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HCCH|Approach

Advancing and Promoting the Protection of All Children

Celebrating 25 years of the HCCH 1996 Child Protection Convention

EVENTS PUBLICATION 2021

Approach:

the 25th Anniversary of the HCCH Child Protection Convention

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Disclaimer

This publication contains a report of the activities within the HCCH|Approach Initiative in 2021. The publication includes transcripts of presentations from the HCCH|Approach Global Event for use as a complementary resource to the visual library. The transcripts are provided without undergoing official review or formatting according to standard Permanent Bureau processes, and do not contain images, references, or other elements that were presented in the original medium of the recorded video. The content provided by third parties reflects the views of the individual speakers and does not necessarily reflect the views of the HCCH, its Members or the Permanent Bureau. Readers are advised to check the transcripts against delivery and to check for updates with respect to discussions of legal instruments, situations and cases.

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Foreword

I am very pleased to present the post-event publication of the inaugural HCCH|Approach event, celebrating the 25th anniversary of the HCCH Child Protection Convention.

HCCH|Approach is an acronym standing for "**A**dvancing and **P**romoting the **Pr**otection of **A**ll **Ch**ildren". A new initiative, HCCH|Approach is inspired by a milestone of the HCCH Child Protection Convention, a core instrument of international family and child protection law. The Child Protection Convention is a comprehensive and powerful instrument that plays a crucial role in cross-border child protection. Relying on the diverse perspectives and expertise of family law practitioners around the globe, HCCH|Approach gave us an opportunity to take stock of the instrument's successes, examine the instrument in new and interesting ways and chart out possibilities of its future.

The format of HCCH|Approach was also a bold experiment. As the pandemic has driven our work and personal lives online, HCCH|Approach was conceptualised as a series of online activities to take place through the fall of 2021, including complementary initiatives such as the Essay Competition and Media and Design Competition. Activities were also organised across the Permanent Bureau in The Hague, the Regional Office for Asia and the Pacific (ROAP), and the Regional Office for Latin America and the Caribbean (ROLAC). In this format, HCCH|Approach was delivered to the widest possible audience of practitioners, experts, academics and newcomers interested in cross-border child protection. Its content remains accessible on our website and social media channels and can be revisited on demand. This post-event publication provides another concrete footprint of the output of the HCCH|Approach initiatives.

I would like to take this opportunity to convey my sincere thanks to all those who contributed to the successful organisation of all aspects of HCCH|Approach. First, to the Federal Ministry of Justice and Consumer Protection of Germany, and the International Academy of Family Lawyers, which provided the generous voluntary contributions that enabled us to bring this project to fruition.

I thank Yun Zhao, Representative of ROAP, and Ignacio Goicoechea, Representative of ROLAC, as well as their respective teams, Florencia Castro, Levi Gao and Alix Ng, for their support for the initiative and their organisation and hosting of the HCCH|Approach activities targeted for these two regions.

At the Permanent Bureau, the event and this publication were conceptualised and brought to life by Gérardine Goh Escolar (then First Secretary), with strong legal and practical support provided by Harry Cheng, Raquel Salinas Peixoto, Giulia Valentini, Stuart Hawkins, my colleagues from the administrative team, and our interns.

I am confident that you will find the material in this post-event publication as timely and interesting as I do. As novelist Pearl S. Buck, the winner of the Nobel Prize for Literature, once wrote, "the test of a civilization is the way that it cares for its helpless members". Joining and properly implementing the 1996 Child Protection Convention represents one practical step in many that our global community can take to protect and care for our children and our youth. I hope you will join me in celebrating the silver anniversary of this remarkable international legal framework.

Dr Christophe Bernasconi | Secretary General, HCCH

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Summary of Events

Thanks to generous voluntary contributions from the Federal Ministry of Justice and Consumer Protection of Germany and the International Association of Family Lawyers, the Permanent Bureau developed and hosted the HCCH|Approach Initiative (**A**dvancing and **P**romoting the **Pro**tection of **A**ll **Ch**ildren) in 2021, featuring multiple events and promotional activities to mark the 25th Anniversary of the 1996 Child Protection Convention.

HCCH|Approach comprised three separate events respectively hosted by the Permanent Bureau, the Regional Office for Asia and the Pacific, and the Regional Office for Latin America and the Caribbean, as well as the HCCH|Approach Essay Competition, aimed at legal professionals, law students, and law academics or researchers, and the HCCH|Approach Media and Design Competition, open to arts, multimedia, graphic, or design professionals or students.

On 28 September 2021, the HCCH Regional Office for Asia and the Pacific hosted a region-focused event titled "Twenty-Five Years of the HCCH 1996 Child Protection Convention in the Asia and Pacific Region: Present, Development and Future". The meeting, held via video conference, was attended by participants representing 15 Member States and two observers. The event brought together experts and scholars to explore matters in the historical evolution and future development of the 1996 Child Protection Convention in the Asia and Pacific region. Through their respective keynote speeches, the experts provided valuable insights on the domestic and private international law of Japan, the Republic of Korea, and Indonesia concerning child protection. In addition, they discussed the necessity and feasibility of increasing the influence of the Convention in the Asia and Pacific region.

On 28 October 2021, The HCCH Regional Office for Latin America and the Caribbean hosted a Regional Event for the Central Authorities of Latin America. The purpose of the meeting was to exchange ideas and experiences in the application of the Convention and to identify possible challenges for the implementation and operation of the Convention. Participants discussed the need to promote the Convention in the region to increase membership, as well as various solutions to address the challenges identified, such as trainings for Central Authority officers, judges and other actors. The meeting was attended by 19 officials from the Central Authorities of Argentina (as observer), Costa Rica, Cuba, Dominican Republic, Honduras, Nicaragua and Uruguay.

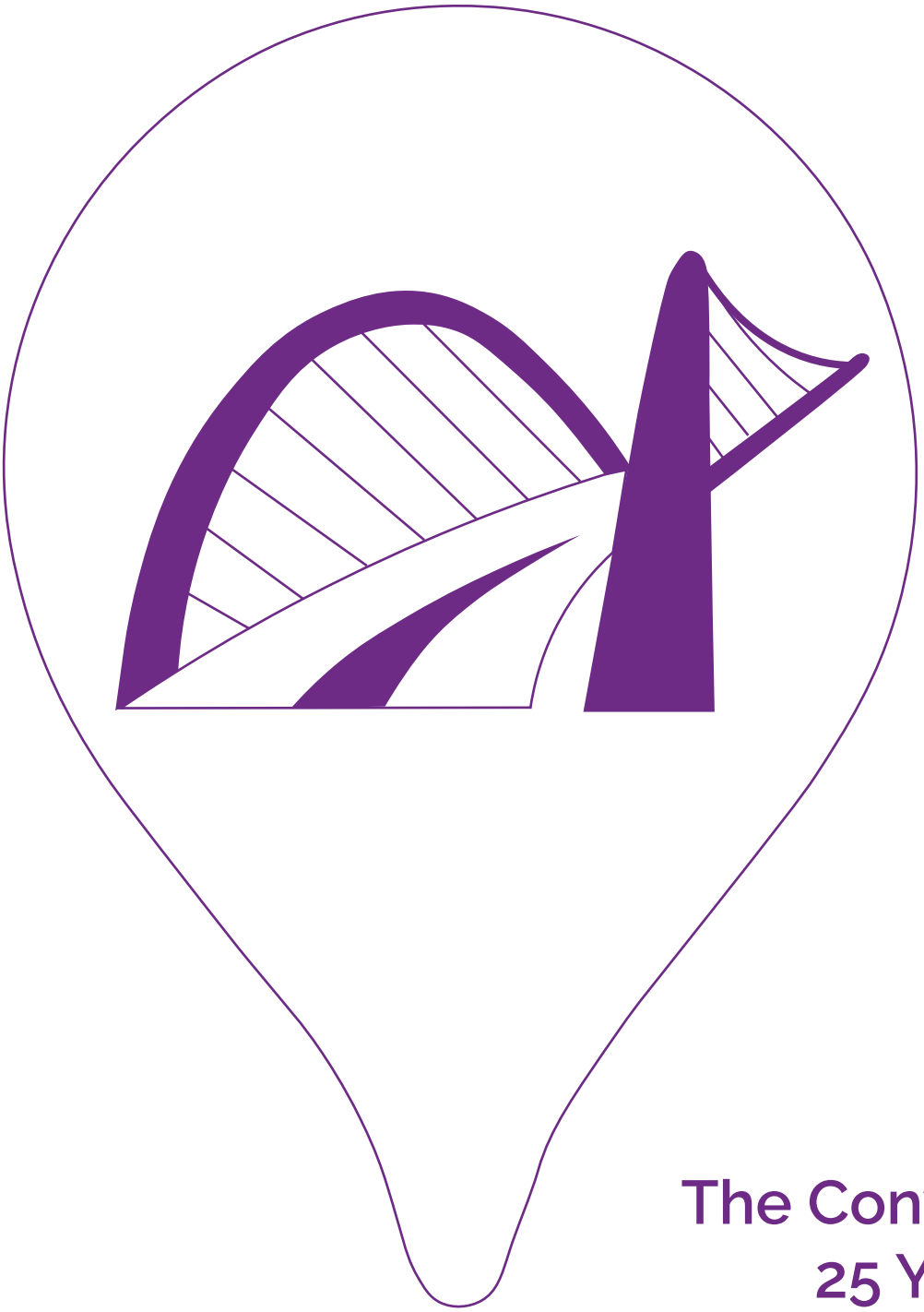
On 19 October 2021, the PB hosted the HCCH|Approach Global Event. Fifteen speakers representing a diversity of regions, legal systems and points of view each delivered pre-recorded remarks to create a series of "expert videos" broadcast throughout the entire day of the Global Event. These videos highlighted current perspectives on the 1996 Child Protection Convention and set out a vision for increasing the recognition and influence of the Convention.

The expert videos were organised under the following themes: "The Convention: 25 Years On"; "Issues Addressed by the Convention"; and "Why Join the HCCH 1996 Child Protection Convention: Perspectives". The event concluded with a live panel discussion titled "The HCCH 1996 Child Protection Convention at 25: Going from Silver to Gold".

During the broadcast of the Global Event, the Permanent Bureau announced the winners of the Essay Competition. Entrants were invited to author an essay examining any legal issue within the scope of the 1996 Child Protection Convention. The three winners, selected by an international panel of expert judges, came from the United States (first place), France (second place) and the Philippines (third place). In the Media and Design Competition, entrants were invited to create an audio, visual, graphic or other representation of the protection of children across borders in general, or on any aspect of the 1996 Child Protection Convention in

particular. The three winners came from Jamaica (first place), Venezuela (second place), and Costa Rica (third place). The winning essays and media pieces are included in this publication.

The PB has created a dedicated webpage for the 25th Anniversary of the 1996 Child Protection Convention, which contains all the videos and recordings of the HCCH|Approach Global Event. The HCCH|Approach videos are also hosted online and are accessible at any time. These videos form the core of a library of audio-visual materials on child protection, which the PB will continue to use and re-publicise for the promotion of the child protection portfolio.



The Convention: 25 Years On

Olga Khazova

Prof. Olga Khazova is a leading legal scholar in Russian and international family law. She is currently affiliated with the Private Law Research Centre named after S.S. Alekseev and two Moscow Law Schools. Until 2018, for more than 30 years, Prof. Khazova worked at the Institute of State and Law within the Russian Academy of Sciences. She holds a Ph.D. from that Institute and an LL.M. from Cornell University Law School (USA). She teaches International Family Law and also consults on children's rights and family law matters. She is the author of Marriage and Divorce in Western Family Law, as well as of numerous scholarly articles published in Russia and abroad. She is a Vice-President of the International Society of Family Law (ISFL) and a Fellow of the International Academy of Family Lawyers (IAFL). For two terms, she served as a member of the UN Committee on the Rights of the Child. She was a Vice-Chair of the Committee in 2017-18; her mandate expired on 1 March 2021.

The Significance of the HCCH 1996 Child Protection Convention in implementing the UN Convention on the Rights of the Child

Ladies and gentlemen, distinguished colleagues, dear friends!

It's a great honour for me to speak at this Global Event dedicated to the 25th Anniversary of the Hague 1996 Child Protection Convention. Let me please first of all express my gratitude to the Permanent Bureau for the invitation to be with you on this day.

The Hague 1996 Child Protection Convention was a response to the increased international mobility and to the fact that the world is getting smaller. Families nowadays move around the globe, get settled in one country, move to another country, sometimes, regrettably separate and start living in different places. Children may stay with one of the parents, visiting another one from time to time, or may go back and forth on a regular basis. Too often, regrettably, parents conflict with one another over custody, visitation, relocation, and at the worst scenario we face with an international child abduction. In all such situations, child's rights are at stake.

In this regard, let me remind you about the UN Convention on the Rights of the Child (the UNCRC), which is known as the most comprehensive, holistic and inclusive text on international protection of the rights of the child as it covers all aspects of children's life. The UNCRC, in its Preamble, recognizes the family as the natural environment for the growth and well-being of children. Preservation of the family environment and maintaining relations are identified by the UN Committee on the Rights of the Child among the main elements that need to be taken into account when assessing what is in the best interests of the child. These reflect the main goal in dealing with overwhelming majority of child-related issues in the family context.

In the UNCRC, there are several articles that address family issues. Some of them directly concern a child in a cross-border family situation. Apart from Articles 21 and 27(4) that deal respectively with inter-country adoption and recovery of child support, these are: Article 10 that entitles a child whose parents reside in different States "to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents," and Article 11 that requires the States to "take measures to combat the illicit transfer and non-return of children abroad," and to this end, to "promote the conclusion of bilateral or multilateral agreements or accession to existing agreements". It is also Article 18 that concerns common responsibilities of both parents for the upbringing and developments of the child, where it is stated that "for the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities…".

Therefore, inter-connection between the UNCRC and the Hague 1996 Convention is obvious. It is twofold: conceptual and practical.

Conceptually, the UN CRC and the Hague 1996 Convention "are visibly linked to one another," to quote former Secretary General Hans van Loon. Thus, the UNCRC directly refers to international agreements and conventions that deal with different cross-border family issues, and the Hague 1996 Convention is exactly that kind of an international instrument. The Hague 1996 Convention, as stated in its Preamble, aims at improvement of the protection of children in international situations and confirms that the best interests of the child are to be a primary consideration—and this is one of the key concepts of the UNCRC. To put aside the Hague 1980 Child Abduction Convention as such, which is known to provide "the inspiration" for Article 11 of the UNCRC, the Hague Child Protection Convention repeats the rules on international child abduction fixed in the Abduction Convention and is, therefore, completely in line with the corresponding provisions of the UNCRC. Also, one of the key concepts of the

Hague 1996 Convention – the "parental responsibility" – "draws its inspiration from the UNCRC" (Article 18), as expressly stated in the Explanatory Report.

As to the practical aspect, whether the provisions of the 1996 Convention deal with parental responsibilities or visitation rights, abduction or rights of custody, they support, develop, and give practical effect to the relevant provisions of the UNCRC, and thus help the States to implement the respective parts of the UNCRC.

Thus, the 1996 Convention helps the States to ensure that the rights of the child involved in cross-border parental disputes are protected – at least to the extent possible in the given circumstances. It helps to ensure that children and parents separated by the State border will not lose each other and will be able to keep contact with each other. It may help to minimize conflicts between the parents, which are usually very traumatic for the child, and may even help parents to find amicable solutions to their child-related problems.

By facilitating contacts between a child and the child's non-resident parent, the 1996 Convention also contributes to the implementation of the UNCRC Article 18, already mentioned, on common responsibilities of both parents for the upbringing and developments of the child. Accordingly, we could say, that the States by joining the 1996 Convention "render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities…", as required by the UNCRC Article 18 (paragraph 2).

When we speak about the cross-border disputes over children, we usually mean disputes between the parents. However, it should not be forgotten that the Hague 1996 Convention equally concerns children who live with guardians or foster parents, as well as children placed under *kafala* arrangements. In this respect, the 1996 Convention is extremely important and relevant when the Committee on the Rights of the Child deals with *kafala* issues in a cross-border context, which are increasingly on the agenda at the present time.

It should be also stressed that the Hague Child Protection Convention guarantees that the child has a voice in judicial or administrative proceedings. It is stated in Article 23 that recognition of the measure taken by the authorities of a Contracting State in other Contracting States may be refused if such measure was taken, except in a case of urgency, without the child having been provided the opportunity to be heard. It is hardly possible to overestimate the importance of this provision in helping the States to ensure implementation of the UNCRC Article 12. To remind, Article 12 requires the States to assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, and to provide the child with the opportunity to be heard in any proceedings affecting the child.

Also, while speaking about the significance of the Hague 1996 Convention in implementing the UNCRC, it is important to highlight that due to still ongoing migration crises and the huge number of children on the move who are under increased risk of being neglected, subject to different forms of exploitation, trafficking, sale, and abuse, Article 6 of the Hague 1996 Convention is becoming more and more topical and could be more effectively applied by the UN Committee in the dialogues with the respective States. This Article aims at protection of refugee children and children internationally displaced due to disturbances occurring in their country; it recognizes jurisdiction of the authorities of the respective Contracting State to take measures directed to the protection of such children. The Committee on the Rights of the Child, particularly, referred to Article 6 of the 1996 Convention in the Joint General Comment of the CRC Committee and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return adopted in 2017.

Thus, it seems to me not surprising that, taking into account globalization processes, increased migration, increase in the number of children involved in cross-border family

disputes, the Hague Children Conventions generally, and the 1996 Child Protection Convention specifically, are now more widely applied in the child's rights contexts dealt with under the UNCRC than before, and the links between these international instruments are becoming only stronger.

Finally, there is also close cooperation between the UN Committee on the Rights of the Child and the Permanent Bureau of the HCCH on issues related to protection of children in different cross-border contexts. Thus, to give examples, experts of the UN Committee were invited to speak at the Fourth Malta Conference on Cross-frontier Child Protection and Family Law (Valletta, Malta, 2016), at the International Conference and Workshop on Cross Border Child Protection (Geneva, Switzerland, 2015), at the Gulf Regional Seminar on Protecting the Best Interests of the Child in Cross-Border Family Disputes (Doha, Qatar, 2016), and at the International Seminar on the Protection of Children Across Borders and the Hague 1996 Convention (Rabat, Morocco 2019). The UN Committee on the Rights of the Child, in turn, regularly invites the Permanent Bureau experts to brief the UN Committee on different cross-border issues related to application of the Hague Children Conventions and projects that the Permanent Bureau is currently working on.

I find this cooperation absolutely crucial to ensure the proper protection of the children involved in cross-border parental disputes, as well as children who due to different reasons turned out to be unaccompanied in the territory of another State. I do hope that this cooperation will only increase.

Thank you for your attention.

Jean Ayoub

From volunteer to Director of Operations of the Lebanese Red Cross during the civil war in the 1980s, Jean Ayoub served as head of several missions for the International Federation of Red Cross (IFRC). In 1996, he moved to the IFRC Headquarters in Geneva to help redesign and manage the response to worldwide disasters, from 1999 as IFRC's USG. Since 2005, he has consulted with many agencies in change management and leadership coaching. Jean is currently the SG/CEO of ISS leading its transformation ahead of the Organisation's 100th anniversary in 2024. Jean is a strategic thinker and has a deep understanding of world affairs, engaged for organisational change in the digital age. He is passionate about ISS roles in programmes and advocacy initiatives for child protection.

Remarks of Jean Ayoub

It is an absolute honour and pleasure to be among you today on this special occasion of the 25th anniversary of the 1996 Hague Convention. I wish to thank Secretary General Christophe and First Secretary Gérardine for this opportunity.

To begin with and situate the ISS intervention to mark this anniversary, I quote from the outline of the Convention as published and reading that text, it feels that it was written today!

"Increasing rates of international mobility have been accompanied by growing concerns for the protection of children in cross-border situations. Children represent half of the global population on the move between borders." Probably more than half today.

"Issues of concern include the cross-border trafficking and exploitation of children and their global displacement as a result of war, civil disturbance, or natural disaster. Children are also affected by cross-border disputes relating to custody and relocation. The number of transnational families has also led to the increased susceptibility of children to international abduction and to having contact with their parents severed, and a growth in the necessity of the cross-border placement of children and the provision of alternative care".

The outline continues to state:

The principal features of the 1996 Hague Convention are: parental disputes over custody and contact; reinforcement of the Hague Child Abduction Convention of 1980; unaccompanied minors; and alternative care across borders. All of which are at the center of ISS casework, advocacy research and publications.

The 1996 Hague Convention is closely associated with cross-border child protection work of the ISS Network.

As a global network founded in 1924 and currently present in 120 countries, the ISS understands the importance of effective collaboration which enables approximately 75,000 families to be served each year via a wide variety of cross-border social services. As such, ISS is actively involved in implementing the 1996 Hague Convention on an individual case-by-case basis, in promoting its effective application and in actively advocating for its wider ratification. Cross-border casework in child protection cases is ISS daily core business and the 1996 Hague Convention foresees very helpful cross-border communication and cooperation mechanisms that allow other bodies with uncontested competence, such as ISS, to intervene in complex cross-border situations, whether in contracting or non-contracting States.

Allow me to develop briefly with some details.

For decisions regarding the most suitable child protection measures that involve more than one country, cross-border communication and cooperation between authorities and professionals is indispensable.

When the welfare of a child is at risk, appropriate measures for their protection must be taken at the place where the child is located as soon as the need arises, regardless of the child's nationality. In many cases, to be able to make a decision in the best interests of the child, it is necessary to obtain quality information. In this particular context, the ISS-Casework services include:

- Reporting high-risk situations ("child protection alert");
- Locating a child;

- Obtaining reports on the assessment of a child's situation;
- Obtaining reports on the assessment of a family or institutional placement abroad;
- Counselling to professionals and private persons; and
- Support in decision making regarding the future arrangements for the child.

Further, regarding parental responsibility, the ISS sees also many benefits in practice in having uniform rules on applicable law, such as Article 16 for instance.

Let us now take a practical example of cross-border work in the region of West Africa where we have no Contracting States for the 1996 Hague Convention.

The ISS has added value and strength in intervening in the region where we see a lot of movement of children across borders. Indeed, the ISS, through the ISS West Africa Network, aims to protect and reintegrate children who find themselves in vulnerable displacement situations in and within the region and beyond, in a family setting and offer them prospects for a better future.

This is done by strengthening the capacities of West African countries putting the emphasis on intercountry cooperation. So far, over 7,000 children and youngsters have been supported.

In the West Africa region, the ISS clearly fills a cooperation gap by connecting child protection systems in different countries. This places the ISS as a facilitator for inter-sectoral and cross-border cooperation and ensures a harmonised approach regarding complex situations.

This approach was recognized, already in 2016 by ECOWAS, as the Support Procedures and Standards for the Protection and Reintegration of Vulnerable Children on the Move and Young Migrants and is applied in the 15 Member States and Mauritania.

