

Escaping Domestic Violence Across International Borders: Identifying Hague Convention on Child Abduction Issues & Challenges for Survivors

Nicole Fidler, Director, Pro Bono Project & Narkis Golan International Child Abduction Initiative

Lesley Johannsen, Senior Staff Attorney, Narkis Golan International Child Abduction Initiative

Maria Vallejo, Director, Bi-National Project of Family Violence and Staff Attorney, Texas RioGrande Legal Aid

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Training Objectives

- Provide an overview of the 1980 Hague Convention and its implementation in the U.S.
- Identify scenarios where the Hague Convention applies
- Identify issues and challenges associated with the application of the Hague Convention to survivors fleeing abuse
- Discuss best practices for advising a client facing a potential Hague Convention Petition for Return

Hague Convention On The Civil Aspects Of International Child Abduction: A Brief Overview

Hague Convention Goals

- “To secure the prompt return of children wrongfully removed to or retained in another country.”
- “To ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.”

Hague Convention Problems

Premise: abduction is harmful to children.



The efficacy of the Convention is based on the **principle of comity**.



Treaty embodies “**greater good**” theory.

Problem: No mention of domestic violence in the Convention.

When Does the Hague Convention Apply?

Two contracting parties to the Hague Convention + both have accepted each others' accession = Hague Convention applies

Otherwise...the Uniform Child Custody Jurisdiction & Enforcement Act (UCCJEA) applies

- State specific legislation

Case Example - Nataly

You are working with a client, Nataly, who fled Russia to the U.S. with her children. You learn that the father of the children, who is still in Russia, did not consent to the children leaving Russia. You want to determine if your client could be subject to a Hague Convention case in the U.S.

Case Example - Nataly

You check the HCCH status table and learn that Russia acceded to the Hague Convention in 2011.



Republic of Moldova		10-IV-1998	A*	1-VII-1998		1	Res
Romania		20-XI-1992	A*	1-II-1993		1	D
Russian Federation		28-VII-2011	A*	1-X-2011		1	D,Res
<i>Saint Kitts and Nevis</i>		31-V-1994	A*	1-VIII-1994		1	Res

Case Example - Nataly

You also need to check if the U.S. accepted Russia's accession. You go to the State Department web site and review the U.S. Hague Convention Treaty Partners list. Russia is not on the list.

travel.state.gov/content/travel/en/International-Parental-Child-Abduction/abductions/hague-abduction-country-list.html

Hague Convention Country or Territory	Date of Entry
Norway	1989/04/01
North Macedonia, Republic of	1991/12/01
Pakistan	2020/10/01
Panama	1994/06/01
Paraguay	2008/01/01
Peru	2007/06/01
Poland	1992/11/01
Portugal	1988/07/01
Korea, Republic of	2013/11/01
Romania	1993/06/01
Saint Kitts and Nevis	1995/06/01
San Marino	2008/01/01

Case Example - Nataly

Russia is a signatory of the Convention but NOT a U.S. treaty partner. This means that the Hague Convention will not apply here and the father of Nataly's children cannot bring a Hague Convention litigation against Nataly in the U.S.

Any proceedings in the U.S. will be governed by the UCCJEA.

Common Misnomers About the Hague Convention

- Hague litigation does NOT determine custody rights!
- Hague litigation is NOT determined by a best interest of the child analysis!
- However, many of the issues in a custody and Hague cases are intertwined.
- Things can become more confusing if there is an existing custody order.
- Criminal proceedings (such as kidnapping charges) are separate and may occur in the left-behind country...even if the Hague litigation is resolved!

U.S. Implementing Legislation

International Child Abduction Remedies and Prevention Act (ICARA)

22 U.S.C §§ 9001-9011

Key differences between ICARA and the Convention

- Burdens of proof
- Commencement of proceedings:
Hague application vs. filing of suit
- Attorney's fees

Hague Convention Process

What is a “Voluntary Return Letter?”

