Article Talk

trafficking.

Contents [hide] (Top)

Definition Origin of the term

✓ Internationalization of family law The Hague Convention on the Civil Aspects of International Child Abduction

The United Nations Convention on the Rights of the Child

The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and

Cooperation Impact on society, families and children Mediation in child abduction cases Abduction Convention: "Grave risks

of harm" and "intolerable situations" Domestic violence Global Missing Children's Network

See also References

External links

International child abduction

文 3 languages ~ Read Edit View history Tools >

Conflict of laws and

private international law

**Preliminaries** 

Characterisation

Incidental question

Renvoi · Choice of law

Conflict of laws in the United States

Public policy doctrine Hague Conference

**Definitional elements** 

Jurisdiction

Procedure

Forum non conveniens

Lex causae

Lex fori · Forum shopping

Lis alibi pendens

**Connecting factors** 

Domicile · Lex domicilii Habitual residence

Nationality · Lex patriae

Lex loci arbitri Lex loci rei sitae

Lex loci contractus Lex loci delicti commissi

> Lex loci actus Lex loci solutionis

Lex loci protectionis

Proper law

Lex loci celebrationis Choice of law clause

Dépeçage

Forum selection clause

Substantive legal areas

Status · Capacity · Contract

Tort · Marriage Divorce

Property

Forced heirship

**Hague Trust Convention** 

**Enforcement** 

Enforcement of foreign judgments Anti-suit injunctions

Revenue rule

Family law

**Family** 

Marriage and other unions and

**Validity of marriages** 

Children's issues

(or criminal law)

**Dissolution of marriages** 

**Private international law** 

Family and criminal code

status

V.L.E

[show]

[show]

show

show

[show]

A.L.E

From Wikipedia, the free encyclopedia This article is about International child abduction. For child kidnappings for ransom and other forms of international child exploitation, see Child

The lead section of this article may need to be rewritten. Use the lead layout guide to ensure the section follows Wikipedia's norms and is inclusive of all essential details. (December 2016) (Learn how and when to remove this template message)

The term **international child abduction** is generally synonymous with international *parental kidnapping*, child snatching, and child stealing.<sup>[1]</sup> However, the more precise legal usage of international child abduction originates in private international law and refers to the illegal removal of children from their home by an acquaintance or family member to a foreign country. In this context, "illegal" is normally taken to mean "in breach of custodial rights" and "home" is defined as the child's habitual residence. As implied by the "breach

of custodial rights," the phenomenon of international child abduction generally involves an illegal removal that creates a jurisdictional conflict of laws whereby multiple authorities and jurisdictions could conceivably arrive at seemingly reasonable and conflicting custodial decisions with geographically limited application. Such a result often strongly affects a child's access and connection to half their family and may cause the loss of their former language, culture, name and nationality, it violates numerous children's rights, and can cause severe psychological and emotional trauma to the child and family left behind. [2] There is a common misconception that because the abductor in these cases is usually not a stranger the children are not in danger. <sup>[3]</sup> The harmful consequences for children and families have been shown in several studies and child abduction has been characterized as a form of parental alienation and child abuse. [4] Adding international dimensions to the detrimental effects of child abduction significantly increases the detrimental effects on children and families. The modern day ease of international travel and corollary increase in international marriages is leading to a rapid rise in the number of international child abductions. [2] Definition [edit]

International child abduction occurs when one parent unlawfully takes (or retains) a minor child in a country other than the one the child has his/her habitual residence. If that country is a party to the Hague Convention on the Civil Aspects of International Child Abduction (applicable to children under 16), then the child will usually be returned to the country of origin. If there is a conflict of law between two countries, the guardian must follow the laws of the country where the child physically present. It is very common that a parent that has legal custody of the child in the country where the child physically present, is wanted for parental abduction in another country. In such cases the child cannot be removed from the country where the child physically present, before child custody ends at age 18, because otherwise the child will not be returned to the taking parent. This does not have anything to do with children's rights or welfare, only parental rights. According to the law the left behind parent is legally the only victim if the child is not returned before child custody ends at age 18. This would also be the case if the child does not want the taking parent to go to jail, does not want to see (have no contact with) the left behind parent for the rest of their lives. Children have no say in a child custody dispute involving themselves even when they turn 18 years old and are legal adults and child custody becomes moot. According to the law when the child is 18 or older, it legally does not make a difference if child is returned, because child custody becomes moot. Further legal proceedings with regard to it can have no effect.

