

The Judges' Newsletter

on International Child Protection

Special Focus

Second Experts' Meeting on the
Continued Nurturing of the
1980 Hague Convention

London, August 2025

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Second Experts' Meeting on the Continued Nurturing of the
1980 Hague Convention

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Foreword

This edition of the Judges' Newsletter on International Child Protection includes several items.

Primarily, this edition covers the second Experts' Meeting on the Continued Nurturing of the 1980 Hague Convention, convened and organised by Professor Marilyn Freeman and Professor Nicola Taylor, which was held at the University of Westminster in London from 4 – 5 August 2025. In this regard, the Newsletter aims to serve as a useful repository for the remarks and contributions of the organisers, chairpersons, as well as the panellists, all of whom have submitted their contributions in writing for the purpose of this Newsletter. The Permanent Bureau, as well as Professors Taylor and Freeman, are extremely grateful to all panellists for having prepared and shared their contributions in writing for this edition of the Judges Newsletter. It is hoped that those who were not able to attend the Experts' Meeting, and those who have an interest in the subject matter, will find this Newsletter interesting and helpful.

This edition of the Newsletter also intends to report on the Fourth Global Meeting of the International Hague Network of Judges (IHNJ), which took place from 19 to 21 May 2025, in Singapore and to share an article co-authored by Brazilian IHNJ Members Guilherme Calmon Nogueira da Gama and Inês Virgínia Prado Soares, reporting on the recent activities of the IHNJ Members in Brazil.

The views expressed by the authors in this Newsletter are their own and should not be attributed to or be understood to reflect the views of the HCCH.

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Fourth Global Meeting of the IHNJ and HCCH Judicial Roundtable

19 to 21 May 2025, Singapore



From 19 to 21 May 2025, the Fourth Global Meeting of the International Hague Network of Judges (IHNJ) was held in Singapore, co-hosted by the Singapore Family Justice Courts and the HCCH. It was attended by over 50 judges representing 34 HCCH Members.

The meeting consisted of 18 sessions, bringing together experts from over 20 States. Following the opening remarks, the first session set the stage with a review of key HCCH and IHNJ developments since the previous IHNJ Global Meeting in 2018. The second session provided the state of play of the IHNJ, focusing on its structure and relationship with other judicial networks. In the third session, participants discussed ways to enhance communication, cooperation, and mutual support and assistance among members, while in the fourth session the discussion shifted to IHNJ members' relationship with key stakeholders at the domestic level. The fifth and sixth sessions were dedicated to promoting direct judicial communications. They were followed, in the seventh session, by a discussion of domestic / regional procedures applicable to cases under the 1980 Child Abduction Convention, particularly with a view to facilitate expedition. In the eighth session, the speakers provided examples of implementation of the Emerging Guidance and General Principles for direct judicial communications in domestic laws.

The next four sessions examined the role of the IHNJ in, respectively, promoting and supporting the use of HCCH guidance materials; ascertaining whether protective measures are available and enforceable in the State of habitual residence to secure the safe return of the child in cases of international abduction; coordinating issues of jurisdiction (including transfer) under the 1996 Child Protection Convention; and facilitating the obtaining of the child's views in a cross-border context. During the thirteenth session, participants discussed sharing the content of direct judicial communications with the parties to a dispute. Finally, the last five sessions focused on the IHNJ's expansion, INCADAT, the IHNJ Secure Platform, the Judges' Newsletter on International Child Protection, and possible topics for future online IHNJ meetings.

Across their various interventions, participants illustrated how the IHNJ, which was established in 1998, continues to serve as an essential mechanism for facilitating international cooperation and communication between judges in international family law cases. The Conclusions and Recommendations adopted during the Fourth Global Meeting of the IHNJ are now available on the HCCH website in [English](#), [French](#), [Spanish](#) and [Portuguese](#).

For more information on the IHNJ, please visit its [dedicated section](#) on the HCCH website. More information on the 1980 Child Abduction and 1996 Child Protection Conventions is available on the [Child Abduction](#) and [Child Protection](#) Sections of the HCCH website.

The Permanent Bureau of the HCCH is grateful to the Singapore Family Justice Courts for its hospitality and generous support of the Fourth Global Meeting of the IHNJ.

Experts' Meeting II on the Continued Nurturing of the 1980 Hague Convention

University of Westminster, London

4 - 5 August 2025

Welcome and opening remarks

Professor Marilyn Freeman, Co-Director, International Centre for Family Law, Policy and Practice, and Principal Research Fellow, Westminster Law School, University of Westminster, London, England

A warm welcome to you all to:

EMII: International Child Abduction – Continued Nurturing of the 1980 Hague Convention

And thank you all for making the time to be here with us today.

EMI, for those of you who were not there, was held here at the University of Westminster on 19-20 October 2023 after the conclusion of the Eighth Meeting of the Special Commission on the Practical Operation of the 1980 and 1996 Conventions which took place in The Hague from 10-17 October 2023. EMI was focused on Nurturing the 1980 Hague Convention, and we discussed the interconnection between (i) abduction and asylum (ii) abduction and domestic abuse and (iii) child participation.

Before we go any further, I would like to take a moment to pay tribute to the late James Turner, KC, who passed away in January 2025, and who participated (together with Henry Setright) with his usual vigour in the first of those sessions on the subject of asylum. His was a knowledgeable and reassuring presence which is much missed by many of us who remember James with great fondness.

EMI concluded with recommendations for next steps by the Meeting Chairman, Philippe Lortie. A Special Focus issue of the Hague Conference's Judges' Newsletter followed (Volume XXVII) Fall-Winter 2024) reporting on the Experts' Meeting and recording the need for continued nurturing of the Convention. This is what we are doing here today, continuing to nurture the Convention. Of course, as you know, we are delighted that EMII will also be reported in an upcoming issue of the Judges' Newsletter.

A Forum on domestic violence/abuse in the context of Article 13(1) (b) was subsequently convened and held in Sandton, South Africa from 18-21 June 2024, with a second forum planned for later this year in Brazil. The value of evidence-based research to strengthen the effective operation of the 1980 Convention was emphasised both by the Eighth Special Commission, and in Philippe Lortie's conclusion to EMI. It has taken some time to get here but we will shortly be commencing a survey-based research project on outcomes including any legal proceedings (including relocation proceedings) which took place after the return decision was taken, aftercare support, and return/non-return monitoring. We hope this will provide some of the widely recognised, much-needed information on these topics, and we will be contacting you all (and others) to ask for your help in ensuring that the surveys reach as many eligible people as possible around

the world so that we can gather a sufficiently sizeable sample to make the data useful to the fullest extent possible for those working in the field.

A couple of brief, but deeply felt, thank you's are due.

Firstly, I want to acknowledge and thank Professor Luke Mason, and Dr. Harriet Samuels, respectively Head and Assistant Head of the University of Westminster School of Law. Both Luke and Harriet truly 'get' the importance of the issues we are addressing, the value of knowledge exchange, and the way that research works in a practical context and the real world. They also 'get' me which is very much appreciated, and I would like to take this opportunity to thank them both for their continued support and belief.

Next, I need to acknowledge and thank my partner in crime, Professor Nicola Taylor from the University of Otago in New Zealand. We have the unbelievable luxury of now being in the same part of the world, but we are used to working together across time zones which are very unfriendly and, somehow, manage to do that in a productive and enjoyable way. We have done so since 2010, when Nigel Lowe and William Duncan paired us up, like a promising girl-band, for the initial Washington DC meeting which led to the Washington Declaration on Relocation. We thank Nigel on a regular basis, and do so again today! Nicki is acting as rapporteur once again for EMII so we are assured of organised and reliable notes! I hope she knows how much I value the partnership and friendship that we have.

Finally, my dear friends Stephen Cullen and Kelly Powers of Miles & Stockbridge - a US firm of lawyers which has continued to support me and my work over many years. And for this we need to thank the Hague Conference because Stephen tells me that we first connected at one of the early Special Commissions over a tea-break cuppa! Too many years have gone past for either of us to remember if that is what happened, but it was certainly something along those lines. They are both committed experts in the field, in particular undertaking regular child abduction pro bono work to help those in the US where no public funding is available and who would otherwise be without the critical legal representation required in their cases. I've said it before, but it bears re-saying - they care. They know the pitfalls, the practical problems, and they want to help find solutions. That is the reason that they have helped to make EMII possible, and I thank them most sincerely for it.

At EMII we have 53 registered participants approximately from around 17 jurisdictions, plus we have three participants joining us online today. We are academics/researchers, attorneys/solicitors, barristers, judges, professional organisations, NGO's, mediators, psychologists, central authorities, and the Hague Conference!

And we have 4 topics to work on this time. I will briefly introduce them now with the names of the chairpersons for each session. However, I have asked the chairs not to waste our valuable time together in reading out CVs and bios. We have produced a biographical document so that you can look up anyone's details if you wish to do so. This is an Experts' Meeting, and everyone here fits that description with lists of achievements as long as your arm. We wouldn't be here if that were not true. So, I must take my own medicine and keep these introductions short, which I shall do:

- (i) Relocation, chaired by Professor Rob George, KC, an expert both from the perspective of his legal practice and his academic research which gives him an unusual and extremely impactful understanding of the issue;
- (ii) Prevention, chaired by Emeritus Professor Nigel Lowe KC (Hons) who has

forgotten more about international child abduction than most of us can aspire to know, and who is, of course, responsible (along with others, notably Victoria Stephens) for the essential statistical analyses of cases which inform the proceedings of the Special Commissions and the work which many of do in this area;

- (iii) After-care, chaired by Philippe Lortie, First Secretary of the Permanent Bureau of the Hague Conference on Private International Law. Philippe's understanding of the Convention is practically encyclopaedic, and he has a very deep concern for the issues involved, as well as an expert's appreciation of the diplomatic nuances of a Convention of this type;
- (iv) Enforcement, chaired by Henry Setright, KC, of 4PB, the chambers of which I am proudly an Associate Member. There can be few people more experienced and knowledgeable about international child abduction than Henry. He is literally the go-to authority on all matters relating to abduction and has been my willing tutor during many discussions concerning both theory and practice.

Finally, we are conscious of the need to consolidate and move towards next steps following EMI and, now, EMII, and the work which we and others have done, and are doing, in the field. We are therefore planning to hold a further meeting (EMIII) here at the University of Westminster in early September 2026 looking specifically at 'What Next?' to build on what has been achieved in terms of all our work in nurturing the Convention including the outcomes research we shall shortly be undertaking. So do watch this space for further information about that as it becomes available.

Just a reminder about tonight's reception at 4PB where Barbara Mills KC, Joint Head of Chambers and Chair of the Bar Council, will provide an address for the expert participants at EMII. Chambers' wonderful administrators are working on the weather as we speak to make sure that you will be able to enjoy the spectacular view of St. Paul's Cathedral from chambers' terrace – we wish them luck with that!

With that, I will hand over to Rob George to start the proceedings for EMII.

Session 1 – Relocation

Introduction by Session Chairperson Professor Rob George KC

Professor of Law and Policy, UCL Laws; Harcourt Chambers, London

Relocation disputes, as is well known, are cases where there is a dispute between parents about whether a child should be taken to live in a new geographic area or remain in their present location.¹ These cases are often thought by lawyers and legal advisers to be amongst the most difficult of family law cases, part of the reason for that being that there are few opportunities for compromise.

As an identifiable category of legal dispute, in England and Wales relocation cases can be traced back to at least 1884,² though the start of the modern law is with the Court of Appeal's 1970 decision in *Poel v Poel*.³ At that time, the law reflected very different social norms in relation to post-separation parenting. The vast majority of children were in the clear primary care of their mothers, and the law adopted a general position whereby the child's welfare was seen as being best promoted by the support of the primary carer mother in starting a new life. The father was, in a sense, seen as substitutable by a step-father – what Robert van Krieken previously termed the 'logic of substitution', which assumed that 'both parents will re-partner, the child will gain a step-parent to substitute for the departing parent, who will simply form a new family with their new partner, more or less gradually losing touch with their first children'.⁴ Translated into the context of relocation disputes, this led to court authority that placed a clear priority on allowing the primary carer to live what she would consider to be a good life, and in particular to ensure that any new relationship that she was in was not undermined if at all possible. Consequently, while not all relocation applications were granted, there was a strong trend that relocation plans that were generally well thought through would be in the child's interests, even if the consequence was that contact with the father was severely limited or even terminated as a result.

While the general law had started to move on from that attitude in the early 1990s⁵ – moving to what van Krieken called the 'logic of durability'⁶ or, in Patrick Parkinson's language, the 'indissolubility of parenthood'⁷ – relocation law in England and Wales was significantly behind the curve. The long-time leading case of *Payne v Payne*,⁸ decided in 2001, did little to modernise the approach to relocation, and indeed expressly built itself on the *Poel* approach from 30 years earlier. There are no data on case outcomes in this period of time, but the clear impression given by *Payne* was that a well-planned relocation application was highly likely to

¹ There are occasional unusual cases where both parents seek to relocate, so the choice is between two new locations; remaining in the current location is not posited as an option by either parent.

² *Hunt v Hunt* (1884) 28 Ch D 606 (CoA).

³ *Poel v Poel* [1970] 1 WLR 1469 (CoA).

⁴ R. van Krieken, 'The "Best Interests of the Child" on Parental Separation: On the "Civilizing of Parents"' (2005) 68 *MLR* 25, 30-31.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ P. Parkinson, 'Family Law and the Indissolubility of Parenthood' (2006) 40 *Family Law Quarterly* 237.

⁸ *Payne v Payne* [2001] EWCA Civ 166, [2001] 1 FLR 1052.

be approved by the court. Professor Mary Hayes, writing in 2006, said that the effect of *Payne* was to require trial judges to give especial weight to considerations that favour applicants, which 'offends the fundamental principle that justice should be even-handed'.⁹ She went on to argue that the approach robbed trial judges of any real discretion in relocation decisions because '[t]he Court of Appeal has ruled that a judge makes a serious error where he gives less weight to the impact on the mother of denial of leave than he does to other factors relevant to the welfare checklist'.¹⁰ By the time I was writing my PhD on relocation cases in 2008, practitioners remained of the view that – to quote three of the lawyers I interviewed as part of my research – an applicant seeking relocation 'has the wind in their back' (Participant EB5), 'starts ten points ahead' (Participant EB2), or has 'the cards ... stacked ... in [their] favour' (Participant ES2).¹¹

In terms of case outcomes, the first (and I think only) data currently available in England and Wales come from a study in 2012.¹² That study came just as there was a bit of a shift happening in the approach to relocation cases. While *Payne* was never overruled, the Court of Appeal in cases in 2011,¹³ 2012¹⁴ and 2015¹⁵ shifted the focus, and the so-called 'discipline' of questions proposed by *Payne* fell out of use. Instead, the court's analysis came to be more squarely on an unadulterated view of the child's welfare. The result, in 2012, was that around two thirds of relocation applications were granted by the courts,¹⁶ though it is likely that at that stage legal advisers were still giving relatively positive advice to applicants and more cautious advice to respondents about their chances if the case went to a final hearing.¹⁷

Since then, the appeal courts have been relatively quiet. This is partly a function of the law having settled and there being less impetus for litigants and lawyers to try to challenge the legal approach being taken, and partly a function of the decision to allocate relocation cases to lower tiers of the judiciary,¹⁸ coupled with changes to the rules on appeals so that very few cases have any prospect of reaching the Court of Appeal. Consequently, I think over the last 10 years since the 2015 decisions, there have been four reported Court of Appeal decisions on relocation, only one of which was more recent than 2018 (being a decision in July 2025).¹⁹ However, while there has been no meaningful development of the law itself in relation to relocation, the clear impression is that relocation applications now face a significantly lower chance of being approved than they did back in 2012 when the last empirical study of

⁹ M. Hayes, 'Relocation Cases: Is the Court of Appeal Applying the Correct Principles?' [2006] *Child and Family Law Quarterly* 351, 364.

¹⁰ *Ibid.*, at 370.

¹¹ R. George, *Relocation Disputes: Law and Practice in England and New Zealand* (2014, Hart Publishing).

¹² R. George, 'How Do Judges Decide International Relocation Cases?' [2015] *Child and Family Law Quarterly* 377.

¹³ *K v K (Relocation: Shared Care Arrangement)* [2011] EWCA Civ 793, [2012] 2 FLR 880.

¹⁴ *Re F (Relocation)* [2012] EWCA Civ 1364, [2013] 1 FLR 645.

¹⁵ *Re F (International Relocation Cases)* [2015] EWCA Civ 882, [2017] 1 FLR 979; *Re C (Internal Relocation)* [2015] EWCA Civ 1305, [2016] Fam 153.

¹⁶ George, note 12, at 380.

¹⁷ George, note 11, Chapter 4.

¹⁸ President's Guidance on Case Allocation 2014.

¹⁹ *Re M (Children)* [2016] EWCA Civ 1059, [2017] 2 FLR 562; *Re L (Relocation: Second Appeal)* [2017] EWCA Civ 2121, [2018] 2 FLR 608; *Re J (Children: Relocation)* [2018] EWCA Civ 1372; *Re O (Domestic Abuse: International Relocation)* [2025] EWCA Civ 888.

outcomes was done. Whereas two thirds of applications in 2012 were granted, the impression based on practitioners' informal reporting of their experiences is that now the proportion is likely to be closer to one third. Clearly getting more data and being able to report on this in a more empirically-sound manner would be highly advantageous, but it does not seem to be taking much of a risk to say that it has become substantially more difficult for applicants to obtain relocation orders than it was 12 or 15 years ago. As I recently wrote in a piece reflecting on the Washington DC Relocation Conference,²⁰ it may be at some point that we should have 'a collective consideration of whether the swing of the pendulum away from relocation being granted (assuming that impression is confirmed by the data) is something that, as a community, we should be pleased by, concerned about, or indifferent to'.²¹

Overall Summary of the Session on Relocation

Against the background of these comments, the Experts' Meeting heard the four presentations outlined elsewhere in this publication and then moved to discussion. There was clear support for the idea that it was important to have a legal mechanism to allow a parent to leave their country with their child, and the principles of the Washington Declaration on International Relocation 2010 were endorsed by participants at the meeting.

Focusing on those states that already have a relocation jurisdiction (whether separately or as part of their general law in relation to children), the presentations had shown a significant commonality of approach to relocation cases in the sense of placing the child's best interests at the heart of the decision,²² but differences of approach were also apparent. For example, the English court has a process called a 'fact-finding hearing' (FFH), used when there are serious allegations made against one or more parties, and where the nature of those allegations is substantial enough to impact the broad types of order that the court is likely to consider to be in the child's best interests. Recent case law has reiterated that this same procedure, set out in general for private law children cases (i.e., parenting disputes), also applies to relocation cases.²³ When a FFH is ordered, that hearing focuses only on the allegations, with the judicial determination of the allegations then forming the factual matrix against which the final evidence (including, for example, social work evidence or any expert reports) will be set. Comments from other jurisdictions made clear that this was not the approach adopted there, and that the judge would consider allegations at a rolled-up hearing considering both the truth of any allegations and the overall welfare decision at the same hearing.

Participants noted that there was an apparent disparity of approach, at least within some states, when comparing proposed relocations between Global North countries, versus proposed relocations from the Global North to the Global South or vice versa. Some participants from Global North countries considered that it was harder to persuade a judge to allow a relocation to a Global South country, while conversely some representatives from

²⁰ 15 Years of the HCCH Washington Declaration: Progress and Perspectives on International Family Relocation co-organised by the HCCH, IAFL, and Embassy of Canada, Washington DC, 2-4 April 2025.

²¹ R. George, '15 Years of the Washington Declaration on International Family Relocation' [2025] *International Family Law* (in press).

²² This was also a theme seen at the 2025 Washington Conference, note 20.

²³ *Re O (Domestic Abuse: International Relocation)* [2025] EWCA Civ 888.

Global South states thought that their judiciary would generally see a move to the Global North as being generally beneficial for a child. These anecdotal observations from experts at the meeting may highlight an important area for future research, considering how (amongst the many relevant factors in a relocation case) these issues may influence decision-makers.

Another area raised by participants in the discussion, which links to some areas of existing research, was the possibility of one or other parent later seeking to 'un-do' a relocation that has happened. In some cases, the difficulties that lead to these questions are primarily related to on-going contact – here, a greater focus on the 1996 Hague Convention and its mechanisms for recognition and enforcement of orders would be beneficial, but as between states that are not yet Convention signatories there are few easy answers. In other cases, research shows that there are many permutations of what happens after a relocation dispute is decided by the courts – some parents are permitted to relocate but later return; others are refused permission to relocation but go anyway, leaving the child behind (and possibly re-applying later to have the child join them); and so on.²⁴ I reported a recent case where the parents agreed that the relocation would not go ahead, but the opposing parent changed his mind 6 months later and the relocation later proceeded by agreement. As with all areas of work involving people's personal lives, there are as many variations as there are people.

The final area of discussion was to link the meeting from the opening session on relocation to the remainder of the papers which are about abduction, a link discussed in two of the papers presented in this session. A question asked was about what effect a prior child abduction might have on a later relocation application. As with all such questions, the lawyer's answer is: 'it depends'. Undoubtedly no lawyer would wish their applicant relocation client to have previously been involved in child abduction proceedings, but there are many variations in child abductions as well. The effect of a furtive, secretive abduction done in bad faith will, in most cases, be fatal to a later relocation application, barring some exceptional factor. On the other hand, the technical abduction where the abducting parent subjectively believed that she had consent to move, but a court applying the 1980 Convention holds that the alleged consent has not been proved to the 'clear and unequivocal' standard,²⁵ is likely to face a more sympathetic hearing, at least in England and Wales (though participants from some jurisdictions were less sure that the applicant parent would fare so well in their systems).

Conclusion

This important discussion highlighted the significance of relocation, both as its own critical area of practice and research, and as an area with at least some significant connections to international child abduction (though the extent of those connections was a matter of debate within the sessions). The vital role that research plays in this area of law and practice was also apparent, with a number of areas of potential further work identified. It is important that the approaches that courts are taking in different countries (and therefore the advice that lawyers are giving to clients, reflective of those approaches) is understood, since it is only by understanding what is actually happening that we are able to consider whether there is

²⁴ See, for example, N. Taylor, M. Gollop and M. Henaghan, *Relocation Following Parental Separation: The Welfare and Best Interests of Children* (University of Otago, Dunedin, New Zealand, 2010); P. Parkinson and J. Cashmore, 'When Mothers Stay: Adjusting to Loss after Relocation Disputes' (2013) 47 *Family Law Quarterly* 65.

²⁵ *Re P-J (Children) (Abduction: Consent)* [2009] EWCA Civ 588, [2010] 1 WLR 1237.

commonality of approach, and whether the approach taken can be improved. Likewise, the human experience of both the adult litigants and the children involved in relocation cases needs to remain a central focus. Relocation cases have profound impacts on both the adults and children involved, regardless of whether the decision is to grant or refuse relocation, often affecting very core parts of people's identities. Research is not going to make individual relocation decisions any easier, but it can help to ensure that the consequences of the decision (either way) are more properly understood, and allow the systematic patterns of outcomes to be seen so that we can better understand, overall, how different factors influence decisions and subsequent outcomes.

Relocation: An overview

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Introduction

It is axiomatic that any analysis of the law relating to relocation of children and proposals for reform should be informed by research. This article briefly considers three aspects of the published research relevant to disputes concerning relocation of children: empirical findings; comparative law and practice, and the inter-relationship between relocation and child abduction.

Empirical Findings

The relevant research findings can be divided into two main categories. The first is research conducted by social scientists on the impact of residential mobility on children in general and after parental separation in particular.¹ These studies, which do not distinguish between cases where there has been a legal dispute about relocation and those where there was consent or no need for consent, attempt inter alia to analyse the factors which determine the impact of relocation on children. Whilst some factors seem uncontroversial, such as the positive effect of support from the wider family in the new location and the extent to which the child finds new friends, there is a fundamental disagreement among researchers as to the impact of the reduced contact with one parent. One school of researchers takes the view that the most important parameter in determining outcomes for children following parental separation is regular contact with both parents and thus relocation which significantly diminished the contact with the left-behind parent is usually harmful.² In contrast, the other school of thought argues that the quality of the parenting by the primary caretaker is the most important parameter in determining child adjustment after divorce and that therefore it is essential to protect the stability and integrity of the post-divorce family unit in which the child is living.³ In light of the discrepancies between the findings of different research studies and the criticism levelled at some of the research, some commentators have concluded that we really know

¹ For discussion of these studies see B. Horsfall and R. Kaspiew, 'Relocation in Separated and Non-Separated Families: Equivocal Evidence from the Social Science Literature' (2010) *Australian Journal of Family Law* 24, 34-56; N. Taylor and M. Freeman, 'International Research Evidence on Relocation: Past, Present and Future' (2010) *Family Law Quarterly* 44(3), 317-339.

² For example, M.M. Stevenson, W.V. Fabricius, S.L. Braver and J.T. Cookston, 'Associations Between Parental Relocation Following Separation in Childhood and Maladjustment in Adolescence and Young Adulthood' (2018) *Psychology, Public Policy and Law* 24(3), 365-378.

³ For example, M. Hetherington and J. Kelly, *For Better or For Worse: Divorce Reconsidered* (W.W. Norton & Company, New York, 2002) at p. 126; J.S. Wallerstein and T.J. Tanke, 'To Move or Not to Move: Psychological and Legal Considerations in the Relocation of Children Following Divorce' (1996) *Family Law Quarterly* 30, 305-332, at p. 311.

very little about the impact of relocation after parental separation on outcomes for children and there has been a call for further and more rigorous research.⁴

The second type of studies specifically address cases where there has been a dispute between the parents concerning relocation of children. Some of these studies involve an analysis of decided cases and others involve obtaining information and perspectives from one or both parents via interviews or questionnaires, usually after the conclusion of the dispute. In some studies, this includes information about the aftermath of the dispute.

