

## NOTE

### WHEN A STRANGER ISN'T THE DANGER: INTERNATIONAL CHILD ABDUCTION AND THE NECESSITY OF MANDATORY PREVENTATIVE MEASURES IN THE EUROPEAN UNION

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#### INTRODUCTION

It's a problem in Greece. Stavro had a very happy life: he was married, had a two-year-old son, and owned a thriving wealth management business. Everything changed, however, when he learned that his wife, Ana, had engaged in an extramarital affair. The couple attended counseling and worked to rebuild their relationship, but it had already been devastated beyond repair. Ana, guilt-ridden and unhappy due to her failing marriage, longed for the support of her family. She decided to visit them in her native South Africa for two weeks, taking her son with her. When the two weeks were over, however, they did not return to Greece. Ana decided she would start a new life in South Africa without Stavro. It would be years before Stavro would see his son again.

It's a problem in Spain. Javier was under a tremendous amount of stress at his job due to a recent recession. As a result, he suffered from severe depression and anxiety. At times, he would lose his temper and yell at his wife, Noor, and their three children. Noor became increasingly frustrated with their monetary and marital problems, telling Javier that she would not hesitate to take their children away from him. Javier reported Noor's threat to the Spanish authorities, who informed him that they would prevent her from leaving the country at any airport. Shortly after, however, Noor drove across the border to France with her kids and caught the first flight to Egypt, where they would stay with her sister until Noor could file for divorce. Their passports were not checked by border control, as both Spain and France are located within the Schengen Zone, in which the borders between many E.U. coun-

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tries have been effectively eliminated. Javier came home one day after work to find that his entire family was gone.

It's a problem in Croatia. Edward and Rachel, parents to two daughters, had been divorced for several years. Both remarried but had chosen to remain in Croatia and share joint custody of their children. When Edward's new wife, Sara, got a job in Australia, however, the couple planned to relocate there with Edward's daughters. When Edward discussed this plan with Rachel, a serious argument ensued and resulted in Rachel threatening to sue for full custody. Rachel believed that Edward was a flight risk and immediately contacted local police about the situation, but they informed her that they could not act until an abduction had actually occurred. The next day, Edward and his daughters packed up their belongings and boarded a flight to Australia. When Rachel went to pick up the girls from Edward's house a week later, they were nowhere to be found.

Stories such as these are almost universally the same: the relationship between two parents disintegrates, and one parent (the abducting parent) takes his or her child across international borders without the knowledge or consent of the other parent (the left-behind parent), who must then use legal means to obtain the return of the child. Colloquially, people may refer to such an incident as "parental kidnapping," but in legal terminology, this phenomenon is known as international child abduction.<sup>1</sup> While the term is not explicitly defined even in the multilateral treaty that governs it,<sup>2</sup> international child abduction occurs when one parent either wrongfully takes his or her own child across international borders into a country other than that of the child's habitual residence<sup>3</sup> or wrongfully keeps the child in such a country.<sup>4</sup>

In incidents of abduction, a large number of legal schemes, including both domestic laws and international agreements, focus primarily on obtaining the return of a child after an abduction has been perpetrated. Based on the available data, returns are success-

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1. See Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11,670, 1343 U.N.T.S. 98 [hereinafter Abduction Convention]; THALIA KRUGER, INTERNATIONAL CHILD ABDUCTION: THE INADEQUACIES OF THE LAW 1 (2011).

2. This treaty is The Hague Convention on the Civil Aspects of International Child Abduction. See generally Abduction Convention, *supra* note 1.

3. The concept of "habitual residence" is discussed later in this Note. See *infra* note 55 and Section I.B.1.

4. See KRUGER, *supra* note 1.

ful in only half of all cases of abduction.<sup>5</sup> In the best case scenario, when an abducted child is eventually returned, he or she has still suffered considerably as a result.<sup>6</sup> The child's life has been completely dismantled for an extended period—daily routines, friendships, progress in school, and extracurricular activities are indefinitely disrupted as the child is forced into the stressful, unstable environment that an abduction creates.<sup>7</sup> Further, the child's relationship with the left-behind parent has been negatively impacted by the significant amount of time that they have spent apart, and the “consequences of parental alienation are catastrophic for children.”<sup>8</sup> These emotional traumas are not simply negated by the child's return. Once a child has been abducted, existing legal solutions are often inadequate.<sup>9</sup>

Because it is exceedingly difficult to obtain the return of an abducted child, this Note argues that there should be various protocols in place aimed at preventing abductions so that the ineffective return process is utilized in fewer cases, if at all. A child who is at risk of parental abduction should be prevented from leaving the country until the parents can take their custodial dispute to the appropriate court in the jurisdiction in which they reside, which would settle the issues of custody and legal residence. The United Kingdom's legal system serves as an example that the international community should mirror. Their system currently has two measures in place—tipstaff orders<sup>10</sup> and a port alert system<sup>11</sup>—aimed at the prevention of international child abduction. If the High Court of Justice for England and Wales deems an abduction likely, it issues a “tipstaff order,” which enables the U.K. enforcement agent known as the “tipstaff” to locate a child's whereabouts, remove a child from one parent's custody, and/or confiscate the

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5. In 2008, the overall rate at which children were returned after an abduction was forty-six percent, lower than the fifty-one percent recorded in 2003 and the fifty percent recorded in 1999. See NIGEL LOWE, *A STATISTICAL ANALYSIS OF APPLICATIONS MADE IN 2008 UNDER THE HAGUE CONVENTION OF 25 OCTOBER 1980 ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION* 6 (2011) [hereinafter 2008 Statistical Analysis].

6. See KRUGER, *supra* note 1, at 176.

7. *Id.* at 27.

8. *Id.* at 176.

9. *Id.* at 182.

10. MINISTRY OF JUST., FAMILY PROC. RULES, PD 12D, §§ 7.1–7.4 (UK) [hereinafter PD 12D].

11. MINISTRY OF JUST., FAMILY PROC. RULES, PD 12F, §§ 4.2–4.8 (UK) [hereinafter PD 12F].

parent's and child's passports.<sup>12</sup> If the police deem an abduction imminent, they will activate the port alert system, notifying border control agents to stop a child from leaving the country.<sup>13</sup>

All countries, internationally and independently, must take a proactive approach to the problem of international child abduction just as the United Kingdom has done. To that end, mandatory preventative measures must be implemented to ensure that children who are abduction risks cannot be taken out of a country and that abductions in progress are physically stopped at a country's borders. This Note juxtaposes the legal systems of two international communities—the United Kingdom and the European Union—and describes why and how the preventative measures of the former can be successfully implemented into the legal framework of the latter. Specifically, the European Union should implement the tipstaff orders and port alert system utilized by the United Kingdom in all E.U. countries. To do this, the European Union should pass legislation that creates tipstaff-like agents to enforce court orders related to child abduction, reestablishes border controls by dissolving the Schengen Agreement, and requires all E.U. countries to implement national port alert systems.

Part I of this Note provides an overview of the existing problem of international child abduction, both around the world and specifically in the European Union, and discusses the legal framework currently in existence. It then describes the superior preventative system that the United Kingdom has in place, highlighting the tipstaff orders and port alert system aimed at decreasing instances of abduction. Part II of this Note explains how the legal framework of the European Union could be modified in three ways to adopt and implement the United Kingdom's preventative measures feasibly and effectively. It sets forth the basic ideas involved in these legal solutions that aim to dramatically decrease international child abduction within the E.U. countries, and addresses potential difficulties that might arise with this proposal. Finally, this Note concludes with a brief explanation of why the European Union is the ideal place to implement such preventative measures, and contemplates the future of international child abduction on a global scale.

