What Is The Hague Convention?

Dad, what’s the Hague Convention?

Let’s see what it is.

That’s great, son. Let’s hope lots more countries become a member of the convention in the future!

I know all about the Hague Convention now!

What Is The Hague Convention?

The Courts
(1) Tokyo Family Court
1-2 Kasumigaseki, Chiyoda-ku, Tokyo 100-0013, Japan
TEL: 03-3502-8311
URL: http://www.courts.go.jp/english/

(2) Osaka Family Court
4-1-13 Odornae, Chuo-ku, Osaka City, Osaka
TEL: 06-6943-5321
URL: http://www.courts.go.jp/english/

Japan Federation of Bar Associations
15th Floor, Bar Associations Building
1-1-3 Kasumigaseki, Chiyoda-ku, Tokyo 100-0013, Japan
TEL: 03-3580-9841 (Exchange)
URL: http://www.nichibenren.or.jp/en/

The Central Authority
Hague Convention Division, Consular Affairs Bureau, the Ministry of Foreign Affairs
2-2 Yotsuya 3-chome, Shinjuku-ku, Tokyo 102-0093, Japan
TEL: 03-5501-8466
URL: http://www.mofa.go.jp/eng/about/emb_cons/about_con/index.html

Foreign Diplomatic Missions
Please see the list of Foreign Diplomatic Missions as follows:
URL: http://www.mofa.go.jp/about/emb_cons/about_con/index.html

The Hague Convention on the Civil Aspects of International Child Abduction

Ministry of Foreign Affairs of Japan

The Hague Convention

Japan has joined the Hague Convention on the Civil Aspects of International Child Abduction, also known as the Hague Convention.

Joining The Hague Convention

The Hague Convention was first concluded in 1980. Before you were even born! It's an agreement between countries to prevent the wrongful removal of children across borders.

The convention seeks to resolve issues relating to child abduction across international borders, and will come into effect starting April 1, 2014.

Hey, Dad?

I often hear about this “Hague Convention” on TV, and in the newspaper. What is it about?

Oh,-haymae! you read the newspaper already? I'm so proud!

What happens after we join the "Hague Convention"?

If it's about children, does that mean it affects me too?

You sure are full of questions!

I'll explain it all after you finish your dinner, okay?

The Hague Convention lays out a system of international cooperation in the interest of the children by returning them to the country they were taken from.

First

I'll explain about "Children's removal."

Let's say that two married people with different nationalities have a falling out. One of the parents might then take their children to a foreign country without the permission of the other parent.

When a child is taken away like this, he or she will be removed from the other parent, their friends, their language, and everything else that was familiar to them.

What would it be like if I was suddenly taken overseas?

I'd have to leave my friends, and change my school, too...

So, if that happens, what difference does it make to be a member of the Hague Convention?

When Japan was not part of the Hague Convention, the parents of children taken from Japan were unable to request their children's return based on the convention.

Many Japanese parents had to overcome differences in law and culture to search for their children by themselves.

and then they needed to plead to a foreign court to get their children back.

Trying to find a little child in a foreign country, without help from anyone at all! That sounds really hard!

Imagine a divorced mother and her child living overseas, who decide that they want to come back to Japan for a visit.

There are actual cases where the country they live in has not allowed them to do so!

When Japan was not part of the Hague Convention, the parents of children taken from Japan were unable to request their children’s return based on the convention.

The Hague Convention.

That's right.

It also goes the other way, too. If a child is brought to Japan from another country, the left behind parent was unable to do anything to get that child back, and even had difficulty just to see the child.

What? They aren’t allowed to go back to the country where they were born? Why not?
If the parent who takes a trip abroad doesn’t return, the left behind parent, in this case the father...

If Japan is not a member of the Convention

Please, return him back to me!

If Japan is a member of the Convention

No

Hague Convention

Japan

I see. So being a member of the Hague Convention means the left behind parent can ask for help from Japan to find and return the child, and to meet the child again.

That’s right. In principle, the Hague Convention seeks to return children as quickly as possible to the country they used to live in, and having this system in place can aid in preventing children’s removal before they even happen.