The main findings of these studies can be summarised as follows. Relocation proceedings are usually drawn-out and very costly and this causes considerable hardship.⁵ Success rates vary from jurisdiction to jurisdiction, but the available evidence suggests that, overall, they are lower than in the past.⁶ In most cases in which the mother was allowed to relocate, contact with fathers diminished over time, largely because the financial and physical burden of the frequent long-distance travel made it impossible to maintain the contact schedule which had been approved by the court or agreed by the parties.⁷ In cases where the relocating parent did not comply with the contact arrangements, the left-behind parent faced considerable difficulty and expense in enforcing a contact order in a foreign jurisdiction.⁸

Comparative Law and Practice

On the one hand, broadly speaking, there seems to be a consensus that relocation decisions need to be based on the best interests of the child, whilst also taking into account the autonomous interest of the move-away parent to choose where to live and the interests of the left-behind parent to maintain a meaningful relationship with his children and play an active role in their life.⁹ On the other hand, however, there is no agreement as to the precise content of these parameters or the relative weight given to them.

A few States provide a starting point which will apply unless the other party can satisfy the court otherwise. This starting point might be expressed in the form of a rebuttable presumption or imposing the burden of proof on one party. For example, some US States

⁴ For example, Taylor and Freeman, note 1, at p. 338; P. Parkinson, J. Cashmore and J. Single, 'The Need for Reality Testing in Relocation Cases' (2010) *Family Law Quarterly* 44(1), 1-34, at pp. 4-6.

⁵ R. Osborne, *Trauma-Informed Perspectives on International Relocation Disputes*, (GlobalARRK Relocation Report, 2025) at pp. 14-15, 23; M. Henaghan, 'Relocation Cases – the Rhetoric and Reality of a Child's Best Interests – a View from the Bottom of the World' (2011) *Child and Family Law Quarterly* 23, 226-250, at p. 236; Parkinson et al., note 4, at p. 23.

⁶ See, for example, R. George, 'How do Judges Decide International Relocation Cases' (2015) 27 *Child & Family Law Quarterly* 377, at p. 380; Parkinson et al., note 4 at p. 38; Osborne, note 5, at p. 9.

⁷ Parkinson et al, note 4, at pp. 31-32; Taylor and Freeman, note 1, at p. 331. However, some fathers reported that they were able to keep up a close relationship, via phone conversations and Skype - P. Parkinson and J. Cashmore, 'Reforming Relocation Law: An Evidence-Based Approach' (2015) *Family Court Review* 53(1), 23-39, at p. 30; Henaghan, note 5, at p. 237.

⁸ M. Freeman, *Relocation: The Reunite Research* (Reunite Research Unit, 2009), at pp. 14-16, 21; N. Bala and A. Wheeler, 'Canadian Relocation Cases: Heading Towards Guidelines' (2012) *Canadian Family Law Quarterly*, 30, 271-320, at p. 279.

⁹ L. Elrod, 'National and International Momentum Builds for More Child Focus in Relocation Disputes' (2010) *Family Law Quarterly* 44(3), 341-374, at pp. 348-349; P. Parkinson, 'Freedom of Movement in an Era of Shared Parenting: The Differences in Judicial Approaches to Relocation' (2008) *Federal Law Review* 36(2), 145.

judicially adopted a presumption that a custodial parent will be allowed to relocate unless the non-relocating parent can rebut the presumption by showing that relocation will be harmful to the child.¹⁰ Canadian federal legislation provides that where a child spends substantially equal time with each parent, the burden is on the move-away parent to show that relocation is in his or her best interests. In contrast, where the child spends the vast majority of time in the care of the move-away parent, the burden of proving that the relocation would not be in the child's best interests is placed on the party who opposes the relocation.¹¹

However, most States apply the best interests standard without any formal presumption or allocation of burden of proof.¹² In some States, legislation sets out the factors which should be considered in determining best interests in relocation disputes.¹³ In other States, such as England and Wales and New Zealand, the general checklist of factors to be considered in determining the child's best interests applies also in relocation cases, with case law working out how to apply them to relocation cases.¹⁴

Some degree of international consensus is perhaps reflected in the list of 12 factors set out in the Washington Declaration on International Family Relocation, adopted in 2010 at a conference attended by 50 judges and other experts from 14 jurisdictions.¹⁵ However, even if there is broad consensus as to the factors to be taken into account, differences of approach can be identified in relation to some of those factors, as can be seen from the following examples.

1. Options to be considered

Firstly, there are differences of opinion as to whether courts should take into account the intentions of the move-away parent if the permission to relocate is denied. On the one hand, it is difficult to see how the best interests of the child can be assessed without knowing whether the existing care arrangements would continue if permission was denied. Indeed, if the move-away parent will relocate alone and the left-behind parent is unwilling or unable to care for the child alone, there does not seem to be any viable alternative to relocation.¹⁶ On the other hand, requiring the move-away parent to declare his intentions is "confronting him with a Solemn choice"¹⁷ and giving real weight to this factor is likely to encourage move-away parents to state that they will move without the child, even if this is untrue. Notably,

¹⁰ See, for example, *Testerman v Testerman* 193 P3d 1141 (2008) (Wyoming); *In re Marriage of Burgess* 913 P2d at pp. 473–486 (California); and discussion in M.D. Nunn and J.L. Lawrence, *Child Relocation: Case Law, Social Science, and Practice Implications* (2020) *Journal of the American Academy of Matrimonial Lawyers* 32, 383–412.

¹¹ Act to Amend the Divorce Act, the Family Orders Agreements Enforcement and Assistance Act and the Garnishment Attachment and Pension Divisions Act and to make consequential amendments to another Act 2019 (hereafter the Canadian Divorce Act 2019), s 16.93(2).

¹² N. Lowe, M. Everall and M. Nicholls, *International Movement of Children* (2nd edn, Family Law, 2016), at p. 267.

¹³ Canadian Divorce Act 2019, at s 16.92(1).

¹⁴ See, respectively, s 1(2) Children Act 1989 and s 5 Care of Children Act 2004.

¹⁵ Set out in full in the Appendix to the *Preliminary Note on International Family Relocation*, Preliminary Document No 11 (January 2012), at paras 24–26. See also the factors listed in the European Commission of Family Law, *Principles of Parental Responsibility*, Principle 3.21: <http://ceflonline.net/wp-content/uploads/Principles-PR-English.pdf>

¹⁶ Parkinson and Cashmore, note 7, at p. 36.

¹⁷ C.C. Melcher and D.R. Bass, *Relocation Factors – A Lawyer's Guide* (2021) *Family Advocate* 43, at p. 45.

Canadian federal legislation expressly states that courts should not take into account whether the move-away parent would relocate without the child if her application was denied.¹⁸

Secondly, scholars have suggested that courts should routinely consider the possibility that the left-behind parent could also relocate, so as to remain close to the children¹⁹ and this factor is expressly mentioned in the Louisiana legislation.²⁰ However, the available evidence suggests that, even where courts do consider this factor, they do not give real weight to the feasibility of the left-behind parent relocating too.

2. Impact of Current Care Arrangements

The extent to which the left-behind parent is currently involved in the care of the child is invariably a weighty factor in evaluating best interests in relocation cases. Thus, it is hardly surprising that there is evidence to suggest that relocation is less likely to be allowed in cases of shared care, which have become much more prevalent over the years.²¹

However, some scholars warn against placing too much weight on the time currently spent with each parent because this does not necessarily reflect the significance of the relationship with the parent for the child.²² In particular, the benefit to the child from contact with a parent is not determined solely by the number of nights spent with that parent. It is of interest that in the Canadian and Louisiana list of factors, there is express reference to the level of involvement in the child's life of each parent, in addition to the amount of time spent.²³

3. Expert Reports

There seem to be differences in the approach to expert reports. Bala and Wheeler report that, in Canada, expert reports are prepared less often in relocation cases than in other types of child-related litigation and, where prepared, less weight is given to them.²⁴ Similarly, George reports that in England and Wales, reports prepared by court social workers, known as CAFCASS officers, are less influential than in other types of cases concerning children and may not be ordered at all.²⁵ In contrast, in Israel it is standard practice for courts to commission a report from a child psychologist in relocation cases and considerable weight is placed on the report, with courts usually adopting the expert's recommendation.²⁶

¹⁸ Canadian Divorce Act 2019, s 16.92(2).

¹⁹ For example, M. Weiner, 'Inertia and Inequality: Reconceptualizing Disputes Over Parental Relocation' (2007) *University of California Davis Law Review* 40, 1747-1836, at p. 1797; R. Zafran, 'Children's Rights as Relational Rights: The Case of Relocation' (2010) *American University Journal of Gender, Social Policy and the Law* 18(2), 163.

²⁰ La Rev Stat Ann § 9:355.14A(10)

²¹ George, note 6, at p. 383.

²² Parkinson and Cashmore, note 7, at p. 35.

²³ Canadian Divorce Act 2019, s 16.92(1)(c); La Rev Stat Ann § 9:355.14(1).

²⁴ Bala and Wheeler, note 8, at p. 305.

²⁵ George, note 6, at p. 396.

²⁶ See, for example, RFamA 07/10060 Ploni v Ploni tak-al 2008 (4) 35 ("the expert's opinion is the central tool to enable the court to make a determination in relocation cases", para 32 of judgment of J. Danziger (my translation – RS).

4. Children's Views

It seems to be universally accepted that children should be given an opportunity to be heard in relocation cases and that their views are a relevant factor, with the weight being given to them depending on the child's age and degree of maturity, as provided for in Article 12 of the United Nations Convention on the Rights of the Child. Nonetheless, this consensus masks divergences of approach as to how much weight is, and should in fact be, placed on the child's wishes in relocation cases.

On the one hand, Bala and Wheeler conclude that courts place considerable weight on the clearly expressed wishes of older children, as indicated by statements of judges and the fact that outcomes are in accordance with such wishes in a high proportion of cases.²⁷ In contrast, George takes the view that, even though outcomes do generally accord with the wishes of older children, in fact these wishes rarely have any real impact on decisions. Rather, courts give weight to these wishes where they accord with the outcome preferred by the judge and otherwise find reasons not to give weight to them.²⁸

5. Domestic violence

Some courts have treated domestic violence as a weighty factor in favour of allowing the mother to relocate, even considering that creating a distance between the parents will be of benefit to the child.²⁹ However, a recent survey reports that applicants for relocation are advised not to mention domestic violence as this is likely to prejudice their chances of success³⁰ and that where it is disclosed it is usually given little weight.³¹

Inter-Relationship Between International Relocation and International Child Abduction³²

In both relocation cases and abduction cases,³³ the underlying dispute relates to the country in which the child should live. Moreover, research shows that the motives of taking parents and those who apply for permission to relocate are very similar, and that particularly common motives are the desire of the mother to return to her home country and the need to escape from domestic violence.³⁴ Indeed, I have suggested that abduction cases can be seen as ex

²⁷ Bala and Wheeler, note 8, at pp. 300-302.

²⁸ George, note 6, at pp. 396-398.

²⁹ See, for example, Bala and Wheeler, note 8, at pp. 291-295; and cases cited by Henaghan, note 5, at p. 243.

³⁰ Osborne, note 5, at pp. 28-29.

³¹ *Ibid.*, at pp. 30, 36-37.

³² See, generally, R. Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart, 2013), at pp. 84-90.

³³ The discussion is in relation to cases in which the 1980 Hague Convention on the Civil Aspects of International Child Abduction applies.

³⁴ In relation to relocation, see N. Taylor and M. Freeman, note 1, at p. 330; Parkinson and Cashmore, note 7, at pp. 25-26; Osborne, note 5, at p. 20. In relation to abduction, see Reunite Research Unit, 'The Outcomes for Children Returned Following an Abduction' (2003), at pp. 23-24; T. Kruger, *International Child Abduction the Inadequacies of the Law* (Hart, 2011), at pp. 66-69.

post facto relocation cases.³⁵ An additional similarity is the difficulty of enforcing conditions made by the court in the State hearing the relocation or abduction case in another State after return or relocation.

There are, of course, clear formal distinctions between the two areas of law, but in some ways these are artificial and mask the similarities between the two types of case. Firstly, whilst the central characteristic of an abduction case is that there has been a wrongful removal or retention,³⁶ in some cases, the taking parent is not aware that the removal or retention is wrongful *inter alia* because this may depend on technical legal issues, rather than moral blameworthiness. Thus, for example, a removal carried out with the consent of the left-behind parent is usually considered wrongful, with the consent providing a possible exception to the requirement to order return rather than preventing it from being wrongful.³⁷

Secondly, whilst abduction proceedings are intended to provide a first aid remedy and not a final determination of the dispute on the merits, in practice many abduction cases are outcome determinative. In particular, after a return order, the taking parent often does not have the financial or emotional resources to start relocation proceedings.³⁸ Even where proceedings are initiated, they usually take a long time and the very fact of the abduction and return may significantly reduce the likelihood of obtaining permission to relocate.³⁹

Thirdly, whilst the legal mechanism in the two types of case is quite different, with courts in abduction cases having no discretion unless one of the exceptions is established, in contrast to the wide discretion in relocation cases, we have to remember that in both cases the overarching objectives are to protect the interests of the child and that the exceptions in the 1980 Hague Abduction Convention are designed to deal with cases where return will harm those interests. Thus, some of the factors taken into account in relocation cases will be relevant in determining whether one of the exceptions is established in abduction cases.

The potential artificiality of the distinction between the two types of case is demonstrated by what may be referred to as re-relocation cases.⁴⁰ These cases occur where, following a temporary/conditional move or a recent permanent move to another State, one parent wishes to return to the country in which the parties lived previously, while the other insists on staying in the new State. Whether this is an abduction case or a relocation case depends purely on the question of whether the child has become habitually resident in the new State, which is invariably difficult to determine in these types of case.

I am not suggesting that a single regime should apply to abduction and relocation cases. However, I believe that research and practice in relation to relocation law can provide helpful insights for abduction law and practice and vice versa. For example, as seen above, relocation

³⁵ R. Schuz, 'International Child Relocation After Relationship Breakdown' in J. Caruthers and B. Lindsay (eds.), *Research Handbook on International Family Law* (Edward Elgar, 2024, 130-152), at p. 130.

³⁶ 1980 Hague Convention, note 33, Article 12.

³⁷ R. Schuz, 'The Hague Child Abduction Convention and Re-Relocation Disputes' (2021) *International Journal of Law, Policy and the Family* 35(1), at pp. 11-12.

³⁸ Osborne, note 5, at p. 18.

³⁹ For example, because the abduction is seen as evidence that the applicant does not understand the importance of contact with the other parent or on the basis that the child needs stability following the upheaval caused by the abduction and return.

⁴⁰ For detailed discussion of this phenomenon, see Schuz, note 37.

research has demonstrated the need for reality testing in relation to contact arrangements following relocation. This conclusion should be taken on board in relation to protective measures made in conjunction with return orders, with judges checking that in practice the measures will provide adequate protection, especially in cases of domestic violence. Similarly, the importance usually attached to the role of a primary carer in relocation cases should cause courts in abduction cases to consider seriously whether the grave risk exception applies in cases where the primary carer, for legitimate reasons, will not be returning with the child(ren).

Conversely, for example, techniques adopted in abduction cases to expedite proceedings could be adopted, with appropriate modification, in relocation cases to reduce the length of the proceedings. In addition, much of the research and literature in relation to methods of hearing children and separate representation in abduction cases⁴¹ is equally relevant to relocation disputes.

Conclusion

There is a considerable body of literature analysing relocation law and proposing different models designed to provide better mechanisms for decision-making in relocation cases. To a large extent, the spectrum of views expressed by scholars reflects the different approaches adopted by courts, discussed above. Perhaps the main point of disagreement is in relation to the use of presumptions or burden of proof. Those in favour argue that it is necessary to provide a starting point to guide the court in order to avoid the great uncertainty created by the best interests standard. The subjective speculative and indeterminate characteristics of this standard are in some ways exacerbated in relocation cases, both because of the ambivalence of the social science research explained above and because of the greater impact that such decisions have on the child and the parents than other decisions relating to parental care and contact, owing largely to the limited opportunities for future variation.

Those opposed to the use of presumptions argue that it is difficult to develop presumptions which operate in an appropriate way in the wide variety of situations and family contexts in which relocation applications are made. However, even amongst the opponents of presumptions, there seems to be a recognition that greater guidance is needed to provide more clarity and certainty. Whilst most recent local and international initiatives seem to have focused on formulating a list of factors to be considered, these would seem to be of limited value, in the absence of any hierarchy or additional guidance. Moreover, it is difficult to eliminate the risk that the weight given to the various factors will be influenced by the cultural bias of experts and judges.⁴²

There is a pressing need for new up-to-date empirical research in relation to relocation cases and their long-term outcomes. In particular, it is important to assess the extent to which insights from earlier studies, such as the need to reality test contact arrangements, have influenced judicial decision-making. Moreover, it is essential to evaluate the impact of

⁴¹ See, for example, research referred to in R. Schuz, 'Child Participation and the Child Objection Exception' Chapter 8 in M. Freeman and N. Taylor (eds.), *Research Handbook on International Child Abduction: The 1980 Hague Convention* (Edward Elgar, 2023), at p. 115.

⁴² M. Strouss, 'International Relocation Disputes and the Risk of Cultural Bias in Family Law Matters: A South African Perspective' (2023) *The International Journal of Children's Rights* 31(1), 268–291.

changing social norms, such as the increase in shared parental care following relationship breakdown, and the technological revolution, which has made unlimited digital contact available throughout the world via a variety of platforms.

Finally, there is a need for greater recognition that relocation law and abduction law both deal with the disputes relating to international child relocation and share many common concerns. Thus, whilst the differences resulting from the timing of the adjudication⁴³ cannot be ignored, comparison between the ways in which the two areas of law deal with particular issues can be instructive and inform policy. Similarly, research findings in relation to one area of law can be relevant to the other. Accordingly, it is to be hoped that the potential for beneficial cross-fertilisation between the two areas of law will be taken on board by all those who work in this area, including judges, lawyers, researchers and policymakers.

⁴³ Whether before or after the actual relocation of the child.

Relocation, International Child Abduction and Children's Identities

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Introduction

The nexus between relocation (a lawful move) and international child abduction (a wrongful removal or retention) has regained momentum this year thanks to several key events and projects, including the Conference celebrating the 15th anniversary of the HCCH Washington Declaration (2010) held in Washington DC in April 2025,¹ and this Experts' Meeting II held in London in August 2025 on the continued nurturing of the Convention.² Relocation and abduction are both significant family events which have the potential to impact on children's identity development. In this article, we consider the similarities and differences between relocation and abduction and draw attention to the nexus between them and the child's right to identity protected in Article 8 of the United Nations Convention on the Rights of the Child (UNCRC). In our view, this is a right that is hidden in plain sight - a sleeping giant - largely unrecognised by law, policy and practice. Its potentially huge significance in the contexts of relocation, international child abduction, and the 1980 Hague Convention on the Civil Aspects of International Child Abduction (hereafter the Convention) is yet to be fully realised. We argue that the international family justice community must take greater account of children's identity in their decision-making processes when a significant life-altering event like relocation or abduction is experienced.

Article 8, UNCRC: The Child's Right to Identity

The UNCRC was the first human rights treaty to explicitly recognise, in Article 8, "the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference". This right "is deliberately formulated in a broad manner, which allows for its dynamic interpretation and evolution with the times".³ However, despite its expansive scope, and clear relevance to relocation and abduction

¹ Co-organised by the HCCH, the International Academy of Family Lawyers (IAFL), and the Embassy of Canada in Washington DC, this Conference was held from 2-4 April 2025.

² Other initiatives include the IAFL Relocation Committee's Global Survey of members about relocation issues; the Penningtons Manches Cooper's International Relocation Breakfast (London, 27 June 2025); the Hunters Law Relocation Webinar organised by A. Rowe and M. Wright (London, 10 July 2025); and N. Hyder-Raman and R. Osborne, *International Relocation of Children: A study of how applicant parents experience relocation proceedings to return to the country they consider home*, GlobalARRK Report, March 2025.

³ S. Bou-Sfia, 'Article 8 UNCRC: To protect or neglect? Consideration of its (potential) meaning and effect' in M. Freeman and N. Taylor (eds.), *Children's Right to Identity, Selfhood and International Family Law* (Edward Elgar Studies in International Family Law, 2025, 24-43), at p. 42.

contexts, Article 8 has been narrowly interpreted and is still considered to be in its infancy despite the decades that have elapsed since its introduction.⁴

... the message to lawyers and judges is to start using Article 8 in proceedings. After all, they can play a crucial role in ensuring that the interests of children regarding their identity are not overlooked or forgotten.⁵

The Evolving Nature and Meaning of Identity

Our identity, which is initially attributed to us by others at birth, evolves over time as it is shaped and developed by each of us throughout our lives in response to experiences, relationships, changes and transitions:

... a child's identity, like that of an adult's, is 'never completed, never finished' but is an ongoing process consisting of both static and dynamic dimensions.⁶

What I am as a self, my identity, is essentially defined by the way things have significance for me.⁷

Our identity tells us, and others, who we are, and provides our horizon:

My identity is defined by the commitments and identifications which provide the frame or horizon within which I can try to determine from case to case what is good, or valuable, or what ought to be done, or what I endorse or oppose. In other words, it is the horizon within which I am capable of taking a stand.⁸

The Impact of Protective and Risk Factors on Identity

The dynamic nature of identity formation means that children and young people's ability to develop an integrated identity will be influenced by the combination of protective and risk factors present in their lives that will either i) help them assimilate or accommodate their experiences into their identity development coherently; or ii) cause interrupted or maladjusted identity development or psychopathology.⁹ Early life adversities and disruptive life experiences can have potentially devastating impacts on personal identity development.¹⁰

Our recently published book examines, in relation to child identity, a diverse range of challenges and transformations that children and young people may experience and which

⁴ *Ibid.*, at p. 42.

⁵ *Ibid.*, at p. 40.

⁶ J. Tobin and J. Todres, 'Article 8. The Right to Preservation of a Child's Identity' in J. Tobin (ed.), *The UN Convention on the Rights of the Child: A Commentary* (Oxford University Press, 2019, 279-304), at p. 290.

⁷ C. Taylor, *Sources of the Self: The Making of the Modern Identity* (Harvard University Press, 1989) at p. 34.

⁸ *Ibid.*, at p. 27.

⁹ A. Martalas, 'Identity: A psychological perspective' in M. Freeman and N. Taylor (eds.), *Children's Right to Identity, Selfhood and International Family Law* (Edward Elgar Studies in International Family Law, 2025, 44-61).

¹⁰ *Ibid.*

may also potentially trigger a legal response within family law and related fields.¹¹ These include donor conception, surrogacy, adoption, care and protection, violence, forced marriage and child brides, gender, culture, unaccompanied migrant children, parental deportation, and child soldiers. The chapter devoted to relocation and international child abduction discusses how significant transitions occurring during childhood as a result of relocation, or a sudden and distressing event like parental abduction, will be happening during a critical period in the formation of the child's identity.¹²

Relocation and International Child Abduction: Similarities and Differences

Relocation and international child abduction are both significant family events which can impact on children's identity. Relocation is the lawful means by which separated parents seek to move domestically or internationally with their child(ren) with parental agreement or court authorisation. International child abduction occurs when a child is wrongfully and/or unlawfully taken to, or retained in, another country by one parent without the other parent's, or a court's, consent.¹³

There are many similarities between these two events which, at first blush at least, may make them seem like homogeneous matters. However, as discussed below, the differences between them are so fundamental that this is not, in fact, the case.

Similarities

Relocation and abduction contexts are likely to share the following common features:

- A background of parental relationship breakdown;
- The exposure of children to interparental conflict, hostility and/or family violence;
- The physical transition of children from one locality to another (often to a different country or continent);
- The children's complete lack of, or only partial, familiarity with the new location;
- Compromises in the children's relationship with the left-behind parent and wider family members as a result of the move;
- Children's contact with the left-behind family after the move can often become problematic practically, and is sometimes contested;
- Children must emotionally adjust to the absence and loss of family and friends who were previously prominent in their lives;
- The loss of stability, security and familiarity which children often experience as a result

¹¹ M. Freeman and N. Taylor (eds.), *Children's Right to Identity, Selfhood and International Family Law* (Edward Elgar Studies in International Family Law, 2025).

¹² N. Taylor and M. Freeman, 'Relocation and international child abduction: The impact on children's identity' in M. Freeman and N. Taylor (eds.), *Children's Right to Identity, Selfhood and International Family Law* (Edward Elgar Studies in International Family Law, 2025, 128-149).

¹³ *Ibid.*

of the move, which may involve a change in their language, home, school and community, and also impact their culture with the potential to cause cultural bereavement;¹⁴

- The possible detrimental impact of the move on children's wellbeing, development and adjustment;¹⁵
- The formal proceedings that are likely to occur in both situations will require lawyers, mediators, and/or judges, with implications for children's participation in the respective decision-making processes, and the impacts and outcomes of the decisions reached by parents and/or courts.

Differences

However, there are also meaningful differences between these two events. Relocation is lawful, whereas abduction is wrongful, and often unlawful. The simplicity of this statement belies its pivotal effect as it means that there will be practical and emotional impacts of the move for the families, and especially the children, in the case of an abduction which will not be present in a lawful relocation move. It is also noteworthy that an abduction will potentially trigger an application for return under the Convention.

