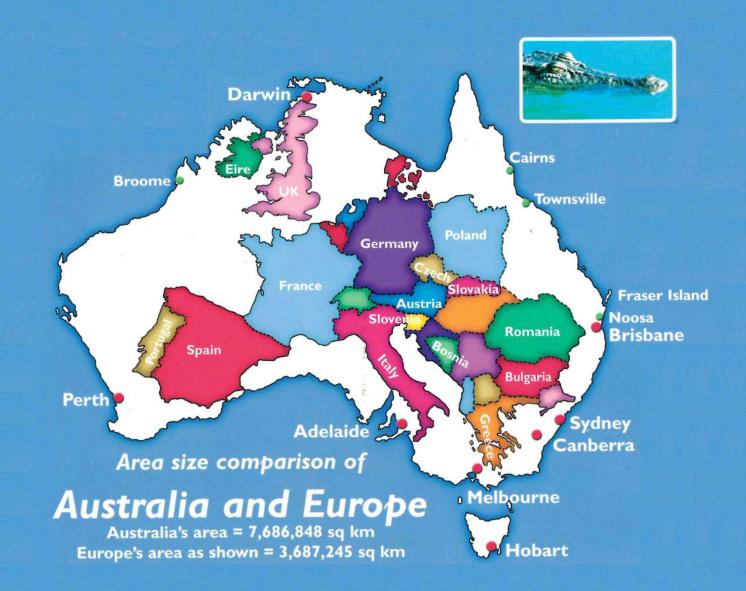


An overview of the benefits and key features of the Hague 1996 Convention on the International Protection of Children

Fourth Malta Conference ("Malta VI") on Cross-frontier Child Protection and Family Law Malta, 2016

> The Honourable Justice Bennett Family Court of Australia









Same Concepts

The 1996 Convention uses the same terminology as the 1980 Convention:

- habitual residence
- wrongful removal and retention
- parental responsibility
- rights of custody

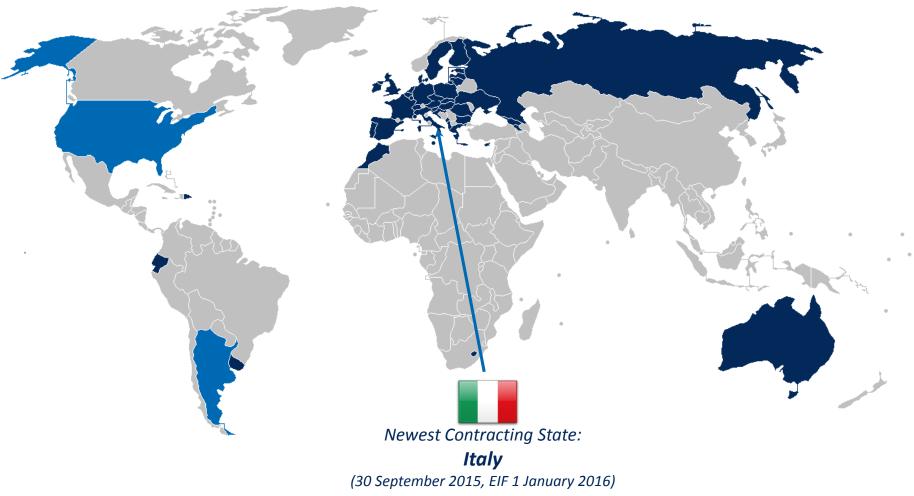
A Central Authority is a pre-condition to membership.



1996 Hague Child Protection Convention

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

42 Contracting States (+2 Signatory States)



Practical Handbook on the Operation of the 1996 Hague Child Protection Convention

1996 Convention

The *1996 Convention* provides scaffolding to support enforceable protective measures of abducted and other vulnerable children in that it:

- provides for one state (either the state where the child is present or the state of habitual residence) to have preeminent jurisdiction;
- enables orders based on presence of child or child's property to be made if urgent or provisional;
- provides for an exchange of relevant information, frequently about important child protection issues;
- provides recognition and enforcement of mirror or complementary orders or arrangements to operate across two jurisdictions;
- requires mediation;
- allows for transfer of jurisdiction to the country better placed to assess a child's best interests.



Article 5

State of habitual residence has pre-eminent jurisdiction



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.



Article 26

(1) If enforceable measures taken in one Contracting State require enforcement in another Contracting State, they shall, upon request by an interested party, be declared enforceable or registered for the purpose of enforcement in that other State according to the procedure provided in the law of the latter State.

(2) Each Contracting State shall apply to the declaration of enforceability or registration a **simple and rapid procedure**.

(3) The declaration of enforceability or registration may be refused only for one of the reasons set out in Article 23, paragraph 2.



CYPRUS



Entry into force between Cyprus and Australia: 1 November 2010

Hague Network Judge: Judge George A

Serghides

- An application under arts 24 or 26 needs to be made to a family court.
 - The applicant does not require a lawyer to make an application.
- There are fees payable to the court.
- Legal aid or assistance from the Central Authority is available to the applicant.
- For the recognition, registration and enforcement of foreign orders in Cyprus the relevant legislation is Law 121(I)/2000.
- Under s 5(1)(a) of Law 121(I)/2000, when a foreign court decision is taken in default, the application for recognition etc is made ex parte.
- According to research undertaken by his Honour in his Court (Districts of Nicosia-Kyrenia), there has been only one case filed which was based on the *1996 Convention* (case no 12/14). The decision regarding recognition, registration and enforcement was made four days from the date the application was filed in the Family Court of Nicosia-Kyrenia.
- When the foreign decision is not taken in default, under section 5(1)(b) of the same Law, the duration of the Cyprus procedure should not exceed four weeks from the date of the filing of the application.



Article 23(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;



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.





