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Irreconcilable Differences? Germany, the U.S. and the Hague Convention Controversy

Ximena Skovron*

The current high-profile divorce of former tennis star Boris Becker and his wife brought the Hague Convention to the international media. Becker accused his wife of kidnapping their two children from Germany and bringing them to the United States and currently has applied for return of the children under the Hague Convention.¹ The Hague Convention has also been the subject of recent diplomatic strains between Germany and the United States.

Nearing 20 years of existence, the recent controversy between the United States and Germany is illustrative of why the 1980 Hague Convention on the Civil Aspects of International Child Abduction (CAICA) needs to be reviewed. The 50 countries that are party to the Convention² have attempted to incorporate the treaty into their own legal systems with varying levels of success. Actual implementation of the Hague Convention furthers its goals, while ratification without implementation hinders the Convention's progress. The rates of unreturned children are disproportionate; the United States, the United Kingdom and France return children to their home states at rates of approximately 90%, while the return rate of children to the U.S. is 72%.³ This paper will address the causes of this disparity, as illustrated by recent controversial Hague cases.

The Hague Convention was created to address the growing problem of international child abductions, which are primarily facilitated by either noncustodial or joint custodial parents who remove the child from the country without the knowledge of the other parent.⁴ This causes significant psychological harm for the child; the parent forcibly removes the child from his customary environment and subjects the child to a new parental situation, a new culture, and perhaps a new language.⁵

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¹ David Osborne, *Beckers Declare a Truce and Try to Settle Divorce Out of Court*, The Independent, Jan. 9, 2001.

² U.S. Dept. of State, *Hague Convention on Child Abduction, List of Participating Countries* (last modified Oct. 25, 1980), available at <http://www.travel.state.gov/abduct.html>.

³ Implementation of the Hague Convention on the Civil Aspects of International Child Abductions; Hearing Before House Comm. Int'l. Rel., 106th Cong. (1999) (statement of Mary A. Ryan, Ass. Secretary for Consular Affairs, U.S. Dept. of State) available at <http://www.travel.state.gov>.

⁴ Julia A. Todd, *The Hague Convention on the Civil Aspects of International Child Abduction: Are The Convention's Goals Being Achieved?* 2 IND. J. GLOBAL LEGAL STUD. 553, 554 (1995) [hereinafter Todd].

⁵ *Id.* at 556.

The express goals of the Convention are to secure the prompt return of the children wrongfully removed or retained and to ensure rights of custody of parents, as the laws of one Contracting State are effectively respected in other Contracting States.⁶

The Convention seeks to accomplish these goals by reestablishing the status quo and returning the child to his or her country of habitual residence, where the merits of the custody dispute can be determined.⁷ By assuring that the abducting parent will not benefit from the removal of the child, thereby disallowing "forum shopping" - attempting to litigate the custody dispute in a forum that is favorable to the abducting parent, abductions are discouraged.⁸

The parent submitting an application for return under the Hague Convention must prove that he or she has rights of custody in the country of the child's habitual residence, and that the removal or retention was wrongful.⁹ Once this is ascertained, the child is to be returned promptly to the home state, where the custody dispute can be litigated. Thus, the purpose of the Convention is to "determine a choice between competing forums, not a choice between competing parents."¹⁰

However, four exceptions allow for greater discretion in deciding whether a child should be returned. Two of those exceptions figure most prominently in the disputes between Germany and the United States: the "grave risk of harm" exception and the "child's objection" exception. Additionally, the one-year limitation of Article 12, which provides that a return may be denied if the child has "now settled into a new environment," is a major point of contention among contracting states, especially in the German-U.S. context.¹¹ Moreover, peripheral issues such as bureaucratic delays and lack of familiarity with the Convention have contributed to dissatisfaction among contracting states with the decision reached by the returning state's judiciary.

⁶ Hague Convention on the Civil Aspects of Int'l Child Abduction, Oct. 25, 1980, art. 1, available at http://travel.state.gov/hague_childabduction.html [hereinafter Hague Convention].

