

The Hague Convention on the Civil Aspects of International Child Abduction (hereinafter, the “Hague Convention”) is an international treaty that provides a procedure for returning children who have been wrongfully removed from their home country. The United States assisted in drafting the Hague Convention and became a signatory in 1981, joining many other countries in adopting uniform rules governing the civil aspects of international child abduction.

The purpose of the Hague Convention is to ensure that custody and visitation rights are respected across international boundaries. The Hague Convention applies when a child under the age of 16 has been wrongfully removed from his or her country of habitual residence in breach of a parent’s custodial rights. When a child has been wrongfully removed, the Hague Convention provides for the child’s prompt return to his or her home country.

It is important to note that, under the Hague Convention, courts do not have jurisdiction to hear the underlying custody dispute. Rather, the Hague Convention mandates that courts can only determine where a child custody action should be tried, whether in the country of habitual residence or in the country to which the child has been removed.

The Hague Convention recognizes certain affirmative defenses that a parent who wrongfully removed a child may assert. Those affirmative defenses are as follows:

1. That there is grave risk that return of the child to the country of habitual residence would expose the child to physical or psychological harm;
2. That return of the child would contravene the human rights and fundamental freedoms of the country to which the child has been removed;
3. That the Hague proceeding was commenced more than one year after the child’s wrongful removal and the child has become well settled in his or her new environment;  
and
4. That the parent bringing the Hague Convention proceeding was not actually exercising custody rights at the time of the removal or had consented to or subsequently acquiesced in the removal.

In certain circumstances, courts may also refuse to order return of the child based solely on the child’s objection.

These affirmative defenses are narrowly drawn, and the Hague Convention envisions that a child who has been wrongfully removed will, in almost all cases, be returned to the country of habitual residence for resolution of the custody issues.