STOP!

Abduction

Travel Restrictions

If channels for getting children back are established, it will also release children from being prevented from traveling to Japan.

Okay, dad. But I still don’t understand exactly what happens when a child is actually taken overseas?

Right. Let me tell you about a friend of mine.

Okay. I see now.

An anime character, Momo!

Sigh... Dad’s getting out again!

My friend Naomi married an American citizen.

Husband

Daniel

Wife

Naomi

Child

Michael

(5 years old)

Central Authority

(USA)

With support from the Central Authority and other agencies, they attempted to resolve the matter through mediation between the parties...

Based on the Hague Convention, her husband applied to the Central Authority (the organization implementing the Hague Convention) in the USA in order to get his son back.

Naomi did not respond to the mediation so it was taken to the court of Japan to decide whether Michael should go back to the USA or not.

Court

(Japan)

What if Michael didn’t want to go back to the USA, though?

Does he have to go back, even if his father was violent or abusive toward him?
Of course, if a child who objects to being returned has attained a certain age, or there is a grave risk that the return of the child would expose the child to physical or psychological harm, they may not be returned.

List of grounds of refusal of return of a Child under the Hague Convention

- The petition is filed to the court after a period of more than one year has elapsed from the date of wrongful removal or retention and the child is now settled in a new environment.
- The applicant was not actually exercising the custody rights at the time of removal or retention.
- The applicant has consented to or subsequently acquiesced in the removal or retention.
- There is a grave risk that the return of child would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.
- The child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.
- It is not permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

Here’s a list of grounds for the refusal of the return of a child under the convention.

Of course, even if Michael does go back to America, he might not go back to his dad. Who should live with will be decided by the courts in the USA.

So rather than just taking him to Japan,

The situation varies for each family, so it’s hard to make a blanket statement about what’s best.

The language barrier, cultural differences, and complex legal procedures...

But it definitely isn’t right to stop one parent from meeting their own child, without even telling them about it.

I’d be so sad if I suddenly couldn’t see you, Hajime!

You’re hurting me, Dad?

But it definitely isn’t right to stop one parent from meeting their own child, without even telling them about it.

You’re hurting me, Dad?

But it definitely isn’t right to stop one parent from meeting their own child, without even telling them about it.

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You’re hurting me, Dad?

But it definitely isn’t right to stop one parent from meeting their own child, without even telling them about it.
The Change in Japan by Implementing the Hague Convention

**Case 1** Removal of Child From Japan

1. **Wrongful Removal of Child Occurs**
   - Father
   - Child
   - Court in Country A

2. **Application for return of child**
   - Based on the convention, she can make a request to Country A for the return of the child.

3. **Wrongful Removal of Child Occurs**
   - Mother
   - Child
   - Court in Country B

4. **Application for return of child**
   - Based on the convention, he can make a request to Japan for the return of the child.

**Case 2** Removal of Child To Japan

1. **Wrongful Removal of Child Occurs**
   - Father
   - Child
   - Court in Country A

2. **Application for return of child**
   - Based on the convention, she can make a request to Country A for the return of the child.

3. **Wrongful Removal of Child Occurs**
   - Mother
   - Child
   - Court in Country B

4. **Application for return of child**
   - Based on the convention, he can make a request to Japan for the return of the child.

**Case 3** Travel Restrictions for Parents Living Overseas

1. **Application for visiting their Home Country with Child**
   - Father
   - Mother
   - Child
   - Court in Country C

2. **Allowed To Travel!**
   - Because you can request the return of a child, which also reduces the risk of being denied permission to travel.

Key Points Relating to the Hague Convention

1. The Hague Convention only applies to the wrongful removal of children across international boundaries.
2. The nationalities of the father, mother and child involved do not matter. If any child has been wrongfully removed across international boundaries, then the Hague Convention may be applicable, even if everyone involved is Japanese.
3. The procedures to make an application for the return of the child do not make any determinations concerning parental rights or child custody.
4. With regard to any wrongful removal of child prior to the Convention enter into force in Japan (prior to April 1, 2014), the procedures for a return order as based on the convention cannot be applied. (However, assistance can be offered for visitation or contacts for child).
5. The Hague Convention only applies when both the state from which the child is removed and the state to which they are removed are the contacting states of the convention.