Several special features of international child abduction make this experience more likely to disrupt a child's identity development and potentially cause lifelong challenges, maladjustment or psychopathology.¹⁶ One especially unique feature relates to the secrecy with which, by definition, it is undertaken. Children may be made part of the secret by the taking parent telling them that they are permanently leaving their home, but also instructing them not to tell anyone, especially the other parent, about these plans. This creates a major burden for the children. Alternatively, the children may be taken by surprise when discovering the secret which has been kept from them by the taking parent, for example, when they were told they were going on a holiday to spend time with known relatives in a different country and, once there, were subsequently informed by the taking parent that they would not be returning to their home country. Clearly, the use of secrecy in both senses is likely to be damaging for children.

In cases of abduction, unlike relocation, there is no opportunity for children to emotionally adjust to, or prepare for, the impending move, nor to say goodbye to family, friends, pets,

¹⁴ Cultural bereavement relates to the grief experienced when people migrate which is associated with the loss of their culture –see M. Eisenbruch, M. van Tilburg and A. Vingerhoets, 'The Cry for the Lost Placenta: Cultural Bereavement and Cultural Survival Among Cambodians Who Resettled, Were Repatriated, or Stayed at Home' in *Psychological Aspects of Geographical Moves: Homesickness and Acculturation Stress* (Amsterdam University Press, 2006, 105-126); D. Bhugra, W. Wojcik and S. Gupta, 'Cultural Bereavement, Culture Shock and Culture Conflict: Adjustments and Reactions' in D. Bhugra and S. Gupta (eds.), *Migration and Mental Health* (Cambridge University Press, 2010, 139-148).

¹⁵ However, we recognise and acknowledge the benefits that may accrue when the child's removal avoids their continuing exposure to violence or abuse. See M. Freeman and N. Taylor, (2020). Domestic Violence and Child Participation: Contemporary Challenges for the 1980 Hague Child Abduction Convention. *Journal of Social Welfare and Family Law*, 42(2), 154-175.

¹⁶ S. Calvert, 'Ghosts in Our Genes: Psychological Issues in Child Abduction and High Conflict Cases' in M. Freeman and N. Taylor (eds.), *Research Handbook on International Child Abduction: The 1980 Hague Convention* (Edward Elgar Research Handbooks in Family Law Series, 2023, 30-45), at pp. 32, 33, 45.

neighbours, places and surroundings which have significance in their lives. Similarly, there is no possibility for children to resolve unaddressed issues with the left-behind parent, family, or friends – to make a choice, to make amends, to apologise, to explain, to repair, to express their love, to be reassured about the love of others, or to work out a resolution.

Sometimes abducted children are told by the taking parent that their left-behind parent does not love them, is not interested in them, has moved away, or has died. The children may grieve for their lost or dead parent, only to find themselves later reunited with that parent when the law has been invoked to enable reunification.

Due to the wrongful and/or unlawful nature of abduction, some abducted children are moved frequently by the taking parent and kept 'under the radar' to avoid discovery and return. This means they miss out on education, health checks, friendships, and the benefit of stability which comes from putting down roots. Some even have their identity changed to escape detection, using different names and birth dates, and making alterations to their physical appearance, including living in a different gender.

In relocation cases, even if the left-behind parent and family are opposed to the move, they can be available to provide support for the children before, during, and after the move. However, for abducted children, there is no such support available during these first two stages. Support may also be unavailable at the third stage if the parents are embroiled in harshly combative exchanges and proceedings in which the children are frequently, albeit reluctantly, involved.

When abducted children are reunified with the left-behind family, they are expected to pick up the pieces of a relationship which has been changed forever by the abduction experience. This includes their learned coping strategies, which impact their ability to trust, thus affecting the likelihood of reunification success. Practical changes in the left-behind family's structure and profile since the abduction will also contribute to the challenges faced. If the left-behind parent has moved home, the reunification will occur in a place which is unfamiliar to the returning child. If the left-behind parent has re-partnered, there may be new family members including a new stepparent and stepsiblings, a wider stepfamily, and perhaps new halfsiblings. These are major life hurdles requiring navigation in all blended families, but for the previously abducted child who has had to grapple with secrecy, loss, change, emotional disturbance and, often, lies, they can prove too difficult to resolve. Some describe the reunification with the left-behind family as another abduction, or even the real abduction, being taken away again from all that they know, and placed with people who are effectively strangers in their lives.

The Impact of Relocation and Abduction on Children's Identity

Abduction often creates long-term, seriously negative, impacts on an abducted child's identity including feelings of isolation, disconnection, anger and the inability to trust others.¹⁷ Sadly, depression, psychological breakdown, and suicide attempts are also commonly reported experiences. These have been described as ongoing effects which continue

¹⁷ M. Freeman, *Parental Child Abduction: The Long-Term Effects* (International Centre for Family Law, Policy & Practice, London, 2014).

throughout the previously abducted child's life, and relationships.¹⁸ Reunification, when it occurs, may also impact identity.

Whilst abduction has the potential to cause greater disruption to a child's identity development,¹⁹ relocation can also be impactful on this process due to the similarities outlined above between these two sets of circumstances. Unfortunately, children's identity has not yet been widely recognised in the practice relating to these forms of international family mobility, nor in the related fields of research. The nexus between children's identity, relocation and international child abduction is therefore ripe for further professional application and scientific enquiry.

Conclusion

We advocate changes in thinking, practice and legal policy. The way we think about children, wellbeing and best interests needs to develop through the application of an identity lens to the family law mobility field, encompassing both lawful relocation and wrongful/unlawful abduction. It is unquestionable that the 'family relations' aspect of UNCRC Article 8 may be affected and imperilled by a child's move away from their home, yet surprisingly scant attention has been paid to the potential life-changing impact of relocation and international child abduction on child identity. Thus, we argue that this should be made integral to the legal decision-making processes involved in both situations.

The very real challenges of moving do not disappear because the move is agreed by adults or authorised by the court. While it is generally accepted that abduction is usually detrimental for children, we submit that it is not necessarily a case of 'four legs good, two legs bad'²⁰ with all abductions being harmful, and all relocations being harmless, for children. No matter whether the move is lawful, and no matter how much the move is desired by the adult decision-makers, such a move away from the home that is known to the children will always involve challenges. That does not mean that the move should not happen, and it is acknowledged that the invested, collaborative support of both parents may do much to help ameliorate the impact on the children. Unfortunately, though, it is unrealistic to suggest that such child-centred parental support will always be available and, even when it is, it does not negate the magnitude of the challenges faced by children in these situations. The best interests of the children concerned must, of course, be the deciding factor, but the precise contents of the best interests' test are famously variable and indeterminate.²¹ We argue that best interests' determinations should include consideration of the impact of the move on the children's identity.

To achieve change we need to raise awareness about the relevance and significance of identity in the family law field. We believe this will, in turn, open up critical new possibilities for how we think about children's development, wellbeing and best interests, as well as the

¹⁸ *Ibid.*

¹⁹ Calvert, note 14.

²⁰ G. Orwell, *Animal Farm* (Collins Classics, 1945) where the animals take control of the farm and use this slogan to demonstrate their supremacy over humans.

²¹ R.H. Mnookin, 'Child-Custody Adjudication: Judicial Functions in the Face of Indeterminacy,' (Summer 1975) *Law and Contemporary Problems* 39, 226-293; <https://scholarship.law.duke.edu/lcp/vol39/iss3/8>

responsiveness of the law in the relevant specialist and cross-border domains. We hope that this greater awareness will lead to the fuller implementation of Article 8 – the sleeping giant of the UNCRC – as greater emphasis is placed on identity in family law and other related legal decision-making processes.

We must not ignore the significance of identity and selfhood to children, and to society, simply because they have not yet been sufficiently recognised:

'The right to identity is so obvious. It's in front of our noses [yet] we almost don't see it. And so, we really have to make an effort to reflect on it and to realise that it is present in almost all the issues we deal with.'²²

That being unarguably the case, we ignore child identity at our peril when dealing with the potentially life-altering transformations that may occur in all aspects of family mobility.

²² B. Van Kerisbilck, 'Importance of the Right to Identity' (Experts Chip In video, Child Identity Protection, Geneva): <https://youtu.be/tkAOSgTuqWQ>

Italian Case Law on Relocation: An Overview

Professor Costanza Honorati, Professor of Private International Law, University of Milano-Bicocca, Italy

Introduction

Relocation disputes appear to be mostly filed in common law countries, where there is strong debate about when, and on which grounds, relocation should be granted. However, this is still a quite unexplored topic in many civil law countries, Italy being no exception. Greater family mobility, which has also led to a rising number of abductions, should have caused a parallel rise in relocation applications, and hence decisions, in Italy. Instead, surprisingly, this is not the case.

This article first outlines the legislative rule embodied in the Italian Civil Code and the general guidelines provided by the *Corte di Cassazione*¹ (hereafter Supreme Court). It then draws on empirical research undertaken by the author regarding 50 Italian court decisions in relocation cases, both national and international, during 2014-2024. The sample is unfortunately incomplete due to difficulty in obtaining Italian Family Court decisions, but is nevertheless considered to be representative of the general trend.²

Legislative Directions: Article 316 Italian Civil Code

Article 316 Italian Civil Code is the starting point in the law on relocation. It was modified in December 2013 by a more general and far-reaching law on filiation (Legislative decree of 28 December 2013 No 154) and now reads:

“Both parents have parental responsibility, which is exercised by mutual agreement, taking into account the child's abilities, natural inclinations, and aspirations. Parents mutually agree on the minor's habitual residence and make decisions regarding his or her education and upbringing.

In the event of a dispute over particularly important issues, *including those relating to the minor's habitual residence* and schooling, either parent may informally appeal to a judge, indicating the measures they deem most appropriate.

The judge, after consulting the parents and arranging for the minor child to be heard if he or she is at least twelve years of age, or even younger if capable of discernment, *attempts to reach an agreed-upon solution and, if this is not possible, adopts the solution he or she deems most appropriate for the child's best interests*”.³ (emphasis added)

The inclusion of parents' mutual right to determine the child's habitual residence within the general rule governing parental responsibility is of significance for two reasons. First, it

¹ Supreme Court of Cassation.

² C. Honorati «Il trasferimento lecito della residenza del minore nella giurisprudenza italiana», forthcoming in *Famiglia e Diritto* 2026.

³ Translation of all official documents, including legal provisions and decisions, is unofficial and made by the author using [DeepL.com](https://www.DeepL.com) (free version).

elevates the prohibition of unilateral relocation to the rank of a statutory provision, thereby avoiding any uncertainty. Second, under Italian law, the right to determine the minor's habitual residence is part of parental responsibility rights and disconnected from custody rights.⁴

Shared custody is the common model, as identified by the legislator and currently applied in courts, with both parents having equal responsibilities and duties. Newborns and younger children are usually placed with the mother, except where she is unfit or exceptional reasons advise otherwise. Nonetheless, when one parent is granted sole custody, this does not entail the right to remove the child to another State /part of Italy without the other parent's consent.⁵ Even in such circumstances, agreement to relocate from the non-custodial parent is required, or leave to relocate must be sought from a court. Leave to relocate is generally granted more easily in these situations.

The following points should also be emphasised about the rule:

- a) it does not distinguish between national and international relocations - these are treated in the same way and assessed on the same criteria;
- b) it sets no general presumption in favour of, or against, relocation and is neutral in regard to the opportunity of relocation, leaving this to the parents' agreement or, in its absence, to the court's assessment based on the principle of the child's best interests;
- c) it sets no burden of proof - if parents fail to reach agreement, the court assesses each application on a case-by-case analysis.

Italian Supreme Court Case Law and the Guiding Principles

The Supreme Court provides colour to the principle of the child's best interests in relocation cases, as enshrined by the legislator in Article 336 Civil Code. Ten decisions were made in both national and international cases during the 2014-2024 period, thus giving a consistent guideline to Family Courts.

In 2014 – possibly due to the recently adopted Legislative Decree No 154/2013 – the Supreme Court set the legal framework for international relocation cases by affirming the need to strike a balance between the child's right to maintain stable relations with both parents and the constitutional right of each parent to relocate and to enjoy freedom to circulate. In contrast to previous decisions, given under a different legal framework, the Supreme Court focused not only on the principle of continuity and emotional stability of the minor, but also on the fundamental right of each individual – although a parent – to freely determine his or her own

⁴ A logical consequence of the disconnection between the two concepts is that agreement on placement does not imply agreement to waive the determination to the child's habitual residence. Therefore, if parents have joint custody rights and one agrees on placing the child with the other, this does not imply conferring to the latter the right to move her residence and move the child with her (Supreme Court, 10 August 2022 n. 24651).

⁵ Bologna Tribunal, 3 May 2022: "As regards children, residence must be decided by mutual agreement, not only in cases of joint custody but also in cases of sole custody by one parent, as this is a matter of greater interest to the children (see Article 337 quater, paragraph 3, Civil Code). It follows that if one parent intends to change residence, he/she cannot take the children with him/her without the consent of the other parent and, in the event of disagreement, the court is called upon to assess whether it is in the best interests of the children to move with the parent who is requesting it or to remain living with the other parent, who in that case would become the custodial parent".

domicile / residence and to pursue "legitimate aspirations, including professional growth".⁶ This is an important statement, particularly in regard to women, who are often the minor's primary caretaker and are requesting the minor's relocation in order to pursue a work-life project. The constitutionally guaranteed right of the parent to freely determine their place of domicile is not susceptible to restriction, unless there is an absolute need grounded on the child's best interests in maintaining a balanced and fruitful relationship with the parent who is not the primary custodian.

This principle was confirmed in 2015 in a national relocation case, thus showing the overlapping of arguments in the two types of cases:

"No court has the power to impose on one or the other of the spouses to renounce a planned transfer, which moreover corresponds to a constitutionally guaranteed fundamental right. ... The judge can only take note of the decisions made in this regard by the interested party and act accordingly in the decision, which is his responsibility, on the custody and placement of minor children. Furthermore, no rule requires depriving the spouse who intends to move, for this sole reason, of custody or placement of the children with him or her; the judge's decision is discretionary and must be inspired [...] by the best interests of the minor children. In other words, faced with the unquestionable choices regarding their residence made by the separated spouses, who do not lose, simply because they intend to transfer their residence away from that of the other spouse, their suitability to be placements for minor children, the judge *has exclusively the duty to evaluate whether placement with one or the other of the parents is more functional* to the pre-eminent interests of the offspring, even though this will negatively affect the daily relations with the non-placing parent: this is a consequence, however inevitable, both in the case of placement with the parent who moves and in the case of placement with the parent who remains".⁷ (emphasis added).

It follows that while a separated spouse, who intends to transfer their residence away from that of the other spouse, does not thereby lose the right to have custody of minor children, or to be their custodian, the court must exclusively evaluate whether it is more functional to the interests of the children to place them with one or the other parent, "even if this inevitably has a negative impact on the daily relationship with the non-custodial parent".⁸

However, it is also clear that the child's relocation is not neutral, and there is no *right* for the parent to take the children with him/her, as leave to relocate cannot be taken for granted. Any automatism is therefore excluded and, failing an agreement by the parents, it is for courts to establish the best placement regime following the change of residence of one of the parents.⁹

Thus, what is framed as a decision on an application for relocation will, in fact, become a decision on placement: following the change of circumstances, with whom is the child better

⁶ Supreme Court, 18 September 2014 n. 19694.

⁷ Supreme Court, 12 May 2015 n. 9633.

⁸ Supreme Court, 18 September 2014 n. 19694. This line of argument has been consistently held: Supreme Court, 5 August 2024 n. 21971; 1st July 2022 n. 21054; 14 February 2022 n. 4796; 18 July 2019 n. 19455; 14 September 2016 n. 18087; 12 May 2015 n. 9633.

⁹ The point was clearly made by Supreme Court, 6 October 2021 n. 27142.

placed? With the relocating parent, with whom the child has always lived and who can provide emotional stability, but who seeks to live in a different place? Or with the non-custodial parent, with whom the child has not yet lived, but who could guarantee stability and continuity in the ordinary day-by-day routine?

This issue is very theoretical – and indeed not framed in these terms by courts – but reveals the logical flow of legal arguments building towards the decision. The parent who is the custodial and principal caregiver – let's suppose, the mother – is free to move, and cannot be withheld. If the other parent – let's suppose, the father – declines consent for the children to relocate, he must propose an alternative plan e.g., to become the custodial parent and have the child/ren placed with him. In such cases, it is for the court to assess whether the child's needs for emotional, scholastic and relational stability are better served by placement with the father or mother.

The reality is more complex and nuanced. A mother who is the primary caregiver and has always lived with the child, will seek relocation *with* the child and, when faced with the risk of losing the child's daily care and placement, will often state that she will not relocate, thus losing (or, at best, weakening) her case. This can be an emotional challenge close to the one faced by abducting mothers in Hague return proceedings, when it becomes clear the court will order the child's return.

Research Overview

In 2025, besides analysis of the abovementioned collection of court decisions, a questionnaire was circulated to 40 international family lawyers across Italy to ascertain their experience with and views on relocation cases. This confirmed that very low numbers of relocation applications are filed in Italian courts. Some lawyers mentioned they rarely file for a relocation because i) this is seldom required by the parties; and ii) it would likely be rejected by the courts.¹⁰

However, their perception is incorrect, as the analysis of Italian case law found that many relocation applications are actually granted by the courts. Of the 50 decisions that have been analysed between 2014-2024, relocation was granted in 50-55%, in respectively international and national cases. There was no obvious difference between the rate of awarded national and international relocations – the applications are assessed on the same grounds, with only slight differences noted in judicial reasoning.

The large majority of the examined cases follow a plain and ordinary scenario and do not concern borderline situations involving domestic violence, immigration, or other pathological issues. These are just 'normal' parents who separate and want to carry-on with their lives in different States or parts of Italy, while keeping contact to their children.

¹⁰ One lawyer based in Milan stated: "Filing a relocation is a loss of time, as courts are biased and rarely grant one. Even when they do, this requires so much time that the only sensible way to proceed is to seek an agreement with the other parent. If you cannot reach one, then you'd better change your family plans".

How the Family Courts Assess the Child's Best Interests in Relocation Cases: Striking a Balance

Unsurprisingly, given that this is the principle codified in the law, all the decisions analysed had their foundation in the principle of the best interests of the child. I now consider how Family Courts assess and balance this principle in relocation cases. They proceed on a case-by-case basis, and eventually review the placement arrangements. Decisions are very varied and use a panoply of different reasoning and factors. The most frequent arguments used in the collected sample fell into two topics: (1) the reasons for the relocation and the plan offered by the primary caregiver; and (2), how to maintain an enduring relationship with the left-behind parent, including the voice of the child.¹¹

1. a. The reasons for relocation put forward by the relocating parent

The personal or professional reasons put forward must be substantial and genuine. This is assessed quite strictly. As one court stated:

"Reasons for moving elsewhere are not determined (only) by more remunerative job opportunities or by a mere 'change of social environment' that offer (the adult and only the adult) a more general security than that offered by the environment in which he or she lived with the child up until the time of the request".¹²

Furthermore, the sole desire to move together with a new companion in a different State (or different part of Italy) is often insufficient to convince the court to grant relocation.¹³ The prospect of a more attractive salary, working conditions, or more comfortable surroundings, may also not be enough.¹⁴

1. b. The relocation plan

The court will assess whether the relocating parent has provided a settled and well-organised plan. The condition seeks to avoid the child being moved away from familiar surroundings on a temporary or provisional basis, without a clearly envisaged life-program. The court also investigates the effect of the proposed relocation on the child. For example, whether the child has previously spent time in the new place; knows the language/culture/surroundings; extended family members are already there; or whether, on the contrary, the prospective new location is totally new and the child will have to start again from the beginning.¹⁵

¹¹ See Honorati, note 2, for a more complete analysis.

¹² Milan Tribunal, 12 August 2014 (J Olindo).

¹³ Terni Tribunal, 17 June 2024 (J Velletti) and Verona Tribunal, 8 August 2023 (J Guerra), both decisions involving national relocation cases; Milan Tribunal, 18 December 2013 (J Muscio), refusing an international relocation to Split, Croatia.

¹⁴ Como Tribunal, 13 July 2023 (J Manenti).

¹⁵ See Como Tribunal, 13 July 2023 (J Manenti) where a relocation was refused because "the life plan lacks the necessary stability and certainty, lacking a concrete long-term plan" and because of "the mother's lack of awareness of the concrete and real interest in her child, as well as the need to put his psychophysical well-being before her own needs".

2. The child's right to maintain a steady and continuous relationship with the non-custodial parent

This is the consideration to which the court will attach the greatest importance and includes such factors as the expectations of the left-behind parent regarding regular contact; the feasibility and costs thereof, to be balanced between both parents; proven (not just offered) ability of the relocating parent to keep the relationship between the other parent and the child warm; previous cooperative or non-cooperative relations between parents; and the distance between the current habitual residence and the proposed new one.

Since primary attention is on maintaining, or reinforcing, the relationship between the non-custodial parent and the child, the existing relationship between the two parents and their co-parenting story will be closely scrutinised and will gain special weight. In general terms, it may be easier to grant relocation in the (few) cases where the parental relationship is cooperative. Problems mostly arise when the relationship has been difficult and uncooperative. For example, relocation was refused in a case where the mother had previously been held responsible for the lack of a child-father relationship, which was now being built under the supervision of social services. The court found that authorisation to relocate could not be based on a comparison of benefits or advantages that the change of environment would entail for the child in terms of social and scholastic life, as the primary interest of the children was to continue the psychotherapeutic process leading to the reconstruction of a relationship with their father.¹⁶

Another factor considered in light of the aim of favouring the maintenance of contact is the **distance between the current residence and the new relocation**, although this is never the sole reason for refusing or granting relocation. For example, the Supreme Court refused relocation to Romania on the basis that Romania was too distant. The court had, however, previously noted that the parents' relationship was uncooperative, the father/child relationship was being rebuilt via supervised contact through social services, and relocation would have interrupted that process.¹⁷ On the contrary, the Milan Tribunal allowed relocation to Lugano (Switzerland) of a child resident in Milano, because it only involved 1.5 hour's travel.¹⁸ Weight was also given to the fact that the mother had a new companion there with whom she had a new baby; that she had proved stability and a plan-of-life, and was very open and cooperative towards the child's father.

The **age of the child** is also important in assessing whether relocation will affect the existing relationship between the non-moving parent and the child. However, it is challenging to ascertain the impact of the child's age. The general understanding is that newborns and babies should be kept as close as possible to both parents to allow both to establish strong bonds to the child. Hence a very young child should perhaps not be relocated because the bond with the left-behind parent is not yet strong enough. As the Milan Tribunal stated:

¹⁶ Rome Court of Appeal, 23 March 2017.

¹⁷ Supreme Court, 11 November 2021 n. 33608. For a similar conclusion in a national relocation case, see Como Tribunal, 13 July 2023 (J Manenti), where relocation from Como (north of Milan) to the middle of Tuscany's countryside (south of Florence) was considered too far away and involved a too different environment. Furthermore, the mother did not show a settled plan and lacked a job there, but wanted to be closer to her husband to deliver the new baby there.

¹⁸ Milan Tribunal, 9 January 2024 (J Giannelli).

"The younger the age, the lower the ease (and the more compromised the probability) of maintaining a significant bond with the non-custodial parent, especially when [...] the age of the offspring has not yet allowed them to develop a significant bond with one or both parents".¹⁹

However, a prior Supreme Court decision stated that, in the case of a young minor, it is plausible "to value the criterion of so-called maternal preference",²⁰ in a case where internal relocation was sought by the mother on professional grounds. This 2016 decision could have a different outcome today.

An older, primary school-age child will be integrated in his/her own social environment and is not easily moved. Sometimes courts will grant relocation from the end of school year, but other decisions expressly say that the mother's need to move can be postponed to a later point in life when the child changes order of school (i.e., in the Italian system, around 11-12-years-old). At that point, hearing the child becomes mandatory and their views will make a difference.²¹ For example, the relocation from Milan to Turkey of a girl, who the expert report found very fragile and manipulated, was nonetheless granted by the Milan Tribunal because she was 16-years-old and wanted to relocate to Istanbul, where the mother was already living.²² The court found it could not disregard the wishes of a girl nearly of age, but ordered she be entrusted to Turkish social services for psychological support.

Previous Unilateral Relocation

A previous unilateral relocation of a child by the relocating parent, without asking, or despite the refusal of, the other parent is not considered relevant by the courts. While courts rightly construe this as a violation of the left-behind parent's right, and a case of abduction, they refuse to make the relocation application conditional on this fact. As the Supreme Court made clear in 2021:

"it is completely irrelevant that the mother moved to another country, taking the child with her without asking for the judge's authorization, given that we are not dealing with a situation in which the rules on international child abduction are in question, but rather a dispute concerning the identification of the best custodian, an identification to be carried out, as already observed, in the exclusive interest of the child, taking into account the strongly highlighted criteria".²³

¹⁹ Milan Tribunal, 12 August 2014 (J Olindo).

²⁰ Supreme Court, 14 September 2016 n. 18087.

²¹ Under Italian law, hearing the child is an obligation, and also before 12-years of age if the child is capable of discernment. However, the weight given to the child's voice will largely depend on his/her age and maturity. This is of special importance in relocation cases where the child is asked about their own expectation and desire regarding where to live.

²² Milan Tribunal, May 2024 (J Cattaneo).

²³ Supreme Court, 6 October 2021 n. 27142. In similar terms, Terni Tribunal, 2022 (J Velletti), allowing relocation to Germany despite the mother having unilaterally and unlawfully already relocated there, on the basis that she was still the best primary caregiver and should keep placement of the child.

