

Adult Domestic Violence in Cases of International Parental Child Abduction

SUDHA SHETTY

Seattle University

JEFFREY L. EDLESON

University of Minnesota

This article discusses the Hague Convention on the Civil Aspects of International Child Abduction and its impact on battered mothers and their children seeking safety in the United States. We discuss relevant articles of the convention, the extent to which adult domestic violence is present in cases of international parental abduction, and cases in which battered mothers have contested the forced return of their children to an abusive partner. We conclude with recommended steps needed in research, training, and legislation that may increase the likelihood of safe outcomes for battered mothers and their children.

Keywords: *child abduction; domestic violence; international parental abduction*

Public concern for children exposed to domestic violence has grown substantially in the past decade as a result of a growing number of research studies revealing (a) that children exposed to domestic violence may experience subsequent negative developmental outcomes (Edleson, 1999a; Fantuzzo & Mohr, 1999; Margolin, 1998; Onyskiw, 2003; Rossman, 2001) and (b) that almost half of the families in which adult domestic violence occurs also show evidence of child maltreatment (Appel & Holden, 1998; Edleson, 1999b; McGuigan & Pratt, 2001; O'Leary, Slep, & O'Leary, 2000). Accompanying the explosion in published literature on children exposed to domestic violence has been a variety of new public

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policy (Dunford-Jackson, 2004) and programmatic efforts (see <http://www.thegreenbook.info>).

It is not just the public but also battered mothers who are concerned for their children. Children frequently play a major role in battered mothers' decision making about staying or leaving an abusive partner. Studies in the United States (Humphreys, 1995a, 1995b; Levendosky, Lynch, & Graham-Bermann, 2000; Short et al., 2000) and Canada (N. Z. Hilton, 1992) have repeatedly shown that battered mothers express deep concern for their children's safety. This concern may lead mothers to stay with an abusive partner out of fear of greater harm if they leave. It may also lead them to flee with their children for safety. In fact, the majority of residents of battered women's shelters are often children brought with their battered mothers who are fleeing an abusive partner (Minnesota Department of Public Safety, 2004).

In an increasingly interconnected world, one group of battered women overlooked and in dire need of our attention in the next decade is mothers who flee with their children for safety across international borders. It is not surprising that in their search for safety, mothers flee across national boundaries. What is surprising is the web of international treaties and domestic legislation and programs in the United States that may work against securing safety for battered mothers and their children who have fled from abusive partners.

In this article, we discuss the Hague Convention on the Civil Aspects of International Child Abduction (hereinafter *the Convention*) and how it affects battered mothers and their children seeking safety in the United States. We first discuss the Convention and its relevant articles. We then examine the extent to which adult domestic violence appears to be present in cases of parental child abduction. Next, we examine cases in which battered mothers have contested the forced return of their children to an abusive partner in the child's country of habitual residence by using specific defenses allowed under the Convention. And finally, we focus on several steps needed in research, training, and legislation that may increase the likelihood of safe outcomes for battered mothers and their children engaged in court proceedings involving international child abduction.

We should note that it is not just mothers who may abduct their children across borders. Some men who batter use the courts to

extend their harassment of a battered partner through lengthy custody fights (Jaffe, Lemon, & Poisson, 2003). Threats of abductions and actual abductions of their children across international borders are sometimes part of this extended postseparation harassment. But for the battered mother who is left behind in the United States, there are several sources of support, as will be noted below. It is the abducting mother, who is battered and fleeing across international borders for her safety and that of her children, for whom there is little or no assistance and whose motives are often doubted. It is the situation of these women and their children that is the focus of this article.

THE HAGUE CONVENTION AND U.S. RESPONSES TO IT

The Convention on the Civil Aspects of International Child Abduction was completed at The Hague in October 1980 and put into effect in the United States through passage of the International Child Abduction Remedies Act passed by Congress in July 1988 (see <http://www.hcch.net/e/conventions/menu28e.html> for full text of the Convention and <http://travel.state.gov/icara.html> for the full text of the International Child Abduction Remedies Act). To date, approximately 67 countries are parties to the Convention (U.S. Department of State, 2003).

The Convention establishes international law for handling cases in which children are abducted from one country to another. States party to the Convention are expected to help quickly return abducted children to their habitual residence, where other issues, such as custody, can be resolved by local jurisdictions (W. M. Hilton, 1997). The Convention contains certain exceptions that permit the best interests of the child to override the mandatory return of a child from one country to another, and these will be discussed at greater length later in this article.