As this methodology has proven to be very effective in practice, the ISS published a global 8 step procedure in the Children on the Move manual in 2017 on how to treat individual cases related to the protection and care of children on the move. The ISS followed up by actively supporting the production and dissemination of several Massive Online Open Courses in the following years.

This brings me to another important point: how does ISS promote the 1996 Hague Convention mechanisms in its different advocacy, capacity building and research-publication efforts?

Many ISS members across the world engage in concrete advocacy efforts to promote the effective implementation of the 1996 Hague Convention. They provide trainings and capacity building to different actors, social workers and judges among others.

Since the 2015 Conference on Cross-border Child Protection, that ISS co-organized with the Hague Conference Permanent Bureau the IRC – a specialised program of the ISS General Secretariat focusing on research and advocacy in child protection, alternative care and adoption. It regularly publishes articles on news, promising practices and initiatives developed in the framework of the 1996 Hague Convention.

Furthermore, the IRC published in December 2020 a publication on national and cross-border kafalah practices, through which it analyses over 20 country contexts and addresses in particular current challenges in order to ensure that kafalah is indeed a child protection measure respectful of children's rights, both domestically and across borders.

To fulfil that purpose, we had an extensive look at the 1996 Hague Convention as the reference legal instrument, and proposed avenues and concrete tools on how to strengthen existing cooperation mechanisms: encourage direct judicial communication, and improve case management mechanisms.

On another and last front for us today, the 1996 Hague Convention clearly promotes the recourse to mediation as a way to solve family conflicts and to allow a child to maintain contact with both his/her parents.

In direct work of the ISS with families and children affected by family conflicts, we either provide international family mediation ourselves, refer to qualified mediators or apply a mediation-based approach in our casework management approach.

Mediation has also been at the core of our activities within the ISS General Secretariat, where a specialised program developed various tools to inform and raise awareness on the benefits of mediation targeting families themselves.

Tools include an International Family Mediation guide published in several languages and a dedicated website.

The ISS would be pleased to continue this work together with your support and is actively looking for new partnerships in this field.

Closing the curtain on ISS intervention today, let me mention that next year, the ISS and the Hague Conference will celebrate 10 years of official cooperation following the signature of a cooperation agreement in March 2012. We will celebrate as well many, many years of close cooperation before 2012 of course!

This cooperation agreement between the Permanent Bureau and ISS General Secretariat has a main feature: The working relationship between ISS and the Hague Conference is based on a complementary expertise in issues of cross border child protection and, building on that, today ISS is very much looking forward to increased cooperation in the 1996 Hague Convention.

Secretary General Christophe, First Secretary Gérardine, friends and colleagues, I bid you farewell for now, I thank you warmly for this opportunity to share with you the 25th anniversary celebration of the 1996 Hague Convention and wish you all the best for the continuation of today's rich program.

The Honourable Justice Victoria Bennett AO

The Honourable Justice Victoria Bennett AO was appointed to the Family Court of Australia, in Melbourne, in November 2005. Justice Bennett is the longest serving judge in the Melbourne Registry at Division 1 level.

Her Honour's first judicial appointment was in 2004 as a Federal Circuit Court judge across all areas of that court's wide jurisdiction. Prior to her Honour's judicial appointments, she was a member of the independent Victorian Bar for 17 years.

Her Honour has had many years of experience in transnational and cross-border family law with a particular interest is the 1980 and 1996 HCCH Conventions. She regularly presents on both Conventions domestically and internationally. Since 2008 Justice Bennett has been designated as a judge of the International Hague Network of Judges (IHNJ) for Australia. The other judges designated to the IHNJ are Chief Justice the Honourable William Alstergren and the Honourable Justice Jillian Williams. Justice Bennett supports and assists Justice Jillian Williams in her highly centralised case management of Hague return cases for the whole of Australia (except Western Australia).

In January 2018 Justice Bennett was appointed an Officer in the General Division of the Order of Australia for "distinguished service to the judiciary and the law, to the improvement of the family law system and child protection, to legal education, and to improving access to justice for indigenous families".

Australia's Experience with the 1996 Child Protection Convention

Greetings from Australia to Secretary General Bernasconi, our friends and colleagues of the Hague Conference, and to all of you who join us today to celebrate and reflect on the 25th anniversary of the 1996 Child Protection Convention.

The Australian anthem used to contain the lines: "*Australians let us all rejoice, for we are young and free".* The anthem has officially been amended to: "*for we are one and free*", to acknowledge the multicultural nature of modern Australian society. As for the '*young*' part, that was only ever true if Australian society was deemed to date from the first days of the European conquest in 1788. In point of fact, our Nation's First People, the Australian Aborigines, have lived on the continent of Australia for some 60,000 years. This depiction is located on the wall of a natural rock formation which has sheltered perhaps hundreds of generations of people who lived in, what is now, a semi-arid region of Northern Australia. Scholars have suggested that the figures you see on the screen are the members of a family or, to be more accurate, depictions of the spirits of those people who used to shelter there about 45,000 years ago.

This presentation represents my views and I gratefully acknowledge the assistance of Georgia Bishop, Legal Associate.

Australia acceded to the 1996 Child Protection Convention on 1 August 2003. The Convention is currently in force between Australia and 52 Contracting States. The Convention has been signed but is yet entered into force for USA, North Macedonia, Canada and Argentina.

In Australia, our most common requests are article 23 recognition requests followed by article 33 placement requests. Our most frequently encountered partner country is the United Kingdom.

The children's conventions could not operate without Central Authorities. We have an Australian Central Authority ("ACA") and a Central Authority designated for each state and territory in Australia. The State Central Authorities are routinely the government departments charged with the welfare and protection of vulnerable children for the state.

Our Central Authority is the federal Attorney General's Department and comprises six lawyers and two or three non-legal case officers. There is a strong and respectful relationship between the Hague Network Judges (who I will discuss in detail later) and the ACA. I thank the Central Authority for the information it volunteered for this presentation.

Within the 1996 Convention there are easy lines of communication and co-operation between states for which the Convention has entered into force. The ACA also receives requests for assistance about non-Convention countries. In those cases our Central Authority will try to seek assistance from the other jurisdiction's Central Authority appointed for the 1980 Convention if that jurisdiction is a member of that convention. That other Central Authority might, for example, identify and provide contact details for the child protection authorities in the appropriate region of that country. This kind of co-operation is in the spirit of the 1996 Convention and possible because of the strong network which has developed between Central Authorities in which the Co-Directors of the ACA are very keen to maintain and nurture.

Article 33 is most frequently encountered by Australia and is engaged when a child is going to be sent to live in Australia. It is designed to ensure that the child's arrival and proposed new place of residence in Australia is safe.

The two main issues that the ACA experiences with Article 33 requests for cooperation are the lack of anyone confirming whether the child is eligible for an appropriate visa and the lack

of meaningful and timely engagement in the Article 33 process. In some cases, our Central Authority has found that a child's visa hasn't been applied for and the placement is derailed because the child is not eligible for a visa. Our State and Territory Central Authorities are extremely helpful and hands on in the management of, for example, the assessment of the family into which the child is to be placed. This is a helpful consequence of the State Central Authorities being the child welfare agencies for each state. State Central Authorities are very much focussed on making sure that any proposed placement in our jurisdiction will be in the child's best interests.

One of the more complex Article 33 requests involved the placement of a child where the overseas court was about to issue a final order permanently placing the child into the care of an Australian family at that point the ACA became involved. The child was being placed with an extended family member (and their family) but they had never met. They had Skyped a few times. The ACA found that not only had no-one considered the child's eligibility for a visa but the child had no passport and no ability to obtain a passport for a wide range of reasons. The child was also going to have to move from a large European city to a very regional and remote area of Australia; it was always going to be a massive adjustment for the child. The ACA asked that the relevant overseas authority to consider seeking only interim orders (rather than a final order) and to also include a plan B (contingency) in their planning for the child to ensure that alternative arrangements were in place if the placement did not work out. The court did so. Sadly, the child and the family failed to adjust to one another and the plan B became necessary and the child returned to out of home care in the other jurisdiction.

The next most common provision in the 1996 Convention for Australia is the recognition and enforcement of measures as provided for in Article 26 and 23.

Prior to the 1996 Convention entering into force the recognition of orders between Australia, which is a common law jurisdiction, and other countries was problematic and quite out of touch with the realities of families living across international borders. Article 23 provides that orders from contracting states will be recognised by operation of law (that is without the need for legal process) in other contracting states, subject to refusal on limited natural justice or procedural fairness and public policy grounds. Article 23 means that an order made in Switzerland is recognised as an order made in Sydney.

Now recognition is not enforceability. Recognition will render an action lawful but not enforceable. In most instances cross border families require enforceable orders or enforceable measures.

The key to the success of the enforcement provisions is the simple and rapid registration process required under the Convention. Regulation 12 of our *Family Law (Child Protection Convention) Regulations 2003* has been effective for Australia. Each large Family Court registry has a Registrar who is responsible for effecting recognition or referring it to a judge for immediate attention if something is amiss. Where the Convention falls down in its operation is where contracting states fail to or neglect to adopt a simple and rapid registration process for the enforcement of orders from other jurisdictions.

Article 24 provides for advance recognition. Australia has had little experience with advance recognition perhaps because in the wording of the article it would be cumbersome to enforce; we would need to make a final order before we could send it overseas to have it recognised and rendered enforceable whilst retaining sufficient jurisdiction to revoke the process in the event that enforcement was not achievable in the other jurisdiction.

We have had other cases that have needed us to help parents navigate rather less common aspects of the Convention, such as parental responsibility. In one case a mother had sole parental responsibility for her child by operation of law in another jurisdiction (Germany). In that jurisdiction an unmarried parent only secured parental responsibility for the child if they took positive action to claim that responsibility. The father in that case had not done so, so

the mother retained sole parental responsibility and she moved with the child to Australia. The mother wanted to take the child from Australia to an overseas destination to see her family but the authorities in Germany refused to issue a passport for the child to travel because she could not prove that, as a matter of Australian law, that she had sole parental responsibility. The child had by that stage been in Australia long enough to have changed his habitual residence to Australia. In Australia, according to our law, a parent automatically has parental responsibility until a court orders otherwise – so because of Article 16(4), the German father had parental responsibility according to Australian law. In the end the mother instituted proceedings in Australia for sole parental responsibility for the child, which she obtained. If we take this case a little further than it actually went it could be a good example of the saying that *"under the 1996 Convention, you can add but not subtract parental responsibility".* By this I mean, in Germany, the child had one parent with sole parental responsibility. Upon assuming habitual residence in Australia, both parents have parental responsibility. If the child then became habitually resident in Germany again, Article 16(3) would mean that the father in Germany would continue to have parental responsibility under German law. He could exercise that parental responsibility in Germany because German law contemplates two parents having parental responsibility. However, what if the child went from Australia to a one parent custody jurisdiction (like Japan – which by the way is not a party to the 1996 Convention but I will use it simply as an example). If the child then acquired habitual residence in Japan, the German father would still retain parental responsibility in Japan but he would not be able to exercise it because Japan does not recognise the exercise of parental responsibility by more than one parent. That is the basis of the saying you can add but you cannot subtract.

Chapter III of the Convention deals with applicable law.

Article 15 provides that authorities may, exceptionally, apply or take into consideration the law of another state with which the situation has a substantial connection. I have recently had argued before me a case in which it is likely that a request may be made by an Australian Court of the courts in the Netherlands to consider applying some of the Australian law to the resolution of a family law case in the Netherlands because Australian law would have a greater emphasis than the law of the state of habitual residency could possibly have in relation to the importance of the child's indigenous heritage, that is the aboriginal heritage.

The ACA are grateful for information and sharing of experiences from its European colleagues because of Europe's vast experience in dealing with both 1996 Convention and the Brussels Regulation cases. The Central Authority Network is like an international brains trust.

The ACA received a request in one matter from a European nation for assistance that appeared to relate to a succession matter (which is expressly excluded under Art. 4 of the 1996 Convention) but it emerged that the assistance they were seeking related to the appointment of a guardian *ad litem* for the children and not a succession matter. The overseas authority was very helpful and forwarded our central authority decisions from the European Court of Human Rights relating to similar cases to explain the basis of the request.

Of course there are the provisions in the 1996 Convention for the provision of information. In another case the ACA was notified of a child who was alone in a large European city. The child, aged 15, had gone to visit their mother for a contact visit, but their relationship had broken down and the child had left the mother's home. The child's carer in Australia raised the alarm, fearing for the child's welfare. In that case, the ACA was able to submit an urgent request for the other jurisdiction to consider taking measures in respect of the child and detailing its concerns under Art. 32. The overseas authority sought police and child protection assistance and were able to quickly locate the child. The child protection authorities ensured the child was ready to safely travel and be cared for until they could be placed on a flight back to Australia.

Article 9 under the 1996 Convention provides a contracting state (as referred to in Art. 8(2)) to request jurisdiction to decide a particular case if they believe that to do so would advance the child's best interests.

In 2020 the Family Court of Australia determined it was better placed than a Norwegian court to assess the best interests of an Aboriginal child found to be habitually resident in Norway. Orders were made for a request to be made of a Norway Court for Australia to assume jurisdiction in respect of the child pursuant to Article 9.

All of the technical requirements of Article 9 and 8 had been met. The basis of the request was that our Court considered that it was better equipped than the Norwegian courts to take into account the profound relationship between Aboriginal people and their lands as had been referred to by a recent decision of our apex court, the High Court.

This slide [Love v. Commonwealth] illustrates the very strong sentiments expressed by our apex court in relation to the importance of aboriginality. They understand from the Norwegian Central Authority that the matter is finalised on the basis that Australia's request to assume jurisdiction was not accepted.

Chapter II of the 1996 Convention deals with jurisdictional rules. This is a particularly important and encountered provision. In relation to children who are the subject of proceedings or potential proceedings under the 1980 Convention there is also Article 7 of the 1996 Convention which provides for a child who is wrongfully removed or retained to not lose their habitual residence except under certain situations. I have a case at the moment pending with the Russian Federation in which the child on my interpretation is still resident in Australia and Australia is the correct forum pursuant to Article 5; it is a work in progress.

I invite you to go to the Hague website and look at the information on the International Hague Network of Judges. The network is only as good as the number of countries we have with effective network members.

Under the 1980 Convention it is clear what law is to be applied. On the other hand under the 1996 Convention its operation is often unheralded. The practitioners and the judges who encounter the 1996 Convention are frequently uneducated or uninformed about its operation. It is particularly helpful to have the assistance of a Hague Network Judge within one's jurisdiction when looking at the implications of the 1996 Convention. In Australia our Hague Network Judges are the Chief Justice of the Federal and Family Court of Australia who is also the head of the Family Law jurisdiction in Australia, my colleague Justice Jillian Williams and myself. A shortcoming for Australia is that our immediate neighbours do not number highly in the international network judges designations. Australia encourages designations by all countries to the international network of judges. The country does not have to be a contracting state to either convention in order to make a designation to the network. They just have to be willing to enter into a discourse between a designated judge in their country and designated judges in other jurisdictions in accordance with the prescribed and firm protocols for the operation of the network. Judges in contracting states and even non-contracting states have very similar functions within their own jurisdictions. We are all in it together.

If anyone has queries about how to advance the designation of a judge for a particular jurisdiction I encourage you to contact the Permeant Bureau. If you want to speak to someone personally I am happy to speak to you and my details follow. The fact is the judges from contracting and non-contracting states all perform similar functions. We are all alike. Our strength is that we can obtain benefits from each other by sharing the information and sharing our practices and doing so safely and confidentially within the secure confines of an organisation like the International Hague Network of Judges.

That concludes my presentation, thank you very much.

[The speaker included the following remark regarding a discussed case example:
Since this presentation I have been informed that on 3 September 2021 the Dzerzhinsky District Court ordered the seven year old child to be returned to Australia based on Australia remaining the place of habitual residence of the child. The father has appealed that decision to the St Petersburg City Court principally on Article 13b. The father contends, that the mother's same sex relationship and her alleged sexual behaviour exposes the child to a grave risk of harm or otherwise places the child in an intolerable situation. On 25 October 2021 the parties before me consented to the child's return to Australia being postponed until after the determination of the father's appeal in late November 2021.]

Nieve Rubaja

Nieve Rubaja is a Private International Law Professor at the University of Buenos Aires. She has been teaching in the field since 1999 and in Family International Law since 2010. She has also been a visiting lecturer at several national and international universities. Nieve Rubaja is a researcher at the University of Buenos Aires. She holds a postgraduate degree in Family Law from the University of Buenos Aires (2004). She is a member of the HCCH Experts' Group on Family Agreements Involving Children and a member of the HCCH Parentage/Surrogacy Project. In addition, she is a Latin American correspondent for INCADAT.

The HCCH 1996 Child Protection Convention in Latin America: Achievements and Challenges

It is a pleasure for me to join the HCCH celebration on the 25th Anniversary of the 1996 Child Protection Convention. I would like to thank Geri, the PB and the Regional Office for Latin America and the Caribbean of HCCH for their invitation to be part of this event.

I believe that every anniversary could be seen as an opportunity to review and to reflect on achievements, remaining challenges and future projects. Because of this I would like to take the next minutes to share with you some of the achievements and challenges that the 1996 Hague Convention (HC) posed in Latin America.

1. The impact of human rights in PIL solutions in the region

If we are going to reflect on child protection in Latin America it is compulsory to consider the impact of human rights in PIL solutions. Human rights treaties and, particularly, the UN Convention on the Rights of the Child brought a reformulation of national constitutions and domestic laws in several countries. Thus, over the last decades family law and child protection solutions have been greatly influenced by this advancement.

In addition, the doctrine of the Interamerican Court of Human Rights reinforces this impact, especially taking into account the peculiarities of this system. It should be noted that the Interamerican Human Rights System allows to condemn countries for the violation of human rights but also to impose obligations both in each specific case and in general, including, for example, the training of judges in human rights; the improvement of domestic legislation and so forth.

In this context, important work has been done in the region in order to fulfil human rights in the field of child protection, both at domestic and regional level.

2. Multiplicity of conventions on international family: effectiveness of their solutions?

As a result of this work a multiplicity of international conventions for the protection of children were developed.

Two main scopes should be considered: regionally, several instruments were elaborated within the Interamerican Conferences of Private International Law (known in Spanish as CIDIPs), which have meant an important contribution and have captured the Latin American approach in their solutions. These instruments have also served as an inspiration for domestic regulation. However, there are no instruments within this scope that specifically cover parental responsibility. Globally, the work developed by the HCCH is remarkable, not only because of the process of developing conventions, but also because of its post-convention services. These aim at improving the conventions' effectiveness. In addition, the work developed by the Regional Office has had an impact on the dissemination, identification of good practices and challenges for the implementation and operation of the Conventions. It does so with a particular focus on the Latin American approach and realities prevalent in the region.

Notwithstanding the importance of the richness of the existing solutions, it should be recognised that there are still challenges in order to provide effective solutions for real cases. The 1996 HC should be seen as a protagonist in this goal.

3. The 1996 HCCH Child Protection Convention: Benefits and Challenges

If we focus on this instrument both benefits and challenges should be considered. We are going to review some of them:

Its benefits will be at the core of this global event and they are twofold. In the first place, there are the unified solutions regarding cross border cases on parental responsibility (such as jurisdiction, applicable law and uniform rules of cooperation and coordination). In addition, the broad material scope of the Convention, includes custody and contact, measures of protection, situations in which parental responsibility is unavailable, non-accompanied children, displaced children, as well as children´s property. This means that important rights recognised to the child will find a way to be restored or enforced.

In the second place, the 1996 HC should be considered as a tool to achieve the objectives and the cooperation that the 1980 Child Abduction Convention promotes. For example: An important challenge that courts are facing nowadays is how to address domestic and gender-based violence in international child abduction cases. The 1996 HC may contribute to the possibility to adopt protection measures and to facilitate the post-return assistance. This would contribute in pursuing the harmonization of the protection of the rights of both children and the abducting mother, without confronting them. In addition, the 1996 HC is also applicable in international abduction cases when the 1980 HC is not in force among certain States.

Status of ratification in Latin America

Notwithstanding all these benefits, the 1996 HC was signed and ratified only by some States in Latin America, despite the fact that several years have passed since it entered into force. At the moment 8 countries are part of it: Costa Rica, Cuba, Ecuador, Honduras, Nicaragua, Uruguay, Paraguay and Dominican Republic. More countries are considering joining it.

Probably, two main aspects may give an answer to the scarce ratification of this instrument: firstly, the possible shortcomings or difficulties to understand the complexity of some provisions. Secondly, the challenges and shortcomings at the time to approve or ratify the Convention, taking into account the administrative and judicial reality of some countries because of the lack of human resources to study and analyze them deeply. Both types of difficulties can be overcome in practice, as experience has shown.

Regarding the complexity or novelty of some provisions, I will mention some challenges that were captured in the "Explanatory Note on Specific Matters Concerning the 1996 Convention" drafted by the Permanent Bureau after the meeting held in Santiago de Chile in 2013:

1. The determination of the habitual residence of the child as a main connecting factor and basis for jurisdiction. Traditionally, domicile has been the most frequent connecting factor used in Latin American countries; nevertheless, the habitual residence is also a broadly familiar concept because it is provided by other Conventions.

2. Concerns surrounding jurisdiction, particularly to the positive and negative conflicts on jurisdiction and transfer of jurisdiction. In these scenarios, communication and coordination between the competent authorities of the countries involved will be the key to the proper functioning of the provisions. However, such coordination is not common in Latin American States. In general, Latin American judges are reluctant to share or discuss these kinds of issues with others. On a positive note, it is worth mentioning that direct judicial communications, with the assistance of the Central Authorities in both States, or of the judges of the International Hague Network of Judges, are increasingly successful.

3. Concerns surrounding protective measures, especially because they are not qualified and cover a wide range of situations. In this regard the work developed by the HCCH, the

academy and the experience of those countries that have been applying this convention for a long time should provide clarification.

4. Recognition and enforcement of a foreign measure of protection.

This could mean a novelty in some countries and may lead to some procedural concerns. In any case, it is important to recall that these provisions seek the effectiveness of the measures in order to protect the integrity of the child and the rights involved.

Among the challenges posed for the approval or ratification, as well as for the implementation of the 1996 HC in some countries of the region, we find 4 different needs:

First, the need for dissemination of the 1996 HC both for the acknowledgment of the instrument and its benefits in order to become part of it and for its proper application in a later stage.

Second, the Need for training.

In several regions of Latin America, judges do not decide on international family cases very often, thus they are not aware of the current tools at hand and how to apply them. If they were made aware of an applicable convention at a later stage, the answer would probably not be on time and this would have a negative impact on the best interest of the child.

Third, the need for resources and designation of Central Authorities.