This is consistent with the 1980 Hague Child Abduction Convention as returning the child to the State of habitual residence after an abduction should not lead the court to 'punish' the abducting mother for her previous wrongful act, especially if her parenting abilities have been newly verified.

Conclusion

Overall, Italian courts tend to prioritise the stability of the child, whilst not forgetting the constitutional rights of both parents. Stability is not therefore considered uncritically as if the child was always to stay in the place of habitual residence, nor to always move with the primary caregiver. Rather, this is subject to a delicate and complex assessment on a case-by-case analysis.

Two critical points need to be highlighted for further examination. First, Italian courts seem to pay little attention to the emotional wellbeing of the relocating parent. A few decisions expressly refuse relocation based only on maternal personal views and expectations.²⁴ While the child's stability clearly comes before the primary carer's wellbeing, the child's emotional wellbeing is closely connected to the primary carer's emotional wellbeing. Disregarding the latter will clearly also affect the former.

Second, while all relocation decisions assess and balance the feasibility and costs of future contact rights with non-custodial parents, no decision seems to consider how these plans will be recognised and enforced in the foreign State when relocation has occurred. This matter is well-addressed by the Brussels II-ter Regulation, providing for a privileged decision when accompanied by an Annex V certificate (Articles 42(1)(a) and 47(1)(a)) and by the 1996 Hague Convention (Article 23), but it is regretful that no reference is made by courts to the after-play of the decision.

²⁴ See, for example, Rome Tribunal, 18 August 2018 (J Velletti).

Relocation Matters – A Practitioner's Perspective from England and Wales

James Netto, Partner, International Family Law Group, and Chair of CALA (Child Abduction Lawyers Association)

A paper is not available for this presentation.

Session 2 – Prevention

Introduction by Session Chairperson Professor Nigel Lowe KC (Hon)

Emeritus Professor of Law, Cardiff Law School, Wales

Introduction

The theme of the second session of the EMII conference was prevention of child abduction. The initial introductory address focused on legal measures, while the subsequent presentations focused on what might broadly be termed non-legal remedies. Here I begin with the introductory address and end with an overall summary of the afternoon's presentations and ensuing discussion.

A Legal Perspective

By parental child abduction we mean the unilateral action taken by one parent without the other's consent either to remove a child to another country or to keep the child there. This is respectively referred as 'wrongful removal' and 'wrongful retention' by the 1980 Hague Abduction Convention. However, the abduction is perpetrated and for whatever reason, its effects on the children involved can be devastating. It is likely to be traumatic in the short-term and potentially permanently damaging in the long-term. It is accordingly desirable that abductions should be deterred in the first place and, failing that, wherever possible they should be prevented, but where this is not possible, amicable solutions should be sought and facilitated.

The global response to international parental child abduction has been the 1980 Convention, to which there are currently 103 Contracting States. The basic idea of the Convention is that abducted children should normally be returned to the country of their habitual residence where the merits of the parental dispute can then be determined after a full welfare hearing. Although the Convention deals with abductions *after* they occur, by generally aiming to restore the status quo ante and thereby negating the attempt to flee the home jurisdiction, as the *Guide to Good Practice. Part III, Preventive Measures* says, "the existence of the Convention was intended to prevent abduction"¹ and, as such, is itself a good preventive measure. Of course, we can never know how far the Convention acts as a deterrent (though interestingly the number of applications have recently declined in both England and Wales and the Netherlands) – it must, in any event, be dependent upon knowing of its existence.

From a national perspective, there are a number of steps that can be taken to discourage abduction. These include requiring children to have separate travel documents, and requiring one parent to obtain the consent of the other to take their child abroad. In the United Kingdom (UK), it has not been possible since October 1998 to apply to put children on adults' passports, while under the Child Abduction Act 1984 it is an offence for one parent to remove a child outside the UK (i.e., England and Wales, Scotland and Northern Ireland) without the other's

¹ HCCH, *Guide to Good Practice. Part III, Preventive Measures* (2005).

consent, provided that other parent has parental responsibility.² Consent can be written or oral. It is no defence that the child has consented. It is a common mistake, regrettably not infrequently made by the police, to think that the mother is unilaterally entitled to take her child out of the country. She is not, unless she is the sole holder of parental responsibility (but see further below).

Although the value of making parental abduction a criminal offence can be debated, in the UK context, the 1984 Act also enables a parent to try to stop an abduction, because it is an offence to attempt to take a child out of the UK. The police can arrest without a warrant anyone they reasonably suspect of attempting to take a child out of the UK (again see further below).

Under section 13 of the Children Act 1989 it is an express condition of a child arrangements order made under s 8 of the Act that, while it is in force, no person can remove the child from the UK save with *written* consent of every parental responsibility holder or the court, save to the extent that the person who has a 'live with' order can take the child out of the UK for a period of less than a month, unless the court expressly orders otherwise. Given that this order will have been made in legal proceedings, this restriction should be known by the parents involved. Applications can be made under the 1989 Act for relocation which, absent consent between the parties, is the lawful means for one parent to take the child to live abroad although, as discussed elsewhere at EMII, relocation applications can take months to conclude.

These measures alone do not, of course, prevent abductions and given that, once a child has been taken out of the home country, it becomes much harder (and much more expensive) to find and recover him or her, it is incumbent upon any legal adviser of a potential left-behind parent to identify a risk of abduction and to advise a client about what steps should be taken. Indeed, failure to do so may amount to malpractice.

Among the steps that can be taken are:

1. Preventing the issue of a passport or ordering its surrender

Clients should always be advised that, where possible, the child's passport and birth certificate should be locked away and not parted with other than to get them into safekeeping. So far as the UK is concerned, any court that has made an order prohibiting or restricting the removal of a child from the UK, or from any specified part of it, can require any person to surrender any UK passport which has been issued to, or contains particulars of, the child.³

2. Preventing the parent leaving the jurisdiction

In the UK, this can be done either through the police or the court. The police can, through their own 'all ports warning system', make a *port stop* which means that immigration officers at the ports will hold the name of a child at risk of unlawful removal on an index and try to assist the police by identifying the child if removal is attempted. To effect a port stop, the particulars of the child at risk are circulated by way of the police national computer broadcast facility. Although no court order is necessary, since the police need to be satisfied that there is a real

² Under English law, all mothers have parental responsibility as do all 'married fathers' and those unmarried fathers who are named as the father on the child's birth certificate.

³ Family Law Act 1986, s 37(1).

threat of imminent removal (i.e., within 24 to 48 hours), an order is helpful. In any event, police forces need to be aware of the 1984 Act.

The courts can make *port alert orders* either as an ancillary term of a Tipstaff order made by the High Court or, in the case of the Family Court, as a freestanding order.

The UK is not alone in having such preventive mechanisms. In States within the Schengen area, for instance, it is possible to issue a preventive alert under Article 32 of Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System. Article 32(1)(c) applies the Regulation to children at risk of abduction by a parent.

3. Obtaining Court Orders

Apart from putting in place the protective measures that have just been described, the next step is to institute legal proceedings. Where the risk of abduction is thought high, so far as England and Wales is concerned, the most effective procedure (though one which requires an application to be made in the High Court) is to make the child a ward of court, since the *immediate* effect of making an application is to place an embargo on the removal of the child from England and Wales.

In both wardship and Children Act proceedings not only can the court make passport orders and port alert orders, they can also make a prohibited steps order specifically to stop the child being taken out of the jurisdiction (i.e., England and Wales).

In relocation cases, the court might well allow the parent to relocate abroad with the child (that will depend upon what is thought to be best in the welfare interests of the child). In such cases, a court can require the person given leave to enter into a bond to ensure that the child will be duly returned according to the terms of the order (e.g., to facilitate contact with the left-behind parent). If the condition of the bond is broken, the court can consider assigning the bond to the injured parent to provide a fund to cover the cost of recovering the child from the foreign jurisdiction. One further preventive step worth mentioning is the possibility of seeking advance recognition under Article 24 of the Hague Child Protection Convention 1996. This provision enables the would-be stay at home parent to seek a ruling from the State to which the other is moving as to whether or not a contact order will be recognised.

Overall Summary of the Session on Prevention

Although in a broad sense abduction and relocation are different sides of the same coin, namely, the child living with one parent in a different country from where he or she was formerly living with both parents, there are fundamental differences, not least that the former is 'wrongful' and often criminal, whereas the latter is lawful. Additionally, abductions tend to be sudden events with no time for the child to prepare for and adjust to change, whereas relocations, at any rate those formally sanctioned by a court, are generally orderly events that can properly be planned for. No-one doubted that the prevention of abduction is a worthwhile goal, but how this can be achieved was the overarching theme of the afternoon session. What emerged from that discussion was that while legal remedies have their place, they are by no means the be all and end all.

Globally, there are numerous initiatives that aim to promote and facilitate communication (particularly face-to-face) between the parents and thereby attempt to reduce interparental hostility and to pave the way for reaching amicable child-focused settlements. One initiative, namely, 'Parenting Coordination' and on which Dr Astrid Martalas explained the system

operating in South Africa, attracted much discussion, not least because there is no equivalent scheme in England and Wales (though similar schemes do apparently operate in the US, Canada, The Netherlands and Australia, with some plans to have a scheme in France). The underlying idea of Parenting Coordination is, having managed to get the parents to speak to each other, they then go on to explore and agree upon some solutions. The Parenting Coordinator will generally make a limited assessment and non-binding recommendations and help to manage what one delegate described as 'quarrels about little things'. Although one idea is try to keep matters out of the court, in Italy for example, where the court is involved in a high conflict situation such that the order may not be followed, the court can call on a Parenting Coordinator to implement and enforce the decision and ensure the parenting plan is followed through.

Although no-one doubted the value of these types of schemes, concerns were expressed about costs and their compatibility with the court's role.

It is one thing to encourage parents to communicate with each other but that, in itself, particularly when conducted remotely, can exaggerate conflict and, at the same time, add to court costs because of the voluminous emails etc. In this respect, the presentation by Alicia Farran on the operation of the communication platform *OurFamilyWizard*, which has been used in court orders in the UK, Canada, Australia, New Zealand and across the USA, was especially interesting. Among the platform's features is that it offers parents a secure means of communication that cannot subsequently be edited, deleted or manipulated and has the facility to download a Court admissible report based on their activity. One feature of particular interest in the context of reducing inter-parental conflict, is the tool known as ToneMeter™. This offers real-time feedback on the tone of a message, highlighting phrases and words that could be perceived as negative ahead of the message being sent (and which cannot be deleted subsequently). Parents remain in complete control of what they ultimately send and they can choose to send the message regardless, but it does give pause for thought.

The remaining two presentations concerned mediation. In the first, Pien Wubbeling gave a presentation about the Dutch scheme run by Center IKO, an independent organisation, but funded by the Government. It offers a range of services both in the context of Hague Convention abduction proceedings, but also outside such proceedings. In the former context, it works closely both with the Dutch Central Authority and the Family Division of the District Court of the Hague (the only court in the Netherlands that hears Hague Convention abduction applications). The Netherlands has developed an impressive and well-organised system for dealing with Hague applications with mediation at the heart of the process. Mediation is offered in correspondence between the Central Authority and the parties and again at the pre-trial hearing. The process can be started in a matter of days. Using two mediators (one legal and one behavioural), Center IKO uses the so-called 'pressure cooker' method, conducting three 3-hour in-depth sessions with the parents. Children aged 3 or over are interviewed. Few systems can match this efficiency.

Center IKO has an important role outside the context of Hague proceedings. It can be contacted by parents and a District court can refer the parties to cross-border mediation during private law proceedings. Here Center IKO's role is essentially a preventive one, inter alia by promoting open communication between the parents and to emphasise the child's welfare interests and the potential trauma of abduction. Where, however, the risks of abduction appear high, then Center IKO can advise on what preventive legal steps may be taken.

The role of mediation as a means of preventing abduction was very much the theme of Melissa Kucinski's presentation but, rather than exploring any specific scheme, her concern

was a more general one of making it a more viable option. While having no doubts that mediation can be an effective preventive tool not least because, as she put it, it can be done faster, with a more tailored and creative outcome, at lower cost, and may even create a framework for future parental communication, it was not problem-free. For example, there is the concern that the relocating parent might use mediation to delay potentially unsuccessful litigation to plan an abduction. On the other hand, there is equally the concern that the non-relocating parent might use mediation to increase costs, with no intention of settling, and only delaying any legal proceedings.

While it went without saying that mediation requires the involvement of highly competent mediators, specialised mediation for cross-border families needs to be accessible, such that parents are enabled more easily to find and to access competent specialist mediators in their country or region. Melissa's suggestion was the establishment a global network of mediators, mediation-adjacent professionals, and mediation resources. She pointed to the International Academy of Family Lawyers (IAFL), which was founded as a worldwide network of family lawyers who have a significant focus on international and cross-border issues, as a possible comparable model. However, she acknowledged that creating a network of family mediators presented different challenges to that of creating a lawyer-network, not least that many jurisdictions have no background requirements for mediators. Another huge challenge is the funding of any global network. In this respect, she pointed to the experience of the International Social Services (ISS). ISS's Secretariat had developed a full model for an international family mediation network, but its goal of a stand-alone organisation housing its mediation network stalled because it was unable to secure funding. Notwithstanding what are clearly formidable challenges, Melissa contends that the creation of a global family mediation network is a goal worth pursuing.

Time cut short any extensive discussion of mediation, but it was clear that it was regarded as an essential tool both in seeking to prevent abduction in the first place and trying to find amicable solutions in subsequent abduction proceedings. This is interesting in itself as, for a long time, mediation was not thought to have a useful role in international parental child abduction cases – no provision is made for it in the 1980 Convention. That attitude changed in large part following the pioneering work done by the British NGO, *reunite*, in the early 2000s. Now, mediation has a clearly defined role in England and Wales.⁴ However, not all jurisdictions have mediation schemes (in this respect, the suggestion that a global network of mediators be established might be worth pursuing) and, those that have, generally will not be able to match the efficiency of the Dutch scheme. Even in England and Wales there is some suggestion that in abduction proceedings mediation is sometimes overlooked.

Gathering all the strands together, while it is important, and in line with UNCRC Article 35, that the international and national legal frameworks actively discourage abduction (and in this respect, and in line with UNCRC Article 11(2), more States still need to be encouraged to accede to the 1980 Abduction Convention), it is apparent that that alone is not enough. There also needs to be alternative dispute mechanisms in place ideally to promote early proactive child-focussed communications between the parents, so as to prevent, wherever possible, interparental conflict escalating, and which can lead to agreed solutions that safeguard the

⁴ See Appendix 1 to the 2023 *President's Guidance: Case Management and Mediation of International Child Abduction Proceedings* which explains how the Child Abduction Mediation Scheme operates in England and Wales.

child's interests. What the session illustrated was that, around the world, various schemes have been developed to achieve this preventive goal and without gainsaying the problems, not least of which is the need for adequate resources, the existence of these initiatives gives cause for optimism.

Parenting Coordination as an Effective Dispute Resolution Mechanism to Potentially Prevent Child Abduction Post-Divorce or -Separation

Dr. Astrid Martalas, Counselling Psychologist and Parenting Coordinator, Cape Town, South Africa

Introduction

This presentation is about prevention, not about post-abduction return negotiations. The hypothesis is that if parents have access to effective dispute resolution mechanisms post-divorce or -family separation which, depending on the jurisdiction, can be included in their parenting plans and made an order of the court, abduction may be less likely to occur.

As Nuria Gonzales-Martin put it so succinctly, "the children involved in parental abduction are victims of their parents' war."¹ If we end or reduce the war, is it possible to end or reduce abduction?

What is Abduction?

Parental abduction is defined as the "taking, retention, or concealment of a child or children by a parent, other family member, or their agent, in derogation of the custody rights, including visitation rights, of another parent or family member".²

Why Do Abductions Happen?

From my clinical experience, the reasons given by abducting parents often include the following: the abducting parent feels unsafe, often because of domestic violence; in multi-cultural cases, the abducting parent wants to 'go home'; or an application to relocate has failed. In 1991, Hegar and Greif provided the following reasons for abduction:

- A desire to hurt the respondent (77%)
- Anger over the breakup (23%)
- Desire to be with child (16%)
- Pressure from others to take child (13%)
- Dissatisfaction with visitation (13%).³

¹ N. González Martin, 'International Parental Child Abduction and Mediation' *Family Law Quarterly* (2015), 15(1), 353-412, at p. 356.

² L. Girdner, 'Chapter 1: Introduction' in L. Girdner and P. Hoff (eds.), *Obstacles to the Recovery and Return of Parentally Abducted Children: Final Report* (U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Washington, DC, 1994, pp. 1-1 to 1-13.

³ R.L. Hegar and G.L. Greif, 'Abduction of Children by Their Parents: A Survey of the Problem' *Social Work* (1991), 36(5), 421-426, at p. 423.

What are the Risk Factors?

In 1999, Johnston, Girdner and Sagatun-Edwards provided risk profiles of parents likely to abduct their children.⁴ Their findings suggest a model of five interrelated family factors predicting child abduction by a parent, especially when the children are very young. Each of the five factors (child abuse/neglect allegations, narcissistic/sociopathic personality traits, unmarried relationship status, low socioeconomic, and minority ethnic status) is associated with a reduced likelihood that these kinds of separating and divorcing parents will resolve custody disputes using the legal dispute resolution forums and mental health services provided by family courts. Instead, they turn to their own families and social networks for help and validation. This, in turn, increases attitudes favourable to abduction.

In 2002, Lowenstein listed the following risk factors in cases of parental abduction:

- heightened by concern of a very young child being exposed to neglect, and criminal environments, by the other parent;
- unsubstantiated allegations of sexual abuse;
- heightened distrust of, and less respect for, law and authority;
- a reluctance to seek help from the courts or having been provided with unsatisfactory results by the courts.⁵

Section 7 of the Uniform Child Abduction Prevention Act of 2007 (UCAPA) lists several risk factors:⁶

- **Previous Abduction or Attempt:** Has the petitioner or respondent previously abducted or attempted to abduct the child?
- **Threats:** Has the petitioner or respondent threatened to abduct the child?
- **Recent Actions Indicating Planned Abduction:** Has the petitioner or respondent recently engaged in activities like selling a residence, terminating a lease, closing financial accounts, applying for travel documents, or seeking the child's records?
- **Domestic Violence, Stalking, or Abuse:** Has the petitioner or respondent engaged in domestic violence, stalking, or child abuse or neglect?
- **Refusal to Comply with Custody Orders:** Has the petitioner or respondent refused to follow a child-custody determination?
- **Lack of Ties to the State:** Does the petitioner or respondent lack strong familial, financial, emotional, or cultural ties to the state where the child resides?

⁴ J.R. Johnston, L. Girdner and I. Sagatun-Edwards, 'Developing Profiles of Risk for Parental Abduction of Children from a Comparison of Families Victimized by Abduction with Families Litigating Custody' *Behavioural Science Law* (1999), 17(3), 305-322, at p. 317.

⁵ L.F. Lowenstein, 'Parental Child Abduction: A Literature Review' *The Police Journal: Theory, Practice and Principles* (2002), 75(3), 234-244, at p. 242.

⁶ <https://www.uniformlaws.org>

- **Strong Ties to Another State or Country:** Does the petitioner or respondent have strong ties to another state or country, potentially indicating a desire to relocate with the child?
- **Risk of Taking the Child to a Country That May Not Return the Child:** Is there a risk that the petitioner or respondent will take the child to a country that does not adhere to international child abduction conventions, making it difficult or impossible to return the child?

Reunite also offers 'warning signs' on their website:⁷

Outright Threats

- Threats to abduct your child or to take the child away and you will not see them again.
- Threats to harm you, the child, or themselves.
- Veiled threats against you, the child or themselves.

Behaviour of the Other Parent

- Change in behaviour – either becoming really nice or really horrible.
- Worsening relationship between yourself and the other parent.
- Violent or abusive behaviour.
- Increased contact with family, friends or other contacts overseas.
- Secretive behaviour.
- Talks more than usual about another country and a desire to go there.
- Suddenly asking for documents relating to the child, such as birth certificates or passports, without any clear, genuine reason.
- Suddenly altering well-established contact routines without any clear reason.

Other Parent's Life Circumstances

- They are from a different country and have a lot of family, friends and other contacts in that country.
- Breakdown of their relationship with you.
- Recently experienced a life-changing event, i.e. death of a family member or loss of a job.
- Financial difficulties or high levels of debt.
- Legal issues such as ongoing court proceedings or run-ins with the law.

⁷ www.reunite.org

- Immigration problems.
- Belief that those living abroad are having a much better life.
- Has a much stronger support network abroad than in the UK.
- Feeling threatened by the involvement of the Social Services.

Making Preparations

- Selling their house or terminating the lease on their rental property.
- Giving up their job or selling their business.
- Closing UK-based bank accounts or transferring a lot of money overseas.
- Selling property such as cars or furniture.
- Giving notice of a move to the child's school or nursery.

Behaviour of Your Child

- They tell you outright that they or the other parent are going to another country.
- Asking strange questions.
- They seem anxious or worried about something.
- There is a big change in their behaviour.

When Do Abductions Happen?

Abductions have been found to have occurred most frequently in families that were separated and had experienced custody conflicts, although a high-risk time was the period between separation and actual divorce.⁸ Nearly one-half of the abductions reported by left-behind parents occurred during a court-ordered visitation between the abducting parent and abducted child.⁹ Fifty-one percent of the left-behind parents took measures to prevent the abduction, including seeking supervised visitation, custody orders prohibiting removal of the child from the jurisdiction, and passport denial or restrictions.¹⁰ Parental abductions most often take place within the context of marital conflict and disruption.¹¹

⁸ D. Finkelhor, M. Henley, H. Turner and S. Hamby, 'Family Abduction in a National Sample of US Children' *Child Abuse and Neglect* (2017), 67, 403-407, at p. 403.

⁹ J. Chiancone, L. Girdner and P. Hoff, 'Issues in Resolving Cases of International Child Abduction by Parents' *Juvenile Justice Bulletin, Office of Juvenile Justice and Delinquency Prevention* (2001), 1-19, at p. 5.

¹⁰ *Ibid*, at p. 6.

¹¹ Hegar and Greif, note 3, at p. 421; Lowenstein, note 5, at p. 241.

What is Parenting Coordination?

The AFCC defines Parenting Coordination as:

A child-focussed alternative dispute resolution process in which a mental health or legal professional with mediation training and experience assists high-conflict parents to implement their parenting plan by facilitating the resolution of their disputes in a timely manner, educating parents about children's needs, and, with prior approval of the parties and/or the court, making decisions within the scope of the court order or appointment contract.¹²

Education of parents can include the provisions of the Hague Convention. Educating parents about children's needs can include the effects of abduction on the child's development. Child participation in the Parenting Coordination process (in line with Article 12 of the United Nations Convention on the Rights of the Child) is crucial and in South Africa is usually included in a dispute resolution clause which sets out the powers and mandate of the Parenting Coordinator.

The Parenting Coordination Process in South Africa

Parenting Coordination is a transparent process, and the Parenting Coordinator (PC) cannot take information into account that has not been made available to both parents. Parenting Coordination is essentially a reactive process. A parent has to raise a dispute in writing to the PC whereafter, if the dispute falls within the mandate of the PC, the PC will consult with the parents.

Parenting Coordination has four different outcomes:

1. Agreement reached between the parents through solution focussed mediation.
2. A proposal made by the PC after hearing the parents and no agreement has been reached.
3. A non-binding recommendation made after a limited assessment. The PC can propose that the non-binding recommendation is implemented for a trial period.
4. In limited, clearly defined areas of dispute, the PC can issue a directive which is binding on the parents unless a court determines otherwise.

How Can Parenting Coordination Potentially Prevent Abduction?

Parenting Coordination is likely to be more effective if there is legislation around this Alternative Dispute Resolution (ADR) mechanism. In South Africa, a Parenting Coordination clause¹³ is usually included in the parenting plan which is made an order of court.¹⁴ If, at the time of mediating the parenting plan there is a potential risk of abduction, this could be

¹² AFCC Guidelines for Parenting Coordination developed by the AFCC Task Force on Parenting Coordination, 'Overview and Definitions', *Family Court Review* (2006) 44(1), 164-181, at p. 165.

¹³ Also referred to as a dispute resolution clause.

¹⁴ Sections 33 and 34, South African Children's Act 38 of 2005.

included in the parenting plan and provision made for Parenting Coordination in the event that one of the parents reports the risk to the PC post-divorce or family separation. PC's deal on a daily basis with two of the risk factors identified by Hegar and Greif, namely unresolved conflict (a desire to hurt the respondent) and insufficient contact (a desire to be with the child; dissatisfaction with visitation).¹⁵ A parent can approach the PC if there is a dispute concerning the child in regard to any of the risk factors referred to above.

Conclusion

We will never know if Parenting Coordination will assist in preventing child abductions. However, we can be mindful of the risk factors present in the abduction context, and provision can be made for these risk factors and for Parenting Coordination in the drafting of a parenting plan. Sometimes, in addition to the risk factors referred to above, there may have been previous 'small' attempts to abduct a child, such as not returning the child on time, the child staying a few extra days, the other parent not being informed where the child is, or a failure to strictly adhere to the provisions of the court order.

When making recommendations in relocation assessments it may be helpful to include the appointment of a PC, assuring that disputes can be heard timeously, as well as protective factors such as a financial remedy order¹⁶ or the option of supervised visitation at the reasonable request of one of the parents. Various permutations of supervision exist and supervision need not necessarily be for the entire duration of the visitation.

Perhaps the time has come to include a Parenting Coordination clause, a financial remedy order and the option of supervised contact as a safety measure in all parenting plans. Just like the dispute resolution clauses; you may never need them, but if you do, they are there.