⁷ Todd, *supra* note 4, at 553.

⁸ Susan L. Barone, *Int'l Parental Child Abduction: A Global Dilemma with Limited Relief: Can Something More Be Done?* 8 N.Y. INT'L. L. REV. 95, 108 (1995) [hereinafter Barone].

⁹ Marcia M. Reisman, *Where to Decide the "Best Interests" of Elian Gonzalez: The Law of Abduction and International Custody Disputes*, 31 U. MIAMI INTER-AM. L. REV. 324, 338 (2000) [hereinafter Reisman].

¹⁰ *Id.* at 324.

¹¹ U.S. Dept. of State, *Rep. On Compliance With The Hague Convention on the Civil Aspects of Int'l Child Abduction* (last modified April 2001), available at http://travel.state.gov/2001_Hague_Compliance_Report.html [hereinafter Compliance].

The celebrated German case of the Cooke children illustrates how the combined effect of these factors often results in a questionable decision, and one that is decidedly not in the best interests of the children. Joseph Cooke, an American national, discovered that his German-born wife, who was seeking mental health treatment in Germany during a so-called vacation, had placed them in foster care. He then sought custody and a New York court awarded it to him. Then, he petitioned for return of his children under the Convention. Records in Queens note that the children's mother at this point agreed to his having custody.¹² However, the German court invoked the Article 12 one-year limitation. The court reasoned that the children had bonded with the foster family, and a separation would result in "severe psychological loss," and the children would be subjected to a "language shock," English.¹³

The case was further complicated when the German court made attempts at fact-finding, by requiring the father to gather documentation that he did not have a criminal record and did not engage in substance abuse, even though the New York court had conducted an investigation during the initial custody proceedings. Two years after the proceedings began, Cooke's petition for return was ultimately denied by the German court, and the children remain in foster care.

The court's use of the Article 12 limitation, while commendable in its attempt to determine the best interests of the child, displayed a common but erroneous conception of the aims of the Convention. Here, the German court did not make its primary focus the jurisdictional determination that is the purpose of the Convention; rather, it allowed the Cooke case to develop into a full-fledged custody investigation. The regrettable result was that the Cooke children are not residing with either parent. The *Cooke* case also illustrates the problems arising out of the Convention's lack of specificity concerning the breadth of its exceptions, which leads to confusion. It can prompt an ad hoc approach that does not comport with the aims of the Convention. The aims are to return the child to the country of habitual residence and allow the custodial dispute to be litigated in the jurisdiction of the home state.

One possible solution to interpretative problems is for the contracting state to integrate the Convention into its statutory scheme. In the United Kingdom, for instance, the Child Abduction and Custody Act of 1985 specifically incorporates the Convention and provides a framework for interpretation pursuant to the aims of the Convention.¹⁴ In the United States, the International Child Abduction Remedies Act (ICARA) has implemented the Convention, also with specific guidelines for interpretation. For example, ICARA provides that the four exceptions

¹² Cindy Loose & William Drozdiak, *A Family Kept Apart; U.S. Father Loses Custody of Children to German Couple*, WASH. POST, May 7, 2000, at A1.

¹³ *Id.*

¹⁴ Child Abduction and Custody Act, 1985, c. 60, § 1, 27 (Eng.).

are narrow defenses to the return of the child.¹⁵ The guidelines allow courts to exercise some discretion, provided it is within the framework of the Convention's aims. Thus, the courts retain the discretion to order return even if one of the exceptions is proven.¹⁶ Consequently, the presence of a statutory scheme promotes uniformity in interpretation both within the country and among Contracting States.