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12. PD 12D, *supra* note 10; Sarah Jennings, *Tipstaff Orders*, FAMILY LAW WEEK (Aug. 26, 2015), <http://www.familylawweek.co.uk/site.aspx?i=ed146613> [<https://perma.cc/W74W-GQTG>].

13. PD 12F, *supra* note 11.

## I. BACKGROUND

A. *International Child Abduction Globally and in the European Union*

In the past twenty years, the Hague Convention Special Commission<sup>14</sup> has sanctioned periodical statistical analyses to gather and assess data from over ninety countries regarding various aspects of international child abduction.<sup>15</sup> According to the most recent statistical information recorded in 2008, international child abductions appear to be on the rise around the world.<sup>16</sup> A comparison of the most recent analyses indicates that there has been a forty-five percent increase in the total number of return applications<sup>17</sup> made under the convention governing international child abduction, involving at least five thousand children.<sup>18</sup> There are several reasons for this growing problem. One cause is the increased mobility of people around the world due to the modern-day ease of and access to international travel.<sup>19</sup> Another factor that contributes to higher incidences of international child abduction is the rising number of international families.<sup>20</sup> This includes families with parents of different nationalities who live in the same country, or with parents who reside in different countries.<sup>21</sup> The increased diversity of parents in terms of nationality has caused disputes involving family matters to increase in the European Union specifically.<sup>22</sup> Out of the 122 million marriages recorded in the European Union in 2011, approximately thirteen percent had an international

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14. Hague Special Commissions prepare draft conventions, which are then discussed and adopted by the Plenary Session. They also monitor the practical operation of enacted conventions, including the Convention on the Civil Aspects of International Child Abduction (Abduction Convention). See *Frequently Asked Questions*, HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, <https://www.hcch.net/en/faq> (last visited July 24, 2017) [hereinafter Hague Conference FAQ] [<https://perma.cc/5GB2-RVL6>].

15. See, e.g., 2008 Statistical Analysis, *supra* note 5, at 4 (providing an analysis based upon 2008 survey data).

16. *Id.* at 5.

17. A return application is the formal documentation that a parent submits to a Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State to begin the process of having his or her abducted child returned. See Abduction Convention, *supra* note 1, art. 8.

18. See 2008 Statistical Analysis, *supra* note 5, at 5; Amelia Hill, *The Mothers Fighting to Get Their Children Back Home Again*, THE GUARDIAN (May 16, 2015), <http://www.theguardian.com/lifeandstyle/2015/may/16/the-mothers-fighting-to-get-their-children-back-home-again> [<https://perma.cc/7RB8-NS85>].

19. Hill, *supra* note 18.

20. *Consultation on the Functioning of the Brussels IIa Regulation (EC 2201/2003)*, EUROPEAN COMM'N (Jul. 18, 2014), [http://ec.europa.eu/justice/newsroom/civil/opinion/140415\\_en.htm](http://ec.europa.eu/justice/newsroom/civil/opinion/140415_en.htm) [hereinafter *Brussels IIa Consultation*] [<https://perma.cc/SCC3-DCBU>].

21. *Id.*

22. *Id.*

dimension.<sup>23</sup> Currently, there are about sixteen million international couples in the European Union.<sup>24</sup> Of those, about 130,000 international couples file for divorce annually.<sup>25</sup>

Notably, several problems exist with regards to the available statistical data. Because the Hague Conference<sup>26</sup> most recently published an official analysis in 2011, based on data collected in 2008, the current global trends in international child abduction are not readily apparent.<sup>27</sup> While data on this subject are not collected, analyzed, and published on an annual basis, the Hague Conference is reportedly due to publish a new statistical analysis in 2017.<sup>28</sup> Regarding the European Union, the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) has collected some data on child abductions as recently as 2013<sup>29</sup>; however, these data are limited. They provide a survey of only eleven countries and provide more information regarding the return requests received by countries *to* where a child was taken, as opposed to the outgoing return requests made by countries *from* where a child was taken. As this Note focuses on why and how children are illegally removed from countries, and not on the countries where the abducted children are taken, data about the latter are less useful.<sup>30</sup> Even with the data that are available, it is not totally clear whether parental abductions are actually on the rise, or if there are simply more return requests made as parents become increasingly aware of the protections and assistance afforded to them by the various international and local legal

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23. See *International Parent Child Abduction*, EUROPEAN PARLIAMENTARY RES. SERV. BLOG (May 28, 2014), <http://epthinktank.eu/2014/05/28/international-parental-child-abduction/> [hereinafter EUROPEAN PARLIAMENTARY BLOG] [<https://perma.cc/SZ4B-9GY7>].

24. *Family Matters and Successions*, EUROPEAN COMM'N, [http://ec.europa.eu/justice/civil/family-matters/index\\_en.htm](http://ec.europa.eu/justice/civil/family-matters/index_en.htm) (last updated Nov. 24, 2016) [<https://perma.cc/L8FW-D3WV>].

25. MISSING CHILDREN EUR., ANNUAL REPORT 2014 15 (2015).

26. The Hague Conference on Private International Law is an intergovernmental organization that works towards the progressive unification of the rules of private international law. See Hague Conference FAQ, *supra* note 14.

27. See 2008 Statistical Analysis, *supra* note 5, at 4.

28. See Hill, *supra* note 18.

29. European Parliament Directorate-General for Internal Policies: Citizens' Rights and Constitutional Affairs, *Cross Border Parental Child Abduction in the European Union*, Doc. PE 510.012, 44–45, 49 (Jan. 2015) [hereinafter LIBE Study].

30. *Id.* See also Abduction Convention, *supra* note 1, art. 8.

frameworks.<sup>31</sup> Finally, there are surely cases of parental abduction that go unreported.<sup>32</sup>

Regardless of these statistical inaccuracies and limitations, however, the data indicate that the number of international child abductions grew between 2000 and 2008, and continues to increase today.<sup>33</sup> These data also suggest that while trends in outgoing return requests made by the U.K. countries have increased, this has occurred at a considerably slower rate in comparison with the increases experienced by numerous other E.U. countries.<sup>34</sup> Specifically, the number of England and Wales' outgoing return requests increased by 39.2% between 2008 and 2012.<sup>35</sup> During the same period, Spain's outgoing return requests grew by 44.6%,<sup>36</sup> France's increased by 55.9%,<sup>37</sup> Hungary's grew by 68.8%,<sup>38</sup> Denmark's increased by 73.7%,<sup>39</sup> Belgium's grew by 130%,<sup>40</sup> and Lithuania's increased by 141.7%.<sup>41</sup> Some countries had no outgoing return request data recorded in 2012, including Italy,<sup>42</sup> the Czech Republic,<sup>43</sup> Romania,<sup>44</sup> the Netherlands,<sup>45</sup> and Austria,<sup>46</sup> so no comparisons could be made. While the outgoing return requests of a few E.U. countries have increased at a slower rate—such as Germany at 30.8%—on the whole, these data seem to indicate that the United Kingdom's preventative measures are more effective in stopping abductions than the measures currently in place in a number of other E.U. countries. Thus, the European Union could significantly benefit from implementing these measures—the central argument of this Note.