For example it is a criminal offense under United States federal law for the Japanese parent to take and or retain her children in Japan, while under Japanese law it is a criminal offense for the American parent to take the same children back to the United States. According to the law of their respective country both parents are correct. Because the children are in Japan both parents must comply with Japanese law (not American law). Both parents are only concerned over their parental rights not their children's welfare, and will not respect the others parents legal parental rights under the laws of the other country. On many occasions parents of Indian origin have taken a child to India and have immediately sought

favorable custody orders from the Indian courts. Usually such efforts will not be recognized in the United States and they may well be counterproductive. A U.S. court will not permit parents to evade U.S. jurisdiction by the subterfuge of a parent taking the child to another jurisdiction. This would even be the case, of the predecree abduction was not illegal under state law. Origin of the term [edit]

## What is today called "parental kidnapping," "international child abduction,", "parental child abduction" and "parental child trafficking" has existed as long as

home.[7]

different legal jurisdictions and international borders have—though often under different names. None of these names achieved the modern day broad acceptance of terms like international child abduction. Lacking a common set of terminology or specifically designed laws to address the, at the time, poorly defined problem, researchers on the history of cross-border child abduction must search for terms like "custodial interference," "contempt of child custody orders," "legal kidnapping" or, in cases where children were viewed more as property than as individual subjects of rights, name variations on theft, child-maintenance debt and smuggling, among others. [5] Lawmakers struggled to typify and discuss international child abduction and discussions at the Hague Conference on Private International Law noted

that, what some were referring to with variations on "legal kidnapping," was an oxymoron since that which is legal cannot be kidnapping and that which is kidnapping cannot be legal. The response to these concerns was the coining of the term "international child abduction." The terms first prominent use was in the title of the 1980 Hague Convention on the Civil Aspects of International Child Abduction. The term is not, however, used anywhere in the actual text of the convention itself in preference of the more technical terms "wrongful removal" or "wrongful retention" which were better suited for describing the mechanics of the Convention's system. [6] The use of the term is now widespread in international law. [7] Internationalization of family law [edit]

In all family law disputes a determination must be made as to which legal systems and laws should be applied to the dispute. This question becomes much

more complicated when aspects, or parties, of the case occur in, or hail from, multiple legal jurisdictions. [7] Today's international family law norms were heavily influenced by the concepts of domicile and nationality. In Europe these ideas were refined during the nineteenth century by Italian politician, Pasquale Mancini, who believed matters of personal status were to be governed by the nationality of the person.

During the same period in the US and Latin America the prevailing principle was that jurisdiction over personal matters was determined by domicile which, in the Americas, was acquired immediately upon moving to a foreign jurisdiction even if neither citizenship nor nationality were acquired. [7] Starting in the late eighteenth century until the early 1920s a number of efforts were made to develop a series of international treaties governing international conflicts of law in Europe. Treaties that favored nationality as the determining jurisdictional factor either never got off the ground, were not widely signed or had substantial practical problems with countries renouncing them after signing. At the same time the inter-American system in Latin America produced the Bustamante Code of 1928 and the Montevideo Conventions of 1939 and 1940. Of particular note in these later Conventions was the introduction of a definition of "domicile" that started with a reference to the "habitual residence" for civil status. Lessons learned in prior efforts to create successful multilateral treaties culminated in a number of successful treaties in the mid-1900s, such as the 1961 Convention on the Protection of Minors, the New York Convention of 1956 on the Recovery Abroad of Maintenance drafted under the auspices of the United Nations, and the Hague Convention of 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors ("1961 Convention.") [7] The 1961 Convention brought an innovation in terminology by creating a compromise between advocates of "nationality" as the determining factor for jurisdiction and advocates for the modern fact-centric model of "habitual residence." It also included expanded language to encompass both judicial and

the concept of the "interests of the child" as a basis for authorities of the child's nationality to overrule the authorities of the child's habitual residence. Of particularly special note, the drafters of the 1961 Convention expressly considered a provision addressing the removal of a child from their habitual residence with an intent to evade rightful jurisdiction—primarily for child custody reasons. This first attempt to codify international child abduction failed due to an inability to agree on a definition or manner of describing the phenomenon, with a number of countries that adhered to the principle of nationality regulating personal child and family law unable to classify their nationals removing children from foreign countries to their home state as fraudulent evasion.<sup>[7]</sup> In actual cases of international child abduction, this lack of a specific provision on child abduction in the 1961 treaty resulted in countries regularly interpreting the "habitual residence" concept of the Convention in a manner that allowed parents to take children to a foreign country and immediately acquire "habitual residence." This allowed judicial forum shopping and created perverse incentives for removing children from their homes to foreign jurisdictions in order to game the family law system and obtain a more favorable custodial outcome than could be gained in the jurisdiction of the child's

administrative authorities in response to the Boll case, in which Sweden claimed its public administrative law was exempt from the 1902 Convention on the