¹⁵ Hegar and Greif, note 3.

¹⁶ Referred to in South Africa as a 'war chest'.

OurFamilyWizard: Navigating Co-parenting Communication - A Neutral Space, Centred Around the Child's Needs and Wellbeing

Alicia Farran, Legal Associate, Our Family Wizard

Introduction

In today's digitally driven world, divorced and separated parents face an ever-growing need for communication tools that provide clarity, safety, and structure. OurFamilyWizard is a communication platform designed to facilitate communication between parents before, during, and after the divorce and separation process.

History and Mission

OurFamilyWizard was founded in Minneapolis in 2001. It was launched in the UK seven years ago with a separate entity and version of the platform built specifically for UK families and professionals. Use of the platform has been included in court orders across the UK, Canada, Australia, New Zealand and all 50 states in America. It is also important to be having discussions with parents outside of court proceedings during the early stages of separation, as a pro-active measure rather than just a reactive measure, when communication has broken down.

When introducing a new form of communication for parents to adopt, it is helpful to establish the need. Why do parents need an extra space to facilitate communication? It can become challenging to establish a coherent chain of communication between all the methods of communication they are already using. What has been agreed can get confused and cause unnecessary arguments and disagreements. OurFamilyWizard keeps co-parents on the same page.

Manipulating Online Communication

It is becoming concerningly common and easy to falsify modern online communication records. This example was shared in 2024 by HHJ Clive Baker, the designated Family Judge for Cumbria:

"In a Public Law case a parent appended to a statement a copy of a 'screenshot' of a text message ... it looked genuine, but no trace of the message could be found on either the sender or receivers' mobile and ultimately it transpired that one of the parties manufactured it using an internet 'mockup' site."

Professionals working with parents are often spending unnecessary hours fielding through rafts of screenshots without the capacity to verify their origin. Alternatively, a parent may cherry pick a message which does not accurately depict the true nature of a thread of communication. Platforms, such as WhatsApp, offer a capacity to edit a message within 15 minutes of sending regardless of whether the recipient has read it. By design, this is in place to help when a typographical error is made, but is easily misused. A parent can send a nasty message and then replace it knowing it will already have made its impact. The damage is already done, but there is no trace of the original correspondence.

Overview of OurFamilyWizard

All the features on OurFamilyWizard have been designed specifically for co-parents, and they are unable to edit, delete or manipulate their communication. Each feature has the facility to download a Court admissible report based on their activity.

The primary users are parents, whether this be birth parents, adoptive parents, or grandparents with special guardianship. However, there are also options for Children and Third-Party Accounts to be included with restricted access. Professionals can also be included to communicate with their clients, view their activity, and download reports if necessary.

Notifications can be tailored on a case-by-case basis. A parent who feels they are receiving too many notifications can opt to receive a daily digest i.e., one notification per day by way of text message or email. This single notification summarises the activity from the past 24 hours, allowing a parent to compartmentalise and manage their communication in a headspace and time that suits them. In turn, this helps individuals to better establish personal boundaries.

OurFamilyWizard proudly offers an in-house team for Customer Support which is available seven days a week and by email or over the phone. The team acts as a vital resource for many parents who struggle to adapt to new technology. A call can be scheduled with a parent to walk them through onboarding or any difficulties they are experiencing.

Messages (Now with ToneMeter AI)

The messaging feature has been designed with a similar look and feel to regular email, but with co-parents in mind. Accountability is a key theme, with records unable to be edited or deleted, as well as accurate timestamping. The exact date and time when a message is sent, received, and then first viewed by the recipient, is recorded and included in reports. Each parent can organise their messaging board in the same style as their regular email inbox. Messages can be stored in folders and the search function utilised to find messages by key words or dates.

ToneMeter™ is a unique OurFamilyWizard tool that can operate in a similar way to spellcheck. Rather than registering spelling mistakes, ToneMeter™ offers real-time feedback on the tone of a message, flagging phrases and words that could be perceived as negative ahead of a parent sending a message they cannot delete in the aftermath. Parents remain in complete control of what they ultimately send, so it is of note when they have made an active choice to send a message regardless. ToneMeter™ does not alert the recipient parent that a message is negative, rather it is a tool designed to help the sender:

- Pause for thought and slow down;
- Re-read the message and consider the language that has been used;
- Think about how their co-parent might interpret the message;
- Adjust their tone and rewrite the message;
- Be conscious before choosing to press send.

Recently, an optional update was made to ToneMeter to include AI. Parents can 'opt-in' to use this model, but those who do not will still benefit from the original ToneMeter functionality. As well as the tone analysis, this model offers suggestions providing an alternative draft in a calm, concise tone. Parents still remain in control of their message draft and can edit suggestions

with real time feedback. The AI used is a closed model, keeping data secure within the platform, and was developed by OurFamilyWizard and trained specifically on Co-parent communication.

Calls

Parents are now able to make voice and video calls from within the platform. Calls are made without the need to share phone numbers or email addresses and are managed by consent. Calls on OurFamilyWizard have a familiar look and feel to Facetime/WhatsApp calling, simplifying the process of moving across to the platform.

The safety and security of vulnerable individuals is taken into consideration in the design of all platform features, as illustrated by Calls. If there are concerns, and phone numbers cannot be shared, or indirect contact with a domestic abuse survivor has not previously been possible, parents can now facilitate audio and video contact whilst maintaining control and privacy.

Calls also offers the option for a recording and transcript, but these require an additional tier of consent. Each time a parent initiates a recorded call, two-party consent will need to be explicitly given before the call can take place. Consent history will be timestamped and available within the Calls reports. Upon completion of a call, a timestamped transcript and the recording can be downloaded for up to 90 days after the recording has occurred.

Detailed reports also contain timestamping of call activity beyond consent history. Records are stored for when a call was initiated/ terminated, and who by, as well as turning on and off both cameras and microphones during a call. This helps to prevent manipulative behaviours, like gaslighting and blocking numbers, by offering one shared source of truth.

Shared Parenting Calendar

The shared calendar enables both parents to manage and share schedules for contact, holidays, school events, and extracurricular activities. Parents are prompted to input a parenting schedule when they first join OurFamilyWizard. A child arrangements order that has been finalised or agreed in a parenting plan can go straight into the calendar as a backbone for both parents to refer back to and is colour-coded to clearly show how time is shared.

Changes do happen and it is important to encourage parents to work together in the best interest of the child. Parents can either make a one-way change request or a two-way exchange. This is done through a simple, stripped-back, 'yes or no' approval process to reduce that direct communication between parents. Approved requests automatically reflect in the calendar without parents needing to manually make the update. If a request is declined, the response is timestamped, but there is also an opportunity to suggest a change to the request and send it back to their co-parent. This opens up the negotiation in the same stripped back format thereby avoiding escalation of the issue.

Any proposed changes are stored, with automatic logs documenting each action in a report. This design reduces misunderstandings and supports the enforcement of agreed arrangements.

Expense Log

Discussing money can often become a flashpoint in post-separation parenting. The expense log offers a clear, categorised system for requesting reimbursements and tracking payments related to the child. Each entry can include receipt attachments, payment status, and time stampings, to minimise conflict over financial matters. Categories can have different divisions – for example, if parents have decided to divide all school-related expenses 50/50, but one parent pays 75% of costs relating to extra-curricular activities, then the categories can reflect this. This feature then works out how much is owed based on the category chosen.

Like the Calendar, the expense requests maintain the stripped back 'yes/no' format. Approved expenses awaiting payment are stored and can be paid in one go, again having the total cost summarised for them. This feature was designed to take the stress and mistrust out of what was previously a volatile topic. It helps parents stay accountable and keep on top of outstanding costs, whilst communicating them effectively.

Info Bank

The Info Bank is a place to store key information for each family member, broken down into categories such as clothing, shoe sizes, medical information, etc. In emergencies, parents can quickly access the information they need without having to repeatedly ask the same question, scroll through lots of correspondence, or feel judged for being forgetful. There's also accountability regarding who inputted this information. The Info Bank can be helpful for parents as a neutral space for shared information. It also ensures both parents have access to the same up-to-date data, supporting collaborative parenting and reducing dependency on memory or manual tracking. Parents are also able to share and store documents in the MyFiles section, such as school reports, invoices, and doctors' letters.

Journal

The Journal is a place where parents can upload either Moments or Check-ins privately, which can be shared exclusively with a connected professional or shared with their co-parent. This tool can be used to share memories or to document observations about their child's wellbeing, behaviours, or routines.

Moments can consist of text, photo, video or audio files and can be tagged to a location or date. The time stamping reflects when the entry was uploaded, the date it was assigned, and the first time it was viewed by a co-parent. Memories can be shared as an alternative to typical social media channels, but without the background noise or toxicity of a public social media platform. There is also no capacity to comment or 'like' an entry.

Alternatively, Check-ins are a real time pin drop of a parent's location. These are completely optional and, by default, the location settings will initially be turned off. They do not share any ongoing tracking beyond the instance shared. The parent is unable to drop a pin if they are not in the given place as the feature requires an accurate GPS signal to verify their location. Unlike Moments, these cannot be backdated or assigned to any location. They can, for example, verify that a parent has turned up to a handover or event on time.

Child and Third-Party Access

As children get older and more independent, it may be important for them to feel included in this digital space. The child accounts, which are free and optional, are available for this reason. They can offer restricted, monitored access if it is safe and meaningful for them to be included. For a child, having their own access to view their calendar, which is colour coded, can help with any changes made to parenting schedules and routines. Visualising the information in this way can help children make better sense of it, rather than feeling overwhelmed from having to manage new patterns.

Third-party accounts are also available for Grandparents/Stepparents and other important family members who may also require access. These accounts function in a similar way to the child accounts – both are free and can be added or removed at any point by either parent.

The restricted access allows both Child and Third-Party accounts to:

- View the family calendar, including parenting schedules, holidays, and public events created by parents.
- Use the message board to send and receive messages with other users. Child and third-party accounts do not have access to the correspondence between co-parents.
- Create journal entries, including both Moments and Check-Ins. They can also view journal entries that are shared with them.

However, they will not have access to the Expense Log, Calls and Info Bank portions of OurFamilyWizard.

Professional Accounts

Professional accounts are available to anyone working with the family in a professional capacity, including social workers, legal professionals, court advisors, and mental health practitioners. These accounts are optional and free.

The professional accounts can be utilised to correspond with a parent, oversee their activity, and download Court admissible reports. The search function on messages can streamline the process of bundling by helping to locate and select what is most important for the report. These accounts can be connected with either single parent or dual parent access and can be added and removed at any time.

Single parent access only requires one consenting parent and does not prompt a notification to the other side. A professional can view that parent's account from their perspective. However, they are unable to see private entries, or entries shared only with connected professionals on the other side.

Alternatively, dual parent access can be granted with the consent of both parents. This allows a professional view from either parent's perspective, with the ability to upload parenting schedules to the calendar and set categories in the expense log.

Plans and Pricing

OurFamilyWizard offers the following packages so parents can select and pay for the features they require. Prices are per parent, per year. Parents can also opt for different packages.

Essentials POPULAR	Premium	Max
£107.99 billed annually This works out to be £9/month	£155.99 billed annually This works out to be £13/month	£215.99 billed annually This works out to be £18/month
• 1 year subscription with access to all our main tools for co-parents • 45 minutes per month for video & audio calls • 5 GB secure file storage • Unlimited access for family law professionals • Unlimited downloads of PDF records • Real-time feedback on the tone of messages, journals and calendar entries from ToneMeter	Everything in Essentials, plus: • Unlimited video & audio calls with no monthly minute limits • Unlimited secure file storage • Unlimited electronic affidavits • Request unlimited certified records—notarised, printed and mailed to you	Everything in Premium, plus: • Call Recordings • Call Transcriptions • Secure storage for recordings and transcripts for 90 days

Fee Waiver Programme

OurFamilyWizard offers a Fee Waiver Programme to acknowledge that not all families can afford additional tools. Eligible users have access to the platform with no subscription fees. Their access is not on a trial basis and gives them the equivalent of the Essentials package with the addition of unlimited minutes. This ensures that every family, regardless of income and financial position, has access to the benefits of secure communication and documentation. Those not eligible may be hesitant about what the platform offers comparative to free alternatives. Key points to think about when looking into a co-parenting App are:

- Does that app have all the features the family needs to communicate effectively? In app Calls, a ToneMeter, a Shared Calendar?
- Is there transparency? Is there a customer support team? UK entity? Are there any hidden fees?
- Security – apps based outside the UK are not required to stay compliant with GDPR regulations and often have a 'small print' that reserves their right to sell parents' data and let users stay logged in indefinitely.
- Documentation – does that free app allow deletion of data or a capacity to delete their account?
- Can a professional access and support a parent and/or family's communication?

OurFamilyWizard Resources

The following links provide information on OurFamilyWizard's digital resources:

- [Draft Order Language](#)
- [Digital Resource Kit for Professionals](#) (with pricing)

- [Parent Resource Pack](#)
- [Fee Waiver Application](#)
- [PDF Brochure](#)

The parenting plan can be accessed on the NACCC website: <https://naccc.org.uk/for-parents/parenting-plan/>

Those interested in signing up for a free professional account can do so here: <https://join.ourfamilywizard.co.uk/app/join/pro>

Conclusion

OurFamilyWizard remains at the forefront of technology designed to help reduce friction and encourage co-parenting, ideally from the early stages of separation as a preventative tool. It can also help to prevent child abduction by creating a shared documented record of communication which may deter a parent from taking a child without consent. Key features that support the prevention of child abduction include a shared calendar to log all agreed parenting time and a journal for time-stamped check-ins that confirm a parent has the child at the right time and place. Communication within OurFamilyWizard can also be supported in the background by family law professionals working with parent(s) and can be downloaded and presented to the court to support cases where there are concerns about a parent's behaviour.

Better Safe Than Sorry – Preventing International Child Abduction

Pien Wubbeling, Legal Advisor, International Child Abduction Center (Center IKO), The Netherlands

Introduction

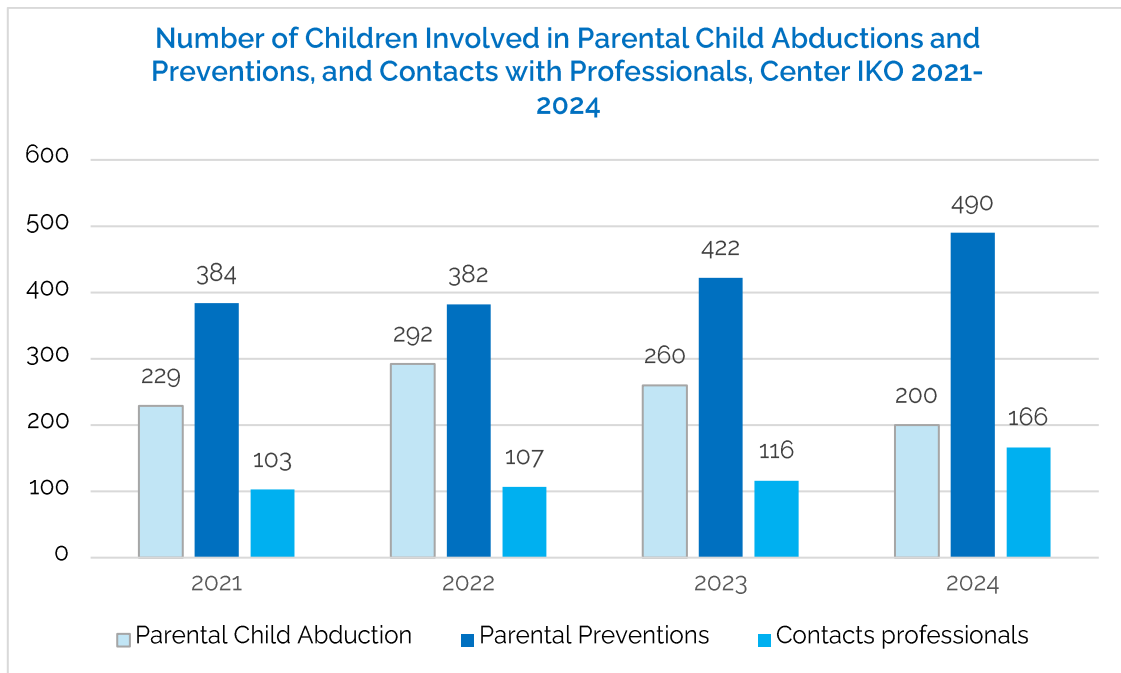
In 2006, the International Child Abduction Center in the Netherlands (Center IKO) was founded. It has since been funded by the state because of an identified need for a legal expertise centre on international child abduction that could share its knowledge with the public and professionals. However, it is structured as an NGO. Center IKO was modelled on UK's Reunite, offering information and advice to the public, and there is a good working relationship between the two organisations. IKO is an active member of Missing Children Europe, cooperating with several organisations throughout Europe and also, extensively, with organisations within The Netherlands to prevent children being taken by a parent.

Center IKO is, as described in the *Guide to Good Practice on Preventive Measures*, a central point for information.¹ It provides information to private individuals and professionals who are faced with child abduction, or the threat thereof, in relation to the Dutch law context. This information is available free of charge, only a phone call away, every business day during office hours. In emergencies, with the help of our volunteers, we are available 24/7. IKO tries to make itself as easily accessible as possible. We provide information on the Hague Conventions, Brussels IIb, and Dutch family law, as well as on the effects of parental child abduction, the social support available, and mediation. Our starting point is the exploration of cooperative and constructive solutions, rather than moving into legal conflict immediately. The best solution is sustainable, found by the parents themselves trying to put the best interests of their children first. No court judgement, however good, can match that.

The Mediation Bureau is an independent part of Center IKO, offering Cross Border Mediation within the scope of the 1980 Hague Child Abduction Convention procedures, as well as independently of those proceedings, preferably before proceedings commence. The sooner the parties decide to seek the help of the mediators, the greater the likelihood of a favourable outcome. While parents may not always be able to come to an agreement, the real benefit of mediation is getting them to talk again about their children. Sometimes an agreement cannot be reached within the limited timeframe of Cross Border Mediation but can eventually be finalised at a later stage. Other times parents can agree to disagree, leave the decision about where their child should live to the judge, and agree on parenting plans for either outcome.

Center IKO has been advising parents on prevention, guiding and supporting them through a Hague procedure when necessary, and standing by them in the aftermath. It continues to do so. However, in recent years, IKO has also invested in more general prevention. Several initiatives have been launched targeting professionals, such as police, first responders in cases of domestic violence and child abuse, child protection organisations, and the judiciary. In 2023, IKO registered a reduction in parental child abductions for the first time in years, while also noticing a significant increase in contacts regarding prevention (see Figure 1). This increase is most noticeable in the contacts with the professionals we targeted.

¹ HCCH, *Guide to Good Practice. Part III, Preventive Measures* (2005).



As the saying goes, one swallow does not a summer make but, in 2024, even fewer children were abducted, and there was, again, an increase in prevention contacts. That one swallow now has company! It should be noted that while not all child abductions are reported to Center IKO, the numbers registered year-to-year by IKO do represent a valid trend which is verified annually with the caseload of the Dutch Central Authority.

Center IKO Prevention Efforts

Several of the prevention efforts of Center IKO are now discussed.

Prevention at the Border: Consent Form for Travelling Abroad with a Minor

Dutch family law presumes parents share parental responsibility, '*gezag*' in Dutch. Taking a child across the border falls within the scope of that shared *gezag*, so anyone travelling abroad with a minor needs the consent of both parents. Even a parent with *gezag* who wants to take a child across the border without the other parent needs his or her consent. That consent has no prescribed form and could be given verbally. However, Border Control cannot check that when the other parent is not present, so written consent is a more practical solution. If a parent does not give consent, a substitute court order can be requested. If parents try to pass through the gates at an airport with all kinds of written consent, maybe even a court order with a substitute consent somewhere on those pages, finding the actual consent can be problematic for staff. Checks would then have to be reduced to just spot checks, which would make it easier for parents to sneak through undetected.

To optimise the checks at the border, Dutch Border Control (Royal Netherlands Marechaussee), the Ministry of Justice and Security, and Center IKO have developed a consent form which is readily available on several webpages and often offered at council offices.

Standardising the written consent makes it possible to quickly check whether consent was given, and whether it was given by the persons with the authority to do so.

Center IKO provides support for this consent form through a hotline service. Anyone with questions about the form, when to use it, where to find it, how to complete it, or what documents to provide, can call IKO on workdays during office hours. In December 2023, the form was changed, which created a huge influx of questions, but this had subsided by 2025. However, once consent can be given through DigiD, the secure Dutch online identification system, expected to launch in early 2026, a new surge in enquiries will probably occur as people adapt to the new approach.

A hidden bonus of the consent form hotline is the ability to ask further questions regarding what to do if an ex-partner will not give consent, or when it is the calling parent who is reluctant to give it. We can discuss the issue and advise them where they can find the consent form for relocation. Sometimes these questions give an opening to alert parents to the risks of international child abduction and the factors they should take into consideration for a well-planned move. Often parents will not have considered seeking such information and simply moved ahead regardless.

Prevention: Information and Advice Case-by-Case

Center IKO also operates a hotline during office hours, and in emergency 24/7, aimed at questions from callers that have a more profound effect on children's lives. Parents, professionals, and bystanders can request information on preventing a child being taken by a parent without the necessary consent.

With parents, we help clarify the legal situation. We explain parental authority and who does and does not have it in a specific situation, and what actions a parent with concerns can take. Traditionally, we needed to remove the misconception that having parental responsibility gave a parent the right to take their child wherever they liked without the consent of the other parent. These days, we also need to debunk misinformation found on the internet or through AI. We explain national and international law, the Hague Conventions, and EU regulations where applicable. We help callers understand the difference between civil law mechanisms and criminal law proceedings.

Most importantly, we try to help clarify the non-legal context. Child abduction happens whether there are laws against it or not. It happens because one parent decides to do what he or she feels is best for their child, regardless of their shared responsibility or legal rules. So, when someone contacts Center IKO, we help them to distinguish between facts and feelings. Feelings, though not facts, are important. Even if they are not based on facts, they can have a massive impact on the perceived safety, or rather unsafety, of a parent. That impact needs to be addressed. However, Center IKO employs lawyers, not behavioural specialists. We will advise parents to contact GP's or social services whenever that might be helpful.

If the facts point to a real and concrete risk, Center IKO will discuss the practical and legal measures available to prevent a child from being taken without consent. If parents are unable to get the help they need, we will try to mediate between the parent and a third party like the police, the local council or social services. Often this involves explaining the legal framework of international child abduction and the possible measures to prevent it to the third party.

Another method of prevention is helping parents and bystanders (like family, neighbours or schools) assess the situation properly when a parent and children are trapped in a harmful

relationship in a foreign country. While it can be very tempting to run to safety in the country of origin, if the child's habitual place of residence is in the foreign country, removing them from that country does not necessarily help. It is often safer and quicker to find access to help in the foreign country. We assist in finding that access in other countries. We also help the friends of foreign parents in the Netherlands to access the information they need on how to escape harmful relationships. Sometimes that is as easy as providing the emergency phone number for the police, as we experienced last year. One day later, the mother and child were taken to safety. Usually, it is not that straightforward. When necessary, we explain Dutch emergency interventions and child protection measures and procedures.

Prevention: Information and Advice on Relocation Case-by-case

Providing easy access to information on relocation is one of the most effective ways to prevent a parent from simply moving abroad with their children when they do not realise that consent, or the record of that consent, was necessary. Parents sometimes ask for the consent form for relocation with a minor. We then explain we do not offer this, because the specific needs of the children need to be addressed. Sometimes we address issues that parents have not thought of yet. If one parent stays behind, what is the contact arrangement going to be and who will pay for the extra travel costs? How are parents going to make the important decisions for their children? Do they realise that with the change of habitual residence, the competent court is going to change, as well as the applicable law? And that, due to that, the parental responsibility may change? Sometimes the discussion leads parents to realise that these consequences were not intended at all. Our goal is to raise awareness about the legal framework and its unintended consequences.

When parents cannot agree, we provide information on relocation procedures. In the Netherlands, the law prescribes that a case should be heard within six weeks after the first request to minimise the impact on the child, but these procedures can take a while. Often the Child Protection Board is asked to report on the situation, which prolongs the procedure even further. The outcome is never very predictable. Through the jurisprudence of the *Hoge Raad*, the highest court in the Netherlands, a catalogue of factors to weigh has been developed.² The best interests of the child, though one of the key factors, is not necessarily the most decisive one. We help parents to understand the procedure and what they need to organise before they can start one.

Support During Abduction Cases – Preventing Re-abduction

When a child is abducted or withheld, we help parents navigate their options. Do they both trust an intermediary who can help resolve the situation quickly? Are they open to mediation? What are the legal options? Does the 1980 Hague Convention apply? We help find legal representatives, we help fill out forms, we explain what is happening, what can be expected, and why it takes so long. We explain it again when a parent in distress finds the information difficult to grasp, and again if necessary. We support parents during those long months when,

² <https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2008:BC5901>,
<https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2013:847>,
<https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2014:901>.

more often than not, there is no contact with their missing child at all. That support continues for as long as the parent needs.

When a child returns, we check in regularly. We explain how, through the Child Protection Board, a 'soft landing' is available to help children and parents resettle safely, while preventing re-abduction. The soft landing involves emergency care for the returning child and receiving parent, a safety plan and, as soon as practically possible, reinstating a contact arrangement with the parent who took the child. Often, the left-behind parent will not trust the other parent with the child anymore and will not be willing to permit any form of meaningful contact. Depending on the situation, we help parents to consider all their children's needs, not just their need for safety, and help them find support to meet all those needs.