There are likely several thousand cases of international child abduction both into and out of the United States each year. According to one newspaper report, U.S. courts handled 2,688 Hague cases (approximately 400 annually) between 1995 and 2002 (Cambanis, 2002). The actual number of abduction cases is far higher than those seen by the courts. For example, the U.S. Department of State's Office of Children's Issues has been con-

tacted since the late 1970s in 16,000 cases of child abduction both into and out of the United States (see <http://travel.state.gov/famly/abduction.html>). The Office of Children's Issues handles the out-going cases, or abductions of children out of the United States to foreign countries. The U.S. Department of State (2003) recently reported to Congress that in 2003, there were 904 international abduction cases filed by U.S.-based parents and opened for intervention. The highest numbers of children with open out-going cases of abduction were thought to be in Mexico (154), Germany (41), Jordan (34), Japan (33), Egypt (33), Canada (29), and India (28).

The National Center for Missing and Exploited Children (NCMEC) is the U.S. nongovernmental agency officially charged with assisting left-behind parents with in-coming cases (i.e., parents in foreign countries seeking the return of their children abducted into the United States). The NCMEC reported that in 2002, there were 445 applications for assistance from parents in other countries seeking to have their children returned to them from parents who had abducted them to the United States (NCMEC, 2002). This is an increase from 241 cases in 1998 (Subcommittee on International Child Abduction, 1999). These applications for return under the Convention came primarily from left-behind parents in Europe and Eurasia (169), Mexico (129), and Central and South America (69). It is likely that there are many more international abduction cases that are never formally reported to either the U.S. Department of State or the NCMEC. For example, the NCMEC assists in cases entering the federal courts, but some parents bypass the federal courts and go directly to state courts for assistance.

Interviews with staff of the U.S. Department of State and the NCMEC indicate that current efforts related to the Convention focus on exclusively assisting left-behind parents to locate and seek the return of their children from abducting or taking parents. This is a reflection of the belief as embodied in the Convention and much of the social science literature, public policy, and current intervention efforts that child abduction has grave negative implications for a child's development and that a prompt return of the child to their country of habitual residence is almost always in the best interests of the child's well-being (Weiner, 2000).

The U.S. Department of State, through its Office of Children's Issues (<http://travel.state.gov/abduct.html>), works with left-behind parents in the United States to provide them with information and to assist them by providing liaison activities with U.S. and other foreign authorities, working to ensure that the Convention is being applied as intended in this country and others, and coordinating between government agencies. The NCMEC provides, with the American Bar Association, a network of pro bono attorneys to assist left-behind parents from other countries as well as support attorneys and judicial officers through training efforts and provide extensive information on international child abduction through its Web site (<http://www.ncmec.org>).

RETHINKING THE HAGUE CONVENTION IN CASES OF DOMESTIC VIOLENCE

What if the abducting parent is a battered mother who is fleeing with her children to safety in another country? In her detailed review of the Convention, Weiner (2000) laid out a new perspective on international child abduction. She argued that the Convention was drafted with a stereotypical male abductor in mind, who takes children from their primary caregiver, their mothers. This has led to a focus on solely assisting the left-behind parents in their efforts to have their children returned. Weiner has argued that the international community has been slow to recognize that some abducting parents are battered women fleeing for their own and their children's safety. In fact, a recent interview with a staff member in the Abduction Unit of the Office of Children's Issues at the U.S. Department of State indicated that fleeing battered mothers who are fearful for their safety and that of their children are expected to use local battered women's services and locate their own attorneys. This staff member also indicated that adult-to-adult domestic violence is not seen as a common issue among these families and that when it is raised, it is often viewed as an unsubstantiated allegation (G. DeBoer, U.S. Department of State, personal communication, May 20, 2004).

The views expressed above leave battered mothers, such as Karin Von Krenner, unprotected in U.S. courts. Von Krenner and her young son escaped brutal domestic violence in Cyprus and fled home to the United States after years of being held against her

will. Shortly thereafter, she was declared an international fugitive and hunted down. Armed federal marshals forcibly removed her 8-year-old son, Kristopher, from her home. When she desperately tried to retain a lawyer in Boise, Idaho, she was met with blank stares and resistance. No one had heard of the Hague Convention, and no one knew where to learn more about it. One attorney told her she had no case and that she was wasting her time (K. Von Krenner, personal communications, May 23, 2004; August 12, 2004). In her case, as in so many others, Von Krenner and her son had no access to adequate representation in U.S. courts.

The little research available on families where parental child abductions have occurred suggests that Karin Von Krenner's situation is not unique. Adult domestic violence is, in fact, a significant issue in parental abductions and supports Weiner's rethinking of how we intervene in these cases. Approximately one third of all published and unpublished Convention cases we have identified using online legal databases include a reference to some type of family violence, and 70% of these include details of adult domestic violence (<http://www.law.seattleu.edu/accesstojustice/hague>). Weiner (2003) also points out that seven of nine Convention cases that reached an appeals court in the last half of 2000 involved an abducting mother who claimed she was a victim of domestic violence.

