of factors that contribute to noncompliance. For instance, Congress may seek to increase or tailor foreign or technical assistance for countries whose compliance issues appear to be linked to inefficient and cumbersome judicial proceedings.

In addition, Congress may seek to improve processing times for Hague Convention cases in the United States. Some stakeholders have suggested that the decentralized nature of Hague Convention case jurisdiction in the United States, involving multiple types of courts, including

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were employed by Congress, they worked, and they've certainly worked in other programs both domestically and internationally and, frankly, all of our civil rights laws have enforcement that includes significant sanctions and that has worked as well." U.S. Congress, House Foreign Affairs Committee, Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations, *No Child Left Behind: An Update on the Goldman Act*, hearings, 115th Congress, 2nd sess., April 11, 2018, p. 6. Also see comments by Rep. Chris Smith in Tom Lantos Human Rights Commission, *The Goldman Act at Five Years*, hearings, 116th Congress, 1st sess., July 25, 2019.

[83] At the same November 2015 hearing, for example, Michele Thoren Bond, then-Assistant Secretary of the Bureau of Consular Affairs, stated in response to questions by a Member of Congress that "I completely agree that the tools that are written into the new law are valuable ones and that they are ones that have to be under consideration for use, and they are. But I do not agree that the best way to approach an issue is to say well, all right, you know, you have had 6 months and we told you these sanctions were out there so now we are going to come out with guns blazing." Ibid. In its most recent annual report, the State Department stated that "each abduction is unique and each country has its own distinct judicial system, law enforcement entities, and cultural and family traditions. The Department of State tailors its strategy to deploy the most effective bilateral approach." U.S. State Department, *2020 Annual Report on International Child Abduction*, April 2020, p. 7.

[84] U.S. Congress, House Foreign Affairs Committee, Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations, *No Child Left Behind: An Update on the Goldman Act*, hearings, 115th Congress, 2nd sess., April 11, 2018, p. 13.

[85] The United States is not Hague Convention treaty partners with Tunisia. According to the most recent annual report, "The United States is engaged with the Tunisian government regarding the establishment of a treaty relationship pursuant to the Convention" U.S. State Department, *2020 Annual Report on International Child Abduction*, p. 130.

[86] See remarks by Rep. Andy Harris and Chris Brann at U.S. Congress, House Foreign Affairs Committee, Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations, *No Child Left Behind: An Update on the Goldman Act*, hearings, 115th Congress, 2nd sess., April 11, 2018. See also Peter Messitte, "Getting Tough on International Child Abduction," Family Court Review, vol. 58, no. 1 (January 2020), pp. 204.

some with limited understanding of the Hague Convention, prolongs the resolution of cases.[87] One lawyer has contended that these delays on the part of the United States "undercuts the US efforts to secure international compliance with the best international standards" and obstruct the efforts of left-behind parents in the United States from protesting delays in the return of children taken to other countries.[88] Congress may consider the pros and cons of passing legislation to limit jurisdiction over IPCA cases to a smaller set of courts, and/or reallocating resources for judicial education and trainings in its deliberations.

Selected Involvement by Members in Congress

Some stakeholders have attributed the resolution of certain cases in part to the engagement of Members of Congress, often on behalf of constituents. As illustrated in the two cases below, such engagement may take the form of publicity for the case, congressional calls for a resolution, or legislative actions designed to incentivize a foreign country to resolve a case.

Lebanon. In the 2019 Lantos Commission hearing on the Goldman Act, Representative Chris Smith and Assistant Secretary Carl Risch credited Representative Bill Posey and Senator Marco Rubio with contributing to the return of four children from two families from Lebanon in 2019, pursuant to Lebanese court orders. Senator Rubio had written a letter to the U.S. Ambassador to Lebanon and had met with the left-behind mothers, and Representative Posey had reportedly sponsored amendments that would have reduced U.S. funding for Lebanon if the children had not been returned.[89]

Brazil. Several Members of Congress were involved in the successful effort to return Sean Goldman from Brazil to his left-behind father in the United States. In February 2009, Senator Frank Lautenberg sponsored S.Res. 37, which called on Brazil to improve compliance with the Hague Convention and to return Sean Goldman to his father. Subsequently, Representative Chris Smith introduced a bill in the House in June 2009 to suspend certain trade privileges, the Generalized System of Preferences (GSP), with Brazil until it increased compliance with the Hague Convention.[90] Representative Smith's bill was not ultimately adopted, but when the bill that included GSP benefits for Brazil was due to be renewed in late 2009, Senator Lautenberg placed a hold on the bill, indicating he would withdraw the hold upon Sean's return to the United States.[91] Sean was ultimately returned to his father in December 2009.[92]