Guardianship of minors because it only governed domestic private judicial law and not public administrative law. The 1961 Convention also emphasized

In the 1970s, dissatisfaction with these results led to efforts to create conventions on the foreign recognition and enforcement of judgments to make it harder for courts to favor a parent solely because that parent is a national suing in his or her home state. Canada also proposed that the Hague Conference work on a Convention to address what it termed "legal kidnapping." The Hague received Canada's request enthusiastically and, inspired by a Swiss proposal originally submitted at the Council of Europe in 1976 coined a new term in international family law – "international child abduction." [7] Although the problem of international child abduction was well understood, finding a way to address the problem in practice was exceedingly difficult, but the Swiss proposal had a solution that was elegant in its simplicity. Why not simply restore the status quo ante?[/] The Hague Convention on the Civil Aspects of International Child Abduction [edit]

#### In 1980 the Hague Conference drafted a convention to address the problem of international child

Main article: Hague Convention on the Civil Aspects of International Child Abduction

abduction: the Hague Convention on the Civil Aspects of International Child Abduction - commonly referred to as the Abduction Convention. The Swiss idea of restoring the status quo ante after a "wrongful removal" or "wrongful retention" became a mainstay of the Abduction Convention. Under the convention, an application could be made for the return of a child who had been wrongfully removed or retained so long as the applicant possessed rights of custody, and provided that those rights were being "actually exercised" at the time of the abduction. The concept of "actually exercised" in reference to custodial rights itself was an innovation in terminology. Having met these requirements a child was to be returned "forthwith" except in exceptional circumstances. [6] Inspired by the Hague Evidence Convention and the Hague Service Convention's of 1965 and 1970, the Abduction Convention required the establishment of a single Central Authority in each country that

would handle two-way communications with domestic courts, administrative agencies and foreign central authorities. Furthermore, each central authority was required to take "any and all actions" to secure the goals of the treaty and cooperate with other central authorities to do the same. All of these new obligations emphasized the need for international cooperation amongst state parties in achieving the objectives of the convention.[/] The United Nations Convention on the Rights of the Child [edit] Main article: Convention on the Rights of the Child

Established in 1989 the Convention on the Rights of the Child reflected the growing international

consensus that children be viewed as a subject of rights and not merely as an object of rights or of

protective action. The UNCRC roused an unprecedented response with 187 countries ratifying it

within seven years forming an essential backdrop in international children's law. Article 11 of the Convention explicitly requires State Parties to combat the illicit transfer and retention of children and promote the conclusion of bilateral or multilateral agreements or accession to existing agreements that do so, Article 35 stipulates that "States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction, sale or traffic of children for any purpose or in any form."[/] The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation [edit] Main article: Hague Convention 1996 The 1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and

#### children including: orders concerning parental responsibility and contact, public measures of protection or care, matters of legal representation and the protection of children's property.

The Convention has uniform rules determining which country's authorities are competent to take the necessary measures of protection. The Convention also determines which country's laws are to be applied and provides for the recognition and enforcement of measures taken in one Contracting State in all the other Contracting States. The co-operation provisions of the Convention provide the basic framework for the exchange of information and the necessary degree of collaboration between administrative authorities in the Contracting States. Reflecting an ever-increasing emphasis on the need for

international cooperation as an essential element in the success of these measures the Convention has a full chapter on cooperation consisting of eleven articles.[/] Although initially slow to gain support and plagued with political problems, the number of states acceding to it has begun to grow. Impact on society, families and children [edit] As the result of the harmful effects on children, parental kidnapping has been characterized as a form of child abuse and

an extreme form of parental alienation. Abducted children suffer emotionally and sometimes physically at the hands of their abducting parents. Many are told the other parent is dead or has abandoned them. Uprooted from their entire life, home, family and friends, abducted children are often even given new names by their abductors and instructed to hide

to erase difficult questions, such as "When can we see mom/dad again?". These children become hostages. It is beyond their comprehension that a parent who truly cares and loves them cannot discover their whereabouts. Childhood cannot be recaptured. Abductions rob a child of their sense of history, intimacy, values and morals, self-awareness, opportunity of knowing one's beginnings and the love and contact of extended family—a loss no child possesses the ability to protect themselves against. Huntington (1982) lists some of the deleterious effects of abduction on child victims: 1. Depression; 2. Loss of community; 3. Loss of stability, security, and trust;