The Convention imposes upon States the obligation to designate Central Authorities. In almost all Latin American States, Central Authorities are designated under the 1980 HC. Thus, this mechanism is not a novelty in the region, although the functions between them differ especially because the material scope of the 1996 HC is wider and calls for more coordination and flexibility. At a later stage, the need for economic, human, infrastructure and technological resources, among others, will also be a challenge.

Fourth. Need for domestic procedural tools in domestic regulation to ensure the effective implementation of the cooperation system that the 1996 HC provides.

For example, some States should adopt simpler and faster procedures to enforce or register provisional measures or to deal with urgent measures in a more efficient way.

Notwithstanding the responsibility of the States in facing these challenges, the contribution of the Regional Office, the academia, as well as the proper intervention of the International Hague Network of Judges could aid in the search for the proper protection of children's welfare.

4. What about the Latin American actual experience?

In a nutshell, limited but successful.

It is limited because of the scarce ratification status of the Convention. Besides, judges, other judicial operators and legal practitioners do not usually have enough knowledge and training in private international cases.

Moreover, our research on this field is based, mainly, on the information shared by Central Authorities and the Regional Office, since there are not a lot of court decisions that have applied the 1996 HC, or they are rarely published. It becomes evident then that cooperation among Central Authorities has been one of the most beneficial tools of the Convention. According to their opinion, for the moment, the Convention has been mostly applied in order to get protective measures in international abduction cases, especially for the enforcement

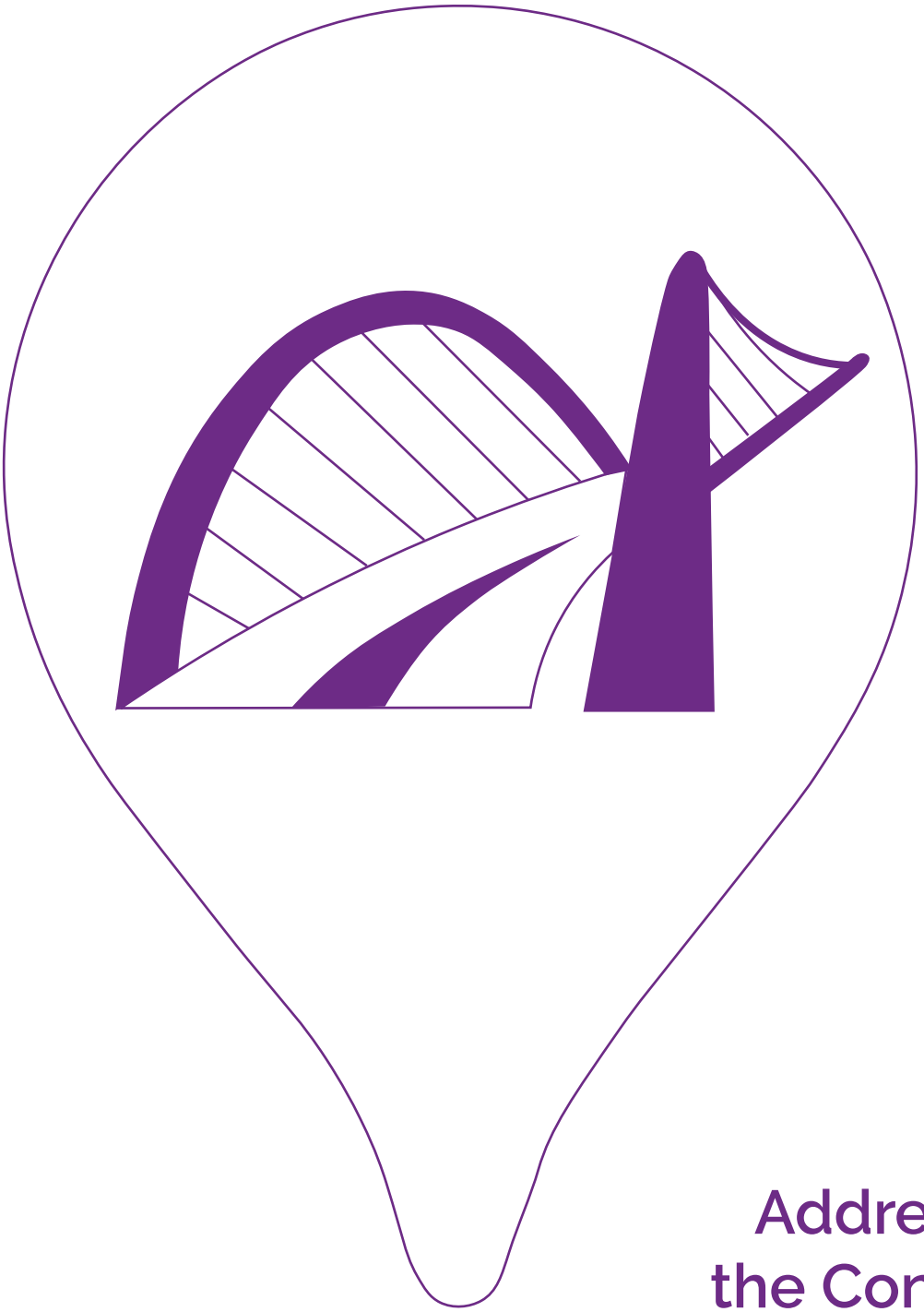
of return orders. In other words, the instrument is mostly used as a complement to the 1980 HC. Nevertheless, some other areas have benefited from the provisions of the 1996 HC. Among them: custody; visitation; requesting information of personal and family situation of the child or of the protective measures in the other State; protective measures for non-accompanied children (eg. from Venezuela to Ecuador). In most of these cases, Latin American States can and do intervene both as requesting as well as requested States.

5. Conclusion

Much work has already been done in the Latin American region in the international family law sphere. The 1996 HC brings a lot of tools in order to fulfil children's rights. Some challenges are posed in order to join and apply this Convention but the experience has shown that they could be overcome in practice and that the effort is worth it. Synergy amongst academia, authorities and other stakeholders needs to be consolidated and bolstered to achieve that goal.

Thank you very much!

These remarks are based on Rubaja, Nieve, "*International Family Law and Child Protection in Latin America. Achievements and shortcomings. Challenges posed by the 1996 Convention*", (Ed. Thomas Johan, Rishi Gulati and Ben Köhler, in *The Hague Conference on Private International Law*, Edward Elgar Publishing, UK - USA, 2020, ISBN 978-1-788-648-7, pp.214-225.



Issues Addressed by the Convention

Martina Erb-Klünemann

Martina Erb-Klünemann is a German family court judge. She worked as a judge in civil law and criminal law cases at various courts before her appointment as a family judge in 1996. In this capacity she is responsible for international family conflicts pending at Hamm District Court as the centralized court for the District of Hamm Court of Appeals. Martina Erb-Klünemann is a network judge in the European Judicial Network in civil and commercial matters (EJN) and in the International Hague Network of Judges (IHNJ) as well as co-chair of the Association of International Family Judges (AIFJ). She publishes and runs worldwide training courses on cross-border family law and mediation in cross-border family conflicts.

Her main focus is on strengthening children's rights in cross-border proceedings.

The Effectiveness of the HCCH 1996 Child Protection Convention Having Regard to the Best Interest of the Child

Ladies and Gentlemen,

I would like to begin by expressing my sincere thanks to the Permanent Bureau of the Hague Conference for the opportunity to speak at this birthday event of the 1996 Hague Convention.

A birthday means looking back and looking ahead.

Looking back, I remember having great difficulty with the 1996 Convention at one of my first international conferences on child protection. I couldn't make sense of the term "1996 Hague Convention" at an English-speaking event, because in Germany we speak of the Convention on the Protection of Children and don't mention a year, and besides, I didn't know it at all yet, because it was not yet applied in Germany. It must have been before 2011, because the Convention came into force for Germany on 1 January 2011. So our first meeting was rather bumpy.

In the time that followed, we became friends.

I work at a family court where we have special jurisdiction with two judges for certain proceedings in the field of international family law for the entire district of our Higher Regional Court. There are 9 million people living here and it is very international, so we hear a lot of international family proceedings.

These include proceedings concerning parental responsibility with an international component and child abduction proceedings under the Child Abduction Convention of which I have heard over 200 cases as a judge over the years. Here, the question of unlawfulness requires clarification of the custodial situation at the time of the abduction. I have noticed that a considerable number of children have not only lived in one country before the abduction, but have often moved abroad with their parents several times before. These are often very international families for economic, professional or even private reasons. Sometimes there are court decisions on custody. Mostly, however, it is a question of the legal situation according to the law, so that Art. 16 para. 3 and para. 4 1996 Hague Convention apply.

These provisions repeatedly cause great astonishment among judges and lawyers in the context of training courses that I conduct: if the child's habitual residence changes, rights of custody under the law of the former habitual residence continue to exist, even if they do not exist under the law of the state of the new habitual residence. Rights which do not exist under the law of the State of the previous habitual residence but which do exist under the law of the State of the new habitual residence are added. The child therefore moves with a rucksack in which he or she takes custody rights with him or her. Nothing is lost. Only something can be added. Parents are often not aware of this, nor are lawyers who are not specialised in this field. This is even more true in Europe, where crossing borders in the Schengen area has no preconditions or border controls. However, it is very important to know these rules, as they determine the situation [in relation to the child] on the basis of the law. To these questions in abduction proceedings is also added another question: whether the unilateral action of removing or retaining the child outside of the State of his or her habitual residence was lawful or unlawful. In my opinion, the general public should be made much more aware of these issues.

These rules are also good. They protect the best interests of children by preserving custody relationships in the event of removal abroad and by ensuring uniform application in the current 53 Contracting States worldwide.

Furthermore, in addition to the establishment of the Central Authorities, which significantly improve cross-border cooperation, I would like to emphasise the rules on recognition and enforcement in Art. 23 et seq. 1996 Hague Convention. By ensuring recognition and enforceability, the measures taken by the authorities of one Contracting State retain effect in the other Contracting State and can be enforced there after being declared enforceable. This also serves the best interests of the child. Measures do not simply lose their effect when the child moves abroad, but continue to apply if there is no reason for refusing recognition. This ensures continuity in the child's circumstances.

I would now like to do what we practitioners love to do most, namely, report on a case from this year that I have worked on in my practice. I was involved in the case in my capacity as a deciding judge and also as a network judge in the International Hague Network of Judges. The course of this case shows very nicely how the 1996 Hague Convention ensures the best interests of the child and how direct judicial communication can help.

The case takes place between Switzerland and Germany, which are both Contracting Parties to the 1996 Hague Convention.

A German couple lived together in Switzerland, where their daughter was born in 2012. When the girl was six months old, the competent Swiss child and adult protection authority ordered joint parental custody. After the separation of the parents, the same authority awarded custody of the child to the father in 2020, first with a superprovisional order, then as a precautionary measure.

In 2021, the girl, now 8 years old, was in a very bad mental state. She claimed to have been beaten by the mother with whom she had contact. There was massive self-stimulatory behaviour, coupled with injuries. The child was verbally and physically aggressive and declared that she no longer wanted to live. The Swiss child and adult protection authority examined the child's situation and came to the conclusion that the girl's condition had to be further examined for diagnosis in an inpatient diagnostic group.

On 1 March 2021, the Swiss authority issued a decision according to which "the girl was to be placed in an emergency group of a youth welfare facility by cancelling the parents' right of residence until a final decision was made by the authority".

However, the father prevented the implementation of this measure by taking the child to Germany without the mother's knowledge shortly before the measure was issued, where he has been living with the girl ever since. The Swiss authority informed the German Youth Welfare Office about the situation, which took the child into care 2 days after the Swiss measure was issued. The girl was taken into a German youth welfare facility. The German youth welfare office did not want to hand over the child directly to the Swiss authority because they were unsure about the legal situation. Significantly, custody interventions by an authority do not exist in Germany, where such measures are reserved solely for family courts. The father was very aggressive there and demanded that the child be handed over to him immediately, as he was of the opinion that he was still entitled to custody in Germany.

The Swiss authority applied to my court for a declaration of enforceability of its decision to place the child in a Swiss emergency group and to revoke the parental right of residence.

The question of whether a foreign decision that was not taken by a court but by an administrative authority is subject to the provisions of the 1996 Hague Convention was clearly answered by Art. 23 and Art. 5 1996 Hague Convention. It is a measure taken by an "authority", whereby such “authorities” may be either judicial or administrative authorities. Decisions taken by the Swiss administrative authorities, which are competent to do so under Swiss law, are subject to the 1996 Hague Convention.

The authority had also submitted all the documents required under the 1996 Hague Convention. I am not familiar with Swiss national law, and it was difficult for me to know whether the decision was enforceable. On this question, I consulted my colleague in Switzerland, Daniel Bähler, who is the Network Liaison Judge for Switzerland. The very next day I had his answer: According to the case law of the Swiss Federal Supreme Court, provisional measures cannot be challenged. He also explained to me in detail what exactly the enforceable content of this measure of the Swiss administrative authority was, which was unknown to me as a German judge. It was the (not expressly titled) surrender of the child to the administrative authority, which now had the right of residence determination.

I concluded that there were no grounds for refusal under Article 23(3) 1996 Hague Convention.

On 12 March 2021, i.e. less than two weeks after the measure was issued and only a few days after the application came in, I had all the information thanks to the smooth cooperation with the Swiss network judge. I declared the measure of the Swiss administrative authority enforceable in Germany, with an explanation for the German bailiff as to what exactly was enforceable.

According to German law, an appeal against this enforceability declaration can be lodged within one month, which the father did. At that time, however, the German youth welfare authorities had already returned the child to the Swiss youth welfare authorities. They now considered the legal situation to be clarified on the basis of my decision, and considered it urgently necessary, for the welfare of the child, that she was to leave the German youth welfare facility and be admitted to the Swiss inpatient diagnostic group, where a diagnosis was made.

The Higher Regional Court, which dealt with the appeal against my decision, dismissed the father's complaint because it had been extinguished by the child's return to Switzerland.

This case shows how the provisions of the 1996 Hague Convention ensured the continued validity and enforceability of the foreign measure in Germany. The network of judges made it possible for me to quickly obtain the necessary explanations on the content of the Swiss decision, so that I was able to order enforceability only a few days after the application was filed. The child was thus quickly able to receive the measure in Switzerland that she urgently needed for the restoration of her well-being. The 1996 Hague Convention ensured that the situation proceeded in an orderly manner. Now it remains to be hoped that the girl is doing better in the meantime. The 1996 Hague Convention has done what it can to help her.

To the 1996 Hague Convention I say this: I wish the birthday girl all the best and am sure that she will continue to ensure the welfare of the children across borders with her framework in the future.

Thank you for your attention.

Carolina Marín Pedreño

Carolina Marín Pedreño is a Spanish *Abogada* who cross-qualified as a Solicitor in England and Wales in 2006. She is a Partner and Head of the Children Department at Dawson Cornwell Solicitors in London. She is the Immediate past President of the Westminster and Holborn Law Society, current Vice President of the International Academy of Family Lawyers and President of the Human Rights Commission of the *Union Internationale des Avocats*.

Carolina Marín Pedreño is known as a "*go-to practitioner for cross-border work involving both public and private children cases*". She specialises in international cases, particularly child abduction, recognition and enforcement of foreign orders, forced and child marriages, leave to remove, residence, contact and public law work. She has represented parents in all instances in the UK and in the European Court of Justice in Luxembourg and in the European Court of Human Rights in Strasbourg.

Carolina is a frequent lecturer and author on family law and has been interviewed by the press on many occasions. She has been appointed as expert in the European Projects VOICE (research on children's voices in child abduction cases) and AMICABLE (enforcement of mediation agreements on child abduction and relocation cases).

She is the author of several publications in English and Spanish, including a practice book in Spanish on child abduction.

Relocation, Custody and Access under the 1996 Child Protection Convention

When preparing my talk about Relocation, Custody and Access under the Hague Convention 1996 on Child Protection, I thought it would be interesting to first consider the journey the Hague 1996 Convention has taken in England and Wales before looking at the treatment of the Hague 1996 Convention in more recent times.

As we know, the Hague Convention came to life following the 18th Session of the Hague Conference in 1996. At that time, the United Kingdom was a Member State of the European Union. The European Union was working on a similar instrument to the Hague 1996 Convention on Child Protection dealing with the same subjects: jurisdiction, recognition and enforcement, and international cooperation but on matrimonial matters only. That instrument came into effect in 2001 in the form of a Regulation known as Brussels II. In 2003, two years later, the Regulation was extended to cover parental responsibility matters in what is known as Brussels II bis or Brussels II revised (Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000). Therefore the European Union had a Regulation dealing with children protection issues from 2003.

It seems to have been the case that because the European Regulation had a marked impact and was applicable to all European Members States (save for Denmark), it slowed the rate at which the Hague 1996 Convention acquired signatory countries. In fact, the UK only signed the 1996 Hague Convention in 2012. When the United Kingdom first became a signatory country of the Hague 1996 Convention, its applicability as a practitioner, I would say, was limited and rare. It was only in very unusual cases when we needed to apply the Hague 1996 Convention, namely when we were dealing with cases where the countries were not members of the European Union, but were signatory countries of the Hague 1996 Convention.

I remember my first case was an application for the recognition of an English order in Russia. It was a very well-known case; it was in the national media because it was the first case where Russia applied the Hague 1996 Convention with the UK. In that case, there were 3 siblings, 2 of whom were retained in Russia by the father, at a time when there were welfare proceedings live in England and Wales where the children were habitually resident. We applied to the English Court, the High Court, for a declaration that the children were habitually resident in England and that they should be returned immediately. That order was recognised and enforced by the Russian courts – not without difficulties – but ultimately the children returned with the mother to England following the successful application of the Hague 1996 Convention by the Russian courts. It was a very useful instrument at the time because Russia had not signed the 1980 Convention so it was incredibly helpful to have the Hague 1996 Convention to seek the Recognition and Enforcement of English orders in that situation.

We used it again for a removal of children from Morocco to the UK, again a non-EU country. The children were ordered to return to Morocco under the 1980 Convention, but the English court put in place some protective measures under Article 11 of the Hague 1996 Convention for their return to be safe.

> *Article 11*
> *(1) In all cases of urgency, the authorities of any Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take any necessary measures of protection.*
> *(2) The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the*

authorities which have jurisdiction under Articles 5 to 10 have taken the measures required by the situation.

(3) The measures taken under paragraph 1 with regard to a child who is habitually resident in a non-Contracting State shall lapse in each Contracting State as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question.

Those protective measures were recognised and enforced by the Moroccan courts even before the children were physically back in Morocco. This is another example of how useful the Hague 1996 Convention is for international families and how well it was applied by the English courts and other signatory countries. It was used very rarely; only when we had a case with a non-EU member state which was a signatory country to the Hague 1996 Convention.

However, everything changed following Brexit, that is to say when the United Kingdom left the European Union as a Member State. I think the best present for the Hague 1996 Convention in its 25th Anniversary has been Brexit. If there is anything positive about Brexit, I have to say it is that the main instrument that we now apply in England and Wales for international children's cases is the Hague 1996 Convention. It is a very valuable and very helpful instrument.

Having considered the history of the Hague 1996 Convention, now that we have returned to the present I thought it would be interesting to highlight those articles of the Convention that have become instrumental and very significant for the protection of children in international relocation cases or international cases of access or custody.

Jurisdiction

When we are talking about relocation, we know that we are dealing with the removal of a child from one jurisdiction where the child is habitually resident to another country. That may be with the permission of the parent who has parental responsibility or with a court order. For the parent who is going to be left behind, when permission is granted, what is often a concern is which country is going to be dealing with the future of the child if there is a disagreement again. Certainty is something that Article 5 of the Hague 1996 Convention provides.

Article 5

(1) The judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child's person or property.

(2) Subject to Article 7, in case of a change of the child's habitual residence to another Contracting State, the authorities of the State of the new habitual residence have jurisdiction.

Article 5 makes it very clear that the court that will have jurisdiction is the court where the child is habitually resident. This is not linked to a certain period of time, which I think is very wise. This is therefore something that is really helpful and provides a lot of security compared to other instruments where the habitual residence is linked to the passage of time.

When a client asks you to explain to them what habitual residence for a child is, I normally use the example of when a child changes schools in the same city. Some children move to a different school and within a couple of days or a couple of weeks they are fully integrated in the new school. This is sometimes because of the circumstances around that child, their family, friends and language or subjects that the child is going to be studying in the new school. In other cases, a child can change schools and it takes months for that child to integrate and to settle in the new school. That is why I think is very healthy that the Hague 1996 Convention has not defined habitual residence and has not linked habitual residence to

a passage of time. A child can become habitually resident in days or in months; every case is different.

We know that in the European context we follow the jurisprudence of the European Court of Justice, and we determine jurisdiction by assessing whether there is a degree of integration in the new country. It is a factual examination of every single circumstance of a child. As I said and I repeat again, I really applaud that Article 5 is so clear on jurisdiction as this provides a lot of security for international families when there is an international relocation.

Another issue that I wanted to address whilst dealing with jurisdiction is the fact that the Hague 1996 Convention limits the prorogation of jurisdiction. This is also very helpful because as a practitioner, we know from other instruments that the prorogation of jurisdiction, under which the courts where the child was habitually resident before a lawful removal retained jurisdiction, did not provide any legal certainty to international families. We know that in practice and in reality, those courts are not the best courts to be dealing with a child welfare issue because the child is not living in that jurisdiction.

Another jurisdiction issue is that it is not linked to timing; the Hague 1996 Convention does not provide *perpetuati fori*. For example, in the European instruments referred to before, following the lawful relocation of a child to another country, the country where the child was habitually resident retained jurisdiction for 3 months to deal with access rights. Again, I do not think that provides legal certainty to international families and it is something that the Hague 1996 Convention does not provide for which I think protects international families better.

Recognition and enforcement

When we are dealing with international contact cases, I would like to highlight the value of having the assistance of recognition and enforcement provisions of the Hague 1996 Convention. It is not an automatic recognition; you first need to seek a declaration and then enforceability. Article 23 of the Hague 1996 Convention covers the issue of recognition and assists by providing grounds for non-recognition. In practice, it becomes very helpful because it is not such a wide scope when determining non-recognition of orders made by other signatory countries of the Convention.

Article 23

(1) The measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States.

(2) Recognition may however be refused -

a) if the measure was taken by an authority whose jurisdiction was not based on one of the grounds provided for in Chapter II

b) if the measure was taken, except in a case of urgency, in the context of a judicial or administrative proceeding, without the child having been provided the opportunity to be heard, in violation of fundamental principles of procedure of the requested State;

c) on the request of any person claiming that the measure infringes his or her parental responsibility, if such measure was taken, except in a case of urgency, without such person having been given an opportunity to be heard;

d) if such recognition is manifestly contrary to public policy of the requested State, taking into account the best interests of the child;

e) if the measure is incompatible with a later measure taken in the non-Contracting State of the habitual residence of the child, where this later measure fulfils the requirements for recognition in the requested State;

f) if the procedure provided in Article 33 has not been complied with.