Article 13(b)-Grave Risk of Harm

The Article 13(b) "grave risk of harm" exception is the most frequently litigated because it comes closest to allowing the parties to argue the merits of the case instead of focusing on the jurisdiction issue.¹⁷ This article permits the denial of a petition to return where there is a "grave risk" that returning the child would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation."¹⁸ In the United States, the defense must be proven by clear and convincing evidence, and this defense is a narrow one.¹⁹

As noted above, while ICARA provides certain construction guidelines, the refusal of the court to deviate from these rules and avoiding a fact-based inquiry can have some dubious results. *March v. Levine*, a recent case involving a dispute between an American father and American maternal grandparents illustrates this point. The father, who had custody of his children, moved the children to Mexico. He invoked the Hague Convention after he allowed the children to visit their American grandparents and they refused to return them. The Tennessee Circuit Court of Appeals affirmed the District Court's determination that the "grave risk" exception did not preclude the father, as the custodial parent, from having his children returned, in spite of allegations that he had murdered their mother, who had disappeared four years prior to the dispute.²⁰

Still, this exception leaves room for judicial discretion where appropriate. For example, in *Blondin v. Dubois*, the New York District Court of Appeal denied a petition for return of the children, Marie-Eline, age eight, and Francois, age four, to Blondin, the French father, on the basis of the "grave risk" exception. The children had been abducted by their mother, Dubois, from France to the United States. The court found that Blondin repeatedly beat and threatened to kill Dubois, often in the

¹⁵ International Child Abduction Remedies Act (ICARA), § 2(a)(4), 42 U.S.C.A. § 11601(a)(4) (1988) [hereinafter ICARA].

¹⁶ *Id.* See also Pub. Notice 957, 51 Fed. Reg. 50, 494, 10509 (1986).

¹⁷ Reisman, *supra* note 9, at 343.

¹⁸ Hague Convention, *supra* note 6, at art. XIII(b).

¹⁹ ICARA, *supra* note 15, at § 11603(e)(2)(A).

²⁰ *March v. Levine*, 136 F. Supp. 2d 831 (M.D. Tenn. 2000), *aff'd*, 249 F. 3d 462 (6th Cir. 2001), *reh. en banc den'd*, 249 F. 3d 462 (6th Cir. 2001), *cert. den'd*, *Levine v. March*, 122 S. Ct. 810 (2002).

presence of their children. Blondin also frequently hit Marie-Eline, and threatened to kill her as well.²¹

These cases demonstrate how judicial discretion may properly be exercised in using the “grave risk” exception. The court in the *Blondin* case reached a desirable result because return of the children to their father would have put them at risk of physical and psychological harm. The *March* case, however, shows that courts should not refuse to apply the exception if there is a likelihood that harm will occur.²²

While these extreme cases show the outer boundaries of the grave risk defense, courts, especially those in civil law jurisdictions, improperly use the defense as a way to determine which parent is best suited for custody, under the well-meaning guise of the best interests of the child.

The Austrian case of *Sylvester v. Sylvester* is particularly illuminating. There, the mother, an Austrian native, abducted her then 13-month-old American-born daughter from Michigan to Austria. The Austrian trial court initially rejected the mother’s “grave risk” defense during the subsequent Hague proceedings, and entered a return order. Subsequently, the mother instituted a variety of legal and nonlegal maneuvers to avoid compliance. After an exhaustive appeals process that lasted one year, the Austrian trial court, pursuant to remand instructions from the Supreme Court of Austria, invoked the “grave risk” exception to reverse the order. The court opined that granting return was appropriate because the passage of time had changed the circumstances of the case. The court observed that the “specific welfare of the child takes precedence over the purposes of the Hague Convention.”²³

The leading American case of *Freidrich v. Freidrich* is a prime example of how the common law and civil law nations differ in applying this exception. The court in *Freidrich* did not allow the “grave risk” defense where the mother, the noncustodial parent, alleged “nothing more than *adjustment* problems” attending the relocation of the children to Germany to their father, who had custody by an order from a German court. The court’s reasoning in *Freidrich*, based on the guidelines laid out in ICARA, has made it one of the most frequently cited cases in the U.S. in the scant Hague Convention jurisprudence. Subsequently, it has come to represent the dominant American legal view with respect to this exception.²⁴

The exception for grave harm to the child is not license for a court in the abducted-to country to speculate on where the child would be happiest. That decision is a custody matter, and reserved to the court in

²¹ *Blondin v. Dubois*, 19 F. Supp. 2d 123, 124-25 (S.D.N.Y. 1998).