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[87] Numerous other countries have taken this approach. "Unlike the United States, which grants concurrent jurisdiction to both federal and state courts, over 40 Contracting States have limited jurisdiction to specialized courts or designated judges to hear child abduction cases." Keelikolani Lee Ho, "The Need for Concentrated Jurisdiction in Handling Parental Child Abduction Cases in the United States," *Santa Clara Journal of International Law*, vol. 14, no. 2 (2016), p. 608. Some scholars have argued instead for a U.N.-based court to hear cases of IPCA. See Megha Bhatt, "International Child Abduction: Modifying the 1980 Hague Convention on the Civil Aspects of Child Abduction and Proposals for a New United Nations Judicial Body," *U.C. Davis Journal of Juvenile Law & Policy*, vol. 20, no. 2 (Summer 2016).

[88] Jeremy Morley, "U.S. Hypocrisy Concerning International Child Abduction," *Family Law News - Newsletter of the International Bar Association Legal Practice Division,* vol. 3, no. 1 (September 2010), pp. 14-16 and Jeremy Morley, *Extraordinary Delays in U.S. Hague Abduction Convention Cases*, May 26, 2017.

[89] See comments by Rep. Chris Smith in Tom Lantos Human Rights Commission, *The Goldman Act at Five Years*, hearings, 116th Congress, 1st sess., July 25, 2019 and Testimony of Assistant Secretary of State Carl Risch, in U.S. Congress, Tom Lantos Human Rights Commission, *The Goldman Act at Five Years*, hearings, 116th Congress, 1st sess., July 25, 2019. See also https://www.facebook.com/SenatorMarcoRubio/posts/today-i-had-a-meeting-with-constituents-michelle-littleton-and-rachelle-smith-wh/2469134363111913/

[90] Suspend Brazil GSP Act of 2009, H.R. 2702.

[91] For a fuller description of U.S. policymakers' involvement in the Goldman case, see Peter Messitte, "Getting Tough on International Child Abduction," *Family Court Review*, vol. 58, no. 1 (January 2020), pp. 197-200.

[92] P.L. 111-124. Then-Secretary of State Hillary Clinton also raised the return of Sean Goldman with Brazilian counterparts. According to released State Department emails and media reporting, Sen. Lautenberg appeared ready to remove the hold on the GSP bill before Sean's release, but after receiving assurance from Clinton that the administration would continue to advocate for Sean's return. See Ryan Hutchins, "New Clinton Emails Show Lautenberg Pressure in 2009 Custody Battle," *Politico*, September 2, 2015.

Criminalization of Parental Abduction

Some observers question the benefits of criminalizing parental abductions, arguing that while such actions may convey the gravity of the offense, they may not increase the likelihood of resolving IPCA cases. Some say criminalizing parental abduction may discourage individuals from pursuing voluntary resolutions, thereby frustrating U.S. government goals of resolving as many cases as possible.

In various publications, the State Department Bureau of Consular Affairs and U.S. Department of Justice have acknowledged that there are potential benefits and detriments to seeking criminal charges. Benefits typically include an increased likelihood of locating the child and penalties for the taking parent, including a limited ability to travel internationally. Risks include potentially deterring the taking parent from seeking a voluntary resolution. A DOJ *Family Resource Guide on International Parental Kidnapping* advises the left-behind parent to consider the taking parent's potential reaction to charges, a prosecutor's focus on punishing the abductor rather than returning the child, and the potentially psychologically taxing long court processes, in addition to other factors, before making the decision to pursue criminal charges.[93]

Pros and Cons of Pressing Criminal Charges According to Travel.State.Gov

"Pros:

- The process of filing criminal charges may help you locate your child.
- A criminal charge will potentially facilitate cooperation from foreign law enforcement authorities by authorizing issuance of an INTERPOL red notice.[94]
- If the taking parent is a U.S. citizen, criminal warrants can serve as justification to revoke his or her passport, thus limiting subsequent international travel and potentially creating obstacles for his or her ability to remain legally in a foreign country.
- Public awareness of the successful prosecution of a taking parent may deter others from abducting their children.

Cons:

- An outstanding criminal charge may deter a voluntary or negotiated return if a taking parent believes that he or she may be arrested when they return to the United States.
- Criminal charges may adversely affect Hague return proceedings. Some judges may refuse to order a child's return if there is a warrant for the taking parent's arrest.
- Criminal charges may encourage a taking parent to go deeper into hiding to avoid arrest. This is especially true when the taking parent has family or deep ties to the community.
- The arrest, prosecution, and incarceration of the taking parent could be emotionally damaging for the child.
- The goals of the criminal justice system to arrest a taking parent may be in conflict with your wishes, and once initiated, the prosecutor has control of any and all criminal proceedings. How these proceedings develop will be out of your hands."