31. LIBE Study, *supra* note 29, at 16.

32. *Parental Child Abduction is a Worldwide Problem*, FOREIGN & COMMONWEALTH OFF. OF THE U.K. (Dec. 12, 2012), <https://www.gov.uk/government/news/parental-child-abduction-is-a-worldwide-problem> [<https://perma.cc/BUM6-P8RE>].

33. LIBE Study, *supra* note 29, at 36.

34. *Id.* at 373.

35. *Id.*

36. *Id.* at 178.

37. *Id.* at 194.

38. *Id.* at 249.

39. *Id.* at 133.

40. *Id.* at 105.

41. *Id.* at 226.

42. *Id.* at 209.

43. *Id.* at 120.

44. *Id.* at 339.

45. *Id.* at 271.

46. *Id.* at 293.

## B. *Reactive Measures: The Legal Framework of the European Union*

The legal framework that currently governs the countries of the European Union addresses the problem of international child abduction from a reactive stance, seeking the return of an abducted child once he or she has already been removed from a country, instead of proactively preventing the abduction from occurring in the first place. This Section considers the European Union's legal framework in detail.

### 1. The Abduction Convention

In 1980, the Fourteenth Session of the Hague Convention adopted and signed the Convention on the Civil Aspects of International Child Abduction by a unanimous vote.<sup>47</sup> This international convention, informally known as the Abduction Convention, is the primary multilateral treaty governing child abduction across international borders.<sup>48</sup> It delineates the return protocols that are to be implemented by the adopting countries (referred to as the "Contracting States") when a child is wrongfully removed to or retained from his or her country of habitual residence.<sup>49</sup> The Abduction Convention currently has more than ninety Contracting States, and includes all member states of the European Union.<sup>50</sup>

The objective of the Abduction Convention is "to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and to ensure that rights of custody . . . under the law of one Contracting State are effectively respected in the other Contracting States."<sup>51</sup> The Abduction Convention does not determine which parent has proper legal custody over the child.<sup>52</sup> Instead, the treaty allows the judicial authorities in the country of habitual residence to adjudicate the merits of a custody dispute, as opposed to the court system of the country to where the child was removed.<sup>53</sup> The term "habitual residence" is not expressly defined in the treaty,<sup>54</sup> but it is considered to be the

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47. SANDRA DAVIS ET AL., INTERNATIONAL CHILD ABDUCTION ix (1993); *see also* Abduction Convention, *supra* note 1.

48. EUROPEAN PARLIAMENTARY BLOG, *supra* note 23.

49. *See* Abduction Convention, *supra* note 1, arts. 8–10.

50. EUROPEAN PARLIAMENTARY BLOG, *supra* note 23.

51. Abduction Convention, *supra* note 1, art. 1.

52. DAVIS, *supra* note 47, at ix.

53. Article 1 explains that the Abduction Convention seeks to ensure that rights of custody under the law of one Contracting State are effectively respected in the other Contracting States. Abduction Convention, *supra* note 1, art. 1.

54. Hill, *supra* note 18.

country that contains the family and social environment where the child's life has developed.<sup>55</sup> The child's habitual residence is where the child has resided primarily, and is the center of his or her life activities.<sup>56</sup> This becomes more challenging to define when families have moved around frequently because the law does not take into account short-term moves or trial migrations,<sup>57</sup> which is problematic for two reasons. First, if the place of habitual residence is in dispute, judicial authorities cannot determine whether a child's removal from a country is wrongful.<sup>58</sup> Second, a parent could be accused of child abandonment upon return to the country from where the child was taken if that country is not considered to be the country of habitual residence.<sup>59</sup>

The lengthy process of obtaining the return of a child is clearly laid out in the treaty. Articles 6 and 7 of the Abduction Convention mandate that each Contracting State designate a "Central Authority" to discharge the duties that are imposed by the convention.<sup>60</sup> These articles dictate that the central authorities will cooperate with each other and the competent authorities in their respective countries.<sup>61</sup> Articles 8 through 20 describe how a parent begins the process of seeking the return of his or her child: first, the parent submits a return application to the Central Authority of the country of habitual residence, containing detailed information regarding the child and the circumstances of the abduction; second, the Central Authority of that country transmits the application to the Central Authority of the country where the child is thought to be located; and finally, that Central Authority takes all appropriate measures and works with the judicial and administrative authorities to achieve the expeditious return of the child to the country of habitual residence.<sup>62</sup>

Unfortunately, several issues remain prevalent notwithstanding the existence of the Abduction Convention, including non-universal acceptance, noncompliance, exceptions, delay, expense, and, most importantly, a lack of preventative measures. Fewer than half

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55. See Jeremy D. Morley, *Habitual Residence*, THE LAW OFFICE OF JEREMY D. MORLEY: INTERNATIONAL FAMILY LAW, <http://www.international-divorce.com/Habitual-Residence> (last visited July 24, 2017) [<https://perma.cc/887W-969N>].

56. See KRUGER, *supra* note 1, at 20.

57. Hill, *supra* note 18.

58. See KRUGER, *supra* note 1, at 21.

59. Hill, *supra* note 18.

60. Abduction Convention, *supra* note 1, arts. 6–7.

61. *Id.*

62. *Id.* arts. 8–20.

of the countries in the world are signatories of the Abduction Convention,<sup>63</sup> so when children are removed to these non-signatory nations, there is no international legal mechanism in place to facilitate their return.<sup>64</sup> The left-behind parent can start proceedings in the country of habitual residence, but there is no guarantee that a judgment would be recognized by a non-signatory state.<sup>65</sup> In these cases, the suggested remedies include reaching an agreement with the other parent, mediation, or using the foreign country's judicial system, and the prospect of a child's return is much less likely.<sup>66</sup> Even among signatory countries, however, there are problems regarding enforcement.<sup>67</sup> Some countries are simply noncompliant, for which there are no repercussions.<sup>68</sup> When countries do attempt to abide by the Abduction Convention, the lengths to which the various central authorities will go to effectuate the return of a child can vary greatly depending on which country has the abducted child.<sup>69</sup> Based on the most recent survey of all signatory nations, less than fifty percent of children for whom return applications are made are returned to their country of habitual residence.<sup>70</sup>

Additionally, Article 13 of the treaty states that a child does not need to be returned to his or her country of habitual residence if "there is a grave risk that such a return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation."<sup>71</sup> If a child is not required to return to his or

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63. There are 195 countries in the world as recognized by the United Nations, and presently ninety-four countries are parties to the Abduction Convention. See Hague Conference on Private International Law, *Status Table 28: Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, <https://www.hcch.net/en/instruments/conventions/status-table/?cid=24> (last updated Jan. 10, 2017) [<https://perma.cc/QMA3-SMKX>]; *How Many Countries are There in the World in 2017?*, POLITICAL GEOGRAPHY NOW (June 14, 2017), <http://www.polgeonow.com/2011/04/how-many-countries-are-there-in-world.html> [<https://perma.cc/LF82-Y7YQ>].

64. KRUGER, *supra* note 1, at 106.

65. *Id.*

66. *Id.*; see also *Are You Eligible To File a Hague Application?*, U.S. DEP'T OF STATE, BUREAU OF CONSULAR AFFAIRS, <https://travel.state.gov/content/childabduction/en/from/hague-app.html> (last visited July 24, 2017) ("The circumstances of every abduction case are different and each requires a tailored response.") [<https://perma.cc/S529-NPBM>].