²² The father in *March* had not been formally charged with murdering his wife. *March*, 240 F. 3d at 465.

²³ Bezirksgericht für Zivilrechtssachen Graz, April 29, 1997, unpublished.

²⁴ *E.g.*, *England v. England*, 234 F.3d 268 (5th Cir. 2000) (citing *Freidrich v. Freidrich*, 78 F. 3d 1060, 68 (6th Cir. 1996)).

the country of habitual residence. Mrs. Friedrich advocates a wide interpretation of the grave risk of harm exception that would reward her for violating the Convention. A removing parent must not be allowed to abduct a child and then--when brought to court--complain that the child has grown used to the surroundings to which they were abducted. Under the logic of the Convention, it is the *abduction* that causes the pangs of subsequent return. U.S. courts have consistently applied the "grave risk" exception to cases involving blatant psychological or physical abuse or neglect.²⁵ Consequently, they have refused to allow the abducting parent to benefit from their wrongful act by precluding the grave risk defense where the stressful psychological situation has been created by the abducting parent.

However, in civil law systems, the exception is interpreted in its broadest sense. The judicial authority will undertake an investigative inquiry into the degree of harm that the child may potentially suffer. The focus is seemingly centered on the best interests of the child at the time of adjudication; that is, whether the court's actions will cause further harm. This is a marked contrast to the common law approach, which assumes that a return of the child to the status quo is in the best interests of the child, and therefore promptness and return are the goals of the judicial process.

Consequently, the Convention is elevated from merely being a vehicle for returning children to their habitual residence to a mechanism for custody cases that have crossed national borders to be relitigated in a different and often hostile forum. This is not in the best interests of the child because the judiciary must, if their premise of working in the best interests of the child is to be accepted, necessarily undertake a lengthy investigation into the background of the parents. This comes at the expense of the child, who is in custodial limbo in a foreign state during the investigatory process. Further, it is duplicitous as custody has most often been determined prior to the left-behind parent's Hague application.²⁶ The legal process thus is not only self-defeating in its aim to protect the interests of the child, but it also burdens the second Contracting State, who is forced to participate in a foreign legal process if he or she is to have any hope of having the child returned.

Child's Objection Clause

²⁵ See Blondin, *supra* note 21; Application of Nicholson v. Nicholson, 1997 WL 446432, (D. Kan. July 7, 1997).

²⁶ One survey that suggests that the abducting parent has custody of the child in an "overwhelming number" of cases. Recognizing the maternal preference in the attribution of custody, the study found that 55% of abductors were male, suggesting that 45% of the abductors were mothers vested with custody. Paul Beaumont & Peter McEleavy, *The Hague Convention on Int'l Child Abduction* 9 (P.B. Carter, Oxford University Press, 1999) [hereinafter Beaumont].

Article 13 allows a court to deny a return petition if a child of sufficient age and maturity objects to the return. This exception gives significant discretion to the court to determine what age and level of maturity is required to make a decision of this sort.²⁷ This provision is problematic because an abducting parent could exert undue influence over the child.²⁸ The court in the leading British case of *S v S*, responded to this concern by noting that if it concluded that the child's views have been influenced by some other person, e.g. the abducting parent, then it is probable that "little or no weight will be given to those views." The court continued by stating that "any other approach would be to drive a coach and horses through the primary scheme of the Hague Convention."²⁹

Similarly, many American courts subscribe to the view that the defense has no application if the child's views have been influenced by an abductor, or if the objection is simply that the child wishes to remain with the abductor.³⁰

While the Convention does not provide guidelines to aid the factfinder in determining whether the child is at an age of sufficient maturity to decide whether to return to his or her habitual residence, courts in the United States have demonstrated a marked disinclination to defer to the child's objection as a basis for denying a Hague petition.³¹ American courts have tended to avoid the factual inquiry. If anything, an in camera interview may be granted to determine whether the child's objection defense will prevail.³² In the case of *Sheikh v. Cahill*,³³ for instance, the court held that a child of nine was not mature enough to voice an objection to return. Also, a Swiss court held that a twelve-year-old and a fourteen-year-old were not mature enough to decide where they wanted to live.³⁴

German courts, on the other hand, have interpreted this provision broadly. "The wishes of children as young as five years old have been given excessive consideration in German courts."³⁵ In the high-profile British case of the Meyer children, the court in Germany awarded

²⁷ Todd, *supra* note 4, at 573.

