

International Legal Instruments

Around the world, children go missing every day for a variety of reasons. On an international level, there is no harmonized, global strategy aimed at addressing the problem of missing children. There is an obvious need for systems that detail how law enforcement, governmental agencies, and the public can work together not only to prevent children from going missing, but to locate them safely. To ensure that the issue of missing children is addressed globally, it would greatly benefit from United Nations support through a dedicated international Convention or an Optional Protocol under the United Nations Convention on the Rights of the Child.

Several general international child protection instruments, which address some – but not all – aspects of missing/abducted children issues, include: the United Nations Convention on the Rights of the Child,¹ the Optional Protocol to the United Nations Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography,² the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children,³ the Optional Protocol on the involvement of children in armed conflict,⁴ the United Nations International Convention for the Protection of All Persons from Enforced Disappearance,⁵ and the 1980 Hague Convention on the Civil Aspects of International Child Abduction.⁶

¹ Convention on the Rights of the Child, article 1, *opened for signature* Jan. 26, 1990, G.A. Res. 44/25, U.N. GAOR 61st plen. mtg. at 166, U.N. Doc. A/44/736 (1989). The Convention on the Rights of the Child defines “child” as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”

² Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, G.A. Res. 54/263, Annex II, U.N. Doc. A/54/49, Vol. III, art. 2, para. C, *entered into force* Jan. 18, 2002 [hereafter *Optional Protocol*] (on file with the International Centre for Missing & Exploited Children).

³ The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res. A/RES/55/25, Nov. 15, 2000, *entered into force* on Dec. 25, 2003 (on file with the International Centre for Missing & Exploited Children).

⁴ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, G.A. Res. A/RES/54/263 (May 25, 2000), *entered into force* Feb. 12, 2002 (on file with the International Centre for Missing & Exploited Children).

⁵ International Convention for the Protection of All Persons from Enforced Disappearance, G.A. Res. A/RES/61/177, U.N. Doc. A/HRC/RES/2006/1 (Dec. 20, 2006) (on file with the International Centre for Missing & Exploited Children).

⁶ 1980 Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11670, 1343 U.N.T.S. 98 (on file with the International Centre for Missing & Exploited Children).

Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child⁷ (CRC) aims to ensure a broad range of human rights for children – including civil, cultural, economic, political, and social rights.⁸ While the CRC does not specifically address missing children, it is a useful tool to help protect children from risk factors that can contribute to a child going missing.

The CRC was opened for signature by the UN General Assembly on 20 November 1989 and entered into force on 2 September 1990.⁹ There are currently 197 States Parties (196 countries have ratified and one country has signed, but not ratified) to the CRC.¹⁰

Relevant to missing children,

- Article 1 defines “child” as “...every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”
- Article 2.2 explains that all children should be protected against all forms of discrimination.
- Article 3.2 stipulates that the State must provide protection and care as is necessary for the child’s well-being.
- Article 9.1 states that a child shall not be separated from his or her parents against their will, except when competent authorities determine separation is in the best interest of the child.
- Article 9.3 stipulates the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis.
- Article 10.1 specifies that the State will handle applications by a child or his or her parents to enter or leave the territory of a State Party for the purpose of family reunification.
- Article 11.1 specifies that the State must put measures in place to combat the illicit transfer and non-return of children abroad.
- Article 18.1 indicates that both parents have common responsibilities for the upbringing and development of the child.
- Article 19 provides that the State should have appropriate legislative, administrative, social, and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.
- Article 34 requires the State to protect the child from all forms of sexual exploitation and sexual abuse.

⁷ Convention on the Rights of the Child, *supra* note 1.

⁸ See Convention on the Rights of the Child, U.N. Treaty Collection Status Chart, at https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&clang=_en (last visited Mar. 15, 2017) (on file with the International Centre for Missing & Exploited Children).

⁹ Convention on the Rights of the Child, *supra* note 1.

¹⁰ Convention on the Rights of the Child, U.N. Treaty Collection Status Chart, *supra* note 8.

- Article 35 requires the State to provide appropriate national, bilateral, and multilateral measures to prevent the abduction of, the sale of, or traffic in children for any purpose or in any form.
- Article 39 stipulates that States must take appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman, or degrading treatment or punishment; or armed conflicts.

Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography

The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography¹¹ (*Optional Protocol*) to the CRC addresses the criminalization of the sale of children, child prostitution, and child pornography.