Another thing that I wanted to highlight is the situation when we are dealing with international access orders. If you would like an order to be recognised and enforced in another signatory country of the Hague 1996 Convention, you can use Article 24.

> *'Article 24*
>
> *Without prejudice to Article 23, paragraph 1, any interested person may request from the competent authorities of a Contracting State that they decide on the recognition or non-recognition of a measure taken in another Contracting State. The procedure is governed by the law of the requested State.'*

I think this is an extremely helpful provision because even before the court where the children are habitually resident makes an order that will be ultimately recognised or enforced by another signatory country of the Hague 1996 Convention, it can ask that country to confirm that the order will be recognised and enforced in that jurisdiction. I think this is another article that provides a lot of certainty and reassurance to parents in international custody or access cases. More importantly, it provides protection to children because that child is going to travel to another country and before they travel, the parents will know that the decision taken by the country where he or she is habitually resident will be recognised and enforced in the country where he or she is travelling to. This is what I wanted to highlight for relocation cases, access and contact cases. Those articles are so helpful and provide so much certainty and legal security to international families.

Before I conclude, I want to again congratulate the Hague Conference on this anniversary. There are now I believe 53 signatory countries to the Hague Convention. Let's hope that before the 50th Anniversary we will have another 52. I do not understand why those countries that have signed the 1980 Convention on the Civil Aspect of Child Abduction have still not signed the Hague 1996 Convention. The two instruments complement each other and between the two of them provide a lot of certainty and protection to children worldwide. From my humble voice on this anniversary, I invite countries to consider signing the 1996 Convention to protect children internationally within the countries. Thank you so much for your attention and again, congratulations to the Hague Conference on this anniversary.

Justice Hassan Brahimi

Justice Hassan Brahimi Ph.D. is an expert in private international law and, between 2012 and 2018, was the representative of the Moroccan Central Authority under the 1980 Child Abduction Convention. Justice Brahimi is a Professor at the Judicial Institute in Morocco and at the Faculties of Law.

Remarks of Justice Hassan Brahimi

Excellencies, dear participants, I would like at first to thank you warmly, the organisers of this meeting. I am very proud to participate with you in this meeting that is dedicated to celebrate 25 years of the HCCH Child Protection Convention. This convention, which means a lot to me as a Moroccan, because my country contributed to its drafting, and is considered the first country to sign it.

Regarding the topic of my intervention, I was assigned by the HCCH to describe kafala in the context of the HCCH 1996 Child Protection Convention. In fact, a topic like this needs some time to discuss its various aspects, but I will try to focus on some of the problems raised by the kafala at the international level. But before that, let me remind you of the relevant requirements, writing the kafala under the HCCH 1996 Convention.

As it is now, the Convention treated the following. Firstly, referring to kafala as one of the measures intended to protect the child's person or money, ensure recognition and implementation of safeguards right to kafala. Establishing cooperation between the authorities of the States parties in order to ensure better protection for children completing social reports regarding children placed under kafala. The obligation of States to take protective measures for the benefit of children under kafala, adoption of the principle of […] consultation for the receiving states of the kafala before making a decision to assign it (Article 33). After this reminder, I will briefly review some of the problems posed by kafala at the international level as follows.

Firstly, kafala and the right to family reunion. By observing the practices of the administrations of many States parties to this Convention, it can be noted that they refuse to grant the rights of family reunion to children under kafala. This position constitutes discrimination between children under kafala and children compared to other situations such as adoption, especially since the term kafala has become known in international conventions like the HCCH Child Protection Convention and the Convention on the Rights of the Child.

The second point is converting kafala to adoption. Some families would take children under kafala once the child has traveled to the country of residence, or after a period of time has passed, resort to applying before the courts of the country in order to convert the kafala into adoption. This situation is inconsistent with the Hague Convention of 1996, considering that the status of the child […] is recognised on the territory of the States parties, in accordance with the provisions of the Convention in this regard. And any child from kafala to adoption in the status of a child constitutes a violation of the Convention. It is opposed also to the Convention on the Rights of the Child of 1989. In particular, Article 20, which states that consideration of the ethnic, religious, language, and cultural origin of children deprived of family care must be given consideration. It is in conflict with the Hague Convention of 1993 on Child Protection and Cooperation in International Adoption, especially Article 4, which requires that adoption be approved by the child's State [of origin].

Number three, we can find another discrimination regarding the child's rights and the kafala in family benefits. In this context, the child under kafala doesn't benefit from the financial allocations provided by the States of residence compared to the adopt[ed] child. Finally, I would like to note the position of the European Court of Human Rights and its decision used in 2012, which stated that it is not possible to adopt a child who has been received in the framework of kafala. And that's the French law prohibiting the authorisation of adoption if the national child law prohibits adoption, conflict with rights to respect for private and family life. I think this is a good decision, because it took into account the specificity of the kafala system and preserved the cultural diversity of the child. Thank you very much for your attention.

Joëlle Schickel-Küng

Joëlle Schickel-Küng is Co-Head of the Private International Law Unit at the Federal Office of Justice in Switzerland. In this function, she is the Head of the Swiss Federal Central Authority under the HCCH 1996 Child Protection Convention as well as the HCCH 1993 Intercountry Adoption Convention. She holds a Master's degree in law from the University of Fribourg in Switzerland, where she was also admitted to the bar. She was Co-Chair of the Seventh Meeting of the Special Commission on the Practical Operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention that took place in The Hague in October 2017.

Joëlle Schickel-Küng est Co-Cheffe de l'Unité droit international privé au sein de l'Office fédéral de la justice en Suisse. Dans cette fonction, elle dirige l'Autorité centrale fédérale suisse sous la Convention de La Haye de 1996 sur la protection internationale des enfants ainsi que sous la Convention de La Haye de 1993 sur l'adoption internationale. Elle est titulaire d'un master en droit de l'université de Fribourg en Suisse, où elle a également obtenu son brevet d'avocat. Elle a co-présidé la Septième réunion de la Commission spéciale sur le fonctionnement pratique des Conventions Enlèvement d'enfants de 1980 et Protection des enfants de 1996 qui s'est déroulée à La Haye en octobre 2017.

Placement of Children across Borders in the context of the HCCH 1996 Child Protection Convention

Hello and good day to everybody. It is my pleasure and honor to be participating today in the event celebrating the 25th anniversary of the 1996 Child Protection Convention. My name is Joëlle Schickel, and I am co-head of the Private International Law Unit at the Federal Office of Justice in Switzerland. This unit is amongst others Central Authority for the 1996 Convention. Today my presentation will focus on Article 33 and the topic of cross-border placement of children.

Article 33 provides for what I call a dynamic cooperation procedure in cases of intended placement of a child from one contracting state to another. To me, Article 33 has a special place in the Convention. I would like to mention what makes it so unique. First of all, it is the only procedure for obligatory consultation provided by the Convention. Failure to follow the procedure might lead to the non-recognition of the placement decision (see Article 23, paragraph 2(f)). The second point which makes it so unique is that except the general article on scope (Article 3), it is the only article of the Convention that mentions kafala. This shows the general globally inclusive approach of the Convention trying to set bridges between different legal traditions and systems. This also makes it clear how broad the concept of placement under the Convention is, the heart of it being that the child will be entrusted to the care of a family or institution, short term or long term in another country. Regardless of the legal rights of the foster family, the placement of that child is very broad in scope, they might simply have the day-to-day care with all the rights and obligations being left to the parent or the state, or on the other end become the full guardians with parental authority. What is clear, however, is that two types of placements are excluded from the Convention: the ones with a view to an adoption is obviously being covered by the 1993 Hague Convention. The other one excluded from the scope are placements taken as a result of penal offences committed by children.

I would like to give you some practical examples of placement situations. Before I do that, let me remind you that Article 33 only applies to formal placement decisions taken by authorities. Therefore, even though they are frequent in practice, the informal placement between family members for example, without the involvement of an authority, do not fall under the scope of Article 33. But of course, it is clear that this decision or this informal placement will have to respect the laws of both states in terms of what is needed from the foster family, for example, the need for a placement authorization, etc. I did mention in that context of intra-family placement where there are no decisions, they do not fall under Article 33. But even if it is an intra-family placement, if there is a formal decision, they do fall under the scope and this was confirmed in conclusion 42 of the Special Commission of 2017. What type of placements are we talking about? The first category I would say are short- or medium-term placements, typically in a specialised institution, for example to treat specific types of mental disorders or other types of problems that there is just no such institution in the state that takes the placement decision. Another type of these short-term placements is for youth with certain difficulties that you want to put in a specific educational setting outside of their regular home, and this could be done abroad as well in a specialised institution typically, or in foster families.

Our second type of placement is very different in scope. They are long-term or even permanent placement, in an institution or foster family. It could be, for example, the case of a family that moved, let's say, from Portugal to Switzerland. Then something tragic happens to these parents and we are looking to return the child actually back to the country of origin where they have most family and the familiar setting, etc. It could be a placement in the third country, maybe the family has ties there or there is a specific reason to be in that other country. It includes cases of transfer of parental authority to relatives abroad, or at least that's my personal opinion. As I said, at the start, the scope is quite broad and includes, for example, kafala, which gives a lot of rights to the family taking the child in their care. Therefore, what is

important is not to look at the denomination in the other country of what is being transferred, but the actual fact that there is a child that was used to live in one country and that is being entrusted to a new family in another country, regardless of what the denomination is.

The procedure set out by Article 33 is relatively clear, but at the same time, Article 33 doesn't give a lot of details when you compare it to the 1993 Adoption Convention, which goes a lot more into details of who does what, when, etc. Article 33 goes to the essential, which leaves a lot of flexibility but as well, that's always the problem that it might create uncertainty. So, for the procedure, the country of habitual residence of the child that envisages a placement decision must provide a report on the child as well as the reasons for the proposed placement. This should be as comprehensive as possible. Of course, depending on the age of the child, the voice of the child has to be given consideration and this is of course, extremely important. So, there is this request that comes from state A and goes to the authorities of state B. They will have to assess different aspects in order to give their consent to the proposed placement.

First of all, the placement setting. Is the foster family or the institution suitable, do they have all the necessary authorizations under national law, etc.? You have to also look at migration aspects. This has been also mentioned in the past as special conditions for example, that this is an important part that the whole placement project does not fail in the end even though everybody agrees, because on the migration level, there might be some objections or problems. And third of all, the placement plan as a whole. We need to look, what is the situation is the state of origin? Does this respect subsidiarity, is this really the best option for the child to be taken from their familiar setting to this other place? So, on top of all this, of course, there are also the more practical elements to be looked at. How are the costs of the placements being covered, by whom? The more practical aspects of who will bring the child from A to B? How is all of that going to work? Once the placement has been approved by the future country of new habitual residence and there has been therefore, an order in the country of habitual residence, this raises the question of once the child actually moves to the new country, new family, for example, if the placement decision has elements, or has a name or it takes the form of a measure which is very foreign to the system of the new country, should there be a conversion of some kind into national law? When it is a long-term or more permanent placement, it is clear that there is a change of habitual residence, therefore of competence, which would allow the new state to take certain measures to adapt the measure so that it fits as best as possible and so that the child is well protected. To that there was a conclusion 31 of the Special Commission of 2017 where the Special Commission noted that in case of a change of habitual residence of the child, for example resulting from a long-term cross-border placement, the measures of protection established in the former state of habitual residence will subsist in the new state of habitual residence based on Article 14. However, the law of the new state of habitual residence will govern, from the time of the change, the conditions of application of the measure taken in the state of the former habitual residence; this is Article 15.

If necessary, the competent authorities of the new state of habitual residence could adapt the measure taken in the former state of habitual residence or modify it in accordance with Article 5(2). The authorities of the new state of habitual residence may consult, if necessary, the authorities of the state of the former habitual residence when adapting or modifying such measures. This is of course, always an exercise of balance between respecting the core of the foreign decision of placement and the rights and obligations deriving from it, but at the same time adapting the measure as needed in order for that child's life and their family, their foster family for example, to be as easy as possible in the new country, especially if it is a long-term or permanent placement. For example, if kafala as an institution is not known in the other country or if in one country, it is not possible for parental authority to be transferred to people other than the parents, to an uncle, it might be easier to adapt the decision into, for example, guardianship that gives the same rights and obligations, but that will make it easier in day to day life, for that child and for the family.

In conclusion, the placement of a child abroad, especially if the placement is long-term, is a decision that has a defining impact on the child and on their future. The cooperation procedure set out in Article 33 of the Hague Convention is therefore crucial in order to ensure that the measure respects the child's best interests and only a Convention such as this one enables a direct and early cooperation between the authorities in both states in order to take the best measure for this child's best interests and safety. Therefore, we can only encourage even more states to join in to benefit from this enhanced cooperation mechanism. Thank you very much.

The Honourable Justice Baratang Constance Mocumie

Justice Mocumie is presently a judge in the Supreme Court of Appeal (SCA); (the second highest appellate court in the Republic of South Africa), Bloemfontein, South Africa. She acted in the Labour Appeal Court (LAC) and the Competition Appeal Court (CAC) as well after her appointment as a Judge of the High Court of the Free State, Bloemfontein prior to her appointment to the SCA. Justice Mocumie is the Primary Liaison Judge for the Republic of South Africa, of the International Hague Network of Judges and a member of the HCCH Experts' Group for the Family Agreements Involving Children project.

She has presented on several platforms nationally, regionally and internationally on Family Law with special focus on international child abduction and has served as a Guest Lecturer on Family Law (Hague Convention, International Child Abduction, the role and responsibilities of a Liaison Judge) at the University of the Western Cape. Justice Mocumie obtained a Bachelor of Juris (BJuris) degree from the University of Zululand, an LL.B. from the University of North West (Maheking Campus) and an LL.M. specialising in Family Law from the University of South Africa.

Parental Responsibility under the HCCH 1996 Child Protection Convention

Dear colleagues, Hague Network of Judges, Central Authorities across the globe and the leadership of The Hague Conference, family law practitioners, representatives of Member States of various Hague Conventions, ladies and gentlemen from respective disciplines in the context of Hague Conventions, good morning, good afternoon, good evening.

I am Baratang Constance Mocumie. I am a judge in the Supreme Court of Appeal of South Africa in Bloemfontein and a liaison judge in the International Hague Network of Judges. I am pleased to join The Hague Conference on Private International Law (HCCH) today to participate in the HCCH Approach Global Event, in celebration of the 25th anniversary of the 1996 Child Protection Convention (hereafter referred to as the Child Protection Convention).

The Child Protection Convention comprises of seven chapters which have been explained and summarized by the Hague Conference in "The Explanatory Note on Specific Matters Concerning the 1996 Convention". My task is to focus on the concept of "parental responsibility", in its context, as I do in what follows. When examining parental responsibility in the context of this Convention, it may be easy for newcomers and veterans alike to get lost within the broad Convention meaning, or to seek clarity on the practical application of the Convention provisions concerning parental responsibility, or to look into the development of national laws, legislations and terminology encompassing "parental responsibility".

While these are important considerations, I take this opportunity to invite everyone on this platform and beyond to set these mechanics aside for a moment. To take a step back to reflect on the words themselves, and to explore our ordinary instincts about them. What does it really mean to wield the responsibility of a parent? What values, behaviours, or attributes come to mind?

My personal instinct is to start by thinking about "parental responsibility" as a fundamental human role and relationship, that of the caregiver to a child. From this idea, we can begin to think about the many forms of support that a caregiver provides to a child—we would hope in the best of circumstances that children receive the physical, emotional, and spiritual support they need to live rich and fulfilled lives, but we know from our line of work—and perhaps from our own lived experiences—that the performance of "parental responsibility" is not always so optimal. Nor should we bind ourselves to thinking of parentage in tropes that demand a picture-perfect upbringing. The parent-child relationship, the structure of the nuclear family, the day-to-day work that is required to meet the shifting and growing needs of children: these are complex and individualized matters that escape our tendency to categorize.

And the benefits accruing from the exercise of "parental responsibility" are all the more crucial in situations where the family relationship is precarious or fragile. Families are created, they separate, and perhaps later join together in new configurations. Families are split across borders, for various reasons; voluntary or involuntary. In the absence of a nuclear family, "parental responsibility" can also be conferred on relatives, grandparents, or other trusted figures.

I think you will agree with me that the complexity of parent-child relationships is reflective of our changing world, as well as re-framing over the years of how societies perceive the role of parents with regards to children. Turning to this Convention and related instruments, we can see that a similar growth occurred on the international stage, as well as regional stage embodied in treaties of both public and private international law.

First, I invite you to note the timing of the Child Protection Convention, which has siblings in the 1980 Child Abduction Convention and the 1989 UN Convention on the Rights of the Child, what we abbreviate as UNCRC, which came into force in 1990. At the risk of offending some

of the "youngest children" in the audience, I observe the youngest often benefit greatly from watching their older siblings grow up. And so too ("as the youngest child") the Child Protection Convention has benefitted from the experiences of the 1980 Child Abduction and the 1989 UN Convention on the Rights of the Child, which helped attune the focus of the international community on both practical and normative ways to secure the best interests of the child.

The preamble text of the Child Protection Convention explicitly references the UNCRC as an inspiration. Furthermore, the explanatory report attributes the term "parental responsibility" directly to the UNCRC's article 18 by providing that, I quote: "States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child." Here, the UNCRC describes "parental responsibility" as a common duty of both parents.

The text continues, I quote: "Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern." We see here the famous "best interests of the child" standard. Observe that the parent or legal guardian holds specific responsibility for the upbringing and development of the child.

These ideas are a needed change from several decades earlier, where parents did not hold "responsibility" so much as they held authority and command over children. The 1961 Protection of Minors Convention, for example, used the term "relationship subjecting the infant to authority" in its non-authoritative English text.

As we celebrate 25 years of the Child Protection Convention (alongside its siblings as I mentioned earlier on), it is important for us to take a step back and reflect also on the Africa continent. Its approach as well as its embracing of the Child Protection Convention. The African Charter on the Rights and Welfare of the Child, also known as the African Children's Charter, was adopted in 1990 and entered into force in 1999. We would remember that during the negotiations for the Charter began in 1988, its drafters had the opportunity to develop a regional instrument that acknowledged the unique experiences of Africa while promoting broad principles that are also recognized in the UNCRC and the Child Protection Convention.

For example, the best interests of the child are also deemed the primary consideration, and parental responsibility is defined in the Charter to include various duties for the upbringing and development of the child. Article 31 adds that the child holds responsibility toward his family and society, the State, and the international community, subject to their age and abilities. These duties include to work for the cohesion of the family; to strengthen social and national solidarity; to preserve and strengthen African cultural values; and to contribute to the moral well-being of society.

The Charter established an African Committee on the Rights and Welfare of the Child, with the mandate to promote, monitor, and interpret the Charter. In its work and its formal recommendations, the Committee has enhanced regional cooperation and increased harmonization of national laws. Altogether, the African Children's Charter stands as one pillar of the protection framework relevant to Africa, alongside the UNCRC and the Child Protection Convention.

Reverting to the Child Protection Convention itself, looking at "parental responsibility" and its definition in the Convention itself, armed with our greater understanding of how we reached this point.

Article 1 paragraph 2 of the Child Protection Convention identifies parental responsibility as "parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child."

Consistent with our initial reflections, supported by our brief look at the history of international instruments, as well as the regional instrument that of the Africa Charter, we understand that the authority referred to in this definition is not the authority for a parent to further his or her own interests—but the authority to act for the care, education, health, stability, and promotion of the child.

I have to step back here, reflect and share the South African approach. I note that the Child Protection Convention definition has an autonomous meaning, in order to widely accommodate different systems of "parental responsibility" found in different jurisdictions, including systems which do not refer to parental responsibility using the exact same terminology. Furthermore, the Child Protection Convention also directs us to national law, particularly the law of the child's habitual residence, as the source of substantive law on attribution, extinction, and exercise of parental responsibility.

The constitutional framework of South Africa also reflects changes in the perception of "parental responsibility". The enactment of the Final Constitution in 1996 (the Constitution), including its Bill of Rights, brought about an expansion of rights afforded to children, including their rights to equality, dignity, housing, social security, and education. Section 28 of the Constitution contains specific protections for children, referring to the child's right to "family or parental care, or appropriate alternative care when removed from the family environment".

I also draw your attention specifically to section 28 of the Children's Act 38 of 2005 (the Children's Act), which deals with court-ordered termination, extension, suspension, or restriction of parental responsibilities and rights. Here, I quote relevant language. When courts are considering an application regarding modification of "parental responsibility", section 28 subsection (4) of the Children's Act provides that, and I quote, "the court must take into account (a) the best interests of the child; (b) the relationship between the child and the person whose parental responsibilities and rights are being challenged; (c) the degree of commitment that the person has shown toward the child; and (d) any other factor that should, in the opinion of the court, be taken into account".

Putting these factors together, we see that in practice South Africa has built the modern ideals of family responsibility into its law. The best interests of the child, of course, is the overriding principle, again following the UNCRC. We look also to the relationship between the child and the holder of "parental responsibility", as well as the degree of commitment that the person has shown toward the child. It is reassuring that this language holds the parent-child relationship in clear view, and looks for the explicit commitment of the person holding responsibility. This creates the opportunity for the courts to consider what kind of relationship is needed for the growth of the child, and to evaluate whether the holder of responsibility is up to the task of providing for those needs.

South Africa, unfortunately, is not yet a contracting party to the Child Protection Convention. Nonetheless, the values built into its laws are consistent with international human rights standards and completely compatible with the Child Protection Convention. South Africa has the opportunity to take a leading role in defining child protection in the region, using its accession to the Child Protection Convention as a further signal of its commitment to its youth and the youth of the region. Africa is the world's youngest continent. UNICEF data projects that Africa's child population will reach 1 billion by 2055, making it the largest child population among all continents. Joining the Child Protection Convention would equip South Africa with a valuable tool for the protection of children—a tool ensuring that the holders of parental responsibility, in whatever form or name they may take, are positioned to prepare children for the world that awaits them.

Once again, I wish the Child Protection Convention a happy 25th anniversary, and I look forward to its continued growth and development. Thank you for joining me in this celebration. Ke a leboga (In Setswana, my home language).

Why Join the HCCH 1996 Child Protection Convention: Perspectives

Melissa Kucinski

Melissa Kucinski is an international family law expert based in Washington, D.C. She is a long-standing member of the U.S. Secretary of State's Advisory Committee on Private International Law and chaired International Social Service's efforts to create a global network of international family mediation resources. She is currently co-chair of the American Bar Association's and New York Bar Association's International Family Law Committees. She is a fellow of the International Academy of Family Lawyers, and was recently elected to its Board of Governors. Her newest book, Family Law Across Borders: Cases and Comments was released in 2021 by West Academic.