- Letter from the Department of State, Office of Children’s Issues
 - Designated U.S. “Central Authority”
- Means that the left-behind parent has officially requested that the U.S. government help seek the return of the child to the left-behind country
- Letter asks parent in U.S. to voluntarily return the child to the left-behind country



United States Department of State

Washington, D.C. 20520

September 26, 2017

[Redacted]
Odessa, TX 79763

Dear [Redacted]:

We are writing to inform you that the Government of Mexico has forwarded to us an application from Mr. [Redacted] who is seeking assistance under the Hague Convention on the Civil Aspects of International Child Abduction in returning [Redacted] and [Redacted] to Mexico.

On October 1, 1991, the 1980 Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention) entered into force between the United States and Mexico. The Hague Convention establishes a framework whereby a child who is habitually resident in one contracting country, and who has been wrongfully removed to or retained in another contracting country, may be promptly returned to the country of habitual residence so that the court there may resolve custody and access matters. The Hague Convention also establishes circumstances under which a court is not required to return a child to his/her habitual residence.

The Department of State, Office of Children's Issues, performs the functions of Central Authority for the United States under the Convention. Pursuant to Article 10 of the Convention, the Central Authority of the country where the child is located must “take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.” We write today to ask whether you are interested in working with Mr. [Redacted], and any professionals which you may find helpful such as an attorney, mediator, and/or social worker to facilitate the resolution of your family’s conflict without engaging in litigation.

Please note that the Convention does not specifically address the issue of who should have custody of the child, but rather addresses the question of where custody should be decided. The Hague Convention’s objective is to protect children from the harmful effects of wrongful removal or retention by establishing procedures to ensure their prompt return to the country of their habitual residence, where custody can best be decided, as well as to secure protection for rights of access.

For your convenience, our website at childabduction.state.gov offers information about the Hague Convention, its implementing legislation, and how the Hague Convention is implemented in the United States. We encourage you to review this information carefully. If you do not have access to the Internet, please contact Italia Errazuriz at 202-485-6340 or ErrazurizI@state.gov for printed information. After reviewing the information, we ask you to advise Italia Errazuriz by October 10, 2017 as

How Do I Advise A Client With A Voluntary Return Letter?

Common Client Questions:

- Do I and/or my child have to leave the U.S.? → No
- Will I be arrested or deported if I don't return the child? → No
- Do I have to respond to the letter? → No
- Does this mean a Hague petition is going to be filed against me in court?
→ Maybe, but not definitely. Check <https://pacer.uscourts.gov/> to see if anything has been filed (and keep checking!)



How Do I Advise A Client With A Voluntary Return Letter?

Discuss State Department Involvement:

- Does not analyze Hague applications they receive to determine if there are defenses
- Will not help respondent-parent in the U.S. find attorney (but will help petitioning parent in left-behind country find attorney)
- Can share information with abuser - communications are not confidential

How Do I Advise A Client With A Voluntary Return Letter?

Discuss Next Steps for Client:

- Consult with an attorney with Hague experience to:
 - Understand possible Hague defenses, and
 - Discuss whether to file for custody in the U.S. if there is jurisdiction to do so. Note that there may be circumstances where the client should wait to file, **especially if the left-behind parent does not know where the client is currently located in the U.S.**
- Begin gathering evidence for possible Hague litigation
- Establish selves and children in U.S.

