

## International Child Abduction and the Hague Convention

Article By:

Louis M. Ragone

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The world is increasingly becoming a smaller and more accessible place. Globalization and international employment opportunities have made it common for people to move or be transferred to foreign countries. The increased possibility of living abroad combined with marriage and/or children may result in complex issues. Which country's laws apply if one parent takes a child out of the United States? What if an [international custody dispute](#) materializes?

There has been an increase in the number of cases where a parent unilaterally removes a child from the child's place of residence to another country in an attempt to become the child's sole custodian.

Take for example this hypothetical. Wife is born and raised in France, but relocates to New Jersey for employment. While here, she meets and marries Husband and they have two children together. Marital strife sets in and while Husband is away on a business trip, Wife takes the children and their passports and returns to France with the children to live with her family.

A second hypothetical: Wife is born and raised in France. Husband originates from New Jersey. Husband relocates to France for employment, and while there, he meets and marries Wife, and they have two children together. One day, without notice to Wife, Husband suddenly leaves with the children and returns to New Jersey.

In either of these scenarios, which countries laws apply when determining custody and whether the children need to be returned to the spouse that was left behind? The answer depends on the particular facts and circumstances with each family and their application to the Hague Convention.

The Hague Convention on the Civil Aspects of Child Abduction, a multilateral treaty ratified by 98 countries as of May 2018, provides an expeditious protocol for the adjudication and return of a child (or children) unilaterally removed by a parent from one member country to another. Article 3 of the Hague Convention requires member countries to promptly return children to their country of "habitual residence" when they are wrongfully removed or retained in another country in breach of the custody rights of the left-behind parent.

Importantly, the Hague Convention provides that the law of the country from which the child was removed determines custody rights, assuming it was the child's habitual residence, which is itself a fact-specific inquiry and determination. Note that additional complexities in the custody analysis are common if the foreign country's law applies. Some countries, for example, do not provide any

custodian rights to unwed fathers. Therefore, unmarried parents (especially fathers) must be extremely careful when it comes to international child custody disputes.

Remedies are likely even less certain if the country your child has been removed to is not a member of the Hague Convention.

Regardless of the country at issue, if you have an international child custody dispute, timing is everything. It is essential for you to seek legal counsel, determine if the Hague Convention protections apply, and assert your rights as soon as practical. Custody and access to your children may depend on how and how quickly you proceed.

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