A particularly important part of IKO's role is to help parents understand court orders and their impact. We can often explain why an order was given in a certain situation, why a Hague judge will not say anything about the place of residence or a contact arrangement, why extra procedures are necessary. We can help parents understand and accept a court order by explaining how it influences the wellbeing of their child. We can advocate for mediation instead of them hanging on to ideas of right and wrong and justice when a child gets caught in the middle.

Prevention on a Wider Scale

Case-by-case prevention provides valuable insights into good practices and the effectiveness of legal and non-legal measures. If a Dutch civil court order, banning a child from travel, does not result in an alert at the border, the order and therefore the ban are ineffective. To address the issues we encounter and spread the knowledge we gain, we cooperate with what we call '*Ketenpartners*' - all the parties involved in preventing and fighting child abduction, such as the Police, Royal Netherlands Marechaussee, Central Authority, Ministry of Justice and Safety, Ministry of Foreign Affairs, public prosecutor's office, Dutch Association of International Child Abduction Lawyers (D.I.A.L.), and the judiciary.

Center IKO takes part in several consultations, organised regularly, to discuss issues relating to preventing international child abduction. These consultations can be bilateral, to evaluate the cooperation, or to address specific issues such as the introduction of the new consent form or the use of Schengen alerts. A network of professionals has developed through these consultations, and they can contact each other when necessary for a specific case.

We meet with the D.I.A.L. lawyers and mediators three times a year. We invite guest speakers to keep D.I.A.L. up-to-date and learning from their experience of practising international child abduction law.

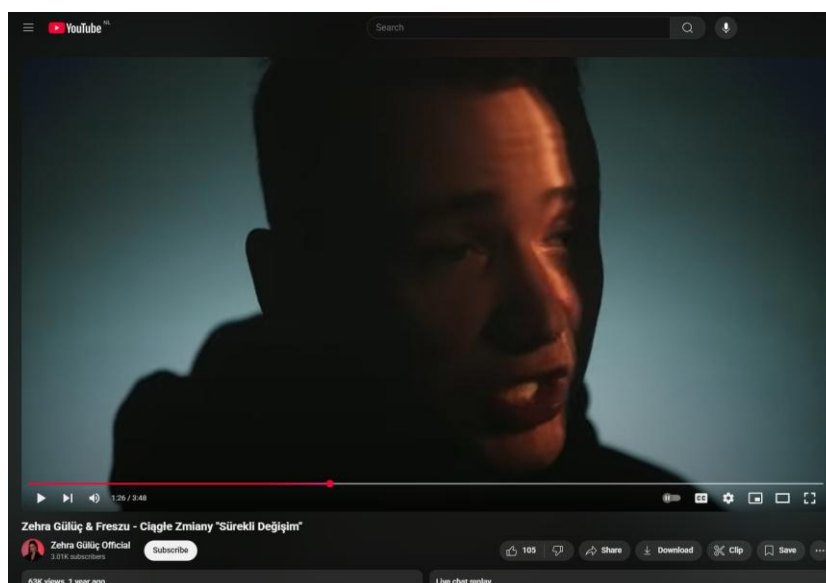
Most years we collaborate with the Ministry of Justice and Safety on an IKO lecture. During the 2024 lecture, the Ministry announced the creation of a Special Chair on international child abduction that Center IKO will facilitate. We maintain close ties with universities, and universities of applied sciences, engaging in guest lectures and supporting student theses.

Center IKO collaborates closely with the Police, especially Missing Persons (LOEP) and SIRENE, and the Royal Netherlands Marechaussee. We provide them with 24/7 access to advice on parenting law and collaborate on spreading the knowledge needed to recognise the signs of an impending international child abduction.

In the last three years, IKO has connected with first responders to domestic violence and child abuse, child protection services and the Child Protection Board. These social workers are

often at the frontline and usually the first to see the warning signs. While control over access to the children can be a highly effective way for a parent to maintain harmful control over a spouse/partner, it is important to consult as soon as possible. Being involved in multidisciplinary consultations, we can spread the knowledge of preventing international child abduction, whilst gaining information on the effectiveness of available measures. This is a win-win development.

We sometimes think outside the box! To reach people who are difficult to reach through traditional channels, Center IKO invested in 2024 in a music video on the harmful effects of international child abduction - a collaboration of a Polish rap artist and a Turkish female vocalist.



The video gained over 60,000 views on YouTube, mostly with Turkish fans. It included IKO's contact information. The video was reported on in Polish and Turkish media and in 2025, for the first time, the presentation of our annual figures was published in Turkish media, again with our contact information. This has made us visible and accessible in a country in which we need to be present.

Conclusion

Over the last two decades, Center IKO has developed into a reputable center of expertise on international child abduction. We are well versed in the legal framework, and we always encourage parents and professionals to look further and find their own solutions in the best interests of their child. The Mediation Bureau is a strong testament to that commitment. In working closely together with all key partners in preventing and resolving international child abduction, we all, in our respective roles, work together to prevent the disruptive and traumatic impact of parental international child abduction on children.

We support parents and professionals on an easily accessible case-by-case basis, and also through consulting and training. In recent years we have focused on prevention projects for professionals. The initial signs show promising results. After years of increase, the last

two years have seen a decline in parental child abduction, while requests to support prevention have increased. While not all abductions are registered with us, and statistics must always be interpreted with care, this trend points towards the conclusion that investing in easy accessibility, collaboration, and prevention pays dividends. All central points for information, whether organised as an NGO like Center IKO, or structured differently, can benefit from this approach.

Bringing Mediation to More Families as a Means to Prevent Parental Child Abduction

Melissa Kucinski, Attorney and Mediator, USA

A parent seeking to lawfully move their child from one country to another, without permission of their co-parent, is faced with expensive, time-consuming litigation and an uncertain result that is, often, particularly for older, more settled children, unsuccessful. It is therefore no wonder that some parents, who need or want to move to another country, forego the court process, and unilaterally move their child, risking litigation in what is often their home country to fight against the child's return. The logical question is, therefore, how do we address the shortcomings of pursuing a lawful relocation to reduce the number of unlawful relocations by abducting one's child? Mediation may hold some promise – it can be done faster, with a more tailored and creative outcome, at lower cost, and may even create a framework for future parental communication. However, there may nonetheless be hesitation to mediate in these situations. Is the relocating parent using mediation to delay potentially unsuccessful litigation to plan an abduction? Is the non-relocating parent using mediation to increase costs, with no intention of settling, only delaying any legal proceedings? Mediation would need to be creative to engage these parents in a way where both feel as if they have gained something at the end, particularly when the outcomes seem fairly one-sided.

The key question is: how can the global family law community make mediation a more viable option for these families? It is a process that clearly needs to involve highly competent specialist mediators, but that alone is not enough. The other key variable to using mediation in a situation where one parent wants to move a child across borders, often on a short time frame, before they give up and remove the child without going through legal channels, is accessibility. Specialized mediation for cross-border families needs to be accessible. Families need to be able to find competent specialist mediators more easily. They need to be able to find them in their country or region. They need to be able to find a mediator who fits their family's unique needs. They need for the mediation to fit their family's budget. How do we do this on a global scale, reaching far beyond one country or even one region, in a way that is flexible enough to meet the needs of families around the world, in different cultures, with different languages, and with different budgets? The best option may be a global network of mediators, mediation-adjacent professionals, and mediation resources.

One example of a successful global network for cross-border family professionals is the International Academy of Family Lawyers (IAFL).¹ The IAFL was founded as a worldwide network of family lawyers who have a significant focus on international and cross-border issues. However, creating a network of family mediators may present different challenges than creating a lawyer-network like the IAFL. There is one common denominator that is the baseline pre-requisite to join the IAFL: a law license in good standing. For mediators, jurisdictions have differing background requirements for mediators, with some having none. There may be no licensing for mediation as a profession in a particular jurisdiction, no ongoing educational requirements, no credentialing bodies, and no methods to discipline mediators

¹ <https://www.iafl.com/>, last accessed 15 July 2025.

who do not adhere to the standards (if standards exist).² This lack of wholesale licensing in all jurisdictions does not necessarily, however, mean there are no competent mediators in a particular jurisdiction. It may mean it is more difficult to locate them.

An additional challenge of creating a global family mediation network is defining the scope of such a network. A network could serve as a professional group who attends conferences and networks with one another. It may be, itself, a quasi-licensing body, however, this could increase the liability of the organization if one of its members were to commit malpractice while professing that they are competent because they meet the network's standards. It could be a clearinghouse that fosters not only connections between mediators, but also adjacent professions, and houses mediation information and resources. For example, some families may not need an actual mediator or may not even know how to select a mediator, so a network may, first and foremost, be a clearinghouse of information for families to learn more about mediation, cross-border issues that are appropriate for mediation, rules of mediation, and how to select a mediator. Given regional and country differences in mediation skills, training, and background requirements, a network may also be able to incorporate country-specific or regional mediation organizations into its fold to increase the visibility of those organizations and expand their reach to other regions. By having not just individual network members, but also organizational members, mediators and organizations in different regions of the world could connect for a range of opportunities, including training, mentoring, and information-sharing.

One of the most complicated questions surrounding the establishment of a global network will be the need for funding. To secure funding, the presumptive network would likely need to apply for a grant. Most granting organizations will want statistics on the number of families or individuals who would benefit from such a network, and, for a global network, the statistics would need to be global. How many cases are international (versus domestic)? Which countries see more cases? Do many cases go to court? Are many even appropriate for mediation? The granting organizations will want to have more clarity on the network's scope. Is this network a licensing body, a membership organization, a marketing tool, a clearinghouse, or even a mediation referral body? More importantly, what type of body may reach the most consumers of mediation, and benefit the most families? The biggest obstacle may be a void of information. Even though mediation has become more common, many consumers are still unaware that it is an available option, or where to go to find more information, including a referral to a mediator. A global organization or network may be beneficial, even if it has a regional component, because many consumers of mediation may be reluctant to approach an organization referred by a Central Authority, or a court, or seemingly tied to a particular country, out of concern the organization is biased. A global network would transcend those biases by having no affiliation directly with the country, including the government, of one of the parties in mediation.

² See: D. Scoliere, 'Is the Lack of Credentialing for Mediators Jeopardizing the Future of the Profession?' (2014) *Georgetown Journal of Legal Ethics* 27, 875; A. Hinshaw, 'Regulating Mediators' (2016) *Harvard Negotiation Law Review* 21, 163; B. Wessner, 'A Uniform National System of Mediation in the United States: Requiring National Training Standards and Guidelines for Mediators and State Mediation Programs' (2002) *Cardozo Journal of Conflict Resolution* 4, 1; M. Zhang, 'To Certify, or Not to Certify: A Comparison of Australia and the U.S. in Achieving National Mediator Certification' (2008) *Pepperdine Dispute Resolution Law Journal* 8, 307.

Another obstacle is that mediation, particularly on a cross-border scale, requires the participants to have good legal advice. While there are networks like the IAFL, a proper mediation network may have space for mediation-focused attorneys and other professionals whose practices support amicable settlement. A competent attorney who can assist a party in a limited scope mediation can make or break the negotiations. Not all attorneys, competent as they may be, have the skills to negotiate within the auspices of a mediation process. A network can assist all its members by offering training and continuing education, including for its attorney members, on how to represent litigants in mediation. It can be a one-stop-shop: a repository for all mediation resources for global families.

Clearly, if a network were formed, it could fill a void for professionals in some significant ways. One of the biggest voids is cross-border family mediation training. At present, the training options are primarily focused among discrete organizations based in Europe. The mediation process and methodology may need to be tailored to each specific region or country where mediators are trained and act. There is likely no one global training. There is likely also a void of trainers in certain regions or countries. Through a global network, there can be more dialogue with trainers who can create more tailored training courses for different regions. There is also a glut of training for mediators who handle cross-border financial remedies cases. When children relocate to another country, there will need to be discussions, in mediation, on how to finance a parenting schedule, school options and costs, healthcare, activities, and other financial matters that relate to the separation of the family across borders. The training opportunities can, again, include training for lawyers who represent clients who are in the mediation process.

A network of cross-border mediation resources will necessarily have members with a wide range of experience and expertise. The more experienced can mentor the less experienced. There will be opportunities for congresses to share information and experiences, beyond training opportunities. Through this cross-pollination, there can be an expansion on the mediation models that have already sprung up organically, and a tailoring of flexible mediation skills to meet the needs of different cultures, different families, and even different financial means. For example, it might be impractical to co-mediate in some countries or regions where there are relatively few mediators. It may be impractical to train more mediators for those countries or regions if there are relatively few international cases. The network may even be a promulgator of more consistent mediation guidelines, best practices, or pursue statistics for mediation or mediation legislation in certain countries.

As an example, the Association for Family and Conciliation Courts (AFCC),³ which is a multi-disciplinary membership organization that works strategically on practice guidelines and model standards for a wide range of family law processes, may present a useful template for a cross-border family mediation network. Coupled with the application process of the IAFL, there could be established benchmarks that each member must meet to be part of the group.

As another example, the Maryland (USA) Program for Mediator Excellence (MPME),⁴ is a clearinghouse of mediation resources housed under the Maryland Judiciary's Conflict Resolution Office. It is a network of mediators who meet certain basic criteria and can set up an online profile on the MPME's website that is searchable by location, background, and other

³ <https://www.afccnet.org/>, last accessed 15 July 2025.

⁴ <https://www.mdcourts.gov/mpme>, last accessed 15 July 2025.

identifying features. The MPME offers its members training, continuing education, and networking events, and offers the public various resources to educate them on mediation rules and processes. This network has bi-annual conferences of mediators. It does not connect mediators with cases or clients. It does not accept referrals. It limits its liability by being an informational clearinghouse for both the public and for mediators.

Additional globally recognized mediation "networks" include JAMS⁵ and the American Arbitration Association (AAA).⁶ JAMS and AAA are private organizations that maintain their own roster of mediators (and arbitrators), who accept referrals of cases and assign dispute resolution practitioners from their roster to the cases.

Finally, the Secretariat of the International Social Service (ISS) developed a full model for an international family mediation network⁷ and presented the template at the Hague Conference's Seventh Special Commission Meeting on the Practical Operation of the Abduction and Child Protection Conventions, only to then ultimately shelve the project with no funding available. The ISS Interim Steering Committee, in 2018, proposed full governance and operation of a network on international family mediation, which was circulated among and supported by other organizations, such as the IAFL. The proposed goals of such a network included: creating and maintaining a digital platform of international family mediation resources, connecting qualified mediation professionals and institutions globally, increasing global cooperation with States and existing specialized family law networks, providing information and guidance to international family law professionals, initiating and facilitating advocacy at national and international levels for cross-border mediation, strengthening the competency of mediators working in countries where there is no training, sharing best practices for cross-border case management, and developing new assistive technologies to facilitate communication.

The ISS envisioned a stand-alone international organization with a Secretariat, governing body, a general assembly every 2 years, and regional assemblies of network mediators. The plan even proposed membership levels for mediators, affiliates, and institutions. Membership would require, at a minimum, adherence to a code of ethics and charter. The mediator member level would allow its members to apply for a designation as a "qualified mediator" who meets certain credentials, including a certain amount of training, a certain number of cases mediated, continuing education requirements, and possibly an assessment of the mediator by a body within the network, to observe their skills in a simulation or passing an examination. One of the key elements of the ISS network was quality assurance of its members. Presumably mediator members would need to, at a bare minimum, meet some criteria to be designated a mediator, particularly if they are from a jurisdiction without such designation. Therefore, ISS envisioned the governing body would develop some type of periodic review or check-in with members to ensure that the members continued meeting those criteria. It also anticipated a complaint process, even if it did not ultimately refer cases to the mediators in the network directly. Above all, the network was intended to be flexible enough to include mediators, mediator-adjacent professionals, and institutions that do not

⁵ <https://www.jamsadr.com/>, last accessed 31 July 2025.

⁶ <https://www.adr.org/>, last accessed 31 July 2025.

⁷ <https://iss-ssi.org/international-family-mediation/>, last accessed 15 July 2025.

already meet the prototype developed in some European countries for cross-border family mediation.

As already highlighted, ISS's goal of a stand-alone organization housing its mediation network stalled when ISS was unable to secure funding. This will be an ongoing challenge, which may make some type of membership dues, scaled to the country or region of the member, an option to create even a basic structure. Clearly there are ideas and options available in the mediation marketplace at present. Funding aside, there should be more consistency, clarity, and centrality of family mediators globally. Creating some network – even if just initially a basic membership network – may be a first start that could prove the foundation of a future international clearinghouse of global family mediators. With one centralized place to research options for mediation, and publicly accessible information that would allow families to conduct research more easily to find a mediator fitting of their family, mediation would become a more viable option for more families. As a more viable option, it would finally become a process of first resort for families seeking to relocate their child overseas.

The Wellbeing Imperative: Protecting the People who Protect the Rule of Law

Speech by Barbara Mills KC, 4PB

Good evening and a very warm welcome to chambers at the end of the first of your two-day conference here in London. I hear it has been a day of stimulating debate about the challenges our clients face and the most effective ways to provide good outcomes for the families we assist and represent.

Those family law related challenges must be seen against a legal landscape that is changing as rapidly as it has ever changed in living memory. The pressures on lawyers—from the relentless expansion of artificial intelligence and technology to the ever-present risks associated with performing our core duties in a contested and sometimes hostile public space—are real, complex, and consequential. If we are to sustain the rule of law, to deliver justice with integrity, and to uphold the confidence of clients and the public, we must raise the level of importance we place on the wellbeing of the lawyers who carry this burden.

Let me be plain: wellbeing is not a luxury nor is it a box to be ticked or a soft sentiment to soothe tired nerves. It is a professional and ethical imperative.

For the past decade, the Bar Council of England and Wales has underscored that a resilient, well-functioning legal profession requires more than technical skill - it requires a culture that recognises human limits, structures support and promotes sustainable practice. When we invest in the wellbeing of lawyers, we invest in the integrity of the justice system itself.

As lawyers, we are very good at being "on." On call. On email. On top of things. And, if we're honest, sometimes just... on edge. The profession asks a great deal of people and always has. High standards. Long hours. Intellectual precision. The ability to see risk where others seek reassurance. To anticipate problems before they arise—and then solve them under pressure.

It's demanding work. Important work. Often brilliant work. But it comes at a price.

Because when your professional instinct is to look for what might go wrong, it's very easy for that mindset to follow you home...to sit with you at dinner...and go to bed with you and wake you up at 3am with racing thoughts. But come the morning, you shrug it off because hey ...You're a lawyer. That's the job.

But here's the thing. The same skills that make excellent lawyers—attention to detail, high responsibility, a strong sense of duty—can also make them particularly vulnerable to stress, burnout, and anxiety.

We are trained to spot risk everywhere. Except, quite often, in ourselves. Our greatest asset isn't just our knowledge or our experience. It's our mind itself. And like any high-performance tool, it needs looking after. We wouldn't walk into court unprepared. We wouldn't submit advice without checking it. We wouldn't run a complex case on instinct alone. And yet, many of us try to run our own mental wellbeing on exactly that basis—hoping it will somehow take care of itself.

It won't. And it shouldn't have to.

The unspoken rule can feel like it is saying - cope quietly, keep going, and don't make a fuss. And that works—until it doesn't. The reality is, no one does their best thinking when they are exhausted, overwhelmed, or running on empty. And no one builds a long, fulfilling career by ignoring their own limits indefinitely.

As the Vice Chair of the Bar, I spent 2024 travelling to all the circuits and speaking to colleagues across many disciplines.

Broadly speaking, I noticed two distinct sides of the wellbeing coin.

On the one hand, there were the colleagues, like the criminal barrister I spoke to in a robing room in the Midlands. When I asked how she was, she spoke of her despair – struggling with a heavy workload, trying to manage family finances with unpredictable and fluctuating earnings, not being present enough with her family especially now one of her children was revising for her GCSE exams.

"What are you doing to help" I asked?

"Nothing" came the answer – "I don't know where to start or who can help. Even if I knew where to go, I suspect it will be too expensive."

So, distress was identified but the plan was to do nothing and continue to suffer – mainly in silence because she felt alone in not being able to cope – everyone else seemed like they were on top of the demands on them.

On the other side of the coin – there were those colleagues who were proactively looking after their mental health – in therapy, executive coaching and the like. Guess what? They also didn't want to talk about it.

I remember speaking to a very successful silk regarded as the "go to" in his area of the law. He told me that he functioned as well as he did because he has had a therapist for over a decade.

"Will you allow me to interview you as part of an article I am writing?" He didn't hesitate. His answer was an immediate "Absolutely not!"

Apart from his wife and his therapist, no other living soul knew he had a therapist. He knew it was what kept him going and what allowed him to operate at the high level he performed at, but he still felt others would think him weak.

Those conversations shone a light on the part stigma and shame play in holding us back from properly tackling our wellbeing. It seems everyone prefers silence when it comes to wellbeing.

And what do we do with shame? Brene Brown has a suggestion.

"Shame" she says "hates it when we reach out and tell our story. It hates having words wrapped around it. It can't survive being shared. Shame loves secrecy...when we bury our story, the shame metastasizes."

So, I thought... right. While I have the microphone as Chair of the Bar Council, we are going to talk about this and start to remove its unhelpful stigma.

Wellbeing has come to mean many things and can be confusing. Like all things that can be unnecessarily confusing, I think it is best to keep it simple. For me wellbeing is the shorthand for knowing the power, importance and value of "the mindful pause" – stopping to create time to reflect, recharge, restock and restart.

And how do we cultivate the habit of pausing?

It doesn't require dramatic life changes or sudden reinvention – often just two steps.

First – you must become aware. Make it a point to just start noticing how you are and how you feel and then allow yourself to give what you notice a name. Noticing when you're more tired

than usual. More irritable. Less focused. The early signs are rarely dramatic—but they are incredibly important because it's much easier to adjust course early than to recover later.

Second – have a plan of action.

This isn't about working less because we all know that's not always realistic.

It's about working more intentionally and knowing what your pause looks like. It must include taking proper breaks.

We should do better at switching off - not the "sitting on a beach with your family whilst on a conference call to London" type of switching off but switching off completely even if briefly.

Allowing your mind to reset because a brain that never stops doesn't become more productive. It just becomes more tired.

The challenge before us is not only to acknowledge these pressures but to answer them with concrete, systemic solutions. This is not indulgence but rather it is a call for a sustainable future for the profession and a call to embed wellbeing into the fabric of how we train, supervise, practice, and regulate law. It is, in short, a call to future-proof the profession by building a culture of wellbeing that is non-negotiable.

As Chair of the Bar, I drew on my own experience of therapy, coaching and supervision and I introduced reflective supervision pilots. These pilots run in Bristol and London had groups of practitioners (across family law, criminal law, commercial and civil law) who paused once a month to discuss their work, its challenges and their emotional responses in a supportive and structured environment facilitated by a trained professional.

I am proud of the way the profession answered my call to arms on this issue and the way in which colleagues embraced the pilots and are continuing the conversation that I started.

There is still more to be done. I would wish the Bar to develop a practical roadmap to implement wellbeing as a non-negotiable part of practice. Some of the steps I would like to see included are:

- Establishing formal wellbeing frameworks within chambers that provide written policies that define wellbeing objectives, set measurable targets, assign accountability, and provide a clear pathway for staff and barristers to access help. The policy should cover workload management, mental health support, anti-harassment protections, and safe use of technology.
- Integrating reflective practice and supervision into career pathways. We could boldly make reflective practice a required component of pupillage, tenancy decisions, and ongoing professional development. Such a pathway would provide protected time for supervision meetings.
- Building and scaling peer support networks and create ongoing, accessible peer groups for junior to senior practitioners to share experiences, discuss difficult cases, and build resilience. In these fora, conversations about stress, burnout, and ethical tensions would be normalised and effective solutions shared.
- Strengthening safety and security provisions to ensure robust physical and digital safety measures for barristers in all settings, including court buildings, chambers, and digital platforms. Those provisions would include clear reporting channels and timely, sensitive responses to threats or intimidation.

- Investment in mental health resources including the provision of access to confidential counselling, stress management programs, and wellness leave where appropriate.
- Monitoring and reporting progress and continue to collect data on wellbeing indicators, workload trends, and the experiences of barristers and then use findings to iteratively improve policies and practices, with periodic public reporting to demonstrate commitment and accountability.

What would it look like if we succeed?

A profession that functions not only to win cases or secure outcomes for clients, but to preserve the independence of the judiciary, to uphold due process, and to maintain public trust in the legal system.

When lawyers are overworked, under-supported, or subject to hostile environments, judgement can become compromised, creativity can stagnate, and the profession's moral authority can erode. Conversely, I believe that if wellbeing is embedded as a core value, the profession will become more resilient and more innovative - where the lawyers are not merely surviving but thriving—where they think clearly under pressure, can navigate complex ethical landscapes with confidence, and contribute to a legal system that is fair, accessible, and trusted.

We would have a legal profession that attracts and retains the best minds because it is known to value people as the most important asset.

"We cannot tell what may happen to us in the strange medley of life. But we can decide what happens **in** us – how we can take it, what we do with it – and that is what really counts in the end."

Joseph Fort Newton

Session 3 – After-care

Introduction by Session Chairperson Philippe Lortie

First Secretary, Permanent Bureau, The Hague Conference on Private International Law, The Hague, The Netherlands

It is well understood that there are two objectives to the 1980 Child Abduction Convention. One objective is to prevent child abduction (i.e., the wrongful removal or retention of a child away from their State of habitual residence in breach of the rights of custody of the left-behind parent). The other objective of the 1980 Convention is to return the child to their State of habitual residence as soon as possible, unless any of the six exceptions provided for under the Convention apply. The child should be returned to the same legal situation that was in place prior to their abduction. If necessary, it will be for a competent authority in the child's State of habitual residence to review the custody and / or contact arrangements concerning the child, unless the parents make new arrangements voluntarily, through mediation or otherwise, in the best interests of their child.