4. Excessive fearfulness, even of ordinary occurrences; 5. Loneliness; 6. Anger; 7. Helplessness;

8. Disruption in identity formation; and

9. Fear of abandonment.

guilt.

family, friends, and professionals in each parents individual country may lose their objectivity. As a result, protective concerns expressed by the abandoned parent may be viewed as undue criticism, interference, and histrionics preventing the victim parent from effectively relieving the trauma imposed on their innocent child by the abduction.[4]

Mediation in child abduction cases [edit] This section **does not cite any sources**. Please help improve this section by adding citations to reliable sources. Unsourced material may be challenged and removed. (June 2012) (Learn how and when to remove this template message) Mediation is a process during which abductors and the left behind family, assisted by mediator(s), attempt to resolve conflicts independent of the judicial system. Mediators create a constructive atmosphere for discussions and ensure fair dealings between parents. The mediators do not make decisions;

solutions to other issues relating to their children. The Hague Conference on Private International Law provides a Guide to Good Practice Child Abduction Convention: Part V - Mediation ☑. Legal justifications for abduction [edit] International law has generally recognized that there may be extenuating circumstances where a child abduction may have been necessary or justifiable due to extenuating circumstances. The 1902 Convention on the Guardianship of minors limited such considerations to strictly emergency situations. Starting with the 1924 Declaration on the Rights of the Child and the 1959 United Nations Declaration on the Rights of the Child there was a growing recognition at the international level of the shift in nation's domestic laws away from parental authority and towards an emphasis on protecting the child,

circumstances in Article 13 of the Hague Abduction Convention where the removal of children would not be considered child abduction and allow the child

even from their own parents. [7] This foreshadowed the 1989 UN Convention on the Rights of the Child and led to the establishment of exceptional

### to remain in their new country. [6][10] Abduction Convention: "Grave risks of harm" and "intolerable situations" [edit]

The principal purpose of the Abduction Convention is to cause the prompt return of a child to his or her "habitual residence." In certain exceptional cases under Article 13b, the court's mandatory return obligation is changed to a discretionary obligation, specifically, "the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation." The duty to return a child is not abrogated by a finding under Art. 13(b) but merely changes from mandatory to discretionary. Since the general intent of the Convention is to cause the return of a child to his or her "habitual residence," unless there are some powerful and compelling reasons otherwise the court is normally and routinely expected to exercise its discretion and return the child to his or her "habitual residence". In the primary source of interpretation for the Convention, the Explanatory Report, Professor E. Perez-Vera noted the following:

placed to decide upon questions of custody and access. As a result, a systematic invocation of the said exceptions, substituting the forum chosen by the abductor for that of the child's residence, would lead to the collapse of the whole structure of the Convention by depriving it of the spirit of mutual confidence which is its inspiration." In spite of the spirit and intent of the Convention as conveyed by the Convention itself and further reinforced by the Perez-Vera report, Article 13b is frequently used by abductors as a vehicle to litigate the child's best interests or custody. Although Article 13(b) inquiries are not intended to deal with issues or factual questions appropriate for custody proceedings, many countries use article 13b to request psychological profiles, detailed evaluations of parental fitness, evidence concerning lifestyle and the nature and quality of relationships.[11] These misinterpretations of the Abduction Convention's exceptions have rendered the Convention largely ineffective in accomplishing its objectives. The best interests of a child, which is explicitly never mentioned in the Convention, is an essentially subjective standard that judges often use to facilitate foreign nations' manipulation of the treaty and create a