Article 11

- 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.



Article 8 – transfer of jurisdiction to another State

If the state of habitual residence considers that another Contracting State would be better placed in the particular case to assess the best interests of the child, may either

- request the other Contracting State, directly or with the assistance of the Central Authority of its State, to assume jurisdiction to take such measures of protection as it considers to be necessary, or

- the Contracting States whose authorities may be addressed as provided in the preceding paragraph are

• *a)* a State of which the child is a national,

b) a State in which property of the child is located,

c) a State whose authorities are seised of an application for divorce or legal separation of the child's parents, or for annulment of their marriage,

d) a State with which the child has a substantial connection.

- The authorities concerned may proceed to an exchange of views.
- The authority addressed ... may assume jurisdiction, in place of the State of habitual residence if it considers that this is in the child's best interests.



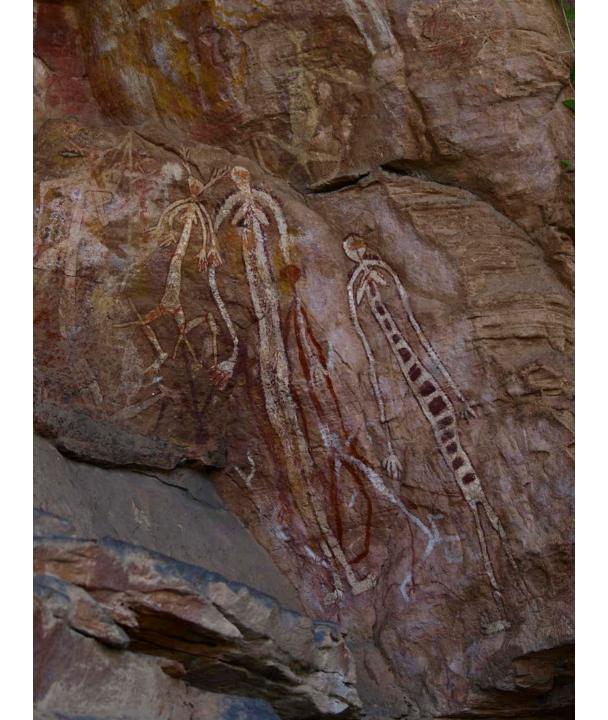
Article 9(1) – request a transfer of jurisdiction

If the authorities of a Contracting State referred to in Article 8, paragraph 2, consider that **they are better placed in the particular case to assess the child's best interests** it can ask for a transfer of jurisdiction.

The authorities concerned may proceed to an exchange of views.

The authority addressed as provided in paragraph 1 may assume jurisdiction, in place of the State of habitual residence if it considers that this is in the child's best interests.







Article 33(1)

. . .

If an authority ... contemplates the placement of the child in a foster family or institutional care, or the provision of care by *kafala* or an analogous institution, and if such placement or such provision of care is to take place in another Contracting State, **it shall first consult with the Central Authority or other competent authority** of the latter State

Article 31(b)

.... facilitate, by mediation, conciliation or other similar means, agreed solutions for the protection of the person or property of the child in situations to which the Convention applies



Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction

Mediation

Article 32

b) request the competent authority of its State to consider the need to take measures for the protection of the person or property of the child.



Article 16

(1) The attribution or extinction of parental responsibility by operation of law, without the intervention of a judicial or administrative authority, is governed by the law of the State of the habitual residence of the child.

(2) The attribution or extinction of parental responsibility by an agreement or a unilateral act, without intervention of a judicial or administrative authority, is governed by the law of the State of the child's habitual residence at the time when the agreement or unilateral act takes effect.

(3) Parental responsibility which exists under the law of the State of the child's habitual residence subsists after a change of that habitual residence to another State.

(4) If the child's habitual residence changes, the attribution of parental responsibility by operation of law to a person who does not already



Article 17

The exercise of parental responsibility is governed by the law of the State of the child's habitual residence. If the child's habitual residence changes, it is governed by the law of the State of the new habitual residence.



Article 34(1)

Where a measure of protection is contemplated, the competent authorities under the Convention, if the situation of the child so requires, **may request any authority** of another Contracting State which has information relevant to the protection of the child to communicate such information.





Article 35(1)

The competent authorities of a Contracting State may request the authorities of another Contracting State to assist in the implementation of measures of protection taken under this Convention, especially in securing the effective exercise of rights of access as well as of the right to maintain direct contact on a regular basis..





The International Hague Network of Judges

Of the 83 countries for which the 1980 Convention is in force with Australia, the shaded countries have a network judge:

Albania	China, People's Republic of	Georgia	Luxembourg	Poland	Thailand
Argentina	Colombia	Germany	Malta	Portugal	The Former Yugoslav Republic of Macedonia
Armenia	Costa Rica	Greece	Mauritius	Romania	Trinidad and Tobago
Austria	Croatia	Guatemala	Mexico	Saint Kitts and Nevis	Turkey
Bahamas	Cyprus	Honduras	Moldova, Republic of	San Marino	Turkmenistan
Belarus	Czech Republic	Hungary	Monaco	Serbia	Ukraine
Belgium	Denmark	Iceland	Montenegro	Singapore	United Kingdom
Belize	Dominican Republic	Ireland	Netherlands	Slovakia	United States of America
Bosnia and Herzegovina	Ecuador	Israel	New Zealand	Slovenia	Uruguay
Brazil	El Salvador	Italy	Nicaragua	South Africa	Uzbekistan
Bulgaria	Estonia	Japan	Norway	Spain	Venezuela
Burkina Faso	Fiji	Korea, Republic of	Panama	Sri Lanka	Zimbabwe
Canada	Finland	Latvia	Paraguay	Sweden	
Chile	France	Lithuania	Peru	Switzerland	

