

International Parental Child Abduction

Part I: The Petitioner's Case

by Rana Holz

Parental kidnappings are an unfortunate fact of life in this country and throughout the world. Through uniform adoption of the Parental Kidnapping Prevention Act (PKPA) and the UCCJA (Uniform Child Custody and Jurisdiction Act), and its successor UCCJEA (Uniform Child Custody Jurisdiction and Enforcement Act), parents have the tools to restore preabduction status within the U.S. When a child is abducted abroad, obtaining return of the child can be particularly challenging legally, emotionally, and economically. It is possible and even probable that children who are abducted to the U.S. can be returned to their home country under the authority of *The Convention on the Civil Aspects of International Abduction*, done at the Hague on Oct. 25, 1980 (the "Hague Convention"), and The International Child Abduction Remedies Act, 42 U.S.C. §11601 *et seq.* (ICARA). Presently 62 countries have contracted to uphold the Hague Convention.¹

Purpose and Scope of Hague Convention

The Hague Convention is generally intended to restore the preabduction status quo and to deter parents from crossing borders in search of a more sympathetic court.² The Hague Convention specifically protects custody determinations in the international context:

The purpose of the Convention is "to

This article addresses the jurisdictional grounds and burden of proof of the petitioner in an international child abduction case. Next month, the defenses which can be raised by the parent or child in response to a petition for the return of a child will be explored.

protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedure to ensure their prompt return to the state of their habitual residence." See *Currier v. Currier*, 845 F. Supp. 916, 920 (D.N.H. 1994). To this end, the Convention sets forth a carefully delineated analytical framework for the application of its provisions. In accordance with these procedures, courts within signatory countries are to determine whether the children have been wrongfully removed from their place of habitual residence, and are not to overstep the scope of their authority by delving into and attempt-

ing to resolve an underlying custody dispute. *Hague Convention*, Art. 19; 42 U.S.C. §11601(b)(4).³

Not a Custody Determination

The Hague Convention does not permit a foreign court to determine the merits of an underlying custody claim. The foreign court is responsible only for deciding whether the child should be returned to his or her "home" state.⁴ When all the requirements of the Hague Convention are met, a "left-behind" parent may invoke the treaty to have his or her child returned.⁵ "A decision under the Convention concerning the return of the child is not to be taken to be a determination on the merits of any custody issue."⁶ Rather, it is a determination of the issue of proper custody jurisdiction pursuant to an international treaty and federal law.

Choice of Forum

The petitioner has the choice of filing for relief in either the U.S. district court or circuit court, both having concurrent jurisdiction to address Hague matters.

The Petitioner's Case

In seeking return of an abducted child, there are three components to a petitioner's case under the Hague Convention. The first is establishing the petitioner's home country as the children's habitual residence. The second is defining the custody rights which the petitioner enjoyed at or near at the time of abduction. Third, the petitioner