67. KRUGER, *supra* note 1, at 105; U.S. DEP'T OF STATE, ANNUAL REPORT ON INTERNATIONAL CHILD ABDUCTION 3 (Apr. 2017), available at <https://travel.state.gov/content/dam/childabduction/complianceReports/2017%20ICAPRA%20Report%20-%20Final.pdf> [<https://perma.cc/CQ2W-QKPR>].

68. See *id.*

69. KRUGER, *supra* note 1, at 105

70. 2008 Statistical Analysis, *supra* note 5, at 6.

71. Abduction Convention, *supra* note 1, art. 13.

her country of habitual residence based on this provision, consequently the courts of the country of habitual residence are prevented from adjudicating proper custody and residence of that child.<sup>72</sup> This essentially counteracts the treaty's intent, and can further delay, if not completely preclude, the return of the child.<sup>73</sup> The costs of time and money pose additional problems, as fighting for the return of a child can take years and can be exceedingly expensive.<sup>74</sup> Left-behind parents can end up practically penniless after paying legal fees and expenses incurred with repeated travel abroad.<sup>75</sup> The most significant issue with the treaty as it stands now, however, is that it does not mandate a single preventative measure.<sup>76</sup> The Abduction Convention focuses solely on what is to be done following the abduction of a child, as opposed to mandating the implementation of measures that could significantly decrease these incidents from ever occurring.<sup>77</sup>

## 2. Suggested Good Practices Under the Abduction Convention

In 2005, the Permanent Bureau of the Hague Conference,<sup>78</sup> in consultation with the Contracting States of the Abduction Convention, published an official document containing suggested good practices under the Abduction Convention.<sup>79</sup> Importantly, the document's introduction notes that "preventing abduction is a key aim of the 1980 [Abduction] Convention and it is widely acknowledged that it is better to prevent abduction than to have to seek a child's return after abduction."<sup>80</sup> The document recommends that individual signatory states create barriers to international travel when there is a risk of abduction.<sup>81</sup> Specifically, the document

72. *Id.*

73. See Katrina M. Parra, *The Need for Exit Controls to Prevent International Child Abduction from the United States*, 31 WHITTIER L. REV. 817, 823 (2010).

74. See Hill, *supra* note 18.

75. See *id.*

76. See Abduction Convention, *supra* note 1.

77. See *id.*

78. The Permanent Bureau of the Hague Conference performs basic research for the Hague Conference. In addition, it develops and maintains contacts with: the National Organs, experts and delegates of Member States; Central Authorities designated by the State Parties to the Hague Conventions for the purposes of judicial and administrative cooperation; and international organizations. The Bureau also handles requests for information from users of the Conventions. See Hague Conference FAQ, *supra* note 14.

79. Hague Conference on Private International Law, *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part III: Preventative Measures*, at vi-vii (2005), [https://assets.hcch.net/upload/abdguidemiii\\_e.pdf](https://assets.hcch.net/upload/abdguidemiii_e.pdf) [hereinafter *Good Practice Guide*] [<https://perma.cc/NK7F-SCVW>].

80. *Id.*

81. *Id.* at 21.

focuses on the regulation of travel documentation (including the revocation of passports or visas and the requirement of parental consent to travel) and border controls (including stop orders, port alert systems, and various checks at international borders).<sup>82</sup> However, these suggestions are in no way legally binding upon signatory states,<sup>83</sup> and the remaining legal mandates are limited supplements to the Abduction Convention.

### 3. The Brussels IIa Regulation

The Brussels IIa Regulation<sup>84</sup> addresses child abduction between member states of the European Union specifically.<sup>85</sup> It has been in force since March 1, 2005, in all E.U. member states except Denmark.<sup>86</sup> This regulation governs numerous matters of family law in the European Union, and was formed, in part, because the Abduction Convention was not sufficiently effective.<sup>87</sup> The Brussels IIa Regulation specifies the procedures used to return the child to the place of his or her habitual residence, prevents parallel proceedings before the courts of different E.U. countries, and aims to ensure the circulation of judgments and agreements based on the mutual trust among the governed countries.<sup>88</sup> This Regulation makes no mention of preventative measures.<sup>89</sup>

### 4. The Luxembourg Convention

The Luxembourg Convention,<sup>90</sup> which entered into force in 1983, protects custody and access rights in international situations, including abduction-related disputes, among European coun-

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82. *Id.* at 21–27.

83. *Id.* at vii.

84. See Council Regulation (EC) 2201/2003, Concerning Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and the Matters of Parental Responsibility, Repealing Regulation (EC) No 1347/2000. 2003 O.J. (L 338) I [hereinafter Brussels IIa Regulation]; EUROPEAN PARLIAMENTARY BLOG, *supra* note 23.

85. EUROPEAN PARLIAMENTARY BLOG, *supra* note 23.

86. *Id.*

87. KRUGER, *supra* note 1, at 115–16.

88. See Brussels IIa Regulation, *supra* note 84, pmbl., arts. 11, 17.

89. *Id.*

90. The Luxembourg Convention is formally known as the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children. See KRUGER, *supra* note 1, at 125; European Convention on Recognition and Enforcement of Decisions Concerning Child Custody and on Restoration of Custody of Children, May 20, 1980, E.T.S. No. 105 [hereinafter Luxembourg Convention].

tries.<sup>91</sup> It provides for “free, prompt, non-bureaucratic assistance from central authorities” designated by each country to “discover the whereabouts and restore custody of a child improperly removed.”<sup>92</sup> This convention makes no mention of preventative measures.<sup>93</sup>

## 5. The Schengen Agreement

In 1995, the Schengen Agreement<sup>94</sup> took effect and has since effectively eliminated all forms of border controls between twenty-two of the twenty-eight countries in the European Union.<sup>95</sup> Any person, regardless of his or her nationality, can cross the internal borders between Schengen Zone countries at any point without being checked.<sup>96</sup> The E.U. countries that are part of the Schengen Agreement “must remove all obstacles to fluid traffic flow . . . at internal borders,” and police are only permitted to exercise their powers as long as those powers do not constitute a border check.<sup>97</sup> This agreement was intended to ease travel between these E.U. nations, “guarantee[ing] free movement to more than 400 million [E.U.] citizens, as well as to many non-[E.U.] nationals, businessmen, tourists or other persons legally present on the [E.U.] terri-

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91. *Details of Treaty No. 105: European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children*, COUNCIL EUR., <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/105> [https://perma.cc/WW4F-M8TP].

92. *Id.*

93. See Luxembourg Convention, *supra* note 84.

94. This agreement is formally known as the Agreement Between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the Gradual Abolition of Checks at Their Common Borders, June 14, 1985, 2000 O.J. (L 239) 13. The agreement was supplemented in 1990 by a further convention which addressed *inter alia* the abolition of internal border controls. See Convention Implementing the Schengen Agreement of June 14, 1985 on the Gradual Abolition of Checks at Their Common Borders, 2000 O.J. (L 239) 19.

95. See *The Schengen Area and Cooperation*, EUR-LEX, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A133020> (last visited July 24, 2017) [hereinafter EUR-Lex Schengen] [https://perma.cc/99WR-GYNC]; *Schengen: Controversial EU Free Movement Deal Explained*, BBC NEWS (Mar. 7, 2016), <http://www.bbc.com/news/world-europe-13194723> [hereinafter Schengen BBC Article] [https://perma.cc/6TZJ-QVFL].