Remarks of Melissa Kucinski

It may seem counterintuitive that I am here today celebrating the 25th anniversary of the 1996 Hague Child Protection Convention. I am in the United States, after all. I come from a world without the 1996 Convention. Yet, I do celebrate this momentous occasion and am grateful to be able to share my uniquely American perspective on what I see as the essence of this private international law treaty.

When I say "essence," I am focused on one of the key reasons the United States signed this treaty in 2010, even though it has yet to proceed in ratifying it. That essence is the fundamental importance of having consistency between countries in recognizing and enforcing court orders that impact our children. Having this consistency is vital to ensuring stability for these children, dissuading parents from unilaterally relocating to other countries for sympathetic forums and laws, and giving families more clarity and certainty in how their family disputes will be resolved. While the United States may not yet have the 1996 Convention, we actually have a fairly structured way of addressing this fundamental issue within our domestic law, and we do it in a way that respects the mobility of families in today's world. So, today, I will share some of the U.S. perspective on ensuring consistency for families in our legal system.

Let me start with a story. A mother and father live in the U.S. state of Maryland. They have a son. The mother is American. The father is Spanish. These two parents love and dote on their son. He has the best of all worlds. He spends significant time in Maryland and in Spain. He attends a bilingual school so that he is fluent in English and Spanish. He enjoys the snowfall in January in the mountains in Western Maryland and the warm sunshine during summers on the coast of Spain.

When he is about 8 years old, his parents, for whatever reason, no longer want to be in a relationship. The father wants to return to Spain to be near his family. The mother does not want to leave her job in Maryland. Both want their son to be near them for his education. What do they do? They are at odds, with each wanting their son to live primarily near them. They, like so many families worldwide, seek the help of a court.

Therefore, we come to our first question: what court in what country does this family go to for help? From a U.S. perspective, I would say that these parents need to approach the family courts in Maryland, where this child was born and has primarily lived his entire 8-year life.

Why do I say this? Every U.S. state has its own version of a uniform law related to jurisdiction over a child's custody. Under this uniform law, Maryland is the child's *home state*, and the child's home state is the proper venue to resolve his custody and well-being. What is a home state? Our uniform law defines it as the place where a child has lived with a parent for the last six months, excluding any temporary absences from that place (such as summer holidays to Spain).

Now, what if the facts were reversed, and this family lived primarily in Spain, and spent summers in Maryland, sailing on the Chesapeake Bay? Let's also assume that during the most recent summer in Maryland, the Mother filed a custody lawsuit in the Maryland courts. What would happen next? Under the same uniform law, the Maryland court should conclude that Spain is the child's *home state*, and that a Spanish court should resolve this child's custody. Only if the Spanish court decides it will not, could the Maryland court consider resolving the dispute.

This brings forward a slight twist in the laws, and how U.S. law intersects with the 1980 Hague Child Abduction Convention, which is ratified by the United States. If the Mother filed her custody lawsuit in Maryland with the intention of remaining in Maryland and not returning to Spain with the child at the end of their summer holiday, the Father could use the 1980 Hague

Child Abduction Convention by filing a lawsuit in the Maryland courts, requesting that the child be returned.

The Father, however, may have a separate, second option to get his son back to Spain, in this reversed scenario. If the Father was able to secure a Spanish custody order, and the Mother had sufficient notice of the Spanish proceedings, the Father could again use the U.S.'s uniform law, bring a copy of the Spanish custody order to the Maryland courts, and register the order so he can ask the Maryland courts to enforce it, presumably returning the child to Spain if that is what the order so requires.

Our U.S. uniform law has this streamlined registration process in place. And, as you just saw with my hypothetical, a U.S. court will register, and enforce, a foreign country's custody order under this uniform law, without revisiting the order. As with any rule, there are some exceptions, but these exceptions are limited. The key limitation is how the foreign country had jurisdiction to issue its order. So long as the foreign court exercised jurisdiction under facts that would similarly afford jurisdiction to a U.S. court (what our uniform law calls "in substantial conformity") there should be almost no question that our U.S. court will accept the custody order.

What does it really mean for a foreign country's jurisdiction laws to be in "substantial conformity" with those in the United States? To put it, perhaps too, simply, the child needs to have some actual, tangible connection to the place that is deciding his or her well-being. In most cases, that is the child's "home state," but, if there is no home state, then the uniform law looks for the location where a child has significant connections. It is not "substantial conformity" to let a parent file a lawsuit while on a vacation, ignoring the authority the child's home state has over that child. It is not "substantial conformity" to let a parent who abducts their child immediately file a lawsuit upon landing in that country. So, while our terminology is a little different, in essence, our laws are very similar, already, to the 1996 Convention's recognition that a child's habitual residence has the authority to take measures to protect a child.

There is a difference, however, between the existing uniform law throughout the United States and the 1996 Convention, and that difference arises when it comes to modifying an existing custody order. But, if you bear with me, I want to explain a relatively important concept in our law. Our uniform act related to custody jurisdiction did not come about to address issues of international custody – that is merely a benefit of the way our act was drafted. Our uniform act was primarily written to address the fact that the United States is a massive country. It spans four time zones when you look at just the continental United States. If you add Alaska and Hawai'i, then the extremes of the United States are 6 hours apart. It is faster for me to fly from Washington, D.C. to Amsterdam than it is to fly to Honolulu, and, frankly, with better flight options. Parents move. They move for jobs, family, financial reasons, or for a new start after a bad relationship. Their children move with them. Since the U.S. family law system is set up so that each individual U.S. state – all 50 of them – and then our separate U.S. territories have their own family courts, family judges, and family laws, it was important to provide for consistency and uniformity within our own country first. It was important to ensure that a parent did not move to the neighboring state because its laws or the temperament of its judges could give them a better result in their custody lawsuit. This is one of the underlying premises of the 1996 Convention. It is no surprise that the current version of our uniform law was being drafted at the same time as the 1996 Convention.

To ensure that consistency – that uniformity – our uniform law puts in place a relatively novel concept when it comes to the jurisdiction where a parent can modify a custody order that they already obtained from one court.

What if I told you that the father, from my prior story, was not from Spain, but was instead from Virginia, a state that borders Maryland. That child may spend significant time in both states. In some situations, depending on the towns in each state, one parent may live in

Maryland and the other in Virginia, and the child could spend equal time in both states. If the Maryland family court issued the initial child custody order, and that child spent one week with his mother in Maryland and the next week with his father in neighboring Virginia, where could this family go if they needed to modify their Maryland custody order? And so is the concept of "exclusive, continuing jurisdiction." In our uniform law, Maryland would have the exclusive authority to continue modifying the custody order it issued, until everyone left the state of Maryland – the child and both parents – or until the Maryland court determines that the child no longer has a significant connection to Maryland and there is no longer substantial evidence in Maryland that relates to the child's care, protection, training, and personal relationships.

How does this ultimately play out for an international family? It means that a U.S. family court that issued a custody order may deem itself the sole tribunal that can modify that order going forward, even if the child is living overseas, and even if the child has established a new habitual residence or home state. In other words, if our family litigated its custody case in Maryland, and a Maryland judge ordered that the father could relocate their child to Spain, the fact that the mother remains in Maryland and continues spending time with the child during summers and breaks in Maryland, means that Maryland courts could still modify the custody order in the future – even years after the child has begun living in Spain.

Ideally, simultaneous lawsuits can be avoided. Multiple courts simultaneously applying their own standards to what is best for a child, parents strategizing over whether they will participate in one or both suits or refusing to abide by the existing custody arrangement, out of fear that the other parent may retain the child. These are things we aim to avoid. One of the benefits of our U.S. uniform law is its mandate for a U.S. judge to initiate direct communication with its foreign counterpart to discuss this issue. Because, it is, after all, about the child, and even if a U.S. court deems itself to have the authority to issue a child custody order, there are rules that permit the U.S. court to decline to do so and defer to the foreign court. This is what it is about. Uniformity. Deference. Respect. And, most importantly, a child. Having separate legal systems, both that intend to protect this child and do what is best for this child, working in tandem. Having consistency between countries in recognizing and enforcing court orders that impact our children.

So, happy anniversary to the 1996 Hague Child Protection Convention, and my deepest regards for my colleagues at the Permanent Bureau of the Hague Conference on Private International Law for all of their tireless work promoting this treaty.

Onyója Momoh

Onyója Momoh holds a degree in Economics and Law from the University of Leicester (2009), LL.M (2012), and in 2014 was awarded the Elphinstone Ph.D. Scholarship to complete her doctoral thesis on Article 13(1)(b) of the HCCH 1980 Child Abduction Convention (University of Aberdeen). She is a barrister and academic expert in international child and family law, practising from chambers in London, and a post-doctoral fellow on the EU-funded POAM project. Onyoja is a past committee member of the British Nigeria Law Forum, the Child Abduction Lawyers Association (UK) and inaugural chair of the Nigeria Group on Private International Law. In 2021, she was an invited expert to the UK House of Lords Justice and Home Affairs Committee roundtable, undertook a joint mission to Abuja, Nigeria with the Secretary General of the HCCH, has accepted assignments as a UN volunteer combating GBV and VAWG and is a trustee of the GlobalARRK charity (international custody disputes).

The case for acceding to the HCCH 1996 Child Protection Convention: Views on Nigeria

There is a well-known proverb. I am sure that many have come across it, the saying it takes a whole village to raise a child. This proverb exists in many African languages; it conveys a message of devotion, self-sacrifice, sharing, supporting, family relationships and growth.

To echo the African Charter on the Rights and Welfare of the Child, the promotion and protection of the rights and welfare of the child also implies the performance of duties on the part of everyone…everyone…. So yes, a village to raise a child, a village to protect a child. That village includes the nurturing mothers and fathers, sisters and brothers, cousins, grandparents, godparents, aunties, uncles, and when I say aunties and uncles, that usually means anyone who is 5 years your senior… the collective few or many trying to ensure that the best interest of that child is at the foremost in all actions.

A village to protect a child. But see, in my vision that village includes those who champion the legal protection of a child to preserve their freedom, dignity, and security.

The Nigerian Child Rights Act 2003 expressly states that a child's best interest shall be the primary consideration and be of paramount consideration in all actions. That village of people signifies any and everyone who has the power to refine and strengthen measures that will promote the protection of the Nigerian child or any child living in Nigeria.

It is fair to say that there have been many efforts on an international scale on the protection of child rights in Nigeria and these have included adopting the UN Convention on the Rights of the Child with high level delegation in the government (i.e., the Ministry of Women Affairs) pushing follow-up measures and progress such as enacting the Child Rights Act 2003 and adopting this law in states of the Federation; the Trafficking in Persons (Prohibition) Law Enforcement and Administration (Amendment) Act 2005; the adoption of policies and strategies to strengthen the implementation of the Convention on the Rights of the Child including national plan of actions involving orphans and vulnerable children, health and human rights; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, to the recent inauguration of the Technical Working Group to coordinate responses to ending violence against children, to mention but a few. There is also the National Child Rights Implementation Committee working to coordinate issues of child protection in Nigeria. The goal is clear, protecting children from all forms of violence, including from harmful traditional practices to child labour to corporal punishment.

It is not contentious that child protection and other related issues have been repeatedly highlighted as a priority on the agenda for Nigeria. But it would be simplistic to just say that the time to promote the rights of the child is now, that time was yesterday, and that time is tomorrow and the day after, until all children feel truly protected and safe, wherever they are in the world. Where the objectives of the 1996 Hague Child Protection Convention are concerned, the importance of international cooperation for the protection of children cannot be understated. The reality is that Nigeria is bordered by four countries: Benin, Cameroon, Chad, and Niger and shares maritime borders with several others including Equatorial Guinea and Ghana. Sadly, this reality breeds opportunities for the trafficking of children, as a source, transit, and destination country.

It is one thing to give legal consent to the UNCRC or African Charter, but it is quite another to have the tools to combat and protect these children in the moment that it matters, in these cross-border situations. It has already been reflected upon in the fifty fourth session of the Committee of the Rights of the Child where in the reports and observations of Nigeria, the committee commended the frank and self-critical nature of the report, noting concerns that the link between human trafficking and international protection obligations were inadequate,

particularly concerning children trafficked over international borders. There is a lacuna in the system, and it needs to be addressed. The time was yesterday, today, tomorrow and every day after until change comes.

Nigeria in sub-Saharan Africa comprises of 36 states brought together by a federal system of government and is Africa's most populous country. Recent surveys reveal that children under the age of 15 years, one of the most vulnerable groups, constitute over 40 percent of the Nigeria's population. Coming back to the Child Rights Act 2003, I must emphasise the remarkable efforts in the domestication of national instruments to combat gender-based violence and protect children. In particular, the ongoing UN European Union spotlight initiative for championing and promoting the rights and protection of vulnerable groups including children. Further, Nigeria continues to see progress in the domestication of the Child Rights Act, where although the law has been passed by the National Assembly, the hesitation by some States has meant it has not been adopted by all 36 States. Nevertheless, recent positive news in respect of Kano State which has approved the Child Rights Act and Kastina State having domesticated the Kastina State Child Protection Bill 2020.

The 'Mother Ministry' – a beautiful phrase I came across for the first time in Abuja this summer is the Federal Ministry of Women Affairs and Social Development. The office is responsible for advancing the social-economic, political, civil, cultural rights and well-being of women and children including the girl child. Its mandate is advanced through various collaborations and partners. To quote the Permanent Secretary of the Ministry, 'today's children are the leaders of tomorrow, it is therefore imperative that we provide a conducive atmosphere for our children to excel as they assume the mantle of leadership in the nearest future'.

The Mother Ministry's leader, Dame Pauline Tallen OFR, KSG puts it this way, her office 'is deliberately engaging a participatory approach that aggregates the concerns and priorities of Nigerian children, while ensuring that their human rights concerns are systematically protected'.

It was a privilege to have met with Dame Pauline this summer in a mission to Nigeria in August 2021. After the inaugural event of the Nigeria Group on Private International Law for which I am very fortunate to chair, Dr Christophe Bernasconi, the Secretary General of the Hague Conference suggested that we plan a joint mission to Nigeria.

At the forefront of the mission was the renewed efforts to promote the progressive reunification of private international law in Nigeria, to speak to key Nigerian officials to discuss HCCH matters. It was clear that for meaningful strides, the stakeholder Ministries at federal level was key. At the heart of the mission: our joint endeavours following months of discussions and planning, with special assistance from the Nigerian Ambassador to the Netherlands, as well as the former Director-General of NAPTIP, we were received by and held key meetings with His Excellency, the Attorney General of the Federation and Minister of Justice, Mr Abubakar Malawi SAN; and thereafter with Her Excellency, the Minister of Women Affairs, Dame Pauline Tallen OFR, KSG. It was wonderful to be back in Nigeria, because a few weeks before that in July, I had travelled to Lagos to speak at a 3-day private conference for the Judiciary, Ministries and NGOs, organised by the Lagos State Government in collaboration with UNICEF. The conference was tailored around a capacity building programme for key functionaries as part of efforts towards strengthening child protection and case management.

Where child protection is concerned, at a federal level, Dame Pauline expressed sadness that Nigeria was not yet a part of the Hague Conference, a global community, especially where families and children are concerned. In no uncertain terms, Her Excellency made clear at that meeting that as the Mother Ministry, it cannot be separated from the issue and children must come first, reiterating full support (echoing the support that Dr Bernasconi and I had received from the Attorney General in a separate meeting that day) for the need to accede to all four children conventions (and protocol), including the 1996 Hague Child Protection Convention.

Dame Pauline's observations and full commitment to this initiative will no doubt encourage the international family law community.

The ethnic and cultural diversity in Nigeria should be celebrated, but that diversity does not negate a uniformity in the pursuit of a better and safer future for the Nigerian child or the child living in Nigeria. To align with current realities, there is no international child protection framework in place and that needs to change.

Nigeria is strongly encouraged to improve the international protection of children by membership and ratification, or acceding to the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children. As we know, the 1996 Hague Child Protection Convention has the primary aim of protecting children in international situations and covers a wide range of civil measures of protection concerning children as well as public measures of protection or care. It can also be helpful in situations involving unaccompanied minors, including refugees, asylum seekers and internationally displaced children. Not less importantly, the 1996 Hague Child Protection Convention complements the 1980 Hague Child Abduction Convention in cases where women flee from abusive relationships and rely on the Article 13(1) (b) grave risk of harm exception to return (under the 1980 Hague Child Abduction Convention), arguing that the return would expose the child to a grave risk of physical, psychological harm or place the child in an otherwise intolerable situation. The 1996 Hague Child Protection Convention may enable the safe return of the child and parent with measures that are recognised and enforceable amongst contracting states. In doing so, it enables competent authorities to protect children and cooperate in a variety of cross-border situations. Accession to the 1996 Hague Child Protection Convention will extend the protection of children in and outside Nigeria beyond the Africa realm to the 53 countries including Europe, UK, North and South America, Asia, Australia that are contracting parties to the Convention.

And so, I feel an ongoing responsibility as a practitioner and academic, a British Nigerian, knowing that I am a part of that village to advocate where advocacy is needed: from words to deeds, so that our leaders of tomorrow journey through life with dignity, security, and freedom.

It is always a pleasure to be invited to speak on matters that promote the improvement of the rules of private international law for a cause as important as the protection of children, irrespective of the country or village that they were born into.

Thank you very much for having me.

Edwin Freedman

Edwin Freedman is licensed to practice in the State of New York and in Israel. He is a board member of the International Academy of Family Lawyers and chair of their Amicus Brief Committee. Furthermore, he is a correspondent of the journal *International Family Law* published in England.

Edwin Freedman authored chapters in the following books: *Family Law - Jurisdictional Comparison, 2nd ed.*, edited by James Stewart, published in 2013 by Thomson Reuters and *International Relocation of Children*, edited by Anna Worwood, Thomson Reuters, 2016. He also wrote the article "Rights of Custody: State Law or Hague Law", published in *The 1980 Hague Convention: Comparative Aspects*, edited by Robert Rains, 2014.

Edwin Freedman served as an observer at the Second through the Seventh Special Commission Meetings to review the implementation of the Hague Convention on Child Abduction.

Perspectives on the 1996 Convention from the Outside Looking In

I would like to thank the Permanent Bureau, and particularly Geri, for inviting me to participate to this panel today. Israel is not a signatory to the 1996 Convention on Child Protection. However, we are signatory to the 1980 Hague Abduction Convention. I would like to address the interplay between the two, by using a case that is currently being litigated in Israel to attempt to demonstrate how the 1996 Convention could enhance and simplify proceedings that are brought under the Abduction Convention for the return of an unlawfully removed or retained child.

The case that I am referring to involves a tragic incident that occurred in Italy with an Israeli family. Let me preface by saying that the case has been extensively covered both in the Israeli and Italian press. I am not divulging any information that is not already public. The family has, originally from Israel, moved to Italy approximately one month after the birth of the child in question, and had been living there for the past six years. Several months ago, there was a tragic accident where a cable car that the entire family was riding on was involved in an unfortunate accident, and all of the family except for the six-year-old perished in the fall of the cable car. Now the six-year-old, who survived the accident, remained, of course in Italy and was hospitalized there. His Israeli aunt also was living in the same village in Italy. Nearby, the family asked the court for temporary custody in order to continue to care for the child. The court in Italy granted the aunt that temporary order. Included in the arrangements was her temporary custody and the access that was granted to the child's grandfather, who lived in Israel. The Israeli grandfather, on a visit to Italy had taken the child in the morning as agreed upon. At the end of the day, instead of returning him to Italy, he decided to take him on a private chartered flight, which he had arranged in Switzerland, cross the border to Switzerland, return him to Israel, and stated that he was not returning the child to Italy. The aunt who got wind of what happened filed an application under the 1980 Hague Abduction Convention for the return of the child to Italy.

As a matter of full disclosure, I do not represent any of the parties in the case, but I have been consulted by the attorney retained by the aunt on an informal basis. Once the petition was filed in the Court in Israel for the return under the 1980 Convention, the petitioning aunt also went to the court in Italy, and asked for an Article 15 decision under the 1980 Abduction Convention. Now, for those of you who recall the Article 15 provision, it is basically a non-binding opinion of the court of habitual residence, it states that the child had been habitually resident in that state's jurisdiction at the time of the removal, and therefore the removal was contrary to the law of that jurisdiction, in this case, Italy. As I said, this is a non-binding opinion of the court generally obtained on an *ex parte* basis. However, courts tend to give credit to those opinions, but they are not obligated to.

Once the petition was filed in Israel, the grandfather responded in a number of ways. First, he claimed that because the child had lost both parents, there was no one to determine the habitual residence of the child. Therefore, the fact that the aunt was given temporary custody was contrary to the proper application of Italian law. In order to support this contention, he filed legal opinions of Italian law professors claiming that the court acted beyond its jurisdiction in Italy, in granting the temporary orders. In addition, the legal professors stated that the Article 15 decision was not properly rendered, given that there was no habitual residence at the time of the death of the six-year-old's parents.

Obviously, I am not getting into whether or not the contentions had any basis, but I am using this as a way to show that procedurally, the 1996 Convention could probably have assisted in simplifying the return petition—and how so? First, we start with Article 50 of the 1996 Convention, which states that nothing precludes the provisions of this Convention from being invoked for purposes of obtaining the return of a child who was wrongfully removed or retained. We learned from Article 50 that the 1996 Convention works in conjunction with the 1980 Convention, and is not an either/or proposition. In what way would the 1996 Convention

assist us in this specific instance, in order to shorten and simplify the proceedings that are presently being conducted in this case? Article 23(1) of the 1996 Convention states that any decision issued by the state of habitual residence, which is also party to the Convention, would automatically be recognized by operation of law in the requested state. Unless there were one of the grounds for refusal, under Article 23(2), which we assume in this instance, did not or would not exist, the Italian order granting temporary guardianship to the aunt would automatically become an Israeli order. The issue of whether or not the order was properly rendered under Italian law would become moot, and along with it, the need to get legal opinions from Italian legal experts.

The other issue that would be relevant here would be covered by Article 25 of the 1996 Convention, which states very clearly that the requested state would be bound by the findings of fact of the requesting state in making a judicial determination. In our case, the findings of fact under the Article 15 opinion would no longer be simply an opinion, they would become binding facts on the Israeli court. With the determination in the Article 15 petition that the child had been unlawfully removed from Italy, we have now binding facts on the Israeli court; there would be no possibility for the Israeli court to now try and determine whether or not that removal was unlawful or contrary to the laws of Italy.

In order to invoke the 1996 Convention, I believe that you could do it in parallel to the 1980 Convention, because the 1996 Convention itself provides that it is a way of assisting the return of a child and not as a matter of being exclusive in the use of these proceedings. Because of the fact that Israel is not a signatory to the 1996 Convention, the case in the matter of this six-year-old child has taken some very unusual turns, creating midnight hearings in family court in Israel, arguing over legal experts from Italy as to whether or not the Italian court has acted properly and within its authority. While under the 1996 Convention, these proceedings would not have been taking place, and we would have probably had a decision by now. It is my hope that someday, the 1996 Convention will be ratified by Israel. I know that it is being considered at this time, and hopefully, we will sign on to it soon. Until it does, unfortunately, we will not be able to benefit from some of the provisions which could help us simplify abduction or unlawful retention petitions that are being heard here. Thank you very much for your attention, and I look forward to our next in-person meeting or conference. Thank you.