Source: U.S. Department of State, Bureau of Consular Affairs, *Pressing Criminal Charges, at* https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/abductions/legain-info-for-parents/pressing-criminal-charges.html.

[93] U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Programs, *A Family Resource Guide on International Parental Kidnapping*, January 2007, pp. 83-86.

[94] The International Criminal Police Organization (INTERPOL) publishes different types of notices to member states. A red notice is a request by the law enforcement of a member state to locate and "provisionally arrest a person pending extradition, surrender, or similar legal action," INTERPOL, Red Notices, at https://www.interpol.int/en/How-we-work/Notices/Red-Notices.

While few criminal charges for parental abductions under the International Parental Kidnapping Crime Act (IPKCA) have been brought, evidence suggests that such charges do not always result in a restoration of custody.[95] For example, in *United States v. Amer*,[96] an Egyptian man did not return his children to the United States, despite a special condition that would have reduced his prison time in exchange for their return.[97]

In other cases, left-behind parents have declined to pursue IPKCA charges due to concerns that such charges would make a resolution less likely. Speaking at a 2014 hearing before the SFRC, Sean Goldman explained that he had chosen not to pursue criminal charges due to fears that a foreign judge would be reticent to return a child to a country in which the taking parent could face charges.[98]

Some Members of Congress and left-behind parents have asserted that IPKCA sends a message to other countries and would-be abductors that the United States takes cases of IPCA seriously. In the same 2014 SFRC hearing, left-behind father Patrick Braden called IPKCA a "deterrent to all forms of child abductions and wrongful retentions;" he suggested that increasing prosecutions under the law to "a few emblematic prosecutions each year would send a message everywhere that we as Americans believe that protecting these children's rights to equal justice under the law is more important than either parents' selfish considerations."[99] In a July 2018 letter to the Attorney General, Senators Charles Grassley and Dianne Feinstein urged the Department of Justice to increase use of IPKCA because it served as a "powerful inducement for the taker-parent to return a wrongfully taken or retained American citizen child."[100]

In considering whether to promote criminal charges as a response to parental abductions, Congress may consider the potential risks that criminal charges may pose for specific cases. In such considerations, additional information about countries' views on U.S. criminal charges related to Hague Convention return requests, the decision-making process of left-behind parents when considering IPKCA charges, and whether the threat of criminal charges has in fact served as a deterrent to taking parents may be useful.

Outlook

IPCA will likely continue to be a significant issue for American citizens and U.S. foreign policy, leading Congress to consider options for addressing specific cases and to pursue the broader foreign policy efforts to address this problem. As it considers policy options, Congress may examine the potential and alleged impacts of sanctions, technical assistance, and high-level

[95] "Between 2012 and 2017, prosecutors filed 56 criminal cases charging a violation of 18 U.S.C. § 1204 (International Parental Kidnapping or IPK). While many cases result in convictions, some with prison sentences, the majority remain pending, along with dozens more filed as early as 1995, because many of the parents charged in these cases remain outside the jurisdiction of the United States." Letter from Stephen E. Boyd, Assistant Attorney General at U.S. Department of Justice, to Sen. Charles Grassley and Sen. Dianne Feinstein, October 16 2018. See also Department of Justice, "International Parental Kidnapping," *Criminal Resource Manual 1957 (archived)*, available at https://www.justice.gov/archives/jm/criminal-resource-manual-1957-international-parental-kidnapping.

[96] United States v. Amer, 110 F.3d 873, 873 (2d Cir. 1997).

[97] Ibid. and Department of Justice, "International Parental Kidnapping." For more on the Amer case, see CRS Report RS21261, *International Parental Child Abductions*, by Alison M. Smith.

[98] U.S. Congress, Senate Committee on Foreign Relations, *International Parental Child Abduction*, hearings, 113th Cong., 2nd sess., February 27, 2014, p. 46.

[99] Ibid., p. 35.

[100] Letter from Sen. Chuck Grassley and Sen. Dianne Feinstein to Jeff Sessions, Attorney General of the United States, July 20, 2018.

outreach on compliance and on countries' willingness to accede to the Hague Convention. In recent years, Congress has raised legislative options for strengthening the U.S. response to IPCA. It may continue to engage this issue through public hearings, direct involvement in specific cases, legislation, and oversight of the State Department Office of Children's Issues.

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