Contracting state the of Hague Convention

A total of 91 states (listed below alphabetically by region)

**Europe**
- Albania, Armenia, Andorra, Austria, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Macedonia, Malta, Moldova, Monaco, Montenegro, The Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkmenistan, Ukraine, United Kingdom, Uzbekistan

**As of January 2014**

**Middle East**
- Israel, Turkey

**Africa**
- Burkina Faso, Gabon, Guinea, Lesotho, Mauritius, Morocco, Seychelles, South Africa, Zimbabwe

**Asia**
- China (Hong Kong & Macao only), Singapore, Sri Lanka, Thailand, Korea, Japan
- Egypt, Bangladesh, Cambodia, People’s Republic of China, India, Indonesia, Japan, Kazakhstan, Kyrgyzstan, Laos, Malaysia, Maldives, Mongolia, Myanmar, Nepal, North Korea, Pakistan, Philippines, Qatar, Russian Federation (including the Far East), Singapore (including Singapore), Sri Lanka, Taiwan, Thailand, Vietnam

**North America**
- Canada, United States of America

**Latin America**
- Argentina, Bahamas, Belize, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Christopher and Nevis, Trinidad and Tobago, Uruguay, Venezuela

**Oceania**
- Australia, Fiji, New Zealand
Q1: If a child was removed to or retained before the Convention enters into force in Japan, can the Hague Convention be applied to the case?

A1: If the removal or the retention of a child across international borders took place before the Hague Convention enters into force in Japan, on April 1, 2014, the Hague Convention cannot be applied to request that the child be returned to his/her habitual residence. However, even if the child was removed to or retained before the Convention enters into force it is still possible to apply for assistance in visitation or other contacts with the child.

Q2: My ex-spouse has taken our child overseas from Japan without my permission. What should I do?

A2: If the state to which the child has been taken is also a contracting state of the Hague Convention, it is possible to file an application to the Central Authority of Japan or the contracting states for assistance in return of the child to Japan, or assistance for visitation or other contacts with the child. Please see the website of the Ministry of Foreign Affairs of Japan for details of how to apply for the assistance to the Central Authority of Japan (Ministry of Foreign Affairs, Hague Convention Division).
http://www.mofa.go.jp/ftp/hr_ha/page22e_000249.html

Q3: Which age does the Hague Convention apply to?

A3: Children 15 or younger.

Applicable Ages
16 years old
15 years old
10 years old
0 years old

Q4: I want to take my child back to Japan with me, but is there a risk that I’ll be arrested when I return to the country we live in now?

A4: Depending on the country, taking a child out of the country without the consent of the other parent can be considered as abduction or kidnapping, and may lead to being arrested (USA, United Kingdom, France, Australia etc.). In order to avoid this kind of situation, if you want to take your child back to Japan with you, start by consulting a lawyer in the country you live.

Q5: Is there consideration and support given for victim of DV?

A5: Even if the Hague Convention can be applied, it does not mean that the child will definitely be returned to his/her habitual residence. If there is a risk that the parent requesting the child to be returned violates the child, and that the parent would violate the other parent in such a manner as to cause psychological harm to the child, it is possible that the return will be rejected (see page 5 for more details). In the Hague Convention Division, the Ministry of Foreign Affairs of Japan, there is a staff member with expertise who is capable of dealing with victim of DV, and Foreign Diplomatic Missions are also enhancing their support for victims of DV (see Q6 for more details).

Q6: What kind of assistance will the Central Authority provide in order to amicably resolve children’s removal issues?

A6: The Central Authority of Japan in Hague Convention Division, Ministry of Foreign Affairs of Japan can provide assistance that includes mediation between the two parties and introductions of alternative dispute resolution (ADR) institutions, referral service for lawyer and visitation support organizations. Furthermore, people with financial difficulties can make use of the civil legal aid system for advancing lawyer’s fees etc. For details on the civil legal aid system, please see the website of the Japan Legal Support Center (Houterasu).