Some of the earliest literature on parental abduction also mentions domestic violence in a prominent way. For example, Agopian (1981) devotes an entire chapter to a review of the early research on domestic violence but then ironically mentions little about such violence in the results of his survey of 91 child abduction cases in Los Angeles. He does note that

examining the relationship between the custodial parent and the offender can help trace the complex flow of events leading to the crime. The child-theft may be a continuation of an established climate of conflict between the custodial parent and offender. (pp. 86-87)

The case Agopian then uses to illustrate this concept is one in which the father abducts the children and then calls and threatens "if you don't stop the divorce, you won't ever see the kids again" (p. 87).

One of the largest studies of abducted children, the second National Incidence Studies of Missing, Abducted, Runaway and Thrownaway Children, was conducted with a random sample of 16,111 adult caregivers in the United States during 1999 (Sedlak, Finkelhor, Hammer, & Schultz, 2002). In their subanalyses of family-only abductions, Hammer, Finkelhor, and Sedlak (2002) estimated that nationally, there were approximately 56,500 abductions reported to authorities by family caregivers and that 57% of the abductors were the child's father, the child's stepfather, or the mother's boyfriend, with a quarter (25%) of the abductors being the child's mother. Unfortunately, it does not appear that the reasons, for example, domestic violence by one parent against another, were clearly recorded in this study of abductions.

Greif and Hegar's (1993) book on parental kidnapping is much more direct about the presence of family violence in cases of parental abduction. Their survey of 368 parents and three grandparents in 45 states and 6 countries is one of the largest and most frequently cited in the literature (the return rate on this survey was only 15% to 27%, depending on how the rate is computed). Greif and Hegar constructed five types of parental child abductions, three of which appear to include abductors or left-behind parents who were violent toward their partners. Overall, the majority (54%) of all the marriages in which abductions occurred involved parent-to-parent domestic violence, and 30% of the left-behind parents either admitted to being violent toward other family members or had been accused of it (Greif & Hegar, 1993).

Sagatun-Edwards and her colleagues (Johnston, Sagatun-Edwards, Bloomquist, & Girdner, 2000) report a study of 634 abduction cases in two California counties. Although these were primarily domestic abductions (only 7.5% were abductions out of the United States), they found that "mothers who abducted were more likely to take the children when they or the children were victims of abuse, and fathers who abducted were more likely to take the children when they were the abusers" (pp. 2-3). They also found that "mothers were more likely to have the children placed with them at the conclusion of the case, regardless of their role in the abduction" (pp. 2-4).

A more recent study reported by Chiancone, Girdner, and Hoff (2001) surveyed the responses of 93 left-behind parents of children abducted out of the United States. Only one table and one

paragraph in their lengthy report are devoted to family violence issues. Here, they note that 84 of the 93 left-behind parents reported the abductor had threatened their lives or those of other family members prior to the abduction. Sixty percent of left-behind parents reporting threats said their lives had been threatened, 21% reported their children's lives threatened, and 42% reported the abductor also threatened the lives of others. Their results would suggest that many of the child abductors were abusive toward the left-behind parents, some of their children, and others.

The results of the Greif and Hegar (1993), Johnston et al. (2000), and Chiancone et al. (2001) studies appear somewhat contradictory when trying to understand who are likely victims and perpetrators of violence among abducting and left-behind parents. Chiancone et al. found that most of the abductors were reported to have used violent threats against those left behind. Greif and Hegar, on the other hand, studied a group that included many violent left-behind parents whose children were abducted. Johnston et al. (2000) found differing motives among mothers and fathers who abducted their children, with mothers fleeing for safety from abusive partners and fathers likely using the abduction as part of their abuse toward the left-behind parent.

Unfortunately, we have little data in these studies of cases involving abduction of children into the United States. For example, in the study by Greif and Hegar (1993; Hegar & Greif, 1991), only abductions originating in the United States were studied. One might hypothesize that those abducting their children out of the United States may be seeking to avoid the reach of the U.S. criminal justice system, whereas those coming into the United States may be seeking criminal justice protections and social services not offered in the countries from where they fled. However, this remains a hypothesis until a more careful study of parents abducting their children into the United States is completed.

One place in which a glimpse of the factors involved in cases of abduction into the United States may be observed is through a careful examination of international child abduction cases before U.S. courts. The following sections describe in detail a selected group of such cases and the degree of success battered mothers have had in contesting the forced return of their children to the country in which the mother's abuser lives.

