

How do I determine whether the treaty is “in force” between the U.S. and the other country involved?

The issue whether the Convention is “in force” between states can be complex. There are differences between the processes by which a state can be bound by the treaty, specifically between those who are “member states” and those who become “party states.” Member states are those states that were members of the Hague Conference on Private International Law at the time of adoption of the Child Abduction Convention at the 14th Session in 1980. Actions by member states include ratifications, approvals, or acceptances. Party states are all other countries that agree to be bound by the Convention and “accede” to the Convention. The legal significance of ratification versus accession is important.

For member states, the ratification by one member state causes the convention to automatically come into force between that ratifying member state and all other previously ratifying member states. However, when a member state ratifies the Convention, the Convention does not automatically enter into force between that state and a party state that has acceded to the convention.

The treaty “enters into force” between two countries when they are both bound by the Convention. In order for the Convention to enter into force between a member state and a party state, the member state must expressly accept the accession by the party state. The same applies to the accession of one party state vis-à-vis another acceding party state; that is, the accession must be specifically accepted by the previously acceding party state. For example, the recent ratification by Japan, a member state, causes the Convention to come into force between Japan and all other member states (including the United States). However, Japan must specifically accept accessions previously made by party states. Additionally, in the case of the accession by Belarus, Belarus’s agreeing to be bound by the convention would not apply to the United States, or any other member or party state, until those a state affirmatively accepts Belarus’s accession. Until such formal acceptance is made, the Convention does not enter into force between these two nations.

A 1999 case arising in the United Kingdom¹ explained the procedure and practical considerations of accepting accessions as follows:

When a State accedes to the convention existing members have the option to recognise the accession, thus creating binding treaty rights between the States, or to withhold recognition. The treaty is only effective between the acceding States and those existing members who have recognised accession.

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Of course, the successful operation of the Convention depends upon mutual confidence that the family dispute will be determined in the country of origin according to standards and principles of justice broadly comparable to those available in the returning State. However, as the number of club members has in-

1. Re E, [1999] 2 FLR 642 (U.K. 1999).

creased it may be increasingly difficult to maintain that confidence. For instance, the breakup of the USSR and the former Yugoslav Republic has seen the accession of a number of individual jurisdictions. Besides Turkmenistan, Uzbekistan has acceded, as have Moldavia and Belarus. The UK has recognised the accession of Turkmenistan and recognition of the other States is pending.

Before recognising accession, the Foreign and Commonwealth Office makes inquiries locally to satisfy itself that there is in place a Central Authority and a justice system capable of providing the reciprocal service that the Convention requires. However, I do not understand there to be any requirement of minimum standards of the family justice system in the acceding State. Whilst consideration was given to setting such a requirement, it was decided that there was too obvious a risk of invidious comparisons and inflammatory exclusions.

It is therefore important to determine whether the Convention is in force with the particular country in question and, of course, the date upon which the Convention went into force between the U.S. and the other country.

For an up-to-date list of countries that have ratified and acceded to the Convention, see the website maintained by the Hague Conference:

http://www.hcch.net/index_en.php?act=conventions.status&cid=24

The U.S. State Department keeps track of countries that enforce the Convention and maintains a similar website:

<http://www.travel.state.gov/content/childabduction/english/country/hague-party-countries.html>