It is clear from the lived experiences we heard from reunite during the panel, as well as the voices of lived experience more generally, that, in the great majority of cases, the removal of a child from their centre of life is damaging to them. We also know that, in many cases, regardless of the relationship between their parents, children are loyal and show affection towards both of their parents. It is within this context that the 1989 UN Convention on the Rights of the Child (UNCRC) provides, in Article 11, that "States Parties shall take measures to combat the illicit transfer and non-return of children abroad" and invites States Parties to join existing agreements in this area such as the 1980 Child Abduction Convention.

The main message that can be derived from this panel discussion, from the perspective of the speakers as well as the participants, is that "after care" is essential following an abduction and subsequent proceedings, regardless of the outcome (return or non-return). As a background to this discussion, it is also important to remember that, in accordance with Articles 9(3) and 10(2) of the UNCRC, a child who is separated from one or both parents has the right 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.

The presentations made by the representatives of reunite, Missing Children Europe, the International Social Services, and MiKK International Mediation Centre for Family Conflict and Child Abduction, showed how the services of organisations such as these constitute an essential and indispensable component of "after care". It was also recognised that their services are complementary to those provided by Central Authorities designated under both the 1980 Child Abduction and the 1996 Child Protection Conventions. A participant, representing GlobalARRK, mentioned the services their organisation provides such as "recovery tool kits" including "training" and "peer support groups". It was observed that Central Authorities under the 1980 and 1996 Conventions could assist families in finding the organisation and service(s) that would be most suitable for them depending on the circumstances of their case. On the other hand, it is to be noted that in some States such organisations and services are lacking. It was also mentioned that it may be time to establish an international organisation for family mediators, similar to the International Academy of Family Lawyers, for mediators to be able to participate in, and contribute to, discussions at

meetings of the Special Commission on the practical operation of the 1980 Child Abduction and 1996 Child Protection Conventions.

It was also clear from the discussion that more information regarding the outcomes following “return” and “non-return” decisions is required to identify the appropriate measures needed to provide proper “after care” to the children concerned. More information on such outcomes would better equip judges in their decision making process in the future. At the 2025 World Congress on Family Law and Children's Rights (WCFLCR) in Cambridge, Sir Andrew McFarlane (former President of the Family Law Division for England and Wales) noted that judges are making these decisions as if they were standing with their back to the dart board. This feeling equally resonates among lawyers, mediators, and specialist report writers, but even more so to the children involved. It was underlined that, to restore trust within the family environment after an abduction, children need to know what is going on. Where appropriate, children who have been abducted need to understand the legal process in which they are involved, through court decisions written especially for children or with child-friendly language, as discussed by participants during this panel and as was emphasised by Sir Andrew McFarlane at the 2025 WCFLCR.¹ It was also suggested that return decisions could provide for measures of protection directed towards after care. Such measures of protection could be put in place in accordance with Article 11 of the 1996 Child Protection Convention, until such time the family situation is stable again in the State of habitual residence. Since the second Experts' Meeting (EMII), Professors Marilyn Freeman and Nicola Taylor have launched a global study of the issue of “Outcomes” in the context of child abduction, the results of which we hope to learn about at the third Experts' Meeting (EMIII) that will take place at the end of August 2026.

It was also noted that, while the HCCH has developed Guides to Good Practice over the years regarding “Prevention”, “Mediation”, “Enforcement”, “Access / Contact”, and “Article 13(1)(b)”, nothing exists *per se* in relation to “after care”. However, it was observed that many measures aimed at preventing abductions, such as ensuring proper access and contact, also apply to “after care”, as they would prevent re-abduction. It was recalled that arrangements for organising or securing effective rights of access / contact could be sought under Article 21 of the 1980 Child Abduction Convention and / or Article 35 of the 1996 Child Protection Convention.

The issue of criminal proceedings upon return was also raised by several participants. It is recognised that criminal prosecution for parental child abduction seems, to some, to be an effective deterrent. On the other hand, it is observed that criminal prosecutions can also deter the voluntary return of taking parents to the State of habitual residence, for fear of facing imprisonment and separation from their child, which would be against the child's best interests. Experience shows that, in these circumstances, the taking parent will evade return e.g., by going into hiding, raising groundless defences during return proceedings, appealing the return decision or evading enforcement. Such actions hinder voluntary returns and cause delays, running contrary to the swift procedure envisioned in the 1980 Convention. It is well understood that undue delays in return proceedings are contrary to the best interests of the child. Experience also shows that many parents are not aware of possible criminal

¹ The FindingHome website, available at < <https://findinghome.world/> >, is a fantastic resource to help children and young people understand international parental child abduction. It has been developed in partnership with young people for the benefit of other young people. The FindingHome website, co-funded by the European Union, is hosted by Missing Children Europe and is available in 15 languages.

ramifications of child abduction, which diminishes their deterrent effect. One thing is certain. Criminal sanctions do not form part of a proper “after care” framework. Participants were reminded that an abduction under the 1980 Convention is characterised as “wrongful”, not “illicit”, “illegal” or “criminal”. The objective of the Convention is to remedy the wrongful act, preferably voluntarily, thereby restoring the legal situation as it was prior to the abduction by returning the child to their State of habitual residence (unless there are reasons not to do so, which are foreseen under the Convention). Against this background, the Convention seeks to invite both parents to properly resolve the dispute they had before the abduction which, had it been properly resolved then, could have prevented an abduction.

The “after care” discussion revealed that there is still a lot of work to be done in this area which offers many possibilities.

Supporting parents and children before, during and after abduction

Alison Shalaby, Chief Executive Officer, reunite International Child Abduction Centre, England

A paper is not available for this presentation.

After-care for children, left behind parents and taking parents: Towards a Comprehensive Approach to Support after International Child Abduction cases

Aagje Ieven, Secretary General, Missing Children Europe

Each year, thousands of children in Europe experience the profound disruption of going missing. A significant proportion of these cases involve international parental child abduction, often arising from family breakdown and conflict. In 2024, one in five children reported to the European 116 000 missing children hotlines went missing due to parental abduction. These cases carry long-lasting emotional, psychological, and social consequences for children and their families. Yet while legal frameworks focus heavily on return orders and jurisdiction, the period *after* a child's return or non-return remains insufficiently addressed. Aftercare is therefore an essential, though often overlooked, component of a child-centred response.

Drawing on the work of Missing Children Europe (MCE) and the European network of 116 000 hotlines, this article outlines the institutional context, summarises available data, reviews the psychosocial impact of international child abduction (ICA), presents insights from the EWELL study, highlights good practices across Europe, and concludes with key takeaways and streamlined recommendations for judicial and academic audiences.

1. Institutional Context: Missing Children Europe and the 116 000 Hotlines

Missing Children Europe (MCE), the European Federation for Missing and Sexually Exploited Children, brings together 34 member organisations across 27 countries. Its mission is to prevent children from going missing and to protect those who do from violence, abuse, and exploitation.¹ MCE's work is structured around four pillars—research, tools for practice, public awareness, and policy influence. The thematic areas the organisation focuses on are children who run away, grooming online and offline, children who go missing in migration, and international parental child abduction (hereafter referred to as ICA). ICA takes up an important part of MCE's work considering that a large part of cross-border cases reported to the hotlines concern abductions by a parent or guardian.²

MCE coordinates the 116 000 hotlines network, a pan-European service offering free, 24/7 emotional, psychological, social, legal, and administrative support to missing children and their families.³ As of September 2025, the hotline operates in 33 countries. Twenty-two hotlines are run by non-governmental organisations members of MCE, while most others are operated by law enforcement or government agencies who cannot be members but share aggregated data annually and cooperate with the rest of the network on cross-border cases.

Since its inception in 2015, the 116 000 network has answered over 2.5 million calls and supported over 90,000 cases through its hotlines across Europe. The hotlines are a critical resource for families navigating the complexities of international child abduction, offering

¹ www.missingchildreneurope.eu/about-us/

² For a full overview of all of Missing Children Europe's work on international parental child abductions please refer to: [International Child Abduction - Missing Children Europe](#)

³ www.116000.eu

assistance at every stage of the process—from the initial abduction until the return of the child. However, aftercare remains unevenly funded and inconsistently available across Europe, despite its importance for long-term recovery.

2. Data on international child abduction from the hotlines

Annual data collected by MCE since 2014 provide insight into the scale and nature of international parental child abduction.⁴ In 2025, 22 hotlines recorded 1,366 new ICA cases, alongside 640 unresolved cases carried over from previous years. This persistence of unresolved cases illustrates the long-term nature of many abductions.

These hotlines supported 1,318 children affected by parental abduction. The number of children does not match the number of cases because some incidents involve multiple siblings, and some hotlines include prevention cases where abduction was averted.

Among 1,236 children for whom gender data were available, 46% were girls and 54% boys. Women were identified as the abducting parent in 57% of cases, men in 31%, with the gender of the abducting parent unrecorded in 12% of cases. The median age of abducted children was six years old, indicating that ICA disproportionately affects younger children.

Although only a minority of hotlines collect data on violence, at least 111 abducted children had experienced some form of violence or abuse. This made parental abduction the second most affected category of missing children in terms of exposure to violence in 2025.

Limited data on the duration of disappearances show nevertheless show that some children remain missing for months. Of 28 children for whom data were available, 8 were found within a week, 11 within a month, 7 within six months, and 2 after up to a year.

These findings demonstrate that ICA cases often extend far beyond the initial crisis. The young age of affected children, the prevalence of violence, and the long duration as attested by the high number of cases carried over from previous years all highlight the need for sustained, structured aftercare

3. Psychosocial Impact on Parents and Children

International child abduction presents complex challenges. While the Hague Convention prioritises the prompt return of the child to their habitual residence, this objective is frequently hindered by delays, limited mediation, inconsistent cross-border cooperation, language barriers, and the absence of child-inclusive procedures. Legal discourse tends to focus on return and jurisdiction, but far less attention is paid to the long-term consequences for children and parents.

The work of **Pauline Boss** on ambiguous loss provides a valuable framework for understanding the experience of left-behind parents.⁵ Parental abduction often results in prolonged, uncertain separation, loss of contact, and lack of information about the child's

⁴ Annual Reports - Missing Children Europe

⁵ Pauline Boss, *Ambiguous Loss: Learning to Live with Unresolved Grief* (Harvard University Press 1999); Pauline Boss, *Loss, Trauma, and Resilience: Therapeutic Work with Ambiguous Loss* (W.W. Norton 2006).

wellbeing. Such circumstances generate chronic, unresolved grief that cannot be addressed solely through legal remedies. Aftercare must therefore include psychological and relational support for left-behind parents.

Early research by Greif and Hegar highlighted the scarcity of reliable data on children's post-abduction outcomes and noted methodological limitations, including selection bias and reliance on parental reporting.⁶ More recent longitudinal work by **Marilyn Freeman** confirms that the effects of abduction may persist well beyond the child's physical return.⁷ Children may experience loyalty conflicts, attachment disruption, anxiety, and difficulties reintegrating into their habitual environment.

These findings underscore that judicial decisions resolve legal questions but do not resolve the emotional, developmental, or relational consequences of abduction. Aftercare is therefore essential to support children's recovery and long-term wellbeing.

4. Insights from the EWELL Study

The EWELL project ("Ensuring the wellbeing of children in judicial cooperation in cases of international child abduction") sought to understand factors influencing children's wellbeing in ICA cases.⁸ Conducted in Belgium, France, and the Netherlands in 2016–17, the study included:

- an online survey of 465 adults who had experienced ICA between 2005 and 2014;
- qualitative interviews with 19 children from 16 families;
- a review of court rulings and the application of Article 13(2) of the 1980 Hague Convention.

The survey probed into the relation between child well-being, measured from the degree of emotional problems, conduct problems, hyperactivity and peer problems as reported by the parent and various aspects of the abduction such as the circumstances before, during and after the abduction, the court procedure and mediation, and the outcome (return or non-return).

The findings revealed the profound effects of abduction on children, including depression, negative emotions, trust issues, and school difficulties.

⁶ Geoffrey L. Greif & Rebecca Hegar, "When Parents Kidnap: The Effects on Children," *Family Relations* 41(1) (1992) 83–88.

⁷ Marilyn Freeman, *Parental Child Abduction: The Long-Term Effects* (International Centre for Family Law, Policy and Practice 2014); Marilyn Freeman, "Outcomes for Children Returned Following an Abduction," *International Family Law Journal* (2016) 307–318.

⁸ Missing Children Europe led this research project which was co-financed by the European Union and conducted in partnership with the University of Antwerp and Child Focus in Belgium, Enfants Disparus and the Ministry of Justice in France, and Centrum Internationale Kinderontvoering in the Netherlands. The contents of this article are the sole responsibility of the author and can in no way be taken to reflect the views of the European Commission. The full report EWELL research report "Bouncing Back The wellbeing of children in international child abduction cases" by Van Hoorde et al. (2017), can be found at missingchildreneurope.eu/?wpdmdl=2345

Key findings relevant to aftercare include:

- Children often lack understanding of proceedings and their role within them. Hearings may not be age-appropriate, and children receive little feedback on how their views influence decisions.
- When children feel unheard or when outcomes contradict their expressed wishes, they may experience helplessness and anxiety.
- Lack of preparation for return can lead to negative emotions and behavioural problems.
- The arrest of the abducting parent is associated with lower emotional wellbeing.
- Children who do not return to the left-behind parent often experience more peer problems.
- Separation from siblings and school difficulties are common.
- Professional support and safe contact with both parents are crucial for recovery.

The study emphasises that aftercare must extend beyond the acute abduction/return phase and include psychological support, educational reintegration, prevention of re-abduction, peer support, and relational rebuilding.

In the absence of such aftercare, the mere legal return of a child may amount to “formal closure” of the case but not actual recovery or sustainable wellbeing. The concept of “best interests of the child” (Art. 3 of the UNCRC) requires not just procedural fairness but attention to post-return adjustment and ongoing resilience. Thus, from a judicial and policy viewpoint, aftercare must be considered an essential part of the continuum of response — not as an optional “add-on”.

5. Good Practices in Aftercare from Four Jurisdictions Across Europe

Drawing on national experiences from the 116 000 network of missing children hotlines and other member organisations of Missing Children Europe, several promising practices in aftercare can be identified. While not exhaustive, these serve as examples of what aftercare practices could and should look like for judicial, social care and policy audiences.

The Netherlands – Centrum Internationale Kinderontvoering (Centre IKO)

The Centre IKO is an independent foundation funded by the Ministry of Justice and Security. It serves as the national legal expertise centre for all matters relating to the prevention and handling of international child abduction connected to the Netherlands. IKO provides free advice, guidance, and information to parents, carers, and professionals. Its aftercare-related activities include:

- Preparation for the return decision, including mediation and counselling.
- Preparation for the implementation of the return order.
- Long-term support via the 116 000 hotline, offering moral, financial, and legal assistance, as well as timely referrals.
- Prevention of re-abduction through risk assessment and safety planning.
- Support in deciding on criminal proceedings and referrals to specialised services.

Judicial relevance: IKO's model shows how structured preparation and coordinated follow-up can be integrated into the return process. For adjudicators, this underscores the value of return orders that anticipate psychosocial needs and include clear pathways to support services.

France – 116 000 Enfants Disparus

French aftercare is delivered through 116 000 Enfants Disparus, which provides:

- Psychological preparation pre-return for both the child and the left-behind parent to address fears and concerns about the return.
- Stabilisation of the legal situation by reviewing the return decision and verifying protective measures such as travel bans are in place in the country of return.
- Post-return follow-up to assess re-abduction risk and refer families to social services, though GDPR rules require deletion of case files after two years, limiting the follow up time.
- An offer of peer support groups for parents.
- A one-off therapeutic group for children aged 8–11 with promising results but which unfortunately did not receive sustainable funding.

Judicial relevance: France's practice demonstrates the importance of embedding psychological, relational, and legal preparation into the return process. Courts can reinforce this by ensuring that return orders explicitly anticipate and enable such follow-up.

Belgium – ChildFocus

Belgium's Child Focus provides a tailored, case-specific approach, including:

- Administrative support for returns or non-returns, such as school re-registration which can be challenging last minute or after an abrupt departure; or assistance with administrative consequences of long-term missing cases.
- Facilitating access to social services, including through the *1Family1Plan* initiative, which assigns a single coordinator to streamline referrals. This service is considered an excellent practice but hurdles exist: service activation only happens after the child's return, which creates a gap in provision negatively affecting child wellbeing after return. Furthermore regional disparities in awareness and understanding of the gravity of the consequences of international parental child abduction lead to uneven aftercare provision across different regions.
- Secondary prevention through risk assessment for contact disruption and re-abduction, and implementation of preventive measures.

Judicial relevance: Belgium's model highlights the value of linking the return order to a concrete delivery plan and a designated coordinator, reducing fragmentation and delays in service provision.

Finland – Kaapatut Lapset ry (Abducted Children Association)

The House of Hope of the Abducted Children Association provides information and immediate assistance in international child abduction cases and international custody

disputes. Support is available by phone, chat and by making an appointment. In addition, it is possible to receive peer support through the association. Services include

- Chat services during defined hours
- A structured peer support network including peer-support buddy systems for both children and parents.
- Empowerment weekends where families having experienced international child abduction can meet, with separate activities for parents and children.

Judicial relevance: Finland's approach illustrates that aftercare is not solely legal or administrative but also social and relational. For adjudicators, this reinforces the importance of crafting return orders that explicitly facilitate access to psychosocial services, recognising their role in stabilising the child and preventing re-abduction.

6. Key takeaways and Recommendations for Effective Aftercare

Based on the evidence, insights and good practices described above, the following recommendations are tailored to those responsible for shaping legal frameworks, adjudicating ICA cases, and conducting research to refine policy and practice.

Return orders require aftercare integration. Courts should anticipate psychosocial needs and embed access to support services into the return-order framework.

Structured pre-return preparation improves outcomes. Psychological preparation, legal stabilisation, and contact-maintenance planning reduce trauma and re-abduction risk.

Designated coordinators reduce fragmentation. Assigning a single coordinator improves continuity and reduces delays.

Re-abduction prevention must be explicit. Judicial orders should consider travel bans, monitoring, and early referral to prevention services.

Psychosocial services are essential. Stabilisation after return is relational and social, not merely legal.

Cross-border cooperation affects implementation. Courts benefit from understanding aftercare systems in the receiving State.

6.1 Recommendations for Courts and Legal Practitioners

1. Ensure a child-centred decision as the foundation. Return or retention decisions should explicitly consider the child's long-term wellbeing. Orders should be communicated clearly to children and parents in accessible language, and address how the child's views were taken into account.

2. Link legal orders with aftercare plans. Return, custody, or access orders should include an aftercare plan identifying the coordinator, psychosocial support needs, school and health re-registration needs, and mechanisms for monitoring re-abduction risk.

3. Require early post-return intervention. Immediate psychological support, educational reintegration, and relational rebuilding (where safe) should be prioritised. Courts may direct authorities to ensure such support is in place.

4. Facilitate safe contact with both parents. Where appropriate, courts should support

mechanisms for safe contact— visits (supervised if necessary), video calls, or mediation—to promote relational stability.

5. Include re-abduction risk assessment. Orders should require authorities to assess and monitor re-abduction risk and implement preventive measures.

6. Address administrative and legal hurdles. Return orders should mandate resolution of administrative issues such as school enrolment, social security, and residence status.

7. Strengthen referral and coordination mechanisms. Courts should encourage or direct the appointment of a single coordinator to streamline referrals and ensure continuity.

8. Advocate for sustainable funding. Judicial actors can support calls for funding of hotlines, psychosocial services, and social service coordination frameworks.

6.2 Recommendations for Academics and Researchers

9. Conduct longitudinal and mixed-methods research. More data are needed on long-term outcomes, comparative national practices, and protective factors.

10. Improve data collection and harmonisation. Harmonised datasets would enable cross-national comparison and policy evaluation.

11. Explore child participation and voice. Research should examine how children's participation affects outcomes and procedural justice.

12. Evaluate cost-effectiveness. Evidence on which interventions deliver the best outcomes can guide resource allocation.

13. Promote cross-disciplinary scholarship. Collaboration across law, psychology, and social work is essential to understand the complexity of ICA.

7. Conclusion

The phenomena of children going missing — and the specific subset of international parental abduction — challenge our legal, child-protection, social-welfare and educational systems in profound ways. While the Hague Convention and Brussels IIb provide essential tools for return and jurisdiction, they cannot alone address the emotional and developmental harm experienced by children and families.

Aftercare must therefore be integrated into the continuum of response. Courts should view return orders not as the end of a case but as the beginning of a recovery process. Researchers must continue to generate evidence on what works to support reintegration, reduce re-abduction risk, and promote resilience.

The coordinated efforts of MCE, the 116 000 hotlines, and national aftercare providers offer promising foundations. With sustained investment, judicial adoption of aftercare-oriented orders, and improved data collection, Europe can move from crisis response to resilience building—ensuring that every child who is returned can heal, rebuild, and thrive.

Only by embedding aftercare within both law and practice can we fulfil the promise of children's rights and give effect to meaningful recovery rather than mere relocation or return.

Beyond Return: Lessons from ISS Casework and Counselling

Viola Rentsch, Lawyer, International Social Services, Germany

Introduction

This article addresses the challenges and needs in the post-return phase of cases within the framework of the 1980 Hague Convention on the Civil Aspects of International Child Abduction (hereafter the Convention) from a counselling and case work perspective. It argues for a child-centred approach and better preparation for the return.

Introducing ISS

International Social Service (ISS) is a global network of organisations and partners working together since 1924 on reuniting and supporting families across borders.¹ ISS Germany supports families in legal and psychosocial matters before, during, and after cross-border crisis situations. Professionals and authorities are guided and linked.² ISS Germany receives around 1500 requests from private individuals per year.³ Cooperation within the global ISS network is utilised in cases involving child protection and youth welfare across borders. ISS Germany does not have a formal after-care project, but rather a longstanding involvement in individual casework and family counselling post-abduction.

Understanding After-Care in Practice

The Convention provides for a clear and speedy procedure following international child abduction. The rule is to return children to their place of habitual residence, where courts and authorities with international jurisdiction are to decide on the merits. Returning a child is not the end of the story. While the focus of the Convention is on restoration of the status quo ante, the aftermath of return proceedings also needs some more attention. A return is not a winding back of time; the circumstances have changed and each family member has had new experiences in the meantime.

After-care in this context means the emotional, psychological, legal and logistical recovery. This requires highly individualised support for children and parents – including the abducted child(ren), both the left-behind and the returning parent, as well as non-abducted siblings, and any step- and half-siblings.

After-care spans from the preparation for return to help navigate family law, immigration issues and protective measures to prevent re-abduction.

After-care is important because of the risk of re-traumatisation and fragmentation after return. It acknowledges and potentially alleviates the long-term consequences for the child.

¹ For more information, see <https://iss-ssi.org/>

² See <https://www.issger.de/en/>. ISS Germany is mandated by the German government as the Central Contact Point for Cross-border Family Conflicts and Mediation; <https://zank.de/en/>

³ Of these general cross-border family requests, approximately 400 concern abduction-related cases.

Carefully considered protection measures can be necessary to safeguard the wellbeing and rights of the child – especially in cases involving family violence. If implemented effectively, after-care can also facilitate children's participation in the long-term.

Children need to be heard in every matter affecting them. Taking child participation seriously in return proceedings should lead to the child understanding the reason for the procedure and their hearing in it. This can be the first step for successful after-care. The reunion with the left-behind parent or family often takes place after a considerable amount of time. Returned children may struggle to find their place within a family structure that has adjusted to their absence. Children need support and effective follow-up as their reintegration in family life and school may take time. In some cases, the reunification itself can be the source of problems. Escalated family conflicts may lead to conflicted loyalties.

Looking at the Cases

Contact: In our experience, the main issue after return is often contact, with the taking parent having difficulties exercising their right to contact with the child after return.

Child Protection: There are also cases where youth welfare is, or needs to be, involved following the return regarding child protection, for example, when there are signs of abuse or violence.

Residence Law: In other cases, residence or asylum law can be an obstacle for the returning parent and child.

Undertakings: While undertakings are commonly used in some jurisdictions to ensure the safe return of the child, their enforcement in other jurisdictions often poses challenges.

After Abduction: Some cases could be called 'after abduction' rather than 'after return'. This includes children who are not returned because they were never found or the authorities decided not to return them or failed to enforce return orders. In other cases, children are returned voluntarily or from a non-member state, so without a Hague proceeding. It is important to remember this group, as they are still abducted children who face the same challenges as those who have been returned on the basis of a Hague return order.

The following examples show the support needs of parents and children identified at the post-return phase and illustrate the complexity of these scenarios.

Angelo (9) moved with his British mother and Italian father from Germany to Italy. The mother had difficulties finding work and integrating, although she spoke Italian. She was depending on the father, who was no support to her. The mother eventually turned to taking Angelo to the UK without the father's consent. The UK Hague Court ordered Angelo's return to Italy, where long and complicated custody proceedings followed. The father received sole custody, and contact with the mother was to be built progressively. The mother moved back to Germany for work, trying to keep regular contact, but the father refused to cooperate. The isolation and the father's unwillingness, as well as the vague court decision and little involvement of the Italian Social Service, led to scarce contact between Angelo and his mother. Now Angelo (16) wants to visit her in Germany.

The Italian Court with jurisdiction according to Article 9 of the Brussels IIb Regulation had difficulties implementing cross-border contact regulations. The vague order depended on the

father's willingness to cooperate. Without a local social service appointed to supervise the case, the mother was left alone to fight for every contact with her son.