HAGUE CONVENTION DEFENSES FOR BATTERED MOTHERS

The published literature on implementing the Convention suggests that court decisions should not be focused on child custody but rather on a determination of whether a child can be safely returned to his or her habitual residence, where local courts may consider custody and visitation issues (W. M. Hilton, 1997). In practice, drawing the line between custody decisions and decisions to return the child to a country of habitual residence seems to be much more difficult. Judges are being asked to decide what is in the best interests of the child, which is not so different from the issues raised in custody and visitation determinations in local family courts.

Cases involving petitions under the Convention reveal several defenses that battered mothers have used when they find themselves sued by a left-behind parent. Almost two thirds of family violence-related Convention cases we located appeared to raise claims that children would face a grave risk if they returned to their country of habitual residence. Many other cases raised issues of habitual residence, consent of the left-behind parent for the abducting parent to remove the children, and the child's age that permitted them to have a say in where they were to live, among others.

Below, we focus primarily on a grave risk defense and its applicability in Convention cases. We focus on grave risk because we see this defense as perhaps the most important, but also the least recognized, among a number of strategies battered mothers have used to defend themselves and their children. After considering this defense in detail, we will also review several other defenses mentioned above that battered mothers have used to defend against the forcible return of their children to abusive partners in other countries.

GRAVE RISK (ARTICLE 13[B])

Article 13(b) of the Convention provides an exception to the return of a child to his or her habitual residence if "there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable

situation" (the Convention, 1980, Article 13[b]). There is a great deal of controversy in the published literature on the degree to which Article 13(b) can and should be applied in Convention cases. W. M. Hilton's (1997) review of the use of the grave-risk defense reveals that court decisions and official interpretations of the Convention usually limit the application of this defense to cases in which there is internal strife in the country of habitual residence or where the courts of the country of habitual residence cannot or will not protect the child and his or her family. He argues that grave risk was not intended to be applied to the behavior of individual parents, stating "that a particular party might cause the child to be in peril is not sufficient" grounds for claiming grave risk (p. 143). This line of thinking is carried into current training curricula for judges and lawyers that equate violence against women with a custody issue and insist that it should be settled in the child's country of habitual residence (Hoff, 1997).

The use of a grave-risk defense is also often criticized for other reasons. For example, Skoler (1998) has written a scathing critique of the use of Article 13(b) and concludes that "the Article 13b phrase, 'psychological harm,' has been interpreted so broadly and so liberally, as to frequently render the Hague Abduction Convention increasingly ineffective, undermined by its own language" (p. 560).

Cases involving grave risk. Despite the above cautions, the grave-risk defense has been raised in broader terms and upheld in a series of U.S. court cases. In fact, the courts seem to be struggling with what constitutes grave risk in a series of rulings. For example, in *Nunez-Escudero v. Tice Menley* (1995), the mother, her parents, and a psychologist provided testimony about severe physical abuse of the mother by the father, who was suing for return of his infant son to Mexico. The mother also stated a fear for her child's safety if returned to the father in Mexico. The district court held that a grave-risk to the child did exist, but the circuit court held that the claim was too vague and sent the case back to the lower court stating that the mother must present more convincing evidence of grave risk to the child. In *Rodriguez v. Rodriguez* (1999), child abuse and domestic violence exposure were both offered as part of a grave-risk defense. The daughter in the case testified that

she had observed her brother and her mother being beaten and was afraid of also being beaten. The court stated that

if the other parent removes or retains the child to safeguard it against further victimization, and the abusive parent then petitions for the child's return under the Convention, the court may deny the petition. Such action would protect the child from being returned to an "intolerable situation" and subjected to a grave risk of psychological harm. (p. 462)

Although domestic violence was part of the testimony, the court ruling concerning grave risk focused on the danger of future child physical abuse to the Rodriguez children. Finally, in *Blondin v. Dubois* (1998), the court heard testimony by the mother that the father had beaten her severely, including times when she was holding one of their children. The child had received blows when in her mother's arms, and the father had at other times threatened to kill the child and the mother. The mother testified that the father beat her during a later pregnancy and subsequently threatened both her life and that of their children. In one of the only published rulings accepting child exposure to domestic violence as grave risk under the Convention, the district court ruled that grave risk existed as a result of beatings of the mother in the children's presence and direct abuse to the older child. A circuit court upheld this aspect of the lower court's ruling stating, "We emphasize, however, that we do not disturb or modify the district court's finding that returning [the children to the father's] custody (either expressly or *de facto*) would expose them to a 'grave risk' of harm, within the meaning of Article 13(b)" (*Blondin V. Dubois [II]*, 1999, p. 250). In two subsequent appeals, courts upheld these lower court rulings.