Domestic violence [edit] See also: Domestic violence At the time the Hague Abduction Convention was drafted domestic violence was never explicitly considered as an affirmative defense for child abduction, although it may be brought as a defense under Article 13, if "there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation." Article 13 supposed that the child's primary caretaker would abduct the child to escape the domestic violence of a non-custodial parent. At the time of the Conventions drafting, joint custody laws were rare. One parent was usually both the custodial parent and primary caretaker while the other, non-custodial parent had rights of access. The move towards joint custody laws

also did little to account for the motivation for abducting a child, generally assuming that all abductions were harmful to children; however, the child's primary caretaker may be fleeing with a child to protect himself or herself from a dangerous domestic situation. [13] Global Missing Children's Network [edit] Launched in 1998 as a joint venture of the International Centre for Missing & Exploited Children (ICMEC) and the US National Center for Missing and Exploited Children, the Global Missing Children's Network (GMCN) is a network of countries that connect, share best practices, and disseminate information and images of missing children to improve the effectiveness of missing children investigations. [14][15][16] The Network has 22 member countries:

conferred both the parent who acted as the primary caretaker and their ex-partner with custodial rights and, by extension, a

right to request the return of children wrongfully removed from their place of habitual residence. In addition to not accounting

for a shift in child custody law towards shared parenting and joint custody, according to Weiner, the framers of the Convention

See also [edit]

 Child-selling • Extraterritorial jurisdiction Human rights

 Haque Abduction Convention Compliance Reports Not Without My Daughter Children in emergencies and conflicts Conflict of laws#International child abduction

International adoption

Trafficking of children

By country:

 International child abduction in Brazil International child abduction in Japan International child abduction in Mexico International child abduction in the United States

Forum shopping#Child custody

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External links [edit]

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 U.S. State Dept. International Parental Child Abduction ☑ MiKK e.v. – Germany ☑ • Child Focus – Belgium ☑ Reunite – UK ☑

 Centrum Internationale Kinderontvoering NL -Netherlands Categories: International child abduction | Child abuse | Domestic violence | Childhood | Child safety | Family law | International law

State parties to the convention states that signed and ratified the convention states that acceded to the convention state that ratified, but convention has not entered into force 25 October 1980 The Hague, Netherlands Location 1 December 1983<sup>[8]</sup> 101 (October 2020)<sup>[8]</sup> **Depositary** Ministry of Foreign Affairs of the Kingdom of the Netherlands Languages French and English Full text Convention on the Civil Aspects of International Child Abduction at Wikisource

**Hague Child Abduction Convention** 

**Convention on the Civil Aspects of International** 

**Child Abduction** 

# Measures is the third of the modern Hague Conventions on international family law, following in the footsteps of the Abduction Convention and the Adoption Convention. It is much broader in scope than the first two conventions and covers a wide range of civil measures related to the protection of their real names or where they used to live. Generally the abductor avoids mentioning the victim parent and waits for time

Many of these effects can be subsumed by the problems relevant to reactive attachment disorder, stress, fear of abandonment, learned helplessness, and

Cover of a US report on

(2007)

International Child Abduction

The extended support systems of abducting and victim parents can also become part of the dispute. Believing primarily one side of the abduction story,

instead, they confine themselves to assisting the parties in working out for themselves a fair and sensible solution to their problems. More specifically, the mediation can address not only the child's primary residence, but also the child's contact with both parents, visitation arrangements, agreements concerning the child's maintenance, schooling, further education, bi-cultural and bi-lingual upbringing, necessary arrangements for financial support etc. Mediation can be helpful in international child abduction cases. [9] In the context of mediation families can deal with the question of return and also find

"it would seem necessary to underline the fact that the three types of exception to the rule concerning the return of the child must be applied only so far as they go and no further. This implies above all that they are to be interpreted in a restrictive fashion if the Convention is not to become a dead letter. In fact, the Convention as a whole rests upon the unanimous rejection of this phenomenon of illegal child removals and upon the conviction that the best way to combat them at an international level is to refuse to grant them legal recognition. The practical application of this principle requires that the signatory States be convinced that they belong, despite their differences, to the same legal community within which the authorities of each State acknowledge that the authorities of one of them – those of the child's habitual residence – are in principle best

pretext for discretionary decisions. This discretion often takes the form of gender, cultural and national biases. The result is substantive non-compliance with the Abduction Convention.[12]

Albania, Argentina, Australia, Belarus, Belgium, Brazil, Canada, Germany, Greece, Ireland, Italy, Mexico, the Netherlands, New Zealand, Poland, Romania, Russia, Serbia, South Africa, South Korea, Spain, the United Kingdom, and the US.[16] Each country can access a customizable website platform, and can enter missing children information into a centralized, multilingual database that has photos of and information about missing children, which can be viewed and distributed to assist in location and recovery efforts. [14][15][17] GMCN staff train new countries joining the Network, and provide an annual member conference at which best practices, current issues, trends, policies, procedures, and possible solutions are discussed.[18][19][20]

Domestic Violence

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