96. See Regulation (EC) No. 562/2006 of the European Parliament and of the Council of 15 March 2006 Establishing a Community Code on the Rules Governing the Movement of Persons Across Borders (Schengen Borders Code), 2006 O.J. (L 105) 1; *Schengen Borders Code*, EUR-LEX, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A114514> (last visited July 24, 2017) [hereinafter Schengen Borders Code Summary] [https://perma.cc/L9YT-E3EF].

97. Schengen Borders Code Summary, *supra* note 96.

tory.”<sup>98</sup> The United Kingdom has opted out of the Schengen Agreement, preferring to maintain its own borders.<sup>99</sup>

### C. *A Proactive Approach: The Legal Framework of the United Kingdom*

As a member of the European Union, the United Kingdom has ratified both the Abduction Convention as well as the Luxembourg Convention, and implemented these treaties through the Child Abduction and Custody Act 1985.<sup>100</sup> Beyond its decision to enact these international treaties, the United Kingdom has adopted certain measures further aimed at resolving the issue of international child abduction. The United Kingdom has passed legislation containing two preventative measures—tipstaff orders and a port alert system—intended to stop international child abduction within its borders.<sup>101</sup> While the former is obtained through the court system and the latter is activated by local police, both seek to prevent a child who is at risk of abduction from leaving his or her country of habitual residence until a court has lawfully heard and settled the custody dispute.<sup>102</sup>

#### I. When Abduction Is Likely: Tipstaff Orders

The tipstaff is the enforcement officer for all orders made in the High Court of Justice for England and Wales (High Court).<sup>103</sup> The majority of the tipstaff’s work involves discovering the whereabouts of children and taking them into protective custody, including cases where international abduction is feared.<sup>104</sup> There are three types of tipstaff orders that a parent can seek in a situation where child abduction is likely: a location order, a collection order, and a passport order.<sup>105</sup> A location order allows the tipstaff to “locate the child by serving an order to people or organizations who may reasonably know the child’s whereabouts.”<sup>106</sup> Those persons or organizations become legally obligated to immediately disclose any

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98. *Schengen Area*, EUROPEAN COMM’N: MIGRATION AND HOME AFFAIRS (Jan. 29, 2016), [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/index_en.htm) [<https://perma.cc/HQB2-AF2M>].

99. Schengen BBC Article, *supra* note 95.

100. DAVIS, *supra* note 47, at ix.

101. See PD 12D, *supra* note 10, § 7.4; PD 12F, *supra* note 11, § 4.2.

102. See PD 12D, *supra* note 10, § 7.1; PD 12F, *supra* note 11, § 4.2.

103. See PD 12D, *supra* note 10, § 7.1.

104. PD 12D, *supra* note 10, § 7.4.

105. Sarah Jennings, *Tipstaff Orders*, FAMILY LAW WEEK (Aug. 26, 2015), <http://www.familylawweek.co.uk/site.aspx?i=ED146613> [<https://perma.cc/W74W-GQTG>].

106. *Id.*

information regarding the child's whereabouts.<sup>107</sup> Next, a collection order is sought when the child's location is known within the United Kingdom but the respondent will not return the child to the applicant, in breach of an order to do so.<sup>108</sup> In this case, the tipstaff can collect the child and place him or her in the care of the applicant, another named individual, or a local authority.<sup>109</sup> Finally, a passport order<sup>110</sup> enables the tipstaff and/or police to go to the potential abducting parent's location, make a forced entry,<sup>111</sup> and confiscate the passports and travel documents of that parent and the at-risk child.<sup>112</sup> Because the tipstaff is an agent of the High Court, a parent seeking any type of tipstaff order must go through the court system to obtain one.<sup>113</sup>

There are no similar enforcement agents employed by the European Union to carry out such court orders. While the European Police Office, known as Europol,<sup>114</sup> is the official law enforcement agency of the European Union, this agency investigates a wide variety of other serious crimes, including terrorism, international drug trafficking, money laundering, organized fraud, counterfeiting, and human trafficking.<sup>115</sup> Furthermore, Europol officers have no direct powers of arrest but support E.U. law enforcement colleagues.<sup>116</sup>

Instead, enforcement is left to the discretion of the various enforcement agents of the differing countries' courts and police agencies, depending on the jurisdiction in which the parent obtains the court order. In Germany, for example, a court marshal seeks assistance from local police in carrying out court orders.<sup>117</sup>

107. *Id.*

108. *Id.*

109. *Id.*

110. For an example of a passport order form, see Passport Order Form A: Direction to the Tipstaff, <https://www.judiciary.gov.uk/wp-content/uploads/2014/08/passport-order-a-directions-to-tipstaff.doc> [<https://perma.cc/3Q42-PV2G>].

111. *Id.*; PD 12D, *supra* note 10, § 7.2.

112. Jennings, *supra* note 105.

113. *Id.*

114. See *About Us*, EUROPOL, <https://www.europol.europa.eu/content/page/about-us> (last visited July 24, 2017) [<https://perma.cc/F7BG-UEJ7>].

115. See *Crime Areas*, EUROPOL, <https://www.europol.europa.eu/crime-areas-and-trends/crime-areas> (last visited July 24, 2017) [<https://perma.cc/UC27-MC9M>].

116. *Europol: Helping EU Countries Fight International Crime and Terrorism*, EUROPEAN PARLIAMENT (Nov. 30, 2015, 3:04 PM), <http://www.europarl.europa.eu/news/en/headlines/security/20151130STO05256/europol-helping-eu-countries-fight-international-crime-and-terrorism> [<https://perma.cc/K3JE-WX5V>].

117. See *Germany: Enforcement of Child Abduction Laws*, LAW OFFICE JEREMY D. MORLEY: INTERNATIONAL FAMILY LAW, <http://www.international-divorce.com/Enforcement-germany.htm> (last visited July 24, 2017) [<https://perma.cc/WQ5N-U4QW>].

In other E.U. nations, such as France, the enforcement agent is an officer of the court (*huissier de justice*, or “justice usher”).<sup>118</sup> In addition to execution of court orders, the *huissier de justice* performs a multitude of functions pertaining to familial matters, including serving process, issuing court summonses, recovering judgments for bankruptcy and insurance claims, and performing seizures and evictions.<sup>119</sup> In addition to these responsibilities, private individuals who are considering bringing forth legal claims can hire these officers to collect and validate findings that will serve as evidence during litigation.<sup>120</sup>

## 2. When Abduction Is Imminent: The Port Alert System

The United Kingdom’s port alert system, also known as an “all ports warning” and enacted in the Child Abduction Act 1984,<sup>121</sup> serves to notify all police forces and immigration officers at the borders to stop a child from leaving the country.<sup>122</sup> Practice Direction 12F, regarding international child abduction, describes how the port alert system functions.<sup>123</sup> To activate a port alert, it is not necessary to obtain a court order before seeking police assistance,<sup>124</sup> and a local police station can help a parent in need.<sup>125</sup> First, a parent reports to the police that his or her child may be abducted in the very near future and provides as much information about the child, the abducting parent, and the conditions of the potential abduction as possible.<sup>126</sup> However, police will only institute the port alert system to prevent removal from the United Kingdom’s jurisdiction when the danger of abduction is both real—not sought merely as a means of insurance or for purposes of spite—and imminent—within twenty-four to forty-eight hours.<sup>127</sup>

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118. See *Huissier*, ONISEP, <http://www.onisep.fr/Ressources/Univers-Metier/Metiers/huissier-huissiere-de-justice> (last visited July 24, 2017) [<https://perma.cc/9QSE-RR3J>]; *Huissier de Justice*, SERVICE-PUBLIC, <https://www.service-public.fr/particuliers/vosdroits/F2158> (last visited July 24, 2017) [<https://perma.cc/4M83-EFSG>].