The Optional Protocol was opened for signature by the UN General Assembly on 25 May 2000 and entered into force on 18 January 2002.¹² Currently, 173 countries have ratified the Optional Protocol and 9 others have signed, but not yet ratified, it.¹³

This Optional Protocol does not refer to missing children explicitly; however, research previously mentioned shows the important link between child sexual exploitation and missing children. It is important for countries to ratify the Optional Protocol as it contributes to the protection of children and may prevent a child from going missing or being abducted.

- Article 1 prohibits the sale of children, child prostitution, and child pornography.
- Article 2 provides the following definitions:
 - (a) “Sale of children” means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
 - (b) “Child prostitution” means the use of a child in sexual activities for remuneration or any other form of consideration;
 - (c) “Child pornography” means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.
- Article 3 requires States Parties to criminalize the sale of children, child prostitution, child pornography, and offering a child for the purposes of sexual exploitation, organ transfer, or forced labor, whether committed domestically or transnationally, on an individual or organized basis.
- Article 10.1 specifies the need for international cooperation by multilateral, regional, and bilateral arrangements for the prevention, detection, investigation, prosecution, and punishment of these responsible for the acts outlined in Articles 1 and 2.

¹¹ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, *supra* note 2.

¹² *Id.*

¹³ See Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, U.N. Treaty Collection Status Chart, at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&clang=en (last visited Mar. 15, 2017) (on file with the International Centre for Missing & Exploited Children).

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (*Optional Protocol on Children in Armed Conflict*) acknowledges the harmful impact armed conflict has on child and the long-term consequences it has for durable peace, security, and development of a country.¹⁴ The Optional Protocol on Children in Armed Conflict strengthens Article 38 of the CRC, recognizing the need for special protection for persons under the age of 18.

The Optional Protocol on Children in Armed Conflict was opened for signature by the UN General Assembly on 25 May 2000 and entered into force on 12 February 2002.¹⁵ Currently, 165 countries have ratified the Optional Protocol on Children in Armed Conflict, and 14 other countries have signed, but not ratified, it.¹⁶

The Optional Protocol on Children in Armed Conflict does not specifically address missing children's issues; however, the strong connection between children involved in armed conflict and missing children makes this a valuable resource.

- Article 2 states that persons under 18 years should not be compulsorily recruited into the armed forces.

¹⁴ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, *supra* note 4.

¹⁵ See Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, U.N. Treaty Office Chart of Signatures and Ratifications, at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&clang=en (last visited Mar. 15, 2017) (on file with the International Centre for Missing & Exploited Children).

¹⁶ *Id.*

Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children

The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (*Palermo Protocol*), supplementing the United Nations Convention against Transnational Organized Crime, is the first international instrument focused on preventing and combating trafficking in persons, especially women and children.¹⁷ The Palermo Protocol – the first global legally binding instrument with an agreed upon definition for “trafficking in persons” – was adopted by the UN General Assembly in an effort to facilitate harmonized national approaches and the development of domestic criminal offenses to support international cooperation in the investigation and prosecution of trafficking in persons cases.¹⁸

The Palermo Protocol was opened for signature by the UN General Assembly on 15 November 2000 and entered into force on 25 December 2003. Currently, 169 countries have ratified the Palermo Protocol, and 3 other countries have signed, but not ratified, it.¹⁹

While the Palermo Protocol does not focus directly on missing children’s issues, the link between trafficking and missing children makes this an important tool.

- Article 2 outlines the purpose of the Palermo Protocol to prevent and combat trafficking in persons, protect and assist victims of trafficking, and promote cooperation among States.
- Article 3 (a) provides a definition of “trafficking in persons” as follows:
“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.
- Article 11 articulates the need for strong border controls to help prevent and detect trafficking in persons.
- Article 13 explains the need for measures to verify travel and identity documents.

¹⁷ The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res. A/RES/55/25, Nov. 15, 2000, entered into force on Dec. 25, 2003 (on file with the International Centre for Missing & Exploited Children).

¹⁸ *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, at <https://www.unodc.org/unodc/treaties/CTOC/> (last visited Mar. 15, 2017) (on file with the International Centre for Missing & Exploited Children).

¹⁹ See Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, U.N. Treaty Office Chart of Signatures and Ratifications, at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=en (last visited Mar. 15, 2017) (on file with the International Centre for Missing & Exploited Children).