Hague Litigation

- Petitioner (left behind parent) must file a Hague petition in a U.S. court
- Petition is filed in state or federal court where the child is located. See 22 U.S.C. § 9003(a), (b)
- Needs to be served on Respondent
- Stops any custody proceeding pending in the U.S.
- Voluntary Return Letter not a prerequisite to litigation
 - This means client may have no warning that a Hague petition is coming

Petitioner's Prima Facie Case

Must prove by a **preponderance of the evidence**:

- Child < 16 years old
- Countries are treaty partners
- Removed/retained from country of habitual residence
- In breach of custody rights
- Custody rights actually exercised or would have been exercised

Prima Facie Case - Habitual Residence Cases

Alzu v Huff, No. 23-CV-3022-MDH, 2024 U.S. Dist. LEXIS 111410 (W.D. Mo. 2024) (Appeal pending)

Sarzosa v Enriquez, No. 3:24-CV-89, 2024 U.S. Dist. LEXIS 154341 (S. D. Tex. 2024)

Respondent's Defenses

Must prove by a **preponderance of the evidence**:

- Consent or acquiescence, (Art. 13) or
- One-year AND well-settled, (Art. 12) or
- Objection of child (age and maturity) (Art. 13)

Respondent's Defenses

Must prove by **clear and convincing evidence**:

- There is a grave risk that [] return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation. Art. 13(b), or
- Return against fundamental principles of human rights and fundamental freedoms of requested State. Art. 20.

Focus on the “Grave Risk” Defense

The respondent must prove that:

- The alleged abuse occurred; and
- The abuse creates a **grave risk** that return would **expose the child** to physical or psychological harm

What Constitutes “Grave Risk?”

- Risk is directed to the CHILD
- Domestic violence against primary care-taker might not be enough
 - Risk must be grave
 - Does not need to be imminent or immediate
 - Physical violence, or serious threats thereof
- Often need to educate the Court on domestic violence

Successful “Grave Risk” Defenses

- Corroboration by independent sources
- Child aware/witnessed abuse
 - Psychological harm may be enough
- Expert witnesses
- Evidence of psychological repercussions if return ordered

Ameliorative Measures

Once a court has found grave risk: it may, but does not need to, examine ameliorative measures

Ameliorative measure considerations:

- Prioritize safety of the child
- Not the custody court
- Expeditious

We generally argue that they are unenforceable and/or will not work!

Common Challenges for Survivors

Challenges & Solutions: Information Gap

- Challenges
 - Existence of Hague Convention
 - Application of Hague Convention in the DV context
 - State Department involvement
 - Legal advice re options
- Solutions
 - Training and education - victims services organizations, survivors, judiciary
 - Early intervention and referrals
 - Need for more post-judgment data on what happens to Respondents and children who return
 - Others?

Challenge: Litigation

- Presumption of return
- Stigma of starting case as so-called “abductor”
- Expedited cases
- Grave risk/intolerable situation high burden (clear and convincing)
- Testimony re grave risk can be re-traumatizing
- High costs - translation of documents, experts often required, high attorney costs

Challenge: Inequality of Arms

- Very hard to handle pro se
- Economic imbalance between parties, often as a result of financial abuse
- Petitioner receives assistance finding an attorney; Respondent receives no assistance
- Attorneys fees available for Petitioner if successful, but not for Respondent
- Not an even playing field

Solutions: Inequality of Arms & Litigation Challenges

- Early intervention / referrals
- Pro bono attorneys
- Support to make it easier for public interest and pro bono attorneys to work on these cases
 - Hague, DV, and trauma-informed lawyering training
 - Technical assistance, advice, and mentoring
 - Sample legal documents and training materials
 - Connection with Hague experts
- Pro / low pro bono relationships with experts and translation vendors
- Creating case law that allows for the use of non-treating experts
- Help survivors submit a pro se request to court that the court appoint counsel to the case
- Others?

Challenge & Solutions: Cases in Left-Behind Country

- Challenges
 - Criminal charges in the left-behind country and their consequences
 - Pending custody cases in the left-behind country
- Solutions
 - Advise client not to ignore cases in left-behind country
 - Advise client about criminal implications (e.g., Interpol alerts, arrest warrants)
 - Hague lawyers in U.S. must collaborate with lawyers in left-behind country
 - Others?

Immigration-Related Issues In Hague Cases

Hague Convention and Immigration Status

Party's immigration status is relevant to the well-settled inquiry but not dispositive.