Elizabeth H. Aguiling-Pangalangan

Professor Aguiling-Pangalangan is Professor of Law at the University of the Philippines (UP) College of Law and is the Director of the UP Law Center Institute of Human Rights.

Prof. Aguiling-Pangalangan earned her undergraduate and law degrees from UP and her LL.M. from Harvard University where she was later a Research Fellow in its East Asia Legal Studies Program. She attended the Hague Academy of International Law on a scholarship and subsequently lectured in its Extension Programme.

She conducted the Assessment on Alternative Parental Care Programs for the Department of Social Welfare and led the drafting of the Philippines Department of Justice handbook "Protecting Filipino Children from Abuse, Exploitation and Violence: A Comprehensive Program on Child Protection" in 2019.

Prof. Aguiling-Pangalangan is the President of the Philippine Society of International Law and a member of the HCCH Experts' Groups on Parentage and Surrogacy and Family Agreements.

The Case for Acceding to the HCCH 1996 Child Protection Convention: Views from the Philippines

> "There can be no keener revelation of a society's soul than the way in which it treats its children."
> Nelson Mandela

Ladies and Gentlemen, good morning. Thank you for inviting me to today's forum. I have been asked to make the case for the Philippine accession to the HCCH 1996 Child Protection Convention.

The Hague Child Protection Convention is a treaty that covers a wide range of civil measures for the protection of children in cross-border situations as a consequence of increased international mobility. This calls for providing protection to children including those who are victims of trafficking, exploitation, or global displacement due to war, civil disturbance, and natural disaster as well as disruptions in their daily lives arising from custody disputes.

The Child Protection Convention lays out rules for cross-border cooperation among Contracting Parties and for securing the implementation of child protection measures in these States. In so doing, the Convention allows States to comply with their obligations under the United Nations Convention on the Rights of the Child (UNCRC) and to further promote the best interests of the child as a primary consideration. The varied civil measures made available in the Convention take into account the diverse legal institutions and systems of protection among States.

The Philippines has a Development Plan 2017-2022 ("PDP") that sets out the vision of the Philippine Government. The PDP recognizes children as part of vulnerable groups whose rights and interests should be protected as part of the country's long-term vision. It emphasizes a more inclusive access to justice especially for persons with special needs, which include children.

There are three pillars of PDP Framework. Pillar 1 is "Enhancing the social fabric", the Filipino term for which is *"malasakit"*. Pillar 2 is "Inequality-reducing transformation", which translates to "*pagbabago"* while Pillar 3 is "Increasing growth potential" or "*Patuloy na Pag-unlad"*, in my native language.

I will now discuss the legal bases for these pillars, specifically as they apply to child protection.

The 1990 Convention on the Rights of the Child is the main international instrument on the protection of children's rights, which it classifies into four categories. These are the child's survival rights, protection rights, development rights and participation rights. Our focus in this global event is on the child's protection rights. States parties undertake to ensure that the child enjoys "protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents or other individuals legally responsible for him or her; for safeguarding children and adolescents from all forms of abuse, neglect and exploitation".

There are legal bases found in other international law instruments such as the CRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography that the Philippines ratified on 28 May 2002 and the CRC Optional Protocol on the Involvement of Children in Armed Conflict ratified on 26 July 2003. Moreover, the Philippines ratified the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption on 2 July 1996 and the 1980 Hague Convention on the Civil Aspects of International Child Abduction quite recently in 16 May 2016.

In domestic law, protection for children is mandated in the 1987 Philippine Constitution, Art II, §13 of which recognizes the vital role of the youth in nation-building. Art XV, §3(2) of the Constitution draws attention to the "right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development".

The central statute law on child protection is Republic Act 7610 or the Special Protection of Children Against Abuse, Exploitation, and Discrimination Act. Section 2 of RA 7610 stresses the State's policy to "provide special protection to children from all forms of abuse … [and shall] provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse".

The Philippines has enacted several laws on child protection. Among them are the following:

- Children and Youth Welfare Code (PD 603);
- An Act Prohibiting the Employment of Children Below 15 years of age (RA 7658);
- Creating a Committee for the Special Protection of Children from All Forms of Neglect, Abuse, Cruelty, Exploitation, Discrimination and Other Conditions Prejudicial to their Development (EO 275);
- Anti-Sexual Harassment Act of 1995 (RA 7877);
- Intercountry Adoption Act of 1995 (RA8043);
- Youth in Nation-Building Act (RA 8044);
- Anti-Rape Law of 1997 (RA 8353);
- Family Courts Act of 1997 (RA 8369);
- Domestic Adoption Act of 1998 (RA 8552);
- Early Childhood Care and Development Act (RA 8980);
- Comprehensive Dangerous Drug Act of 2002 (RA 9165) with respect to minor offenders;
- Anti-Trafficking in Persons Act of 2003 (RA 9208);
- Anti-violence against Women and Children Act of 2004 (RA 9262);
- Juvenile Justice and Welfare Act of 2006 (RA 9344);
- An Act Defining the Crime of Child Pornography of 2009 (RA 9775);
- Cybercrime Prevention Act of 2012 (RA 10175);
- Anti-Bullying Act of 2013 (RA 10627); and
- Children's Emergency Relief and Protection Act (RA 10821).

The Child Protection Convention provides rules for determining which authorities are competent to take necessary measures for child protection and to avoid conflicting or contradictory decisions. Pursuant to Articles 5 and 7 of the Convention, the authorities of the State, which is the habitual residence of the child, have the primary responsibility to provide protective measures.

Consistent with these provisions, the Philippines has identified government agencies as implementers of these laws. Among them are the Council for the Welfare of Children (CWC) tasked with the formulation of policy and advocating, coordinating, monitoring and evaluating the implementation of all laws, programs, and projects on children. The Committee for the Special Protection of Children (CSPC) is responsible for coordinating and monitoring the investigation and prosecution of cases involving violations of RA 7610 and other child-related criminal laws. The body mandated by law to coordinate and monitor the implementation of the Anti-Trafficking in Persons Act of 2003 (RA 9208) is the Inter-Agency Council Against Trafficking (IACAT) with the Department of Justice as the lead agency. Other government offices charged with the enforcement of the law are the Juvenile Justice and Welfare Council (JJWC) that ensures the effective implementation of RA 9344 and the Interagency Committee Against Child Pornography (IAC-CP), the body in charge of the implementation of the said act for the prevention and eradication of child pornography.

In 2017, the International Annual Report of SOS Children's Villages, a non-government global federation working to protect and care for children, enumerated factors that may contribute

to putting children in vulnerable situations. These are the death of a parent, poverty, disabilities, lack of birth registration and refugee status.

Allow me to examine some of these child protection issues that the Philippines has identified and additional factors that give rise to these issues.

1. Parental Disputes over Children

Some facts and figures will help us better understand the reasons behind this priority issue. The total population of the Philippines as of 1 May 2020 is 109,035,343 and of these, 2.2 million are Overseas Filipino Workers (OFWs) who worked abroad at any time during the period April to September 2019. Though overseas employment has brought better financial opportunities for Filipino families, the diaspora of Filipinos has had a tremendous social cost for families. The long-term separation of parents from their children and spouses from each other has given rise to disruptions in family relationships including marital break-ups.

Some other statistics that bear on the situation of families are the number of Filipino nationals married to foreign nationals that has reached 15,047, the decrease in the number of registered marriages from 449,169 in 2018 to 431,972 in 2019 and the number of annulment and nullity cases filed at the Office of the Solicitor General was 11,135 in 2014, and from 4,520 in 2001. Moreover, more than half (906,106 or 54.3%) of the total registered live births in 2018 were born out of wedlock. These data are significant in the Philippines where our laws distinguish between the rights of legitimate and illegitimate children. The status of the child likewise determines the rights of parents to exercise parental authority, the right of custody, the right to contact or visitation rights of the non-custodial parent, and the duty to support the child, *inter alia.*

I take this opportunity to mention that on the matter of child support, although the Philippines has not yet acceded to the 2007 Hague Convention on the International Recovery of Child Support, the Philippine Supreme Court has issued Rules on Action for Support and Petition for Recognition and Enforcement of Foreign Decisions or Judgments on Support on 31 May 2021 that buttresses the Hague Child Support Convention.

Parental disagreements over child custody and related issues are embraced by the Child Protection Convention that has developed a framework to resolve disputes on custody and contact arising from the separation of parents and their establishing of residence in different countries. Moreover, the Child Protection Convention reinforces the 1980 Child Abduction Convention that we have ratified, by giving emphasis on the primary role of the authorities of the State, wherein the child is habitually residing, in resolving cases involving the child. This refers as well to the effectiveness of urgent protective measures given by judges when the child is returned to his/her State of habitual residence.

2. Unregistered Children

Among children 0-14 years of age, 2 million are unregistered with the Philippine Statistics Authority. The major barriers to birth registration have been identified as:

(i) lack of awareness among families and communities on the importance of birth registration and birth records;
(ii) social and cultural practices of Indigenous Peoples and the Muslim population which are not compatible with the requirements for birth registration given that the National Statistics Office reports that registration is lowest among Muslims and among IPs;
(iii) distance and physical barriers that hinder access and mobility for registration; and
(iv) collection of exorbitant fees in some cities and municipalities in the Philippines.

There is concern for orphaned children and foundlings, many of whom are not registered primarily due to the inability to determine their origins. In 2018, the Department of Social

Welfare and Development reported a total of 114 foundlings, 26 of whom were found in Metro Manila.

The report of the Unregistered Children's Project underscored that without birth registration, children are denied the right to a name, nationality, and identity, the right to go to school, the right to claim benefits given by government, and the right to travel, among others. The report observed that "they are more susceptible too to becoming victims of child labor, trafficking, prostitution, among others, hence, the implications of not being adequately protected by a legal identity are more serious and far-reaching for them".

3. Commercial Sexual exploitation

Under Article 35 of the CRC, States parties have the duty to "take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form". Optional Protocol, Article 2 (b) and (c) defined child prostitution as "the use of a child in sexual activities for remuneration or any other form of consideration" and child pornography "any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes".

According to UNICEF, there are 100,000 Filipino children, 80% of whom are girls, estimated to be involved in prostitution yearly. Likewise staggering is the report of the International Justice Mission (IJM), an international NGO working in the Philippines that Internet Protocol (IP) addresses used for child sexual exploitation increased from 43 out of every 10,000 in 2014 to 149 out of every 10,000 in 2017. IJM's program has supported the Philippines in responding to 171 cases of OSEC, resulting in 571 victims rescued, 229 suspects charged, and 76 convictions.

IACAT reports that in 2017 the DSWD served 175 victims of child pornography and in 2018 there were 230 victims, an alarming increase of 31%. Commercial sexual exploitation of children extends to online sexual exploitation while a study by UN Office of Drugs and Crime reveals that OSEC are driven by poverty.

4. Physical and Sexual Abuse

Child abuse is defined as "the infliction of physical or psychological injury, cruelty to, or neglect, sexual abuse or exploitation of a child". It includes emotional and psychological abuse of the child being exposed to violence within the family setting.
Child abuse is more comprehensively defined by the Anti-Child Abuse Act as "the maltreatment, whether habitual or not, of a child, which includes any of the following:

a. Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment,
b. Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being,
c. Unreasonable deprivation of her/his basic needs for survival such as food and shelter,
d. Failure to immediately give medical treatment to an injured child resulting in serious impairment of her/his growth and development or in her/his permanent incapacity or death". [Republic Act No. 7610, §2(b)].

The Council for the Welfare of Children and UNICEF Philippines, *National Baseline Study on Violence against Children: Philippines (2016)*, documented that 60.4% of which happened at home; 14.3% occurred while the child is in school; 12.5% which happened in the community; 7.1% in the workplace and 6.2% during dating.

Thus, the removal of a child from an abusive parent or conversely, the possibility of the abusive parent taking the child out of the country, as well as issues of whether an act by the

parent is ground for extinction of parental authority in one State but not the other, are matters within the scope of the Child Protection Convention.

5. Children in Street Situations

The Department of Social Welfare and Development (DSWD) issued an administrative order on the Standards for Community Based Services for Street Children that defined street children as those "who stay most of the time (four hours and above) on the streets and in public places and are engaged, while in the streets, in varied types of activities other than engaging in economic activities to earn a living".

The Report of the UN High Commissioner for Human Rights on the Protection and Promotion of the rights of children working and/or living on the street referred to the evolving terminology to "recognize children as social actors whose lives are not circumscribed by the street". The Committee on the Rights of the Child General Comment No. 21 has adopted the term "children in street situations", a term that covers "(a) children who depend on the streets to live or work whether alone, with peers or with family", as well as "(b) a wider population of children who have formed strong connections with public spaces and for whom the streets play a vital role in their everyday lives and identities".

Although the UN Committee on the Rights of the Child, in General Comment No 21, has drawn the inexorable vulnerability of street children to violence and exploitation, the Committee observed that: "Yet despite the strong links between street-connectedness and modern slavery, child trafficking and exploitation, children in street situations remain largely absent in international and national efforts aimed at tackling modern slavery".

Efforts on this front have been led by the DSWD that has spearheaded a rapid appraisal of children-at-risk on the streets and street families in the 17 LGUs of Metro Manila in 2010 where 3,072 children were counted during the appraisal period. It was observed that the number of children increases during the Christmas season where another 3,703 children were identified as occasional children at risk on the streets. In 2015, the DSWD launched the Comprehensive Program for Children and Families At-Risk on the Streets and Indigenous People.

6. Major Accomplishments and Next Steps

A significant initiative taken by the Philippine government to protect the rights of children are the creation of the DOJ Task Force on the Welfare of Children, organized to facilitate and monitor cases involving children in 2011. A database on offenders was likewise launched in accordance with the Philippine Plan for Safeguarding Children from Commercial Exploitation and Sexual Abuse.

The Philippine Committee on Special Protection of Children (CSPC) IACAT has strengthened mechanisms to track the movement of traffickers at the entry and exit points of the country. One way by which this is done is to strictly enforce the DSWD Travel Clearance for unaccompanied minors as well as minors not accompanied by either parent.

Since there is a rising number of situations wherein unaccompanied minors are at risk for crossing borders by themselves, the Convention lays down provisions on cooperation to address this problem.

In the study of Philippine Child Protection Programs that I undertook with the Department of Justice in 2019, the following were among the recommendations made with respect to the next steps the Philippines should take:

Determine New Categories of Children in Need of Special Protection.

New forms of technology and emerging threats to children brought about by modern means of communication and forms of discrimination require reassessment of existing categories of vulnerabilities. For example, this will include recognition of and protection for the rights of children born to surrogates.

Need for New Legislation.

As a consequence of the reassessment of categories of children in need of special protection, new measures to address these nascent threats should also be legislated to realize their priority status.

Cooperation and Referral Mechanisms.

The Human Rights Council recommendation (78a) urged States to "(a) Establish cooperation mechanisms for referral of victims of trafficking in persons … ensure that assistance is provided unconditionally, and is non-discriminatory, culturally appropriate, gender-responsive and sensitive to disability and age".

Cooperation mechanisms are not only necessary to enforce the rights of children to be protected from trafficking and sexual exploitation but from all threats. For instance, for the protection of internationally displaced children, the Hague Child Protection Convention puts in place cooperation procedures among Contracting Parties to locate the child as well as a framework to exchange necessary information between the authorities in the receiving States and the States of origin.

Likewise, the CRC Committee, in General Comment 21, called upon States "to strengthen international commitment, cooperation and mutual assistance in preventing children from ending up in street situations and protecting children already in street situations. This includes identifying and sharing rights-based practices that have been shown to be effective, research, policies, monitoring and capacity-building". The Committee's encouragement of "continuous, high level policy dialogues and research in relation to quality, evidence-based interventions for prevention and response" speaks of the importance of cooperation amongst States. This includes dialogues at the international, national, regional and local levels. Such cooperation may need to address the protection of children crossing borders as migrants, refugees and asylum seekers and as victims/survivors of cross-border trafficking. The need for cooperation mechanisms will be served by the Philippines acceding to the Hague Child Protection Convention.

The Philippines' accession to the Convention can guide the formulation of future domestic laws and/or improvement of existing laws on child protection in the Philippines, which can supplement the already existing legal framework for child protection in the country. In turn, this fortifies the Philippines' fulfillment of its international obligation that in all decisions involving children, their best interests shall be prioritized.

The Convention's stipulations on cooperation in cross border situations, Articles 34 and 35, provide that the competent authorities of the concerned States shall communicate relevant information to each other for the protection of the child and in seeking to obtain access to the child. By acceding to the Convention, the Philippines will have other Contracting Parties as partners with a uniform goal of ensuring that children are protected from various forms of abuses and exploitation.

Nuria Gonzalez-Martin

Nuria Gonzalez-Martin has a Ph.D. in Private International Law from Pablo de Olavide University, Seville. She is a certified family mediator as well as a Senior Researcher at the National Autonomous University of Mexico (UNAM). She is also an external counsellor to Mexico's Ministry of Foreign Affairs as well as a member of the American Association of PIL (ASADIP). Nuria Gonzalez-Martin is the author of many books and from 2012 to 2017 was a Visiting Scholar and Fellow at Stanford Law School. In 2015, she was selected JAMS Fellow and in 2019 a Senior Fellow at Weinstein International Foundation (WIF). She is fundamentally focused on expanding the use of Alternative Dispute Resolution in international family law cases, specifically expanding experience in training, network building and cooperation.

Remarks of Nuria Gonzalez-Martin

Good morning, good afternoon to everybody. First of all my gratitude to Christophe Bernasconi, Secretary General at the Permanent Bureau of the Hague Conference on Private International Law, and to Gérardine Goh Escolar, First Secretary, for their very kind invitation to celebrate the first 25 years of the 1996 Hague Convention, with this "HCCH Approach Global Event".

I apologize for not being able to participate in real time due to a previous commitment, in addition to the 9-hour time difference with The Hague since I am in Stanford, California, on the west coast. I hope to meet you soon face to face. Meanwhile I wish you and your loved ones good health, and best wishes for a fruitful and successful event.

The topic I will be presenting is the HCCH's development in Latin America and the Caribbean: the future of the 1996 Child Protection Convention in the region.

Nobody doubts that the Hague Conference on Private International Law has an important role.

Not only because of the development of an exceptional number of instruments (mainly hard law), but because of its post-convention services which aim at improving the Conventions' effectiveness (through soft law and tools such as specialised databases and INCADAT).

I would like to start by laying on the table a series of relevant data. In the HCCH, out of the 90 Member States, 14 are Latin American states (Argentina was the first to incorporate followed by Venezuela, Uruguay, Mexico, Chile, Peru, Brazil, Panama, Paraguay, Ecuador, Costa Rica, Dominican Republic, El Salvador, and Honduras) and 1 state is in the Caribbean (Suriname). These 14 Member States have subscribed to 15 conventions and one protocol, with 61 signatures. The remaining 5 Latin American States, while not Member States yet, are participating actively as contracting parties to HCCH conventions, with 26 signatures. Of the 23 Caribbean States or jurisdictions, fifteen Caribbean States have joined 11 conventions, with 38 signatures. In summary, a total of 19 Latin American and 23 Caribbean States or jurisdictions have had a meaningful and fruitful activity subscribing to international instruments created by the HCCH.

As we know, during the last 40 years, 4 Hague conventions involving family matters and children have been drawn-up with the fundamental purpose of providing the states that share the common interest of protecting children, with the practical mechanisms that allow them to cooperate among themselves. The first is the 1980 Child Abduction Convention according to which 101 states cooperate to protect children from the harmful effects of wrongful removal or retention. The second is the 1993 Adoption Convention, drawn up to regulate international adoption and to protect the interests of the children involved; it is currently in force in 104 countries, both receiving and origin states.

The third convention is the one that brings us together today, celebrating its 25 years. The 1996 Child Protection Convention has a much wider application scope than the first two, because it covers a very wide variety of protection measures for children ranging from orders relating to parental responsibility and rights of visitation, to public measures of protection or care, and from issues of representation to the protection of the property of the child.

It is important to mention that the 1996 Child Protection Convention has been signed by a total of 53 states including 8 of the 14 Latin American Member States. The Convention is in force in 6 of these 8 states; 2 of them have just signed.

There is one more convention, the youngest, the 2007 Child Support Convention, following but equally complementary to the HCCH 1996 Convention.

With all of these data in hand, we can highlight that the Latin American region is deeply interested in having as part of its international law, conventions involving family matters and children because, as states with high birth rates and a significant migrant population crossing borders looking for better living conditions, that give rise to international and transnational families, it needs to protect its people from a situation of vulnerability in which they often find themselves.

Therefore, it is important to be a part of international conventions that detect and prevent unacceptable situations thanks to the conventions' international and integral protection characteristics.

We are talking about situations where children are victims of trafficking, where there are unaccompanied minors, where maintenance obligations, custody and visitation rights are needed, in addition to matters related to abduction and adoption.

A significant number of Latin American countries, through their regional system, concretely through the Inter-American Conferences on Private International Law (CIDIP), are part of international conventions addressing the same subjects: abduction and adoption in this particular case.

Hence, there is an alleged overlapping of matters. However, this is not the case; the target population benefits from all of these combined efforts. If, in addition to this, we consider the broad scope of the 1996 Convention and its complementarity with the aforementioned conventions on family matters and children, we can provide wider coverage and therefore, better protection.

I will not discuss the objectives or the main features of the HCCH 1996 Convention because it will be a recurring theme at this event and I would not wish to reiterate. I will focus on some of the great challenges posed by the signing of international conventions, in particular the HCCH 1996 Convention and how they are being addressed in the region.

I am referring to the need for:

Harmonization of the international law with the national or domestic law. In this sense, the Latin American region is advancing in the implementation of secondary legislation that allows the implementation of certain figures that are not provided for in its legal systems, such as "transfer of jurisdiction" (forum non conveniens), considered contrary to public policy in many of the legal systems in the region. This is the case of Mexico with the bill for a general civil and procedural code.

To incorporate the Convention in a correct manner. On the one hand, through the training of legal operators, something that academics, authorities and other stakeholders are already doing, and, on the other hand, currently, the American region has integrated and consolidated the International Hague Network of Judges, and this is a perfect tool to address the due application of the HCCH 1996 Convention; as well, we need to mention that some countries already have their own national network of specialised judges.

In connection with what was mentioned earlier, since 2005, the role of the Regional Office in Latin America and the Caribbean (ROLAC) is fundamental, working on integrating the "voice" of the states of the region into the work of the HCCH. Building bridges between different legal systems and different cultures, with the additional benefit that they increase the visibility of the organisation in the region.