119. See *Huissier*, *supra* note 118; *Huissier de Justice*, *supra* note 118.

120. *Disputes*, LE HUISSIERS DE JUSTICE, <http://www.huissier-justice.fr/en/disputes-with-neighbours-249.aspx> (last visited July 24, 2017) [<https://perma.cc/S539-GCH7>].

121. See PD 12F, *supra* note 11, arts. §§ 4.2, 4.6.

122. See *id.* §§ 4.1–4.8.

123. A Practice Direction is a supplemental protocol to rules of civil and criminal procedure in U.K. courts. See *Practice Directions*, MINISTRY JUST. (U.K.), <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/raprnotes> (last visited July 24, 2017) [<https://perma.cc/3K6U-C5NA>]; see also PD 12F, *supra* note 11.

124. See PD 12F, *supra* note 11, § 4.3.

125. See *id.* § 4.5.

126. *Id.* § 4.7.

127. *Id.* § 4.6.

Once police deem an abduction threat to be both real and imminent, the police immediately inform the various ports that a child is about to be removed unlawfully from the country and work with the port officers at these borders to identify any at-risk children and prevent their removal from the United Kingdom.<sup>128</sup> Specifically, local police contact the Police National Ports Office (NPO), which is responsible for handling requests for port alert activation.<sup>129</sup> The NPO, working with Special Branch port officers,<sup>130</sup> circulates to all ports a daily list of children (the Child List)<sup>131</sup> in danger of imminent abduction from the United Kingdom.<sup>132</sup> During the course of the day, Special Branch officers immediately update port officers regarding new names and cancellations.<sup>133</sup> Port officers check all children under eighteen traveling alone or in the company of one adult against the NPO Child List as they pass through border control.<sup>134</sup> If port officers identify a child on the list, the port officer “immediately point[s] out the child and any accompanying adults to the police,” who then stop the child from leaving the country.<sup>135</sup> Once the port alert system is activated, the child’s name remains on the list for twenty-eight days, after which it is removed automatically unless a parent makes a further application.<sup>136</sup> The Port Alert system operates twenty-four hours a day using the police national computer,<sup>137</sup> and the NPO is open 365 days a year.<sup>138</sup>

The European Union has recognized the importance and utility of port alert systems, but has yet to make them mandatory in its member countries. In 2008, the European Parliament adopted a declaration that called upon E.U. countries to create alert mechanisms and enter into cooperative agreements that would enable

128. *Id.* § 4.2.

129. UK VISAS AND IMMIGRATION, IMMIGRATION DIRECTORATES’ INSTRUCTIONS, ch. 19, § 4, ¶ 2.2, (Sept. 2004), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/262991/19section4.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/262991/19section4.pdf) [hereinafter INSTRUCTIONS] [<https://perma.cc/ZQ9K-RNF6>].

130. METROPOLITAN POLICE SPECIAL BRANCH, SPECIAL BRANCH INTRODUCTION AND SUMMARY OF RESPONSIBILITIES 14 (Aug. 2004), available at <https://uniteyouthdublin.files.wordpress.com/2015/01/history-of-uk-special-branch.pdf> [<https://perma.cc/3CT7-DKME>].

131. David Jones, *Mind That Child*, 158 NEW L.J. 7312 (Mar. 14, 2008), <http://www.newlawjournal.co.uk/nlj/content/mind-child> [<https://perma.cc/6FWG-UNUM>].

132. INSTRUCTIONS, *supra* note 129, ¶ 2.2.

133. *Id.*

134. *Id.* ¶ 2.3.

135. *Id.*

136. PD 12F, *supra* note 11, § 4.8.

137. DAVIS, *supra* note 47, at 5.

138. Jones, *supra* note 131.

cross-border alerts.<sup>139</sup> That same year, in a public letter to E.U. member states, the Presidency of the Council of the European Union implored countries “to introduce and develop national mechanisms for alerting the general public in the event of alleged or actual abduction of children . . . or to designate an existing structure to do so,” so that border alerts can be “triggered quickly in the event of an abduction.”<sup>140</sup> The European Commission then published a Commission Staff Working Document that delineates suggested guidelines for establishing cross-border child abduction alert systems.<sup>141</sup> Rather than recommending preventative measures and pleading with E.U. states to adopt them, however, the European Union must legally require these measures and punish countries for noncompliance.

## II. ANALYSIS

International child abduction is demonstrably on the rise around the world, and the countries of the European Union are not immune from this unfortunate trajectory.<sup>142</sup> Preventative measures in E.U. countries are necessary now more than ever to combat this serious, continually increasing problem. Because of this, the European Union should emulate the United Kingdom and pass legislation that creates tipstaff-like agents to enforce preventative court orders, reestablishes border controls among all E.U. nations by dissolving the Schengen Agreement, and mandates the implementation of national port alert systems.

### A. *Creation of Tipstiffs in the European Union*

Parents located within the various E.U. countries who fear that their child may be abducted can likely obtain court orders in their jurisdictions similar to the tipstaff orders available to U.K. parents, but there is a critical difference. The United Kingdom has a spe-

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139. *Commission Staff Working Document: Best Practice for Launching a Cross-Border Child Abduction Alert*, at 3, SEC (2008) 2912 final (Nov. 24, 2008), [http://ec.europa.eu/justice/funding/rights/call\\_10014/ramc\\_ag\\_annex\\_5\\_2008\\_en.pdf](http://ec.europa.eu/justice/funding/rights/call_10014/ramc_ag_annex_5_2008_en.pdf) [hereinafter *Best Border Alert Practice*] [<https://perma.cc/4U9T-VBGH>].

140. Council of the European Union, *Child Abduction Alert/Draft Council Conclusions*, 14612/2/08 REV 2 (Nov. 11, 2008), at 3, [https://europa.eu/capacity4dev/sites/default/files/learning/Child-rights/docs/child\\_abduction\\_alertDraft\\_council\\_conclusions.pdf](https://europa.eu/capacity4dev/sites/default/files/learning/Child-rights/docs/child_abduction_alertDraft_council_conclusions.pdf) [hereinafter *Draft Alert Conclusions*] [<https://perma.cc/VGW9-QZ2Z>].

141. See generally *Best Border Alert Practice*, *supra* note 139 (explaining the necessary considerations in creating cross-border child abduction alert systems such as the content, format, and length of the alert).