Several approaches:

- Immigration status would be relevant “only if there is an immediate, concrete threat of deportation”.
- Immigration status might be important even though the threat of deportation is “negligible”. However, “immigration status is neither dispositive nor subject to categorical rules, but instead is one relevant factor in a multifactor test.”

Hague Convention and Asylum

Different Approaches:

- Venezuela mother with her two minor children had established a residence in Tennessee. Mother successfully proved that she had a “well-founded fear of persecution” in Venezuela on account of her political party affiliation. The United States granted her asylum and **her children were granted derivative asylum**. The Sixth Circuit, over a strong dissent, ordered her two minor children to return to Venezuela with or without their mother.
- Mother requested return of children who were retained by their uncle. Uncle took them to the Mexico-U.S. border but advised them to request asylum with DHS based on abuse by mother’s boyfriend. Asylum application granted. 5th Circuit remanded so court can consider asylum in grave analysis.

Hague Convention and Asylum

- Judges have shown reluctance to grant stays of Hague Convention proceedings because a parallel application for asylum is pending.
- If the asylum case is granted, courts may remand to analyze the evidence under the 13b defense.
- Asylum claims and proceedings do not control the outcome of Hague Convention cases.
- No clarity on whether a return order would affect a pending asylum application.

Case Scenarios

Dana

Dana has received a “voluntary return letter” from the State Department notifying her that John has filed a Hague Application. She brings the letter to you for advice and tells you the following details.

Dana

- John and Dana are U.S. citizens. They married in the U.S. and have two boys together, both born in the U.S.
- When the boys were 6 and 3 years old, John received a big promotion to work at his company's Italian affiliate. Although Dana was worried about John's temper and controlling behavior she thought the promotion and the move to Italy would help things, so she decided to relocate to Italy with her husband.

Dana

- After moving to Italy John started to become increasingly verbally abusive to Dana and sometimes the boys. He started sending Dana threatening texts whenever they weren't together. Dana thought about leaving, but she was entirely reliant on John financially.
- In around 2020, John became physically abusive, sometimes in front of the children. The children, who were now ages 12 and 9, became withdrawn and started doing poorly in school.
- When Dana threatened to leave, John suggested couples therapy and Dana agreed. During therapy, Dana disclosed the abuse and the therapist recommended anger management courses for John.
- John followed this advice, but the situation continued to deteriorate, culminating in John pushing Dana down the stairs, necessitating medical attention at an emergency room.

Dana

- Dana left the house and stayed in a hotel, racking up charges on her credit card. She tried to find a DV shelter but the language barrier was too difficult. John filed a custody petition in Italy. Dana couldn't find an attorney. She got some advice from a friend in Italy who is a lawyer, and she tried her best to respond to the custody petition.
- Eventually she realized the judge was not taking her domestic violence allegations seriously. She maxed out her credit card staying at the hotel. In 2024 she called her family in the U.S. and they bought her and the children plane tickets back to the U.S.
- She and the children have been living with Dana's family in the U.S. for the past 5 months. The children are in therapy, enrolled in school, and are doing well.

Key Pieces of Advice for Dana

Introduce Hague Convention

Voluntary Return Letter

- Don't have to leave the country or respond to letter
- State Department communications not confidential
- Check Pacer
- Return petition might be coming

Possible Defenses

- Grave risk
- Mature child objection
- Convention may not apply to oldest child - find out how old he is now.

Key Pieces of Advice for Dana

Challenges

- Grave risk difficult defense to win
- Testimony about abuse needs to be comprehensive and will be difficult
- Expedited cases - will need to start preparing now just in case he files

Evidence Collection

- Hospital records
- Therapy records for Dana and the children
- Messages to/from John
- Witness list
- Anything else Dana can think of!