The courts have considered not just the physical danger to a child when deciding on grave risk. In one case, *Steffen v. Severina* (1997), proof was given to the court that the child had attached and bonded with the abducting parent—the child's mother—and the child's removal from the mother would force the child to be detached and unbonded, thus, the court ruled, constituting a grave risk of harm under the Convention.

Emerging research on risk and domestic violence exposure. As stated earlier, these court rulings reveal judges who are struggling to

define the degree to which physical and psychological harm to the children at the hands of the left-behind parent represents grave risk and intolerable situations under the Convention's Article 13(b). Judges do not appear to use a child's exposure to adult domestic violence as a sole or even primary reason for finding grave risk, despite growing social science evidence to the contrary.

Two areas of social science research clearly point to the potential for risk and harm to a child from exposure to adult domestic violence. First, exposed children may themselves be at greater risk of physical harm. A number of research reviews of the co-occurrence of documented child maltreatment in families where adult domestic violence is also occurring have found a 41% median co-occurrence of child maltreatment and adult domestic violence in families (Appel & Holden, 1998), with the majority of studies finding a co-occurrence of 30% to 60%, depending on the samples studied (Edleson, 1999b).

Second, almost 100 published studies report associations between exposure to domestic violence and current child problems or later adult problems. A number of authors have produced partial reviews of this growing body of literature and its limitations (Edleson, 1999a; Fantuzzo & Mohr, 1999; Margolin, 1998; Rossman, 2001). Overall, existing studies reveal that on average, children exposed to adult domestic violence exhibit more difficulties than those not so exposed. For example, several studies have reported that children exposed to domestic violence exhibit more aggressive and antisocial behaviors (often called externalized behaviors) as well as fearful and inhibited behaviors (internalized behaviors) when compared to nonexposed children (Fantuzzo et al., 1991; Hughes, 1988; Hughes, Parkinson, & Vargo, 1989). Exposed children also showed lower social competence than did other children (Adamson & Thompson, 1998; Fantuzzo et al., 1991) and were found to show higher average anxiety, depression, trauma symptoms, and temperament problems than children who were not exposed to violence at home (Hughes, 1988; Maker, Kimmelmeier, & Peterson, 1998; Sternberg et al., 1993).

Emerging public policy on domestic violence exposure. Notwithstanding the above social science evidence, it appears that possibly only one published court opinion has thus far suggested that

exposure to adult domestic violence in and of itself poses a grave risk or intolerable situation to a child under the Convention (*Blondin v. DuBois*, 1998). Of course, this may raise more of an issue of judicial knowledge and training than of fact. The same outcomes have long been observed in domestic family courts, where some judges have ruled that although an abusive man severely beats the mother, if he does not directly attack the children, his behavior is likely to have little impact on the children.

The emerging social science research and changing judicial attitudes have led to major changes in U.S. public policy regarding the appropriate response to children in cases where domestic violence exists. Led by the National Council of Juvenile and Family Court Judges, there are many changes under way in how the courts and social services respond to children exposed to domestic violence (Edleson, 2004; National Council of Juvenile and Family Court Judges, 1999). Perhaps most relevant is the passage of rebuttable presumption laws in 23 U.S. states (Dunford-Jackson, 2004). For example, Wisconsin is one of the most recent states to pass such a law that stipulates that it "is detrimental to the child and contrary to the child's best interest for that parent [who committed domestic violence] to have either sole or joint legal custody of the child" [Wis. Stat. § 767.24(2)(d)(1) (2004)].

Certainly, our society's definitions of child maltreatment and what constitutes the best interest of a child have been constantly changing during the past half century (Kalichman, 1999). Global definitions have also been changing through the establishment of international treaties, such as the U.N. Convention on the Rights of the Child, and to the extent that at least five European countries have even defined spanking as a form of illegal child maltreatment. With new knowledge about the impact that exposure to domestic violence has on children, our laws have been in a state of change, as have court decisions about the welfare of children. It is likely that similar changes will occur in both thinking and court decisions about domestic violence vis-a-vis grave risk to children under the Convention.