²⁸ *Id.*

²⁹ *In Re S. (A Minor) (Abduction: Child Custody Rights)* [1992] Fam. 242, 251-52.

³⁰ Nicholson 1997 WL 446432 at *9; *Tahan v. Duquette*, 613 A.2d 486, 490 (N.J. Super. 1992).

³¹ Rania Nanos, *The Views of a Child: Emerging Interpretation and Significance of the Child's Objection Defense Under the Hague Child Abduction Convention*, 22 BROOK. J. INT'L L. 437, 448 (1996).

³² E.g., Nicholson, 1997 WL 446432.

³³ *Sheikh v. Cahill*, 546 N.Y.S.2d 517, 521-22 (Sup. Ct. 1989).

³⁴ Linda Silberman, *Hague Convention on International Child Abduction: A Brief Overview and Case Law Analysis*, 28 FAM. L.Q. 9, 30 (citing *Rajaratnam v. Rajaratnam-Hertig*, Zurich, Switz., July 18, 1988).

³⁵ *Compliance*, *supra* note 11.

custody to the father, a German national, after the children, Alexander and Constantin, were taken by him to Germany on vacation and wrongfully retained. Custody was awarded partly because the boys themselves, then nine and seven, said that that was what they wanted to stay and that, as a German child, Alexander felt that Britain was an "alien environment."³⁶ This was in direct conflict with a ruling in the High Court of London that the children had been illegally retained in Germany and should be immediately returned under the Hague Convention.

The British case of *Re HB* is a paradigm case of how the child's objection clause may properly be invoked to preclude the return of the child. There, the Court of Appeal denied a petition for return of a thirteen-year-old child that had been granted two years before to the mother, a Dutch national, over the objection of the child. The child, unlike her brother who was then aged thirteen, refused to board the plane to return to the mother when the original petition was granted. The court's reasoning, which was informed by the continuous observations of the welfare officer throughout the appeals process, is informative: The child expressed strong antagonistic views about the mother and an increased objection to return to her. The child presented a history of her own life to the welfare officer which could only have derived from sources hostile to the mother. The mother's conduct amounted to something close to an abandonment of the Convention order. Her failure to keep in touch with the child had contributed to the breakdown of the relationship between herself and the child.³⁷

Article 12-The One-Year Limitation

Article twelve provides that a claim brought one year after the wrongful removal or retention may be defeated if the child is settled in its new environment.³⁸ While the one-year provision on its face is not an absolute bar to return of the child, in practice, courts have typically interpreted it as such.³⁹

Interpreting this provision narrowly, however, is dangerous because the abducting parent could take advantage of this restriction by delaying the proceedings, either through concealing the whereabouts of the child for more than one year⁴⁰ or engaging in a lengthy appeals process. Indeed, the latter has served as a windfall to abducting parents, allowing them to successfully block the return of their child.

³⁶ Craig R. Whitney, *In Child Custody, Germany is Tough on French*, N.Y. TIMES, Aug. 2, 1999, at 3.

³⁷ *Re HB* [1998] 1 F.C.R. 398 (Eng. C.A.).

³⁸ Hague Convention, *supra* note 6, at art. XIII.

³⁹ *E.g.*, *Wojcik v. Wojcik*, 959 F. Supp. 412, 421 (E.D. Mich. 1997).

⁴⁰ Todd, *supra* note 4, at 565.