The impact and therefore the development, of the HCCH in the Latin American and Caribbean context can be positively assessed; the fact of being part of the HCCH has undoubtedly given legal certainty and justice for the resolution of cases across legal systems.

The challenges are still many. We do not forget the topic of the protective measures, or the recognition and enforcement of a foreign measure of protection, or the habitual residence of the child as a main connecting factor and basis for jurisdiction but today I referred to the progress made in the Latin American region which has been possible thanks to true cooperation; a fundamental content of the 1996 Hague Convention, which means collaboration and trust among designated central authorities, judicial and/or administrative authorities, academics, associations as ASADIP (American Association on Private International Law) for example, as well as universal and regional organisations.

Thank you so much for listening. I send you all a warm hug.

[The speaker provided tables showing the ratification status of Latin American States to HCCH instruments. Current ratification status can be reviewed at the website of the HCCH.]

The HCCH 1996 Child Protection Convention at 25: Going from Silver to Gold – a Panel Discussion

Mia Dambach

Mia Dambach is a human rights advocate with 20 years' experience of working on children's rights, starting her career as a children's lawyer in Australia. As the Executive Director for Child Identity Protection, she brings with her leadership, project management and research skills to ensure that children's identity rights are better protected worldwide. She has provided technical support, mostly on behalf of UNICEF, through evaluation missions in Cambodia, Denmark, Egypt, Ghana, Ivory Coast, Sudan, the Ukraine and Viet Nam, as well as legislative reviews and training in over 20 countries. She has successfully led multiple international inter-agency initiatives including three massive online courses that have reached over 50,000 participants. With a family background from Australia, the Philippines and Switzerland, she understands the importance of children having access to their identity and origins.

Petra Hubová

Petra Hubová is a senior legal counsel at the Office for International Legal Protection of Children – the Czech Central Authority under various international legal instruments concerning the protection of children. She specialises in the areas of parental abductions, parental conflicts and maintenance enforcement. As a caseworker of the Office, she also acts as the guardian *ad litem* representing children in family law proceedings.

She is a trained transformative mediator and cooperates with the Mediation and Education Center in Brno.

Petra Hubová has provided trainings for the representatives of the social services and NGOs, for judges and the general public. She took part as the delegate of the Czech Republic in sessions of the European Judicial Network.

Rachael Kelsey

Rachael Kelsey is an international family lawyer, qualified in Scotland and working in Edinburgh and London. She is recognised by both Chambers and Partners and The Legal 500, as, "the doyenne of Scots family law". She is Immediate Past President of the European Chapter of the International Academy of Family Lawyers (IAFL) and has participated as an Observer in four of the HCCH Experts' Group meetings on the Parentage and Surrogacy Project.

Michał Kubalski

Michał Kubalski is an officer at the Polish Ombudsman's Office. He is also an attorney-at-law and a member of the International Affairs and Human Rights Commission of the Warsaw Bar Association. Michał Kubalski has been working on family and civil law cases for almost two decades – first as a clerk, currently as the Head of the Family Law Unit. He has taken part in many courses and conferences – both in Poland and abroad. He has also organised and moderated many meetings in the Polish Ombudsman's Office and outside, *i.e.*, the Parental Rights Congress in 2018.

Daniel Trecca

Daniel Trecca is Doctor of Law and Social Sciences, Notary Public and Head of the Central Authority of International Legal Cooperation (Uruguay). In addition, he is Assistant Professor on Private International Law at Universidad de la República and Universidad de la Empresa (Uruguay), Assistant Professor at the Uruguayan Institute of Private International Law and Member of the American Association of Private International Law (ASADIP).

Dr Trecca is a member of the Group of experts who were involved in the drafting of the Guide to Good Practice under the HCCH Convention on the Civil Aspects of International Child Abduction – Part VI – Article 13(1)(b).

Henry Setright QC

Henry Setright QC was called to the English Bar in 1979 and was appointed Queen's Counsel in 2001. He has for many years specialised in international children's and family work at the highest level, including cases in the UK Supreme Court, the Court of Justice of the European Union, the European Court of Human Rights, the House of Lords, the Court of Appeal, and the High Court, and as lead English counsel in two cases on Amicus briefs in the United States Supreme Court. His work to date has included consideration of child protection issues relating to care proceedings, children's representation, children's views, habitual residence, jurisdiction, and human rights.

Winners of the HCCH|Approach Essay Competition

Tanner Wadsworth

Tanner Wadsworth is a third-year law student at Columbia Law School. He studied previously at the Texas A&M University School of Law and at Brigham Young University. Tanner's research interests include transnational litigation and investor state arbitration. Before attending law school, he was a copywriter at an international advertising agency.

Growing Up: The 1996 Hague Child Protection Convention and Age Assessment

Tanner J. Wadsworth[1]

Introduction

This year, the landmark HCCH 1996 Child Protection Convention turns 25—in many cultures the last birthday that represents a significant coming-of-age. To celebrate the Convention's 25th, there will be speeches, social media posts, and perhaps even toasts. But for individuals seeking the protections of the Convention, birthdays are no simple or celebratory matter. Because children enjoy special status under law, refugees have an incentive to present themselves as being younger than 18. Further complicating things, refugees often struggle to prove their age because their vital records were lost, destroyed, or simply never created in the first place.[2] Assuming that refugees will lie about their age, many countries attempt to use scientific methods to independently verify whether asylum seekers are actually children. Many state resources—and many refugee tears—are spent trying to establish elusive birthdays.

Signatories to the Convention use different methods of age verification, which can yield contradictory results. Depending on the method used, an individual might be a child—and thus qualify for Convention protection—in one signatory state but not another. Because the Convention was drafted to create uniform rules regarding authority and jurisdiction, these incongruous age verification procedures undercut its purpose. At 25, the Convention should step into adulthood. Its signatories should adopt uniform rules for age verification so that every child's birthday can be as straightforward as the Convention's 25th.

A Call for Uniformity

The 1996 Convention was not the first to tackle international child protection. Both the UN Convention of 20 November 1989 and the Hague Convention of 5 October 1961 included provisions governing how and where children ought to be protected, but neither succeeded in creating a uniform regime of jurisdictional rules. The 1961 convention's chief failure was its ambiguous, subjective definition of whom it protected.[3] It stated that it applied to "infants," with the definition of that word left open to domestic interpretation.[4] Because childhood and adulthood—and the critical gateway between them—were subject to different local traditions, there was no uniform age at which the convention applied. The edges of its protection were ragged. Accordingly, the first step in applying the 1961 convention was often a conflicts-of-law analysis determining which signatory's definition of "infant" should control.[5]

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1 J.D. Candidate, Columbia Law School.

2 According to the European Asylum Support Office, the rate of registered births in some African countries may be as low as 10 percent. European Asylum Support Office, EASO PRACTICAL GUIDE ON AGE ASSESSMENT 18 (2d ed. 2018) [hereinafter *Guide*].

3 Katharina Gatzsche, *Child Protection in Flight Situations: The Hague Child Protection Convention and Unaccompanied Minors*, 11 Cuadernos DERECHO Transnacional 340, 342 (2019) [hereinafter *Gatzsche*].

4 "For the purposes of the present Convention, `infant' shall mean any person who has that status, in accordance with both the domestic law of the State of his nationality and that of his habitual residence." Convention Concerning the Powers of Authorities and the Law Applicable in Respect of the Protection of Infants, Art. 12, HCCH, (Oct. 5, 1961) [hereinafter *1996 Convention*].

5 Gatzsche, *supra* note 3 at 342.

The 1996 Convention was drafted with the flaws of its predecessors in mind.[6] The new convention's central purpose was to provide uniform jurisdictional rules regarding child protection.[7] In contrast to the 1961 convention's ambiguity, the first words of Article 2 cast a net with clear, objective edges: "The Convention applies to children from the moment of their birth until they reach the age of 18 years."[8] It was an important correction, but even those edges soon began to fray.

Immigration and Entropy

The 1996 Convention's ratification coincided with a global spike in refugee movement. The early 2000s saw a dramatic surge of immigration from Latin America to the United States via the Mexican border.[9] The mid 2010s saw an unprecedented "migrant crisis" as waves of refugees from Northern Africa and the Middle East sought asylum in Europe.[10] Civil War in Colombia and unrest in Venezuela and Nicaragua resulted in a diaspora of refugees into neighboring states.[11] This shift in global population placed signatories to the Convention in very different circumstances. Some groaned beneath the weight of asylum applications while others generated applications, losing population as citizens fled.[12] Facing political backlash against migrants, signatories on the receiving end began looking for ways to tighten their borders.[13] One way was to rigorously verify the age of asylum-seekers.[14] Some embraced increasingly elaborate age assessment methods while others saw little use for the practice and largely left it alone. As the gap widened between the schools of thought, the Convention's coverage, while uniform in theory, became increasingly scattered in practice.

Diverging Methods

The goal of all age verification is to reach an objective estimate of an individual's age without the help of birth records. Medical age assessment seeks to do this by measuring different parts of a young person's body and comparing them to aggregated measurements from people in similar age ranges.[15] One popular method is to use X-rays to measure bone density or dental development, though it requires exposing the subject to some level of radiation. To avoid radiation, doctors can take physical measurements or visually compare an individual's development to reference images showing typical development for a certain age. Some

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6 The Convention's preamble opens noting "That the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect to the protection of minors* is in need of revision," and "taking into account the *United Nations Convention on the Rights of the Child of 20 November 1989*." 1996 Convention, *supra* note 4 at 1.

7 The signatories adopted it "[w]ishing to avoid conflicts between their legal systems in respect of jurisdiction . . . for the protection of children." *Id.*

8 *Id.*

9 Katharina Buchholz, *Southern Border Apprehensions at Two-Decade High*, STATISTA, (Aug. 25, 2021), https://www.statista.com/chart/20326/mexicans-non-mexcians-apprehended-at-southern-us-border/.

10 *Migrant crisis: Migration to Europe explained in seven charts*, BBC NEWS, (Mar. 4, 2016), https://www.bbc.com/news/world-europe-34131911 [hereinafter *Migrant Crisis*].

11 Andrew Selee and Jessica Bolter, *An Uneven Welcome: Latin American and Caribbean Response to Venezuelan and Nicaraguan Migration*, 1 Migration Policy Institute (Feb. 2020) [hereinafter *Selee*].

12 Cuba, a signatory state, generates more asylum applications than almost any other nation. Germany, another signatory, receives more applications than any other country. *Countries of origin and destination of refugees*, WORLDDATA.INFO, (2020), https://www.worlddata.info/refugees-by-country.php.

13 *See* Migrant Crisis, *supra* note 10.

14 *See* Johannes Oertli, *Forensic Age Estimation in Swiss Asylum Procedures: Racialization in the Production of Age*, 35 Refuge 8–9 (2019) [hereinafter *Oertli*].

15 *See id.* at 10.

doctors and human rights activists criticize medical age assessment for its inaccuracy, potential for radiation exposure, and tendency to favor some ethnicities over others.[16]

Non-medical methods also exist. Some countries make age determinations based on sociological or intellectual assessments, witness testimony, or some combination of both. In the European Union, methods became so inconsistent that the European Asylum Support Office published a Practical Guide on Age Assessments to promote uniformity. This document echoes the same principles as the 1989 and 1996 HCCH conventions, focusing on the best interests of the child and giving applicants the benefit of the doubt.[17] Yet despite the Guide, age assessment remains widely varied across European signatories.[18]

EU State	Physical Appearance	Age Assessment interview	Social Service Assessment	Psychological Interview	Dental Observation	Sexual Maturity Observation	Bone Density X-Ray	Dental X-Ray
Austria	X	X			X	X	X	X
Belguim		X	X		X		X	X
Bulgaria	X				X		X	
Croatia	X		X	X	X	X	X	X
Denmark		X					X	
Finland					X		X	X
France		X		X			X	X
Germany	X	X	X	X	X	X		
Greece	X	X	X	X	X	X	X	X
Hungary	X	X			X	X	X	X
Ireland	X	X	X					
Italy	X	X	X	X	X	X	X	X
Latvia					X		X	X
Lithuania	X						X	
Luxembourg							X	
Malta		X					X	
Netherlands	X						X	
Norway	X	X			X		X	X
Poland	X				X		X	X
Romania	X				X	X	X	X
Slovakia	X		X		X		X	X
Slovenia	X							
Spain		X					X	
Sweden		X	X					X
Switzerland	X	X			X	X	X	X
The UK	X	X	X					

16 *See generally* Oertli, *supra* note 14; Gregor Noll, *Junk Science? Four Arguments Against the Radiological Age Assessment of Unaccompanied Minors Seeking Asylum*, 28 Int'l J. Refugee L. 234 (2016); Brendan Parent and Nancy Neveloff Dubler, *The Unethical Behavior of Dentists at Our Southern Border*, STAT, (Feb. 13, 2019), https://www.statnews.com/2019/02/13/unethical-behavior-forensic-dentists-southern-border/comment-page-1/.

17 *See* Guide, *supra* note 2 at 20, 22.

18 This table uses data from the EASO guide. *See* Guide, *supra* note 2 at 106.

A comprehensive survey of age assessment practices among signatory states is beyond the scope of this paper, but it is useful to compare a few approaches to illustrate how widely they vary.

Switzerland

Switzerland relies heavily on medical age assessment, even in cases where an individual's appearance matches his asserted age.[19] Assessment is performed medically by measuring three anatomical "pillars:" an individuals' wrist bones, teeth, and sexual organs.[20] Researchers X-ray bones and teeth, visually inspect sex organs, and then compare them against examples meant to be representative of adolescent growth at certain stages.[21] Measurements of sexual organs, for instance, are compared against images taken by the researchers W.A. Marshall and J.M. Tanner, who created a system for classifying the stages of puberty by documenting the development of white English children in the mid 1900s.[22] The analysis of each "pillar" yields an age range which, combined with those of the other pillars and averaged, is regarded as the individual's biological age.[23] In many cases, the results of three-pillar analysis indicate that applicants are older than they have presented themselves to be.[24]

The United Kingdom

Like Switzerland, the UK relies heavily on age assessment and does not give asylum seekers the benefit of the doubt.[25] However, the UK has determined medical methods like X-raying wrists or teeth to be unreliable and demoted results from these tests to supplementary evidence, rather than determinative fact.[26] Instead, age assessment in the UK consists chiefly of the "Merton Assessment," a holistic analysis of individuals' social history, family circumstances, education, self-care and health, physical appearance, and behavior.[27] This assessment is qualitative, not quantitative, and performed by social workers rather than doctors.[28]

Costa Rica

In Costa Rica, a parent's sworn affidavit is sufficient to establish a refugee child's age in the absence of other documentation, at least for purposes of enrolling the child in public schools.[29] While other parts of an asylum application are closely scrutinized, age verification

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19 In an interview with a journalist, a senior case worker at the Swiss Secretariat for Migration expressed his feeling that using forensic methods to confirm the age of children was mandatory, not discretionary: ". . . I considered it my responsibility—as the person, who . . . in the end signs the decisions—if we have the possibility to clarify age with such precision as the forensic medical specialists promise, we must use it." Oertli, *supra* note 14, at 9.

20 *Id.* at 10.

21 *Id.* at 11.

22 *Id.*

23 *Id.*

24 *See* Oertli, supra note 14 at 9; Christopher Lenz, *Why Are So Many Refugees 18 Years Old?*, BLICK, (May 12, 2016), https://www.blick.ch/schweiz/datenrecherche-zeigt-der-bund-laesst-kinder-fluechtlinge-im-stich-id5021987.html.

25 *See* Sarah Judith Camlyn & Miriam Nye, *Asylum Seeker Young People: Social Work Value Conflicts in Negotiating Age Assessment in the UK*, 55 Int'l Soc. Work 675, 681, (2012) [hereinafter *Camlyn*].

26 *Id.*; *see also* R. LEVENSON AND A. SHARMA, THE HEALTH OF REFUGEE CHILDREN: GUIDELINES FOR PAEDIATRICIANS 13, London: Royal College of Paediatrics and Child Health (1999).

27 Camlyn, *supra* note 25, at 681.

28 *Id.*

29 Selee, *supra* note 11 at 30–31.

is not a priority.[30] This benefit-of-the-doubt approach is not uncommon in Latin America.[31] Peru and Uruguay have similar policies.[32]

Old Problems Made New

Because the gates of Convention protection turn on one's date of birth, age assessment practices determine whether they are open or closed for refugees. Because some countries have more permissive age assessment standards, the gates swing open wider in some signatory states than others. This recreates the unhappy effect of the 1961 convention's failure to define "infant:" different states have different criteria for who gets Convention protection. The first step of applying the Convention to an older child with connections to two signatory states is to determine which state's age assessment governs: the very conflicts of law analysis that the Convention was drafted to prevent.

Consider the legal chaos that might ensue if a 16-year-old refugee who successfully sought asylum in Costa Rica was kidnapped and trafficked to Switzerland, where she sought to avail herself of the protections of the 1989 or 1996 conventions. Which state would be responsible for ensuring her safe return? In Costa Rica, the Convention would provide a clear answer, but in Switzerland, three-pillar analysis might place her at 18 or older, making the Convention inapplicable. Her age never changed, nor did a word of the Convention, yet, legally, she could be simultaneously older and younger than eighteen, at once inside and outside the Convention's protections.

Unequal application places international law right back into the pre-1996 regime where the first step to determining jurisdiction was determining which country's definition of "infant" governed. Creating uniform rules is only half the battle: fairness requires that the rules also be applied uniformly.

A Return to Uniformity

Before the 1996 Convention can step into adulthood and fully realize its purpose of creating a uniform jurisdictional regime, the HCCH must adopt uniform rules for age assessment. Uniformity could look quite broad, like the guidelines contained in the EASO's Practical Guide on Age Assessments, or quite narrow, like a multilateral agreement nailing down objective stages of development for medical assessments. Either way, the solution must be acceptable to signatory states and carry more weight than a simple recommendation.

The Practical Guide on Age Assessments offers a valuable starting point. Its emphases dovetail neatly with the 1996 Convention, particularly its focus on the best interests of the child and the principle of the benefit of the doubt. The HCCH could incorporate relevant portions of the Guide but should avoid simply restating the age assessment practices of signatory states: the goal is uniformity, not documentation. Age-assessment techniques remain varied across Europe despite the Guide, so the HCCH rules must go a step farther and bind signatories.

If medical methods are permitted, the standards of measurement and comparison must be uniform. Switzerland makes its medical assessments by consulting, at best, objective models like Marshall and Tanner's stages of sexual development, and at worst, subjective local models correlating certain bone densities or dental features to age. If medical assessment is to be tolerated, all signatories must use the same objective criteria, measure the same

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30 *See id.*

31 *Id.*

32 *Id.*

features, and compare them to the same data. That data must draw from a broader and more diverse study than Marshall and Tanner's twenty-year survey of white English children. Scientific and legal consensus must coalesce behind a set of medical or non-medical techniques tailored to meet the needs of all signatory states while ensuring uniform, accurate results regardless of ethnicity.

Conclusion

A quarter century ago, visionaries came together to sign a convention that would create a uniform jurisdictional regime for child protection. At 25, that Convention is a landmark in international law, but as long as signatory states use vastly different age assessment methods, it falls short of its ultimate purpose. The adoption of uniform rules on age assessment would bring the Convention out of adolescence with a renewed emphasis of purpose. It would be a gift not only to the vision of the Convention's drafters, but also to all individuals who seek its protections.

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The Hearing of the Child as a Ground for Refusal of Recognition and Enforcement Under the 1996 Hague Convention on Child Protection – Current Situation and Prospects

I. Introduction

Child's voice in proceedings that concern them has been subject to increasing focus since the late 1970s. Various texts were adopted, including the 1980 Child Abduction and the 1996 Child Protection Conventions. At larger scale, the right of the child to be heard is guaranteed by Article 12 of the UN Convention on the Rights of the Child which provides that "*States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child*", and has inspired later instruments. At EU level, this matter is dealt with by the Brussels II*bis* Regulation, soon to be replaced by the Brussels II*ter* Regulation.

Under Articles 23(2)b) and 26(3) of the 1996 Hague Convention, recognition or enforcement of a measure taken by the authorities of a Contracting State may be refused if it was taken "*without the child having been provided the opportunity to be heard, in violation of fundamental principles of procedure of the requested State*", except in case of urgency. Inspired from the above- mentioned UN Convention[1], this provision means that the requested State may deny recognition or enforcement of a measure if the failure to hear the child in the State of origin amounts to a violation of its fundamental procedural principles. Article 23(2)b) is a "special clause of procedural public policy"[2], in that it prevents the circulation of a measure the process of adoption of which has neglected to take into consideration the view of the person concerned.

This paper aims at identifying the limits of the current regime of the hearing of the child as a ground for refusal of recognition and enforcement under the 1996 Hague Convention (II). It then analyzes whether the new provision regarding the hearing of the child as a ground of non-recognition in the Brussels II*ter* Regulation could serve as an inspiration to improve the rule of the 1996 Hague Convention (III).

II. The Limits of the Current Regime

Several issues can be identified under the regime applicable to the hearing of the child.

The first one arises from the obvious finding that not all Contracting States attach the same importance to the hearing of the child, which may alter the uniform application of the Convention.

A requested State such as Italy, whose law recognizes the child's mandatory right to be heard[3], may be more inclined to refuse the recognition or enforcement of a measure if it is not certain that the child has been provided an opportunity to be heard than a state such as Greece, where, although children of a very young age have already been heard[4], the

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1 Explanatory Report on the 1996 HCCH Child Protection Convention, para. 123.

2 Ibid.

3 Article 315(3) of the Italian Civil Code recognizes the child's mandatory right to be heard in all matters and proceedings that concern him, as from the age of 12 or younger if he is capable of judgment.

4 *The Child's Voice – 15 Years Later*, The Judges' Newsletter on International Child Protection, Volume XXII Summer – Fall 2018, p. 35.

requesting party must prove the necessity of such hearing[5]. Uncertainty may arise from these divergences as a measure will be recognized and enforced in a Contracting State but not in others, while one of the very purposes of the 1996 Hague Convention is to provide for a minimum common framework for the recognition and enforcement of measures[6]. Yet foreseeing harmonization of the child-hearing procedure is utopic and exceeds the Convention's purpose. Under the current regime, each State is free to assess whether the failure to hear the child should be sanctioned by the non-recognition or enforcement of the measure, leading to legal uncertainty in the application of the Convention. In this regard, the new Brussels II*ter* Regulation offers an interesting perspective, which will be examined later in III.

A second issue relates to the variety of methods used to hear a child. While in some states the child is heard directly by the judge himself[7], others will task investigating officers to do so (Japan for e.g.)[8] or hear the child through his legal representative[9]. This diversity is not a problem in itself – it is rather an advantage as it highlights the benefits and disadvantages, but there are two main risks here.