Establishing domestic violence exposure as grave risk. The ICARA, the implementing legislation of the Convention, requires clear and convincing evidence of the level of risk to a specific child. The social science literature points to several factors to consider when

establishing grave risk. First, the level of violence in the family must be established. Current research suggests that the level of domestic violence is known to vary greatly across families (Straus & Gelles, 1990). Second, it is very likely that children's exposure to violence at home and what meaning they attach to it will vary greatly (Peled, 1998). Third, the child's own ability or lack of ability to cope with the violent environment may also affect the level of harm to the child. Harm that children experience may be moderated by a number of factors, including how a child interprets or copes with the violence (Hughes, Graham-Bermann, & Gruber, 2001). Fourth, children are likely to have varying risk and protective factors present in their lives (Hughes et al., 2001; Masten & Coatsworth, 1998). Protective factors may include a battered mother, siblings, or other adults who offer protection to the child as well the level of legal and social service protections likely available to the child and his or her battered mother in their country of habitual residence. Risk factors that co-occur with domestic violence might include parental substance abuse, presence of weapons in the home, both maternal and male caregiver mental health issues, and other neglect. These and other factors may combine with domestic violence in some families to create greater or lesser risk to the child.

Finally, as stated earlier, the risk of harm resulting from exposure may also vary from child to child. Two additional pieces of information are important to examine when thinking about harm or risk of harm: (a) the degree to which a child is involved in violent events and (b) the documented level of child maltreatment and emotional harm. Children's immediate responses to violent situations may create increased risk for their own well-being. Children's responses to domestic violence have been shown to vary from their becoming actively involved in the conflict, to distracting themselves and their parents, or to distancing themselves (Margolin, 1998). This, combined with the fact that a large number of studies document the co-occurrence of child maltreatment and greater levels of childhood problems in families where adult domestic violence is also present, reveals the possibility of increased risk for children in these homes.

All of these factors are important elements to consider when assessing the level of exposure a child experiences and the possible impact of such exposure. It is clear from the few published

Convention cases that have considered child exposure that most judges will expect more detailed assessments of harm to the child resulting from exposure to domestic violence.

Given the fact that public policies and court rulings regarding children's exposure to domestic violence have changed only recently in the United States, it is also likely that courts in other countries will not yet consider this a risk to the child, raising the prospect of potential increased risks to children on return to their country of habitual residence. In fact, U.S. case law suggests that an analysis of whether the country of habitual residence has court proceedings and social services capable of protecting the child may be appropriate in certain cases.

OTHER COMMON DEFENSES IN CONVENTION CASES

Trends in research, policy, and case law in the United States increase the likelihood that battered mothers will raise Article 13(b) defenses involving grave risk or an intolerable situation in a child's country of habitual residence. Yet these defenses are not the only ones that battered mothers have raised in Convention hearings. Others focus on violations of human rights, definitions of habitual residence, a child's level of maturity, and acquiescence by the left-behind parent. Each of these will be discussed briefly.

Violation of human rights (Article 20). Article 20 of the Convention states the following: "The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms" (the Convention, 1980, Article 20). This Article has been raised in several Convention cases involving abductions into the United States from Germany, Sweden, Italy, and Argentina. In each case, the violation of human rights appears to be tied closely to the issue of grave risk to the child or the return of the child representing an intolerable situation under Article 13(b) of the Convention. The courts appear to have roundly dismissed claims of human rights violations as unfounded in every instance (*Danaipour v. McLarey*, 2002; *Fabri v. Pritikin-Fabri*, 2001; *Mendez Lynch v. Mendez Lynch*, 2002; *Steffen v. Severina*, 1997).

Beaumont and McEleavy (1999) conclude that Article 20 has “nearly faded without a trace” (p. 172). This may be because Article 20 is so often paired with claims of grave risk or intolerable situations. Evidence supporting claims under Article 13(b) have been taken more seriously than human rights claims. Human rights claims may also be viewed as redundant of grave risk claims. The growing movement to consider violence against women and children a global human rights issue promises to raise the future prospects of this defense for battered mothers and their children.

Habitual residence (Article 3a and Article 14). In Convention cases, the left-behind parent must first establish that there was a wrongful removal before the case moves forward. Specifically, Article 3a refers to a parent’s right of custody in the location where the child is “habitually resident immediately before the removal” (the Convention, 1980, Article 3a) but never goes on to define how habitual residence is established. In Article 14 of the Convention, judicial authorities are instructed to consider the removal of the child within the context of “the State of habitual residence of the child” (the Convention, 1980, Article 14).

This language in the Convention has resulted in a number of battered mothers contesting the left-behind parent’s claim that their child’s habitual residence is the country from which the children were abducted. Generally, battered mothers counter that the United States should be considered the child’s habitual residence instead of the country from which they fled.