142. See 2008 Statistical Analysis, *supra* note 5, at 5; LIBE Study, *supra* note 29, at 36, 45–47.

cific enforcement agent whose primary work consists of carrying out court orders that pertain to custody disputes and threats of international child abduction.<sup>143</sup> This agent, the tipstaff, is said to possess “extraordinary powers,” so that he or she<sup>144</sup> can successfully thwart abductions.<sup>145</sup> One source has even reported that the tipstaff has the capability to stop all planes flying from the United Kingdom to another country if suspicion arises that a child is about to be abducted and removed to that other country.<sup>146</sup>

In contrast, there are no similar enforcement agents employed by the European Union to exclusively carry out court orders geared toward the prevention of international child abduction. Enforcement of court orders is instead conducted by the various enforcement agents of the differing countries, such as a court marshal or *huissier de justice*, depending on where the parent obtains the court order.<sup>147</sup> These court officers cannot compare to the United Kingdom’s tipstaff, whose primary focus is the execution of court orders pertaining to familial disputes. Additionally, Europol already investigates a significant variety of serious international crimes, and is therefore unlikely to have the capacity to handle the enforcement of abduction-related court orders as well.<sup>148</sup> Further, Europol officers have no independent powers of arrest,<sup>149</sup> while the primary role of the tipstaff is the direct enforcement of court orders related to abduction threats.<sup>150</sup>

Considering that court orders involving parental child abduction are very time sensitive, the European Union should have an enforcement agent, similar to the tipstaff, whose work principally consists of the administration of such orders. The agent responsible for carrying out these orders cannot be encumbered or distracted by a plethora of other responsibilities outside of family law when performing such sensitive work. Child abductions can occur at any time, so the enforcement agents responsible for effectuating

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143. PD 12D, *supra* note 10, § 7.1–7.4.

144. The identity of the tipstaff is not known to the public. See Steven Morris & Jamie Grierson, *The Rebecca Minnock case: rare insights into the family court system*, THE GUARDIAN (June 12, 2015), <http://www.theguardian.com/law/2015/jun/12/the-rebecca-minnock-case-rare-insights-into-the-family-court-system> [<https://perma.cc/KF6W-8VGT>].

145. *Id.*

146. *Id.*

147. See, e.g., Republic of France, *Huissier de Justice*, *supra* note 118.

148. See Europol, *Crime Areas*, *supra* note 115.

149. See *id.*; *Frequently Asked Questions*, EUROPOL, <https://www.europol.europa.eu/faq> (last visited July 24, 2017) [<https://perma.cc/4FQK-69LF>].

150. *Id.*

preventative orders should be at the ready when a court decides it is immediately necessary to collect a passport or locate a child.

Further, between the twenty-eight nations of the European Union, there is a high probability of somewhat inconsistent enforcement action. If there were at least one tipstaff-like enforcement agent located in every country of the European Union, these agents could work together, rectifying wrongful removals of children before the children are able to exit the European Union entirely. No return application through any international convention would be necessary between these E.U. nations. Just as the High Court appoints the tipstaff in the United Kingdom,<sup>151</sup> the Court of Justice of the European Union could appoint the E.U. tipstaff-like agents. These enforcement agents, designated by the European Union and present in every E.U. country, could implement court orders that pertain to international child abduction in a uniform fashion among the nations. Uniform enforcement is critical due to the close proximity of countries and the ease of travel across borders within the European Union, especially within the Schengen Zone—which poses a wholly separate problem, addressed in the following Section.

### B. *Reinstatement of Border Controls and Abolition of the Schengen Zone*

The purpose of a preventative measure is to keep a child from leaving his or her country of habitual residence with a parent who seeks to circumvent the custody arrangements currently in place. If there is free, unmonitored travel between numerous bordering countries within the European Union, as there is now under the existing Schengen Agreement, it is practically impossible to prevent abducted children from illicitly crossing borders. As one researcher has posited, “[I]f there are no borders, and one is not required to show any form of identification when leaving or entering a country, the international abduction of children . . . becomes easier.”<sup>152</sup> Because of this, the Schengen Zone poses a significant problem to the prevention of parental abduction that occurs between the E.U. countries within it.<sup>153</sup> For children who are in the process of being abducted to be stopped at the borders of the

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151. *Court of Justice of the European Union*, EUROPEAN UNION (OCT. 26, 2015), [http://europa.eu/about-eu/institutions-bodies/court-justice/index\\_en.htm](http://europa.eu/about-eu/institutions-bodies/court-justice/index_en.htm) [https://perma.cc/QAB2-HARD].

152. KRUGER, *supra* note 1, at 221.

153. *Id.*

country of habitual residence, there first must be evident borders, as well as border control agents responsible for carefully monitoring the flow of people across those borders. To do this, the Schengen Agreement must be dissolved and the border controls among all countries within the European Union must be reinstated.

Nullification of the Schengen Agreement, which has been in place since 1985,<sup>154</sup> may seem extreme, but there is already a proposal based on safety considerations that indicates nullification would be a beneficial change for the European Union.<sup>155</sup> Not only does the essentially borderless status of a Schengen Zone country make the international abduction of a child easier to conduct, but the lack of stringent border controls also makes travel between E.U. countries and effectuation of criminal activity easier for dangerous individuals. On December 12, 2015, the European Commission proposed to revise the Schengen Borders Code, an action largely prompted by recent attacks in Paris by the terrorist group ISIS.<sup>156</sup> Many people believe that these terrorist actors entered into France by way of Greece and Belgium, all located within the Schengen Zone.<sup>157</sup> The European Commission's proposed revision aims to "provide for systematic controls of [E.U.] nationals" by mandating that states in the Schengen Zone

carry out systematic checks on persons enjoying the right of free movement under Union law (i.e., [E.U.] citizens and members of their families who are not [E.U.] citizens) when they cross the external border against databases on lost and stolen documents as well as . . . to verify that those persons do not represent a threat to public order and internal security.<sup>158</sup>

This proposal, however, leaves to each nation's discretion whether to carry out only "targeted checks against [certain] databases" if extensive checking "lead[s] to disproportionate impact on the flow of traffic at the border."<sup>159</sup>

154. Five countries signed the Schengen Agreement on June 14, 1985. See EUR-Lex Schengen, *supra* note 95.

155. See *Proposal for a Regulation of the European Parliament and of the Council Amending Regulation No 562/2006 (EC) as regards the Reinforcement of Checks against Relevant Databases at External Borders*, COM (2015) 670 final (Dec. 15, 2015) [hereinafter Schengen Zone Proposed Revision].

156. See Schengen BBC Article, *supra* note 95.

157. See, e.g., *id.* (noting alarm among civilians that the perpetrators of the November 2015 terrorist acts in Paris, France had entered the Schengen zone via Greece with other migrants to Europe).

158. Schengen Zone Proposed Revision, *supra* note 155, at 2.

159. *Id.*

While this is a step in the right direction, the European Commission must go further than performing systematic checks, and abolish the Schengen Zone in its entirety by voiding the agreement that created it. Nullifying the Schengen Agreement and reestablishing border controls among these countries would likely “hamper the fluidity of movement” and “impact the flow of traffic at the border.”<sup>160</sup> However, it would also help to preclude criminal actors, such as terrorists and child abductors, from leaving a country’s jurisdiction after commission of a crime.<sup>161</sup> For an at-risk child to be protected from international removal by means of parental abduction, there must be border control systems in place in each E.U. nation. This will not happen as long as the Schengen Zone exists.

### C. *Creation of National Port Alert Systems*

Finally, once border controls are effectively reinstated, the European Union must mandate that each E.U. country implement a national port alert system, tailored to work best with the police and border control agencies of that specific nation. As previously mentioned, the European Parliament and the Council of the European Union (Council) have publicly called upon E.U. countries to implement border alert systems,<sup>162</sup> and the European Commission recently issued a Commission Staff Working Document which provides guidelines regarding the implementation of border alert systems.<sup>163</sup> This Commission Staff Working Document explains that E.U. countries are to convey information regarding the port alert mechanisms to the General Secretariat of the Council, which will inform the other member states and the European Commission of the port alert systems in place.<sup>164</sup> This would make the nations liable to the Council, which could then alternatively impose fines or other repercussions for a nation’s failure to comply with the mandate and implement a port alert system after a reasonable amount of time.