Key Pieces of Advice for Dana

Italy

- Continue participating in Italian custody case
- Find out if there are any criminal charges in Italy
- Talk to client's lawyer friend in Italy

Next steps

- Help client collect evidence
- Refer client to Hague attorney for further consultation and/or pro bono representation
- Discuss other needs - counseling, safety, need for order of protection

Raquel

Raquel applies for assistance with your immigration office regarding her asylum case. She explains that she arrived in the U.S. with her 2-year-old child five months ago. In Guatemala, she was a political activist who was arrested and assaulted by police officers following a protest.

Raquel

Although Raquel felt unsafe in her country, she hesitated to leave because her spouse had a volatile temper. He was abusive throughout their marriage and was even investigated by Child Protective Services after a daycare employee reported him shaking their child violently.

Raquel previously obtained a protective order against her spouse, which also covered the child, but he violated the order and was not arrested. After Raquel was arrested due to her political activism, her ex threatened her, saying that if the police did not kill her, he would do it himself. She decided to leave and take their son a few days later.

Raquel

At the border, Raquel applies for admission and states that she is seeking political asylum due to her role as an activist. She also informs the officer of her fear of her spouse. She is issued a Notice to Appear (NTA).

Raquel tells you that her ex has been posting on social media, accusing her of kidnapping their child. She is concerned that the child might be sent back if she does not get asylum.

Key Pieces of Advice for Raquel

An asylum application might not supersede an order for return but there are ways to make her case stronger:

- Consider applying for asylum based on fear of persecution due to political activities and particular social group (being member of her family and suffering domestic violence).
- Consider not including the child as a derivative but as a principal.

For her Hague defense:

- Raquel should prepare for a Hague Application by gathering evidence:
- Raquel should also take steps to ensure stability in her child's life.

If Raquel receives a letter from the State Department, she should inform you immediately.

Maya

Maya is accepted into the New York City domestic violence shelter where you work. She tells you that she escaped from Mexico in the middle of the night with her two children. The father of her children, Raul, had assaulted Maya in the past, and she had reported the violence to the police, but he was never charged. Even though he physically disciplined the children with a belt and left marks on occasion, she believes that he was not abusive to them.

Maya

Maya decided to leave Mexico after an incident where Raul assaulted her in front of their shared children. She went to the U.S. with her and her children's tourist visas and went straight to the New York City police. The police told her that they could not help her because the crime had taken place in Mexico.

Maya

Maya is concerned that Raul will come to the U.S. on his tourist visa, and take the children away from her. She fears that she will not be able to protect the children in Mexico and she is afraid to return after Raul's last assault.

Maya

7 months pass, and Maya now has a job and a stable place to live. The children are enrolled in school and doing well. She comes back to your agency seeking help obtaining a custody order to prevent Raul from removing the children. What advice can you give her?

Key Pieces of Advice for Maya

- **Consider the benefits of filing for custody at this time.**
- **If she does choose to file, (or perhaps even if not!) consider preparing for any Hague litigation**
 - Gather evidence of the abuse in Mexico
 - Seek stability (school, housing, job) in NY
 - Seek to settle the children (support system, extracurricular activities in NY)

Final Thoughts

You may be in the optimal position to identify these cases early and assist clients in their preparation.

Hague cases progress relatively swiftly, and Respondents often find themselves without adequate representation. A petition for return may not even be on a client's radar, but any parent who brings their children to the U.S. without the other parent's authorization should be warned about the potential implications under the Hague Convention.

Time is of the essence. Advising clients on how to gather and create evidence is crucial.

It is better to be proactive than to face complications later. When in doubt, refer these cases to the Narkis Golan Initiative or TRLA for specialized assistance.

Resources

- Narkis Golan International Child Abduction Initiative:
GolanInitiative@sffny.org
- Texas RioGrande Legal Aid (TRLA): 956-591-TRLA,
mvallejo@trla.org
- U.S. Hague Convention Treaty Partners:
<https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/abductions/hague-abduction-country-list.html>
- U.S. State Department Office of Children's Issues:
<https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction.html>