The courts have produced mixed rulings on this issue, with some interpreting habitual residence broadly to recognize the child’s acclimatization (which is usually a fact-intensive inquiry regarding school enrollment, friends, social patterns, sports clubs, etc.), the intent of both parties regarding permanent residence, and physical geography. For example, in *Feder v. Evans (II)* (1995), the court stated,

We believe that a child’s habitual residence is the place where he or she has been physically present for an amount of time sufficient for acclimatization and which has a “degree of settled purpose” from the child’s perspective. We further believe that a determination of whether any particular place satisfies this standard must focus on the child and consists of an analysis of the child’s circumstances in

that place and the parents' present, shared intentions regarding their child's presence there. (p. 224)

In a case involving domestic violence and often cited in other opinions (*Ponath v. Ponath*, 1993), the court ruled that "coerced residence is not habitual residence within the meaning of the Convention" (p. 398). This concept is clearly illustrated in *Tsarbopoulos v. Tsarbopoulos (II)* (2001) when the court ruled to deny a left-behind father's request for return of his children to Greece. The mother had fled to the state of Washington, testified that she had been a victim of physical and emotional abuse at the hands of her husband, and said that it was never her intent to make Greece her permanent home. The family had long lived in the United States and only in recent years moved to Greece. The judge agreed that the parents did not share the desire to change their habitual residence from the United States to Greece and pointedly stated that the mother's so-called consent to do so must be examined carefully in the context of the father's use of violence. The judge ruled that the children's habitual residence was Washington and that there was no wrongful removal (i.e., the Convention did not apply in this case). It is interesting in this case that the judge highlighted the issue of consent within the context of domestic violence and relied on the fact that the mother had not acclimatized to Greece as evidence of her intent not to establish habitual residence for her children.

Parental consent or acquiescence (Article 13a) and 1 year elapsed (Article 12). Even if habitual residence in the country of removal is established, there are other defenses available. Under Article 13a of the Convention, a child's return to his or her place of habitual residence is not required if the person caring for the child at the time of abduction "had consented to or subsequently acquiesced in the removal or retention" (the Convention, 1980, Article 13a). Somewhat related to this is Article 12 of the Hague Convention, which mandates the return of children "where a child has been wrongfully removed or retained . . . and, at the date of the commencement of the proceedings . . . a period of less than one year has elapsed from the date of the wrongful removal or retention" (the Convention, 1980, Article 12). Article 12 also indicates that even if a year has passed, a child should be returned to his or her

place of habitual residence “unless it is demonstrated that the child is now settled in its new environment” (the Convention, 1980, Article 12).

These two issues of acquiescence and a 1-year time period were intertwined in a recent case where the mother, on her arrival in Iowa, filed for a no-contact order against and later alleged attacks by the left-behind father who was residing in France. Unfortunately, the specific attacks to which she testified were not documented in the no-contact order, and there was never a formal hearing regarding that order to further verify these attacks. The court ruled that even though a year had passed before the Convention case was filed, the left-behind father had attempted reconciliation during this period and that these efforts neither represented acquiescence by him nor did his attempts to reconcile disqualify his claims under the Convention because more than a year had elapsed. The court found that the children’s habitual residence should be considered France, not the United States, and ordered them returned (*Antunez-Fernandez v. Conners-Fernandez*, 2003).

A case on which we worked but that is unpublished and sealed involved a battered mother and her two children—one child only days old—who were thrown out of the house by the father. He shipped all of her and the children’s belongings to her and wrote to the children regularly after she fled to the United States with her children. The judge in the case ruled that the children could remain in the United States because there was grave risk to them of further abuse if they were returned and that the father had acquiesced to the children’s departure by sending all of their belongings and writing regularly.

A number of battered mothers have also successfully hidden themselves and their children for more than a year and then claimed that more than a year has passed, thus allowing the children to stay with them in the United States under Article 12. This does not appear to have been a successful strategy. The fact that the abducting parent has hidden for more than a year may be used by the court to disallow this defense and start the clock over (*Lops v. Lops*, 1998).

Child maturity (Article 13). An unnumbered section of Article 13 of the Convention also states that a child’s return to his or her

place of habitual residence is not required if “the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views” (the Convention, 1980, Article 13). In several cases, the court, when deciding on a child’s return, has considered the opinions of 8-year-olds and 9-year-olds. In *Mendez Lynch v. Mendez Lynch* (2002), the court ruled that a 9-year-old should be repatriated to his place of habitual residence despite his expressed wish not to do so. In *Blondin v. Dubois (III)* (2000), however, the court ruled that an 8-year-old was mature enough to express her opinions about where she wished to live, and the court appears to have taken her testimony on this and her exposure to domestic violence under serious consideration when deciding not to force her return to France. On appeal, a higher court affirmed in *Blondin v. Dubois (IV)* the importance of the child’s wish not to return in its decision to allow the child to remain in the United States. The court ruled that

in the instant case, we conclude that the District Court properly considered Marie-Eline’s views as part of its “grave risk” analysis under Article 13(b), and that it did not clearly err in finding that Marie-Eline was old and mature enough for her views to be considered in this context. (*Blondin v. Dubois [IV]*, 2001, p. 166)

CONCLUSION

As the weight of the emerging social science evidence and U.S. public policy change brings about expanded definitions of a child’s best interest, it is likely that rulings in Hague Convention cases may change as well. Exposure to adult domestic violence may pose a grave risk and intolerable situation to many children growing up in homes where such violence is being perpetrated. There is little logic to arguments that suggest internal strife in a country qualifies as a grave risk to a child but adult-to-adult domestic violence exposure does not. To use a play on the Convention’s own words, this seems like an intolerable situation.