The automatic application of this exception is not required by its terms; on the contrary, a close reading of the English text suggests that it was not intended to operate to preclude the child from being returned to the custodial parent. Rather, it is a narrow exception that allows the court to take into account the best interests of the child by ascertaining whether he is “now settled in a new environment.” This interpretation is in keeping with the aims of the Convention to affect the child’s prompt return while providing flexibility in cases where a long period of time has elapsed since the separation of the child from the left-behind parent. The article provides, in relevant part:

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child unless it is demonstrated that the child is now settled in its new environment.

While differences in the legal traditions of the contracting nations raise interpretative concerns, the terms of the Convention, contains a relatively simple scheme for addressing the wrongful removal of children, which is embodied in the common law approach. This scheme, as discussed above, leaves little room for judicial discretion, except in the most extreme cases. Commentators have suggested that where the English text of the Convention appears ambiguous, the French text should be consulted for clarification.⁴¹ In addition, explanatory reports are available in both languages. Judicial authorities should also attempt to consult secondary sources, such as academic writings and foreign case law, if possible, as aids to interpretation.

One practicable way for judges to gain familiarity with the terms of the Convention is to establish an annual conference that addresses international child custody issues. The Common Law Judicial Conference on International Child Custody has already been implemented among the common law signatories of the Hague Convention.⁴² The Conference identified “best practices” with respect to improving operation of the Convention, including disseminating information about the Conference and its outcome to their colleagues in their respective jurisdictions.⁴³ The format involved intense discussion among judges, administrators, academics and practitioners around a

⁴¹ Beaumont, *supra* note 26, at 236.

⁴² Judges representing six delegations (Australia, Canada, Ireland, New Zealand, United Kingdom and the United States) attended the conference, which was held on Sept. 17-21, 2000 in Washington, D.C. Press Release, U.S. Dept. of State, *The Common Law Judicial Conference on International Child Custody* (2001), available at <http://www.travel.state.gov/bestpractices.html>. Press Release, U.S. Dept. of State, *The Common Law Judicial Conference on International Child Custody* (2001), available at <http://www.travel.state.gov/bestpractices.html>.

⁴³ *Id.*

number of selected topics.⁴⁴ One resolution stated that “differences of approach, where they exist, have been revealed and a new way has been opened to greater consistency of interpretation and practice” under the Hague Convention.⁴⁵ This approach has the added advantage of minimalizing the imposition of differing legal methodology on a country’s judiciary while ensuring that the spirit of the Convention is preserved.

Delays

Article 11 provides that the judicial or administrative authorities “shall act expeditiously” in proceedings for the return of children and if they authority concerned has not reached a decision in six weeks from the date of commencement of the proceedings, the applicant has the right to request a statement of reasons for the delay.⁴⁶

Hansjoerg Geiger, a top official in the German Justice Ministry, said cases have on average taken anywhere from two to twenty-two months to reach German courts.⁴⁷ In contrast, Britain has a special court that decides all child custody cases within six weeks.⁴⁸ In the British case of *Re HB*, *supra*, the court noted the importance of “continuity of judicial management” in Hague Convention cases, ensuring a target of six weeks between application and determination at first instance, and that it was “no less important that a similar momentum should be achieved by the Court of Appeal in the event of an appeal.”⁴⁹

Inadvertent delays caused by court backlogs in proceedings that have been initiated within a one-year period have served to benefit the abducting parent because they can successfully argue the Article 12 one-year limitation, as the child has inevitably settled into its new environment after such an extended period. While this may indeed be in the best interests of the child, it sends a dangerous message not just to the abducting parent but also to the custodial parent. At best, the incidental yet undesirable consequence is that the custodial parent, who has instituted Hague proceedings, may not regain custody of the child through no fault of his or her own. At worst, delays due to backlogs could result in self-help measures, such as re-kidnapping, by the left-behind parent.⁵⁰

⁴⁴ *See id.*

⁴⁵ *Id.*

⁴⁶ Hague Convention, *supra* note 6, art. XI.

