



HCCH

Connecter Protéger Coopérer Depuis 1893
Connecting Protecting Cooperating Since 1893
Conectando Protegiendo Cooperando Desde 1893

INTERNATIONAL FAMILY RELOCATION – STATE OF PLAY

HCCH CONVENTIONS

15 Years of the HCCH Washington Declaration

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Progress and Perspectives on International Family Relocation

Embassy of Canada, Washington, DC, USA, 2-4 April 2025

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HCCH Conventions relevant to international family relocation



- **1980 Child Abduction Convention**
- **1996 Child Protection Convention**
- **2007 Child Support Convention**

Combined, the 1980, 1996 and 2007 Conventions provide, at the global level, a framework for cross-border legal co-operation on relocation issues

Relocation decisions and / or relocation agreements having the force of law benefit from higher legal predictability and certainty, if all States concerned are Parties to the 1980, 1996 and 2007 Conventions

1980 Child Abduction Convention



➤ 103 Contracting Parties

1980 Convention seeks to protect children from the harmful effects of wrongful removal or retention (i.e., child abduction) across international borders by providing a procedure for their safe return to their State of habitual residence - the abduction of a child is wrongful when in breach of rights of custody

Underlying premise: the authorities of the State of the habitual residence of the child are best placed to resolve the merits of custody disputes

➤ Supports Articles 3, 9-12 and 35 of UNCRC

1980 Child Abduction Convention



1980 Convention provides remedies at the international level when rights of custody are breached:

- **Primary remedy to address the wrongful removal of a child
=> Remedy is to order the return of the child**
- **Remedy to address the wrongful retention of a child in the case of cross-border contact / visit
=> Remedy is to order the return of the child**

1980 seeks to ensure that rights of custody and access under the law of one Contracting State are effectively respected in the other Contracting State (Art. 21)

Possible direct judicial communications in specific cases between members of the International Hague Network of Judges (IHNJ)

1996 Child Protection Convention



➤ 56 Contracting Parties

1996 Convention provides rules that:

- **Determine the State whose authorities have jurisdiction to take measures for the protection of children**
- **Determine the law applicable to such measures**
- **Provide recognition and enforcement of such measures**
- **Establish co-operation between the authorities of the Contracting Parties**

1996 covers a wide range of civil measures of protection, from orders concerning parental responsibility, contact and relocation to public measures of protection or care

➤ **Supports Articles 3, 9-12, 20, 22 and 35 of UNCRC**

1996 Child Protection Convention



1996 Convention provisions relevant to relocation:

- Jurisdiction to make relocation orders is in the State of the habitual residence of the child (Art. 5(1))
- Jurisdiction to give force of law to a relocation agreement is in the State of the habitual residence of the child (Art. 5(1))
- After relocation, the State of habitual residence of the child changes to the State of destination (Art. 5(2))
- Jurisdiction can be transferred, to a State with which the child has a substantial connection (e.g., State of nationality / State of destination), to give force of law to a relocation agreement (Art. 8(2))

Possible direct judicial communications in specific cases between members of the IHNJ

1996 Child Protection Convention



1996 Convention provisions relevant to relocation (cont.):

- The law applicable is the law of the forum (Art. 15(1))
- Exceptionally, the law of another State with which the situation has a substantial connection can apply (Art. 15(2))
- When the habitual residence of the child changes, the law of that other State governs, from the time of the change, the conditions of application of the measures taken in the State of the former habitual residence (Art. 15(3))
- Attribution / extinction of parental responsibility by agreement is governed by the law of the State of the child's habitual residence at the time the agreement takes effect (Art. 16(2))
- Parental responsibility which exists under the law of the State of habitual residence of the child subsists after a change of that habitual residence to another State (Art. 16(3))

1996 Child Protection Convention



1996 Convention provisions relevant to relocation (cont.):

- Measures taken (or given the force of law in the case of an agreement) in the State of origin (i.e., former State of habitual residence) will be recognised by operation of law in all other Contracting Parties (Art. 23(1))
- Relocation order and its conditions can be recognised (in advance) by the State of destination before relocation occurs (Art. 24)
- Request for assistance from authorities of another State in implementing “rights of access” and “the right to maintain direct contact on a regular basis” (Art. 15(1))
- After relocation, custodial parent can ask authorities of the former habitual residence to make a finding as to the suitability of the parent in the other State to exercise access (Art. 15(2))

2007 Child Support Convention



➤ 54 Contracting Parties

2007 Convention ensures the effective international recovery of child support and other forms of family maintenance through a system of administrative co-operation via Central Authorities by a combination of means:

- **Cooperation between States to process applications**
- **Availability of applications for recognition and / or enforcement, establishment and modification of maintenance decisions**
- **Effective access to maintenance procedures**
- **Broadly based system for R&E of maintenance decisions**
- **Expedited and simplified procedures for R&E**
- **Requirement of prompt and effective enforcement**

➤ Supports Articles 3, 12 and 27 of UNCRC

2007 Child Support Convention



2007 Convention provisions relevant to relocation:

- Child and / or spousal support contained in a relocation order will be subject to R&E (Arts 6, 7, 10, 11 and 19-29)
- Any severable part of an order can be R&E (Art. 21(1))
- An agreement in writing relating to the payment of child and / or spousal support which –
 - has been formally drawn up or registered as an authentic instrument by a competent authority; or
 - has been authenticated by, or concluded, registered or filed with a competent authority,will be subject to R&E (Arts 3(e)(i) and (ii), and 30)
- Child and / or spousal support can be subject to modifications over time (Arts 6, 7, 10, 11 and 18)

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Thank you!



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