However, there are various problems with the port alert systems as suggested. First, these port alert systems are not mandatory, and only seventeen of the twenty-eight countries in the European

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160. *Id.*

161. *Id.*

162. See Draft Alert Conclusions, *supra* note 140; Best Border Alert Practice, *supra* note 139, at 3.

163. Best Border Alert Practice, *supra* note 139, at 3.

164. See Draft Alert Conclusions, *supra* note 140.

Union presently have child alert mechanisms in place, including the United Kingdom.<sup>165</sup> Three separate and highly powerful institutions of the European Union—the European Parliament, the Council, and the European Commission—are all in agreement regarding the necessity and importance of a port alert system to stop international child abductions.<sup>166</sup> These institutions retain the combined power to legally obligate, rather than merely implore, E.U. countries to implement them.

Second, one primary purpose of the proposed child alert mechanism is to “alert the public,” who are to assist the authorities in looking for abducted children.<sup>167</sup> Because of this, an alert is to be activated “only in very serious cases when public information can help.”<sup>168</sup> This should not be a constraint on the activation of a nation’s port alert system. Instead, the primary focus of the alert system should be to convey information to the appropriate authorities at the border, as occurs in the United Kingdom.<sup>169</sup> This should be done in all cases that concern abducted children, as there are few, if any, cases of trivial child abduction.

Finally, the Commission Staff Working Document suggests that the child alert mechanism should be activated only during “the hours after the disappearance of a child,”<sup>170</sup> and that it be “restricted to child abductions in circumstances in which there is reason to fear for the life of the child concerned.”<sup>171</sup> By contrast, the police can activate the port alert system in the United Kingdom when they are convinced that an abduction is “real” and “imminent” but not yet effectuated.<sup>172</sup> Further, the U.K. system does not require that the child’s life must be in danger,<sup>173</sup> as it is unlikely for a parent abducting his or her own child to seek to harm that child, and the act of international removal does not inherently endanger a child’s life. Similarly, the alert systems in the European Union should be activated when the *threat* of abduction is present. These changes are necessary to properly model the E.U.-mandated border alert systems after the U.K. system. Beyond these changes,

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165. Missing Children and Child Alert Mechanisms, EUROPEAN COMM’N, [http://ec.europa.eu/justice/fundamental-rights/rights-child/hotline/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/rights-child/hotline/index_en.htm) (last updated Nov. 24, 2016) [<https://perma.cc/7566-22H5>].

166. See Subsection I.C.2.

167. See *Missing Children and Child alert Mechanisms*, *supra* note 152.

168. Best Border Alert Practice, *supra* note 139, at 3.

169. PD 12F, *supra* note 11, § 4.6.

170. See *Child Alert Mechanism*, *supra* note 152.

171. Best Border Alert Practice, *supra* note 139, at 3.

172. See PD 12F, *supra* note 11, § 4.6.

173. See *id.*

however, E.U. nations will have considerable discretion to tailor their alert systems to work best with their own border control agencies, port officials, police officers, and various enforcement agents to prevent international abduction.

The implementation of these measures may pose challenges, but not enough to negate the value presented by the successful prevention of child abductions. One potential criticism considers the associated costs of creation of new E.U. enforcement agent positions, and then hiring and training people for those jobs. However, only about eighty-four positions would need to be created—one tipstaff-like agent and two assistants for twenty-seven E.U. countries—which would likely not impose a heavy financial burden on the European Union.

A more significant critique of the suggested preventative measures is that they are useless unless a parent either has some warning that their child may be abducted and obtains a court or tipstaff order, or recognizes that an abduction is underway and triggers a border alert. While this is true, that is the unfortunate nature of these cases. Prior suspicion or knowledge is the key to successful prevention, and there are no data regarding the percentage of left-behind parents who had this sort of knowledge and might have been helped by a court order or border alert.<sup>174</sup> Further, one police officer has even suggested that the port alert system in the United Kingdom has been compromised, as “having subjects circulated on police national computer and/or placed on the watch list does not guarantee that they will be stopped when leaving . . . the [United Kingdom].”<sup>175</sup> This deficiency is allegedly because “not all airlines carry out checks, particularly if tickets are purchased close to the date of travel.”<sup>176</sup> Regardless, a study has shown that while outgoing return requests made by England and Wales have increased, the outgoing return requests made by several E.U. countries have increased at even greater levels.<sup>177</sup> That the United Kingdom has these mandatory preventative measures in place, while the European Union does not, is likely more than a mere coincidence.

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174. For a discussion of the shortcomings of existing statistics, see *supra* Part I.

175. *Port Alert System ‘Compromised’, Police Officer Tells Judge*, DAILY MAIL (Feb. 7, 2016), <http://www.dailymail.co.uk/wires/pa/article-3435611/Port-alert-compromised-police-officer-tells-judge.html> [<https://perma.cc/4TB8-VYS4>].

176. *Id.*

177. LIBE Study, *supra* note 29, at 45–47.

## CONCLUSION

The United Kingdom has a highly effective system in place for the prevention of international child abduction. This is largely due to the presence of a tipstaff, who focuses on the enforcement of abduction-related court orders, and the nation's port alert system, which can be activated before an abduction has taken place and utilizes border control agents to stop an abducted child from leaving the United Kingdom. The European Union is the best place to begin implementing similar preventative measures for two main reasons. First, changing the policies governing the European Union will affect twenty-eight different member states, creating a significant impact. A change in regulations regarding preventative measures in the European Union could drastically slow the increase of the outgoing requests for return applications made by E.U. countries, according to the available statistics.<sup>178</sup> The latest data indicate that return applications made by E.U. nations comprise forty-six percent of all return applications made under the Abduction Convention.<sup>179</sup> If even a small percentage of child abduction incidents are prevented in each E.U. nation every year as a result of these measures, the impact will be considerable. Second, the United Kingdom could be structurally likened to a smaller version of the European Union, as both are conglomerations of independent nation states which share borders, languages, currency, and various other traits. Therefore, the measures in place in the United Kingdom, which governs several nations, could be more feasibly implemented in the European Union, which also governs many nations, than measures governing a single nation.

To successfully implement these preventative measures, the European Union must take three steps. First, it must establish tipstaff-like enforcement agents and position them around the countries of the European Union. Next, in order to control movement across all borders, it must nullify the Schengen Agreement, which currently creates a borderless group of countries within the European Union, and reinstate border controls among all E.U. nations. Finally, it must mandate that all countries of the European Union implement port alert systems that mirror that of the United King-

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178. See Best Border Alert Practice, *supra* note 139, at 3; see also LIBE Study, *supra* note 29.

179. In 2008, European countries (excluding the United Kingdom) made 909 of the 1,961 total return applications under the Abduction Convention, which constitutes almost half of all return applications (forty-six percent). See 2008 Statistical Analysis, *supra* note 5, at 9–13.

dom to an extent and can otherwise be tailored to best work within each nation individually.

With these preventative measures in place, incidents of international child abductions from E.U. countries will likely decrease. If an intricate and vast legal system like the European Union implements these measures, ideally other legal systems will follow suit, and international child abduction will slowly cease to be such a pervasive and tragic problem around the world.