⁴⁷ Germany Commission Organized to Hasten German—U.S. Child Custody Disputes, SALT LAKE TRIB., June 28, 2000.

⁴⁸ Cindy Loose & William Drozdiak, *A Family Kept Apart: U.S. Father Loses Custody of Children to German Couple*, WASH. POST, May 7, 2000, at A2.

⁴⁹ *Re HB*, [1998] 1 FLR 422, [1998] 1 FCR 398 (Eng. C.A.).

⁵⁰ Barone, *supra* note 8, at 114.

One commentator has suggested that the one-year statute of limitations should not begin to run until the petitioner has sufficient knowledge of the location of the child and the abductor.⁵¹ This would loosen the restriction in cases where the abducting parent has concealed the child, but allow courts to invoke it where the left behind parent has neglected to file an application for return within a year. Further, there should be a higher burden on the abducting parent to prove that the child is settled in the new environment.⁵² In the United States, for instance, under ICARA, the abducting parent has to prove by a preponderance of the evidence that the child should not be returned because the child is settled in the new environment.⁵³

Finally, the appeals process could be strictly circumscribed in cases brought under the Hague Convention. Once the factfinder has ascertained that the left-behind parent is not abusive, the child should be returned immediately. The appeals process should be limited to a hearing, held promptly by the judicial authority.

Comity

The cases discussed above also share one salient feature: a distinct lack of confidence in the second contracting state's ability to make the appropriate custodial decisions. Faith in the second contracting state's legal mechanisms in determining rights of custody is a hallmark of the Convention, and essential if it is to operate effectively. One American court's commentators are indicative of the U.S. perspective.⁵⁴ In considering whether to apply the "grave risk of harm" exception, the Ohio Circuit Court of Appeals in *Freidrich v. Freidrich*⁵⁵ observed: In thinking about these problems, we acknowledge that courts in the abducted--from country are as ready and able as we are to protect children. If return to a country, or to the custody of a parent in that country, is dangerous, we can expect that country's courts to respond accordingly. . . . When we trust the court system in the abducted--from country, the vast majority of claims of harm--those that do not rise to the level of gravity required by the Convention--evaporate.

In June 2000, President Clinton and Chancellor Schroder met to discuss measures that the German government will take in order to facilitate the return of or access to children abducted from the United States and taken to Germany.⁵⁶ In response to lobbying by American parents, Joshka Fischer, the German foreign minister, set up an internal sub-committee. However, it concluded there was little that could be done

⁵¹ Todd, *supra* note 4, at 565.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ See also ICARA, *supra* note 15, at § 11603(g).

⁵⁵ *Freidrich*, 78 F. 3d at 1068.

⁵⁶ Ben Fenton, *Clinton to Lobby Over Meyer Custody Case*, DAILY TELEGRAPH, May 31, 2000.

without legislation.⁵⁷ The German government has also pledged to streamline court procedures and to reduce the number of jurisdictions hearing Hague cases from 600 to 24, in an effort to encourage greater judicial familiarity and expertise in Hague cases.⁵⁸ Most significantly, Germany and the United States established a task force, the German-American Bi-National Working Group to further address procedural issues.

It remains to be seen whether these measures will prove effective in returning more wrongfully removed children to the United States. German local courts' dominant legal view has been nothing shall be done to harm the child's well-being and Germany has declined to interfere.⁵⁹

Boris Becker and his wife have reached an out-of-court settlement, and will share custody of their children, rendering the Hague Convention application moot. It can only be hoped that for the approximately two thousand children whose fates are currently waiting to be decided by Hague courts worldwide, contracting nations will similarly be able to reconcile their differences.

⁵⁷ *Id.*

⁵⁸ Press Release, Philip T. Recker, U.S. Dept. of State, Meeting of Assistant Secretary of State Mary A. Ryan with German Officials on Bi-National Commission for Int'l Parental Child Abduction (June 28, 2000).

⁵⁹ William Drozdiak, *Germany to Speed Custody Claims; U.S. Parents Seek Access to Offspring*, WASH. POST, June 29, 2000, at A2.