

International Parental Kidnapping: Will you ever see your child again?

The answer: It depends.

Each year, hundreds of children are abducted by a parent or family member across international borders to and from the United States. Parental & familial child abduction not only jeopardizes the child's well being, it has substantial long term consequences for the left behind parent, the family, and society. When a child is abducted internationally, the difficulties are compounded for everyone involved.

In 1980 the international community, in large part, addressed the civil aspects of resolving international custody disputes by putting in place the *Hague Convention on the Civil Aspects of International Child Abduction*. It should be noted that civil custody disputes are separate and distinct from criminal kidnapping prosecutions. A civil custody dispute is typically adjudicated, here in the United States, in a Family Court. International Criminal Kidnapping prosecutions are much more complex, and are not often entertained by U.S. law enforcement authorities, because of the logistics and inherent difficulties involved.

The Hague Convention ("Convention") is a treaty which establishes the protocol by which it is determined in what country the custody of the subject child is to be ultimately determined. The primary and dominant factor in determining where the international custody dispute is to be adjudicated is "the habitual residence of the child prior to the abduction".

For example, consider the following scenario: An eight year old girl (let's call her Julia) is taken from the United States to France by her father. Notwithstanding the demands of Julia's mother, the father refuses to return Julia to the United States. Prior to being taken to France, Julia had resided in New York City, since her birth. In that hypothetical case, under the Convention, the court in France should determine only where Julia's habitual residence was; that is where did Julia call "home", immediately prior to being taken to France? Julia's home was New York City. As such, the court in France should then order Julia returned to the United States, so that the court in New York, her home, could properly decide who should have custody of Julia.

The concept embodied by the Convention is a simple one. However, all too often courts around the world go beyond determining what was the child's habitual residence, immediately prior to the abduction but instead begin to perform an in depth analysis of the custody dispute itself. Such is not proper. One court, in a celebrated case in Brazil, even went so far as to hold that since the child had lived in Brazil for so long after being brought to, and held in Brazil from the United States by his mother (the case dragged on in the Brazilian courts for years) that Brazil had become the child's home, and therefore, the Brazilian courts were the proper place to adjudicate the merits of the custody dispute. That decision was later overturned on appeal, but it exemplifies how courts can easily go beyond the mandate set forth in the Convention.

Unfortunately, not all countries are signatories to the Convention. As of June 2010, the Convention has been signed by 82 countries. The vast majority of countries that are not signatory are countries which do not adhere to Western Cultural norms, such as Asia, African, and Arab Countries. Arab countries utilize *Sharia* legal standards, which vest most authority within the family with the Father. If a U.S. resident child is abducted to a non signatory country the chances of returning that child to the United States are quite slim indeed. For instance, U.S. resident children abducted to Japan are virtually never returned to the United States, even though the United States and Japan enjoy strong economic and diplomatic relations. Japan is one of the countries not a signatory to the Convention.

As troubling is the fact that even in abduction cases involving countries that are signatory to the Convention securing the return of the abducted U.S. resident child to the United States can be problematic. A few such countries leap to mind, to wit; Austria, Brazil, Chile, Mexico, and Poland.

Judges in these countries, and there are others, often go beyond the strictures of the Convention, because either they do not understand the limited role that they play pursuant to the Convention or they resent that limited role, and desire to decide the custody case on the merits. Moreover, certain countries, such as Austria, have an extensive appeal framework which leads to lengthy delays (years) in reaching a final decision. The Convention calls for the courts of a signatory nation to render a final decision, concerning turnover of the child, with six weeks of the commencement of the turnover proceeding.

Further, when one of the parents, the abductor, is a citizen of a foreign country, or enjoys permanent resident status there, or has a support network there, such as friends and relatives, it is easier for that parent to mount a vigorous defense to the abducted child being returned to the United States. In some countries, in fact, citizens of that country are shown great deference over their American adversaries.

There is a lesson to be learned from all of this. That lesson is: If you and your spouse, or ex-spouse, or your significant other, are having difficulties in your relationship, and there is a child involved, be vigilant in the face of a threat or even the possibility that your child could be taken out of the United States, for any reason. Under such circumstances, you should seek competent legal advise as soon as possible. There are steps that a judge in the United States can take, if given the opportunity, to preclude your child from being taken abroad. The best international treaty is one that never needs to be utilized!

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The content of this article is not, and is not intended to be, legal advice. Each case is based upon its own unique facts and circumstances which must be addressed on their own merits.

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