The first is the potential lack of adequate training of the person who hears the child. While there is no use in harmonizing the methods under the 1996 Hague Convention, each Contracting State being familiar with its own rules and this not being the Convention's purpose[10], it does however seem necessary to guarantee that the hearing will be conducted by a person having sufficient and adequate training and experience with the matter. The Special Commission has indeed highlighted the need to ensure that the interviewer, whomever he is, has "appropriate training for this task"[11].

The issue hence lies not in who interviews the child, but in making sure they have the skills required to do so and the Convention does not impose any minimum requirement in this aspect.

The other concern is that judges should have at least basic knowledge of the methods existing in foreign legal systems, to avoid applying Article 23(2)b) when unneeded[12]. Although no Contracting State seems to have reported such issue so far, should it arise, an option could be to require the Central Authorities of the Contracting States to explain the conduct of the hearing in their system and to gather them, for e.g., in an annex to the Convention or through enhanced communication between judges, to promote knowledge of foreign methods.

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5 Ibid.

6 Article 1(d) of the 1996 Hague Convention.

7 Article 336bis of the Italian Civil Code provides that the child will be heard by the president of the court or by the delegated judge and that the hearing is conducted by the judge as well as experts or other auxiliaries.

8 Act for the Implementation of the Convention on the Civil Aspects of International Child Abduction of 19 June 2013 in *The Child's Voice – 15 Years Later*, The Judges' Newsletter on International Child Protection, Volume XXII Summer – Fall 2018, p. 25.

9 In a recent judgment from the Court of Appeal of Luxembourg, the six-year-old child was not heard directly as the court considered that the report issued by the child's representative sufficed (Court of Appeal, 10 July 2019, n° 148/18).

10 Practical Handbook on the Operation of the 1996 Hague Child Protection Convention, p. 110.

11 Conclusions and Recommendations and Report of Part I of the Sixth Meeting of the Special Commission on the Practical Operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention (1-10 June 2011) - (Prel. Doc. No 14 of November 2011), para. 164.

12 *The Child's Voice – 15 Years Later*, The Judges' Newsletter on International Child Protection, Volume XXII Summer – Fall 2018, p. 3.

Finally, the third and perhaps most important issue – acknowledged by the Special Commission[13] - is the lack of guarantee that the requested State is provided with the information necessary to assess whether its fundamental procedural principles were infringed and if need be, to trigger Article 23(2)b). Indeed, nowhere does the text require the issuing authority to indicate the summary of the hearing or the reason why it did not take place. Nothing ensures that the requested State will be given the relevant information as to why the child was not heard or if he was heard at all. How can it then be expected to identify a violation of its procedural public policy and deny recognition? This gap has two main consequences: considerable loss of time if the requested authority conducts investigation to determine whether the child was given an opportunity to be heard, and potential non-compliance with due process if it recognizes the measure without any further enquiry. The requirement that the procedure for the declaration of enforceability be "simple and rapid"[14] will moreover encourage the requested court to rule quickly even if it does not have all the information necessary to decide whether to apply Article 23(2)b).

This issue is not merely theoretical and has been encountered by some Contracting States. In its response to the 2016 Questionnaire[15], Germany reported that "from the courts point of view, difficulties have repeatedly arisen in determining whether the child has been provided the opportunity to be heard". One can assume that courts from other Contracting States have or will face the same issue. It is thus clear that there is an urgent need for enhanced cooperation between the authorities of the Contracting States regarding the motives of the decision to hear or not to hear a child. As it is not conceivable to leave such a burden on the requested State, a new provision could be introduced requiring the issuing authority to indicate the relevant information in the decision itself[16]; another option would be to require it to fill up a certificate containing the relevant information.

III. Draw Inspiration from the Brussels IIter Regulation?

While the currently in force Brussels II*bis* Regulation contains a provision similar to Article 23(2)b)[17], Article 39(2) of the recast provides that "*the recognition of a decision in matters of parental responsibility may be refused if it was given without the child who is capable of forming his or her own views having been given an opportunity to express his or her views (…)*". Since Member States were already subject to the UN Convention on the Rights of Child, it is mostly at the recognition and enforcement stage that its reach will be noticed[18]. Article 39(2) allows the requested Member State to refuse to recognize or enforce the decision if the child has not been given an opportunity to be heard. In other words, the requested State is entitled to check whether the issuing authority has complied with this provision. This serious limitation to the principle of mutual trust underlying the Brussels system is justified by the major importance given by certain Member States to the hearing of the child[19]. Moreover, it does not go as far as a review on the merits of the measure, which is prohibited under the

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13 Conclusions and Recommendations adopted by the Special Commission on the Practical Operation of the 1980 and 1996 Hague Conventions (10-17 October 2017), para. 50.

14 Article 26 of the 1996 Hague Convention.

15 Response to the questionnaire concerning the practical operation of the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of Parental Responsibility and Measures for the Protection of Children* (Prel. Doc. No 1 of December 2016), question 13.

16 Conclusions and Recommendations adopted by the Special Commission on the Practical Operation of the 1980 and 1996 Hague Conventions (10-17 October 2017), para. 50.

17 Article 23(b) of the Brussels II*bis* Regulation provides that "*a judgment relating to parental responsibility shall not be recognized if it was given, except in case of urgency, without the child having been given an opportunity to be heard, in violation of fundamental principles of procedure of the Member State in which recognition is sought*".

18 S. Rodrigues, *Le règlement Bruxelles II bis* (refonte), L'Observateur de Bruxelles, N° 116, avril 2019, p. 28.

19 Ibid.

Convention[20], but merely institutes an additional guarantee that the procedure has been complied with. Besides, a minimum review remains necessary to recognize or enforce the measure[21]. Finally, the requested court has no obligation to deny recognition as it only "*may*" be refused.

Article 39(2) of the Recast also seems less strict as the condition that the failure to hear the child amount to a violation of a fundamental principle of procedure of the requested State has been removed. Hence the requested State will be able to refuse recognition or enforcement of the measure if the child has not been provided an opportunity to be heard, without having to characterize a violation of a fundamental procedural principle as it does under Brussels II*bis*. It does not however amount to a positive obligation to hear the child as the child must be "*capable of forming his or her own views*". This provision thus appears as a reasonable compromise between the right of the child to be heard and the free movement of judgments.

Compared to Article 23(2)b) of the 1996 Hague Convention, Article 39(2) of the Recast also has the advantage of lowering the threshold under which the measure will not be recognized or enforced as the violation of a fundamental procedural principle is no more required. It might lead to a more systematic review by the requested State of whether the child was offered the opportunity to be heard. Remodeled in such a way, the ground of Article 23(2)b) will be triggered whenever the child was wrongly deprived of his opportunity to be heard, which will not be assessed anymore considering the subjective conception of each requested State, but rather objectively, by reference to the autonomous and universal right of the child to express his views in proceedings that concern them. It would ensure a stronger safeguard of the child's best interests, without going too far as the issuing authority is under no obligation to hear the child who is not capable of forming their own views.

IV. Conclusion

In sum, three main issues have been identified. First, the varying importance given to the hearing of the child by the Contracting States may impair the uniform application of Article 23(2)b), generating legal uncertainty. Second, it might be useful to gather and explain the various methods used to hear the child across the different legal systems to make sure judges are familiar with them and refrain from applying Article 23(2)b) where there is no need. Finally, the need for the requested State to be provided with all relevant information concerning the hearing of the child urgently calls for imposing on the issuing authority a duty to indicate all relevant information along with the measure.

Using Article 39(2) of the Brussels II*ter* Regulation as an inspiration for remodeling Article 23(2)b), coupled with enhanced communication between the authorities, would allow for a better guarantee that the child is given an opportunity to be heard and constitutes one more step towards giving the child a stronger voice in all matters affecting them.

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20 Article 27 of the 1996 Hague Convention.

21 Practical Handbook on the Operation of the 1996 Hague Child Protection Convention, p. 110.

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Article 22 as a Remedy in Contemporary Issues

Imagine a child, still an infant, whose single father fell in love with another man and entered into a partnership with him. These two men -- same-sex partners –- lived together and provided the child a home. State A where this family habitually resided does not recognize same-sex marriage. Nevertheless, these men, as parents, reared and nurtured the child until the child's biological father died when the child was nine years old.

The surviving partner whom the child considers as a parent just as much as her biological father decided that the child would have better opportunities outside State A. The surviving parent, who is now the actual custodian, brings the child to State B – a state party to the 1996 Convention on Child Protection (the "Convention").[1]

The mother of the deceased parent instituted a proceeding to exercise parental authority over the child. She invokes the lack of legal status on the part of the surviving parent, and relies on the law in State A which provides that, in case of death of the parent, substitute parental authority shall be exercised by the surviving grandparent. This provision sets out an order of persons who may exercise this authority which would have left the surviving parent, as the actual custodian, at the bottom of the chain. As this is an express provision of law, the court in State A while sympathetic, had no choice but to apply the law to the letter.

The grandmother brings this matter to a court in State B. The surviving parent also brought a challenge to the proceeding in State A and he asks the court in State B to block the enforcement of that judgment in its jurisdiction. The court examines the Convention and determines, preliminarily, that Article 15 and 16 which instructs it to apply law of the state of habitual residence or State A.

Article 22 of the Convention provides that the court in State B can be refuse such application only if it would be "manifestly contrary to public policy, taking into account the best interests of the child."

Can the court in State B consider Article 22 to apply its own law which would have allowed the surviving parent to have custody and exercise parental authority over the child?

This requires an examination of the relationship between 'best interests' to the relevant public policy, *i.e.* would this be a subordinate concern or if there is a convergence?

Re-examining the idea of 'best interests'

The idea of the "best interests of the child" is central to any regime of child protection. This is recognized by the Convention on the Rights of the Child ("CRC") which provides that the best interests of the child shall be the primary consideration in all actions concerning children, including those taken by courts of law.[2]

According to the Committee on the Rights of the Children, the concept is itself a substantive right which calls for primacy in consideration when different interests are at stake in a decision

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[1] For the purpose of this essay, we assume that there was authority to take the child out of State A. This essay also does not consider the question of kidnapping and other possible charges under its domestic law.

[2] *Convention on the Rights of the Child*, art. 3, ¶ 2, Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989) [*hereinafter* "CRC"].

to be made on and for the child.[3] The content of this right shall be determined on a case-by-case basis considering the complexity and the flexibility of this concern.[4] As a fundamental and integrative legal principle, it also guides an interpretation of a legal provision so that the interpretation which most effectively serves the child's best interests would be chosen in case two or more interpretations are generated by the text.[5] This is the same understanding of this concept under the Convention.[6]

It is hardly disputed that stability in the home and in the relationships of the child serves her best interests. It is essential to the proper development of the child that her family life is not disrupted.[7] Thus, it is important that the Convention views 'family' in a broad sense, as it includes non-biological parents or the members of the extended family or the community.[8]

With an expansive view of family, and taking into account the relationships in this case, separating the child from her primary caregiver would result in an unstable environment. The Committee recognizes this value:[9]

60. Preventing family separation and preserving family unity are important components of the child protection system, and are based on the right provided for in article 9, paragraph 1, which requires "that a child shall not be separated from his or her parents against their will, except when [...] such separation is necessary for the best interests of the child." Furthermore, the child who is separated from one or both parents is entitled "to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests" (art. 9, para. 3). This also extends to any person holding custody rights, legal or customary primary caregivers, foster parents and persons with whom the child has a strong personal relationship.

61. Given the gravity of the impact on the child of separation from his or her parents, such separation should only occur as a last resort measure, as when the child is in danger of experiencing imminent harm or when otherwise necessary; separation should not take place if less intrusive measures could protect the child. Before resorting to separation, the State should provide support to the parents in assuming their parental responsibilities, and restore or enhance the family's capacity to take care of the child, unless separation is necessary to protect the child. Economic reasons cannot be a justification for separating a child from his or her parents.

Given the moral and justice components of this child protection principle, could this then be a value that the courts in State B (or any other state party) would consider as public policy (and its contravention as manifestly against it), particularly in societies which consider child protection as an integral thread of its social fabric? We examine how public policy, a concept in Article 22, is understood in private international law.

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3 Committee on the Rights of the Children, *General Comment No. 14, on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, 29 May 2013, CRC/C/GC/14 [6, ¶ a] [*hereinafter* "GC 14"].

4 *Id.* [80].

5 *Id.* [6, ¶ b].

6 HCCH, Practical Handbook on the Operation of The Hague Convention of 19 October 1996, 57 (2014).

7 See the discussion in Mathieu Leloup, *The Principle of the Best Interests of the Child in the Expulsion Case Law of the European Court of Human Rights: Procedural Rationality as a Remedy for Inconsistency*, 37 Netherlands Quarterly of Human Rights, 50–68 (2019).

8 CRC, *supra* note 3, at art. 5.

9 GC 14, *supra* note 4.

The concept of public policy

Public policy is as flexible and evolving a concept as 'best interests'. It reserves power on the part of the forum "to reject application of laws perceived to be injurious or harmful."[10] In other words, the courts of the forum may refuse to apply the law of another state due to its deleterious effect to an important value of the forum.

Traditionally, those considered injurious or harmful to the forum are events or actions inconsistent with the interests of the public, local morality, and social order.[11] While this remains a major thrust of public policy, contemporary understanding could accommodate any instance of repugnancy to the forum's sense of morality and decency.[12] This contemporary understanding is what *Joost Bloom* is referring to when he posits that views and values change over time, so that when public policy is invoked, it must mean current public policy.[13]

It is reasonable to posit that public policy would simultaneously be invoked to "prevent injustice in the special circumstances of the parties before the court."[14] Given the nature of the question in this case, a consideration of the harsh effect of applying State A law that separates the child from a caregiver she recognizes as her parent would be manifest. Apart from the child, it would have a harsh effect on a caregiver who had devoted his life to the nurturing of the child only to be stripped of custody due to State A's non-recognition of same-sex marriage. Recalling *Bloom*, this temporal element means that today's view of child protection would entail courts' consideration of whether foreign law that disrupts the family life of the child twice over should not be applied.

Convergence, not subordination

Given these conceptions of what public policy and 'best interests' mean, an interpretation of the latter as subordinate to a public policy of recognizing State A's non-recognition of same-sex relationships would be tenuous. The interpretation that is consistent with child protection is that of convergence of these two concepts. Thus, to answer Geraldine Van Beuren's question, one could say that it does not take second place to public policy.[15]

Bloom identifies four sources public policy's content: (a) the national interest of the forum state in the proper functioning of its governmental and legal systems; (b) the fundamental values that underlie the domestic system of private law; (c) values that relate, not to domestic legal institutions, but to interprovincial and international transactions; and (d) sources in international customary and treaty law.[16]

The service of the best interests of the child (including its protection of stability) could be located in at least three of these sources. *First*, most legal systems are built on strong

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10 Kent Murphy, *The Traditional View of Public Policy and Ordre Public in Private International Law*, 11 Ga. J. Int'l & Comp. L., 591-615 (1981)

11 Monrad Paulsen & Michael Sovern, *"Public Policy" in the Conflict of Laws,* Columbia Law Review Vol. 56 No. 7, 969-1016, at 969 (1956)

12 Murphy, *supra* note 10, at 607.

13 Joost Bloom, *Public Policy in Private International Law and Its Evolution in Time.* Netherlands International Law Review 50, 373-399, at 383 (2003).

14 Murphy, *supra* note 12.

15 Michael Freeman, *Article 3 The Bests Interests of the Child*, Martinus Nijhoff (2007), p. 18.

16 Bloom, *supra* note 13, at 385.

foundations of child protection.[17] Private law regimes strongly draw from the idea of the family and the proper nurturing of children. Further, the proper functioning of a legal system – which public policy protects – could mean that its processes in the administration of justice does not result in injustice. Thus, it is not difficult to imagine the injustice when the child is separated from the caregiver simply due to a list that has weak internal logic.

Second, if the fundamental values of the forum or states which put prioritize child protection are freedom or equality, it would be inconsistent with that public policy to ignore the freedom of the child in choosing the parent and the parent who has raised the child for years, not to mention the indictment of the state of relationships formed out of that freedom.[18] This is particularly the case for human rights issues which are common in family cases, and are usually resolved using the law of the forum.

Lastly, treaty law certainly manifests and further shapes the public policy of protecting the child's interest. The CRC, the treaty with the most State parties, even has specific provisions that direct states to maintain government mechanisms aimed at mitigating possible threats to a child's well-being.[19]

Treaty law as a source is reinforced by the European Court of Human Rights' interpretation of Article 8(2) of the European Convention on Human Rights[20] ("ECtHR") that domestic courts should consider the interests and rights of all concerned, particularly the best interests of the child.[21] In fact, in a case similar to the one considered here where there was a dispute between an unmarried father and the maternal grandparents over whether the former should be allowed to recognize the child formally, the ECtHR pronounced that if any balancing of interests is necessary, the interests of the child must prevail above the rights of the contending parties.[22] In this instance, even when the child cannot articulate that choice, the circumstances and injustice to the parties would compel the exclusion of State A's law based on public policy grounds.

Conclusion

States often claim that the protection of children in their society, ensuring their well-being, is a value to which they are strongly committed to. In this case, separation of the child from the long-time caregiver who is considered a parent, and who happens to be the actual custodian could a result that State B has an interest to avoid an unacceptable derogation from values that are fundamental to its own legal system.[23] This is particularly relevant when the applicable foreign law prescribing who has substitute parental authority based on an assumption of 'better' relationships and without reference to a foundational guiding principle. An understanding that public policy and the 'best interests of the child' converge in this scenario would serve the former's goal of preserving the integrity of the forum's legal order. This would be consistent with the purpose of the Convention.

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17 Dan O'Donnell with Dan Seymour, United Nations International Children's Emergency Fund (UNICEF), Child Protection A handbook for parliamentarians 11 (2004)

18 Bloom, *supra* note 13, at 391.

19 See CRC, Articles 9, 18-19.

20 Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5

21 *Hokkanen v. Finland*, App. No. 19823/92, Eur. Comm'n H.R. Dec. & Rep (1994)

22 *Yousef v. The Netherlands*, 2002-VIII Eur. Ct. H.R.

23 Bloom, *supra* note 13, at 374.

Winners of the HCCH|Approach Media and Design Competition

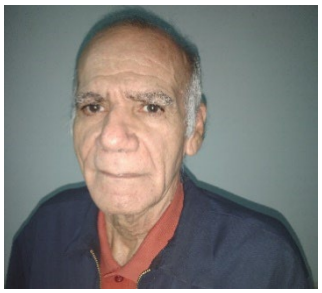
Shaquan Richards (First Prize)

Music is my safe space, it's where I feel most confident and most comfortable. Writing music and loving what I've created makes my heart dance. Good music can really touch your soul and I love that. My connection with music began as a baby. My Mom would sing me a list of songs until I stopped crying so she could leave for work. When I was about 5 years old she discovered that I could sing while I was following tunefully along with a nursery rhyme. In high school I began learning the guitar; an instrument that has become essential in my song writing process. Since then I've been featured on the EP 'Oh Such Grace' by IOABC and I'm currently working on my own solo album.

Ms. Richards's piece is a musical composition entitled "Save Me", available for listening here.

Lyrics:

Will somebody be there when my world is crashing down?
'Cause right now I'm so scared, when my home is nowhere to be found.
Just a six-year-old refugee, only God knows what they took from me,
Somebody save me, won't somebody save me?
Seeking asylum in this foreign land, won't somebody save me? Will somebody save me?
Will somebody be there when my world is crashing down?
'Cause right now I'm so scared, when my home is nowhere to be found.
Will somebody be there when my world is crashing down?
Please don't turn away, from the things you said you'd do.
'Cause right now I need you to protect me.

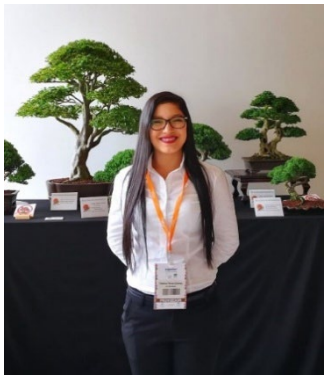


Freddy Rodriguez (Second Prize)

Fredys Marcelo Rodríguez Arias, Venezuelan, was born in the city of San Cristóbal, Táchira State, an area through which the transit of more than 2 million migrants to Colombia and other countries. His academic studies culminated in graduation as a Mechanical Engineer from the Central University of Venezuela. In 1998 he was elected as a deputy to the Congress of the Republic of Venezuela and served as a member of the Comptroller's Commission of the Country until 2000. He worked for more than 3 decades as a University Professor in the areas of technology, with many recognitions including that of Innovative Professor in education for the use of different advanced digital resources.

Fredys Marcelo Rodríguez Arias, venezolano, nació en la ciudad de San Cristóbal, Estado Táchira, zona por la que ha ocurrido el tránsito de más de 2 millones de migrantes hacia Colombia y otros países.Con estudios académicos que culminaron con la graduación como Ingeniero Mecánico en la Universidad Central de Venezuela. En el año 1998 resultó electo como diputado al Congreso de la República de Venezuela y ejerció como miembro de la Comisión de Contraloría del País hasta el 2.000. He ejercido en más de 3 décadas como Profesor Universitario en las áreas de tecnología, con muchos reconocimientos incluidos el de Profesor innovador en la educación por la utilización de los distintos recursos digitales avanzados.

Mr. Rodriguez's piece is a 3-D animated video. It shows a virtual museum dedicated to legal standards, images, and institutions related to the protection of children.



Fatima Perez (Third Prize)

Fatima Perez is a student of Web Application Design in Costa Rica. She is an entrepreneur, empirical artist, and tour guide. She finished her bachelor's degree in Ecotourism Management at the University of Tourism Costa Rica in 2018. At the beginning of the pandemic, she decided to venture into the technological world and design. This thanks to her skills in plastic arts, creativity, and perseverance. Since she was a child, she has been interested in helping others and working for foundations and projects for people at social risk. She wishes to combine tourism projects with technology, design, website design and art.

Fatima Perez es estudiante de Diseño de Aplicaciones Web en Costa Rica. Emprendedora, artista empírica y guía de turismo. Termino el bachillerato de Gestión de Turismo Ecológico en la Universidad del Turismo Costa Rica 2018. Al empezar la pandemia decidió incursionar en el mundo tecnológico y el diseño. Esto gracias a sus habilidades en artes plásticas, creatividad y perseverancia. Desde niña se interesó por ayudar a los demás y trabajar para fundaciones y proyectos para personas en riesgo social. Desea combinar proyectos de turismo con la tecnología, diseño de páginas web y el arte.

Ms. Perez's piece is a poster entitled "Protection of All Children".

This is my poster alluding to the protection of children around the world. In this poster I show situations where children have been vulnerable. This design is for people who see it to reflect on the experiences of children today. Thousands of children around the world at this moment are suffering.

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