Underlying some of these arguments against the broader use of Article 13(b) and other defenses appears to be an attitude that suggests the adult victim should have stayed in the child’s country of habitual residence and litigated the issue there. As Weiner (2003) has so clearly pointed out, we used to ask in a victim-

blaming way, "Why does she stay with her abuser?" but in Convention cases, this is turned around on the adult victim, and we ask, "Why didn't she stay?" to litigate with her abusive partner. Convention cases highlight, as Weiner (2003) suggests, that women flee for their safety because of the inadequate protections available in other countries and that forcing battered women's children to return to their country of habitual residence may expose them to further violence and also force their mothers to return to the abusive partner at least temporarily while custody and divorce litigation takes place.

There are a number of steps that need to be taken to better address the safety needs of battered mothers fleeing with their children to the United States. First, there is a major gap in the social science research literature on parental child abductions. We have little systematic information on the parents who abduct their children into the United States from other countries and almost no understanding of their motives. A systematic study of this group of parents is sorely needed.

Second, specialized training focused on abduction cases involving domestic violence and technical assistance for judicial officers and attorneys are needed. Development of an addendum to current curricula (Hoff, 1997) is very important. This addendum would address domestic violence, its relationship to grave risk, and how this defense can be raised in Convention cases. In the meantime, recognizing that developing and disseminating new training materials will take time, we have created a depository of information essential for attorneys and advocates representing battered mothers facing Convention proceedings. As part of this effort, the Access to Justice Institute at Seattle University School of Law has developed a Web site focused exclusively on Hague Convention cases involving domestic violence. The aim of the Web site (<http://www.law.seattleu.edu/accesstojustice/hague>) is to provide educational information for advocates and attorneys who are representing battered mothers who have abducted their children into the United States and whose children are now facing extradition orders under the Convention in U.S. courts. The site is divided into three broad categories: (a) summaries of Convention cases involving family violence that have been identified using online legal databases, (b) a list of contact information of attorneys who have represented battered mothers in

U.S. courts, and (c) secondary resources, such as academic articles, online journals, and links pertaining to the Convention and domestic violence issues.

Finally, although it would be difficult to amend the Hague Convention on the Civil Aspects of International Child Abduction, a special commission could be convened by the Hague Conference on Private International Law to clarify the proper use of the Convention in cases of adult domestic violence. More immediately, Congress can and should amend the U.S. implementing legislation embodied in the 1988 International Child Abduction Remedies Act to include exposure to adult domestic violence as a valid form of grave risk and to broaden definitions of *habitual residence* to include ones in which a child's well-being is secured. This step will not amend the original treaty but is perhaps more expedient in that it would broaden the definitions of terms such as *grave risk* and *habitual residence* for U.S. courts. Similar efforts should be made in other countries that are parties to the Convention.

Battered mothers who flee to the United States across an international border for the safety of their children and themselves deserve the same protections we provide other battered mothers and their children who cross city or state lines. We should work to change the interpretation of the international treaty at both the international and domestic levels and change the U.S. implementing legislation. Federal judges hearing these cases have an obligation to be knowledgeable of the Convention and the risks that mothers and children face both here and abroad. Battered mothers and their children deserve access to attorneys and advocates who can effectively represent them in these complex cases. And public and private funders must see the safe resolution of these cases not just as an international issue but as one that is critically relevant to the families in their own communities.

Mothers who abduct their children and flee to find a safe haven are not perpetrators, as the Hague Convention implies, but are victims of their partner's violence. They are also victims of an international treaty, written with good intentions, but, when implemented, has unintended negative consequences for their safety and that of their children.

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Sudha Shetty is the director of the Access to Justice Institute at Seattle University School of Law and Of Counsel to the law firm of Dorsey & Whitney, L.L.P. She is a founding member of Chaya, a program for South Asian battered women in Washington State.

Jeffrey L. Edleson is a professor in the University of Minnesota School of Social Work and is director of the Minnesota Center Against Violence and Abuse (www.mincava.umn.edu). He has been published widely and focuses much of his current work on children's exposure to adult domestic violence.