International Convention for the Protection of All Persons from Enforced Disappearance

The International Convention for the Protection of All Persons from Enforced Disappearance (*International Convention on Enforced Disappearance*) recognizes the seriousness of enforced disappearance, which constitutes a crime and, in some circumstances, is defined in international law.²⁰

The International Convention on Enforced Disappearance was opened for signature by the UN General Assembly on 20 December 2006 and entered into force on 23 December 2010. Currently, 52 countries have ratified the International Convention on Enforced Disappearance, and 50 countries have signed, but not yet ratified, it.²¹

The International Convention on Enforced Disappearance focuses on a particular circumstance of how a person may go missing or be abducted. It provides a broad framework to combat the issue and create measures to protect women and children.

- Article 1 provides that no one should be subjected to enforced disappearance.
- Article 2 defines “enforced disappearance” as “...the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”
- Article 3 stipulates that States Parties take appropriate measures to investigate acts of enforced disappearance.
- Article 12.1 ensures that any individual who alleges that a person has been subjected to enforced disappearance can report the information to authorities for investigation.
- Article 19 provides that personal information collected during the search for a disappeared person will not be used or made available for purposes other than the search.
- Article 23 ensures that each State Party will provide training for professionals involved in enforced disappearance cases, such as law enforcement, military, public officials, and medical personnel.
- Article 25.1 (a) requires that each State Party take measures to prevent and punish the wrongful removal of children subjected to enforced disappearance.
- Article 25.1 (b) requires that each State Party implement measures to prevent the falsification, concealment, or destruction of documents attesting to the true identify of children who have been subjected to enforced disappearance.

²⁰ International Convention for the Protection of All Persons from Enforced Disappearance, *supra* note 5.

²¹ See International Convention for the Protection of All Persons from Enforced Disappearance, U.N. Treaty Collection Status Chart, at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4&clang=en (last visited Mar. 15, 2017) (on file with the International Centre for Missing & Exploited Children).

- Articles 25.2 and 25.3 stipulate that each State Party take the necessary measures to search for and identify children subjected to enforced disappearance and assist one another in searching for, identifying, and locating children subjected to enforced disappearance.
- Article 26 establishes a Committee on Enforced Disappearances to carry out the functions provided for under the International Convention on Enforced Disappearance.

Convention of 25 October 1980 on the Civil Aspects of International Child Abduction

The Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (*Hague Abduction Convention*) seeks to combat international parental child abduction by providing a system of cooperation between Central Authorities in Contracting States and a rapid procedure for the return of the child to the country of the his or her habitual residence.²²

The Hague Abduction Convention was opened for signature by The Hague Conference on Private International Law on 25 October 1980 and entered into force on 1 December 1983.²³ Currently, 94 countries (72 Member States and 22 Non-Member States) have ratified or acceded to The Hague Abduction Convention.²⁴ With regard to parental abduction:

- The preamble notes that the best interests of the child are of paramount importance in matters relating to their custody.
- Article 1 defines the objects of the Hague Abduction Convention as securing the prompt return of children wrongfully removed to or retained in any Contracting State, and ensuring that the rights of custody and access under the law are respected in each Contracting State;
- Article 2 requires that Contracting States take all appropriate measures within their territories to secure the implementation of the objects of the Hague Abduction Convention with the most expeditious procedures available.
- Article 3 considers the removal or retention of a child to be wrongful if it is in breach of custody rights of a person under the law of the State in which the child was habitually resident before the removal or retention.
- Article 7 requires that Central Authorities cooperate to secure the prompt return of children, including discovering the child's whereabouts, securing the voluntary return of the child, providing legal aid and advice, providing administrative arrangements for the child's return, and sharing information.
- Article 8 provides a mechanism to report the removal or retention of a child in breach of custody rights and seek assistance in securing the return of the child.

²² 1980 Convention on the Civil Aspects of International Child Abduction, *supra* note 6.

²³ The Hague Abduction Convention initially was open for signature only by the Member States of The Hague Conference on Private International Law. However, it now is open to any State.

²⁴ See Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: Status Table, at <https://www.hcch.net/en/instruments/conventions/status-table/?cid=24> (last visited Mar. 15, 2017) (on file with the International Centre for Missing & Exploited Children).