Often, the left-behind parent prohibits contact between the returning parent and the child, arguing that the child is confused or at risk of re-abduction and needs stability. Return proceedings are silent on this aspect, as the court deciding on return has no jurisdiction over parental responsibility, including contact. Either the left-behind parent is willing to make contact arrangements or the other parent must apply for a contact order at the court of habitual residence. In practice, however, custody or contact proceedings do not always follow immediately after the return.

Berta (7) lived with her mother, stepfather, and half-sister Ruth (4) in Germany. During an agreed vacation in Albania, Berta's father went into hiding with her. It took nearly one year to locate them. The mother then successfully filed for return, but the enforcement got delayed. On return, Berta and Ruth hadn't seen each other for three years, which led to conflict and fighting for attention. Berta and her family had both changed since she was gone. Ruth felt resentment during the time her mother searched and fought for Berta. And Berta does not feel the same either; she is traumatised and misses her father, whom she got close to during their time in Albania. The mother is scared it will happen all over again if the court rules in favour of the father's custody application.

The challenge of cases like this lies in the expectations of parents. The left-behind parent especially longs to continue with their family life with the child where they left off before the abduction took place. Legally, the return restores the status quo ante but, in reality, circumstances have changed due to the time that has passed. Sometimes all efforts go into achieving the return, while not enough thought is put into its preparation. The child and the rest of the family may be overwhelmed by what happens after returning.

Omar (6) is taken from Germany to Iraq by his mother, who is fleeing from domestic violence perpetrated by the father. Since the Convention does not apply between Iraq and Germany, the father could not apply for Omar's return. He went to the police in Germany and tried to cooperate with the embassies. The German embassy in Baghdad has no opportunity to intervene and the Iraqi authorities will not intervene. The ISS working partner is contacting and visiting the mother at her family home. Omar is well, but wants to return to Germany. The social worker tries to support the mother, who is generally willing to voluntarily return if there weren't all these obstacles.

Ongoing criminal investigations for international child abduction in Germany do not incentivise the mother to return with the child. Letting Omar go alone might lead to contact loss. Financial coercion, the overall dependence on the father, and his violent behaviour in the past, make it difficult for the mother to imagine a normal life in Germany. She is unaware of the available protection measures and support services there and is fearful about her residence status, which is dependent on the father due to family reunification. She feels forced to stay in a violent marriage.

In some cases, not only the abducting parent, but also the child, does not receive a visa to return. Even with a Hague return decision, expired residence permits can hinder a return. At least for Germany, the gap between international family law and migration law must be addressed. Parents currently need a lot of assistance in obtaining a secure residence status following the return.

Learning from Gaps

One of the problems in after-care is the lack of mandated or structured follow-up services. There is no mechanism within the Convention for following up on the outcomes for abducted children once returned. The authorities at the place of habitual residence can only rely on domestic procedures. At the same time, one standardised procedure will not meet the needs of every case. Each situation is different and the challenges vary according to such factors as the age of the children, the distance between the states, the duration of absence, and the number of people and countries involved; to name but a few.

Since the cases are highly individual, a one-size-fits-all approach cannot do them justice.

Cases with limited international coordination turn out to be more complicated. However, when the court ordering return knows about the possible protection measures in the state of reintegration, the return can occur on a more solid basis. The use of Article 27 V of the Brussels IIb Regulation offers an important legal basis for accompanying protection measures to safeguard children after return. Exchanges through the International Hague Network of Judges or the European Judicial Network can be essential in some cases.

We have seen case coordination working well among Central Authorities, youth welfare professionals, NGOs, and therapists, ensuring multidisciplinary and multilingual support. Culturally competent cross-border networks play an essential role in this process. At the same time, court decisions and the enforcement of a return may constitute state interventions in personal and family life that can cause children and returning parents to lose trust in the authorities. The amount of time spent doing follow-up work with a family cannot be determined in advance. However, by recognising that 'return' does not mean 'resolution', professionals can ensure that children and families continue to receive appropriate long-term support. Some systems provide self-help groups and workshops for parents and children.

Cases in which after-care begins before the return show the value of early and continuing counselling and family mediation.⁴ Good preparation includes setting the awareness of all parties involved by offering guidance and support. They should be encouraged to agree on how the actual hand-over of the child should take place and to make a plan for the post-return time. Apart from custody and contact arrangements or proceedings, there are other aspects to consider, such as travel restrictions and ongoing court supervision.

The Convention's prescribed path can lead to a subsequent court proceeding on the merits of parental responsibility, potentially even relocation. This is applicable in many cases and can enable security and the protection of the child and their best interests. However, parents need to be acknowledged for the difficult situations they find themselves in. Another legal proceeding following the Hague case may feel overwhelming and, in situations where parents reach an agreement (for example, through mediation), even unnecessary.

Strengthening After-Care

Going forward, we want to reaffirm the importance of a humane, child-centred approach that extends beyond the legal return itself. Integrating the topic of after-care into discussions on

⁴ The ISS International Family Mediation Programme (2010 to 2018) developed approximately 60 Good Practices and discussed professional competencies: see <https://iss-ssi.org/international-family-mediation/>

nurturing the Convention and systematically developing frameworks for post-return follow-up, are valuable steps. At the same time, accessible counselling and family support for all parties involved must be promoted. Ultimately, improving after-care depends on collaboration among authorities, courts, NGOs, and support services to ensure that children and families receive the ongoing protection and support they need. ISS Germany remains committed to bridging these gaps through individual support and international dialogue.

"MiPCAS" Online Parent Support Groups: MiKK's new initiative for those affected by parental child abduction and cross-border family disputes

Ischtar Khalaf-Newsome, Co-CEO and Head of Advisory Services, MiKK International Mediation Centre for Family Conflict and Child Abduction, Mediator and Family Lawyer, Berlin, Germany

"While others may try to empathise, only those who have walked in our shoes can truly grasp the depth of our experiences."

(MiPCAS Participant Mother)

It was a great pleasure and an honour to present the "MiPCAS" Parent Support Groups – MiKK's latest initiative for parents – as part of the "After Care" Panel at the London Expert Meeting on Nurturing the 1980 Hague Convention (EMII) held on 4–5 August 2025 in London.

Conducted online via Zoom, the MiPCAS International Parent Support Groups¹ form part of MiKK's continuing mission to support parents from around the world affected by international child abduction and cross-border custody disputes, with the overarching aim of safeguarding the best interest of the child. Thanks to EU co-funding these peer support groups for parents have been made possible as a free-of-charge service for participating parents.

This innovative project was developed in response to a growing demand expressed by parents who have contacted MiKK's long-standing International Advisory and Pre-Mediation Service, which for almost 25 years has supported and referred families worldwide to MiKK's international network of specialised, bi-lingual family mediators with intercultural competence. Today, this global network of MiKK-trained cross-border family mediators (CBFM®)² spans 45+ countries, offering mediation in over 40 languages in accordance with the renowned MiKK "4B" Co-mediation model³ with good results: On average, around 70% of MiKK mediations over the past decade have resulted in a partial or full agreement between parents.

While mediation and legal proceedings remain essential in international parental child abduction cases, it is well documented that parents frequently face significant emotional and practical challenges in these cases – an important issue that the MiPCAS groups seek to

¹ See the MiPCAS page on the MiKK website: https://mikk-ev.org/home/parent_support_group/

² To date MiKK has trained over 500 mediators from more than 55 countries. The CBFM® trainings are conducted in English as well as in German, Spanish, French and Ukrainian/English. They take place annually in Berlin, Osaka, Strasbourg and Madrid and have also taken place in Singapore as well as online (Ukraine). For these and other trainings, workshops & webinars offered by MiKK for mediators, lawyers, judges and guardian *ad litem* see <https://mikk-ev.org/registration-for-training/>

³ The MiKK "4 B Co-mediation Model" refers to bi-lingual, bi-cultural, bi-professional and bi-gender co-mediation as a best practice in child abduction cases. Accordingly, the Co-mediators speak the parents' common language as well as their respective mother tongues (bi-lingual), share or understand the parents' respective cultural backgrounds (bi-cultural), have juristic and psycho-social professional backgrounds respectively (bi-professional) and, where applicable, represent the genders of the parents (bi-gender). Bi-cultural and bi-lingual mediation in these cases is also recommended by the HCCH, *Guide to Good Practice under the HCCH Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, Part V – Mediation, The Hague 2012. p.31/32. http://www.hcch.net/upload/guide28mediation_en.pdf

address. Academics and other experts in the field, including Professor Marilyn Freeman, co-host and co-originator of this second international interdisciplinary Expert Meeting together with Professor Nicola Taylor, have long emphasised the need for such dedicated parent support groups for parental child abduction cases.

Conducted via Zoom, the groups are designed for parents currently navigating international parental child abduction cases or other cross-border family disputes, providing a structured, confidential and empathetic space for emotional support and peer exchange. Parents wishing to participate need to consent to certain rules and guidelines but may remain anonymous if they so wish. The groups aim to provide a safe space for parents to exchange information and receive support from other parents in similar situations. These may be circumstances where legal proceedings are protracted or have failed, where parents do not know to which country their child has been taken, where mediation is not an option, or where other seemingly insurmountable challenges have arisen.

And herein lies the added value of these groups: Many parents feel the need to speak to someone who truly understands what they are going through - sometimes have been going through for years - such as other parents in similar circumstances. In other words, parents who have *"walked in their shoes."* At the heart of MiPCAS, therefore, lies the power of peer support. Parents who have experienced child abduction or difficult cross-border custody disputes can connect and support each other, reducing isolation and also in some cases give hope in overwhelming and deeply distressing situations. In many cases the participating parents have had little or no contact at all with their children. In fact, the vast majority of the MiPCAS group parents have been left-behind parents, whose child or children were wrongfully removed or retained by the other parent. The groups offer a balance between emotional connection and practical information-sharing, as participants also exchange insights and available resources in different countries. Over the past 12 months (June 2024- June 2025) parents from a total of 25 countries, 11 EU Member States and 14 Non-EU States (of which 6 were Non-Hague Member States), have participated in the MiPCAS Groups. Fathers were in the majority among the participating parents.

Each MiPCAS group is professionally facilitated by experienced MiKK mediators with psycho-social professional backgrounds, such as in counselling, psychology and social work. They not only bring extensive experience in supporting families in high-conflict, multicultural and transnational contexts but also intercultural and linguistic skills, since they are located in different countries, have diverse cultural backgrounds and speak English as well as many other languages. In addition to the MiPCAS Europe Chapter, with facilitators based in different European Countries, "waiting in the wings" are a Canada/USA Chapter as well as an Asia-Pacific Chapter (with facilitators based in Australia/Hong-Kong/Japan/Singapore). These different geographic Chapters will make it easier for parents from different time-zones to participate. Parents can register their interest in one of the two new Chapters or specify their preferred language via the MiPCAS website. The facilitators can also talk to parents about the benefits of mediation when parents have not yet considered this as an option. The international and multilingual nature of MiPCAS ensures that the groups are inclusive and accessible to parents from diverse cultural and linguistic backgrounds. Since the groups are conducted remotely via Zoom, they overcome geographical and financial barriers, enabling parents, no matter where they are located, to access this free-of-charge, vital form of support. The MiPCAS groups have proved especially valuable in cases where parents are isolated from family, friends or professional networks. The groups provide a space for helping parents feel seen, heard and supported during an unimaginably difficult time.

The following three accounts, shared by parents who have participated in MiPCAS support groups, illustrate this very poignantly.

Statements from MiPCAS Parents

1. Father, Left-behind

Child abduction from Germany to a Non-EU Hague Member State

"My two sons were wrongfully retained by the mother following a holiday to the mother's home country, a Non-Hague Member State. At the time, in 2023, my sons were aged 9 and 10 and we were living in Germany. Like many international families we had been shuttling between both countries in the children's pre-school years. But in the 3 years preceding the wrongful retention we had built a life in Germany. The children had made friends and loved spending time with their cousins living round the corner.

The children's retention came as a huge shock to me. Even more shocking was the fact that following the 1980 Hague Child Abduction proceedings the Judge in the country of abduction decided against the return of the children (though no exceptions under article 13b or similar were raised).

I was given leave to appeal the non-return decision in September 2024. This was over 10 months ago and I am still waiting for a date for the appeal hearing. All in all 27 months have passed in total including the 12 months for the first instance hearing. A long time for supposed "expeditious proceedings". A long time in my life and in the lives of my two young children.

Life without my sons with whom I have a close and loving relationship is hard. I feel a sense of deep desperation at times, when I think this situation is unbearable.

And yet, unlike some parents that I have met in the MiPCAS groups I might call myself fortunate, as I do have regular Zoom contact with my sons 5 x per week, and have been flying back and forth to visit them whenever possible - 12 times since they were retained over two years ago. We love the time we spend together and the children tell me how much they miss me. Other parents I have met through the MiPCAS groups do not even know where their children are. It certainly puts things in perspective. The MiPCAS groups are invaluable as not many people understand what parents like us go through.

I am hoping that the appeal will be successful and the judge will order the return of the children. Yet I am acutely aware that such a return might not be as easy. The children have already been away from their home for over 2 years now! They are now aged 10 and 11. The more time passes the more the children will have settled in the other country, and the more difficult a return might be for the soon-to-be teenage boys.

In anticipation of this I have been looking for any expert therapy service or similar, which helps parents and the children prepare for the return. There is nothing as far as I am aware of. But it is very clear to me and other parents I have met through MiPCAS, that there is a need for this.

My message to stakeholders and professionals:

It is vital that Hague proceedings really are conducted speedily! Parents and children in these situations must receive expert support to help them prepare for, and adjust after, the return in order to reduce the risk of any long-term negative effects."

2. Mother, (left-behind)**Child abduction, children aged 9 & 11 - Finland to EU country**

This has been a four-year nightmare since my children, then 13 and 11, were abducted from Finland to an EU country in June 2021.

The custody dispute had already begun in the Finnish family courts in February 2021 and the abduction was the next move of the father - feeling the courts would not decide in his favour.

Over the past 4 years the whole spectrum of Hague court proceedings was played out, though at an agonizingly slow pace:

- *first instance return hearing,*
- *2nd instance appeal hearing overturning the first instance decision,*
- *Hearings in the country of habitual residence, Finland, triggering the "overriding mechanism" and ordering the return of the children to Finland.*

And yet - Not only are the children still not home but for over four years, I've had no contact with my children and have not received any information about their lives. I've suggested mediation multiple times, but the father always refused. During one judge-ordered video call with children, the camera was turned off, and I heard the father instructing the children to refuse any contact - this happened in the presence of a court-ordered representative as is required in these cases where contact needs to be enforced.

My boys desperately needed age-appropriate information from a neutral source, like a social worker or court official, from the start. Their father has been their only source of information, filling their heads with lies about me, our Finnish family and Finland in general. By the time the return order was finally granted, our once warm and close relationship had been destroyed. My boys are now angry, full of hatred and unaware they were abducted; they believe I seek revenge and plan to drug and lock them up. They also said Finland was "harming the planet" since, they argued, Finnish people were "forced to order products on Amazon because of high prices in Finland".

I'm very disappointed by the lack of real support in the return process to ensure regular contact throughout the unbelievably long 4-year court proceedings. I would have accepted any form of contact - even supervised! We desperately needed professional support for our first meeting where the return order should have been explained to the children, but the attending psychologist merely observed.

My biggest wish is to rebuild my relationship with my sons. These years of constant worry, heartache and emptiness have left deep scars. But there's no real plan or expertise by the authorities to assist with the boys' return home. I worry a happy

ending is impossible after years of manipulation. The Hague system failed my boys and our family by not protecting their basic rights.

The only way to truly protect children's rights in parental abduction cases is for the court in the country of abduction to ensure that there is contact with the left-behind parent. Maintaining contact is key to a successful return! Despite doing everything by the book, and a return order to Finland, I haven't had contact with my children in over four years.

3. Mother, Taking Parent

Child abduction from USA to EU country

When my daughter and I joined my husband to live in the USA we hoped to live the American dream with him. We are all citizens of the EU. My husband had a Green Card allowing him to work, but I did not. This meant that my daughter and I came to the USA on tourist visas, requiring us to leave and re-enter the USA every 3 months – always a bit nervous if we would be allowed back in.

Without a Green Card I was unable to work and build a life for us. This put a significant strain on our marriage, which was deteriorating fast, reaching its lowest point with an incident of domestic violence where I was struck by my husband. And yet – I tried to make things work for my daughter initially, but life had become unbearable. After leaving the US for Germany to renew the tourist visa, I decided we would not go back. At that point my daughter and I had been residing in the USA for 8 months.

Hague proceedings were issued by my husband and my daughter's return was ordered. My daughter had expressed a clear wish to the court to stay with me and begged me not to go back. But I understand she was too young for her wishes to be taken into account.

I was absolutely devastated as the return decision posed an enormous problem: I was the main carer of my daughter, but without a Green Card I would not be able to work and earn a living for us in the USA, rent separate accommodation or fight the relocation case. I had to stay behind, letting my daughter return alone, which was a very painful experience. I borrowed money to pay for the US lawyers, worked twice as hard to earn as much as I could.

Today, I am allowed to see my daughter a few days a month in the USA, which is difficult because of the expense of flights and accommodation. We have the summer holidays with me (here in the EU) and a few days at Easter and Christmas. But my daughter is clearly suffering. Panic attacks, feelings of guilt, fear. Every day she asks me to ask the judge if she can stay with me. Her pain tears me apart too.

I understand that the Hague Convention seeks to ensure the best interest of the child is safeguarded. But if return results in the separation of the child from the main carer because they do not have the legal permission to live and work in the country of habitual residence - how does this serve the best interest of the child?

The stories of these three parents offer a window into the lived reality behind international parental child abduction, wrongful retention and return ordered: stories of loss, resilience - but also hope.

The final case above, in particular, highlights the profound impact abduction can have on the children, here seen through the separation from the mother following the return.

Insights from Experience – The Long-Term Impact of Child Abduction

To gain deeper insight into how children are impacted by parental child abduction, I spoke with Konstanze Welz, a MiPCAS facilitator and MiKK mediator, about her own experience of being abducted as a child.

Having trained in trauma recovery and traumatic stress, she brings both professional expertise and lived experience to her work. This trauma-informed perspective allows her to approach cases of international child abduction with both empathy and understanding. Over recent years, Konstanze has spoken and written publicly about her experience to raise awareness of the long-term effects of parental child abduction, particularly its emotional and psychological impact on children. Konstanze is a regular speaker at MiKK's Cross-Border Family Mediation trainings. She has also authored a chapter in the MiKK Cross-border Family Mediation Textbook⁴, a comprehensive guidebook featuring contributions from 15 international legal and mediation experts, in which Konstanze recounts the personal story of her own abduction at the age of two and a half from Germany to India by her father.

In the interview I conducted with Konstanze, she shared more details and insights about this experience: At the age of two and a half, Konstanze and her younger brother (aged only 10 months) were abducted by their father from Germany to India and returned more than two years later, when she was almost five. Though too young to remember consciously, the experience left deep emotional imprints that shaped her early years and beyond.

Returning to Germany was a profoundly disorienting and painful experience. Konstanze no longer spoke German, had grown up immersed in Indian culture and felt foreign in her own country as well as estranged from her mother. "My mother had 'won' the legal case, but we were not the same children she had lost," she recalls. "Aged almost five, I had become an Indian girl, who spoke only the local language and some English, and I had a close bond with my dad and my Indian family."

The transition was traumatic for both sides: the mother, needing to cope as a single parent with her children who she could no longer communicate with and the children, struggling with uprooted identities and feelings of loss and shame.

As a child, Konstanze coped by becoming compliant and high-achieving, a trauma response known as "appeasing" or "fawning," where a child suppresses their own needs to maintain attachment. She recounts "from the outside I looked like the perfect daughter who did great at school, played an instrument, danced ballet – but my internal world looked very different".

⁴ Cross-Border Family Mediation. International Parental Child Abduction, Custody and Access Cases. Christoph C. Paul, Sybille Kiesewetter, Ishtar Khalaf-Newsome (eds.). 3rd updated and expanded edition, 2023, Frankfurt/Main: Wolfgang Metzner Verlag. p.23. <https://mikk-ev.org/crossborderfamilymediation-handbook/>

Her brother, by contrast, externalised his pain through anger and defiance. Both carried the invisible scars of unrecognised trauma, something she would later call "the black hole" inside her. Neither parent spoke about the abduction. "A blanket of silence was spread over our early childhood years", recalls Konstanze.

Many years later, she developed a severe autoimmune neurological illness, which caused her legs to become almost completely paralyzed. Her neurologists considered this illness incurable and degenerative. Konstanze began trauma-informed therapy and discovered a connection between her physical symptoms and her unprocessed childhood trauma. Through this process she was able to heal, both psychologically and physically, "a medical miracle" as her doctors would term her healing journey. This experience inspired her to study trauma recovery and support other families affected by abduction. "We would have needed professional support, all of us. Both, the abduction and the return more than two years later were very disruptive and disconnecting experiences," she explains.

Speaking from the perspective of a trauma-informed coach, Konstanze emphasises the importance of giving young children voice as even young children need to be heard in parenting disputes. Today, she advocates for a trauma-informed approach in all international child abduction cases. She stresses that child abduction should be recognised as an Adverse Childhood Experience (ACE), given its potential to cause long-term emotional and physiological harm. Studies suggest that having experienced one ACE increases the likelihood for children to have additional ACEs by more than 80%. Early intervention is therefore crucial. Disrupted attachment, chronic stress which can seriously impact a child's development and resilience well into adulthood.

Konstanze's message is clear: Children affected by parental child abduction need early, trauma-informed intervention to protect them from further harm. She further suggests that if a person of authority, such as a judge - at the critical moment of making a return order in a child abduction case - were to alert parents to their child needing trauma-informed support, this could play a crucial role in safeguarding the child's well-being and preventing further harm.

The above account offers an invaluable perspective on resilience, recovery and the importance of trauma-informed support for children but also for parents.

While the MiPCAS support groups are not designed as therapeutic or trauma-informed interventions, they move in this direction by providing a compassionate, structured space where parents find others who have gone through the same experience.

The positive feedback from participating parents reflects this impact of the MiPCAS support groups:

"Finding someone who cares, finding someone who is not afraid to go above and beyond to assist people like us, for me, it is hard to find anyone who is as genuinely concerned at all (...).

The MiKK organization itself has really been great, and the MiPCAS group is a success for me without a doubt. I want to take this time to thank all of the participants, as well as our host. Until this nightmare is over, I will participate and offer as much help as I can. See you next time, love you all, thank you."

Father from the USA

"I was completely devastated before I met this group, but when I heard the stories of the other parents, I felt I'm not alone and I can do this."

Mother

"I am deeply grateful for the peer support meetings organized by MiKK. These meetings have been a sanctuary for parents like me, whose children have been abducted. They provide a safe and compassionate space where all emotions – sadness, loneliness, fear, worry, love, longing, guilt, and more – are not only accepted but understood. What makes these meetings special is the shared understanding within the group. While others may try to empathise, only those who have walked in our shoes can truly grasp the depth of our experiences. In this group, I feel seen and heard in a way that is very comforting. (...)

The professional facilitators deserve particular praise. Thank you, Nicolas, Jamie, Konstanze and Rebecca. Your empathy and thoughtful questioning guide us to reflect deeply and consider new perspectives, often gently challenging us to see things in ways we might not have before. Your skilful facilitation is the cornerstone of the meetings' effectiveness."

Mother from Finland

"I want to express my gratitude for the MiPCAS Group session for the left-behind parents. The sessions are a great support and give good advice on how to deal with abducted children. It offers a valuable opportunity to exchange thoughts and feelings among parents who are going through the traumatic experience of child abduction."

Father from Germany

The MiPCAS initiative adds an important layer of psychosocial support, complementing MiKK's existing International Advisory and Pre-Mediation services, its global network of multi-lingual specialized mediators and bi-lingual expert family lawyers to whom parents are being referred. Together, these services help to create a comprehensive network of legal, emotional and practical assistance for families navigating the complex realities of international child abduction and cross-border custody disputes.

Session 4 – Enforcement

Introduction by Session Chairperson Henry Setright KC

Barrister, 4PB, London, England

A paper is not available for this presentation.

Enforcement of Hague Orders and Provisional Remedy Orders in the USA

Kelly Powers, Deputy General Counsel and Principal, Family Law & Private Clients, Miles & Stockbridge P.C., USA

Stephen Cullen, Principal and Head of Family Law & Private Clients, Miles & Stockbridge P.C., USA

A paper is not available for this presentation.

Enforcement of Hague Return Orders and of Provisional Measures under EU Legislation (Brussels IIb)

Professor Thalia Kruger, Professor of Private International Law, University of Antwerp, Belgium

Introduction

One of the goals of the Brussels IIb Regulation,¹ like its predecessor Regulation (Brussels IIa²), is to enhance and improve the legal regime for the return of abducted children in the EU.³ The decision to include the matter of child abduction in the Brussels IIa Regulation was the subject of much debate, but less so at the time of the Recast to Brussels IIb when the focus was on improving the system.

This short article briefly discusses the framework of Brussels IIb, then turns to the enforcement of return orders in the country to where the child was abducted. It discusses the enforcement of protective measures, as well as enforcement after the second chance procedure and after further abduction. Lastly, it considers the enforcement of mediated agreements.

1. Brussels IIb?

Regulation 2019/1111 is called Brussels IIb in some languages and Brussels II^{ter} in others, being the successor of Brussels IIa or Brussels II^{bis}. It is fully in force since 1 August 2022 (Art. 05) in all EU Member States except Denmark (Recital 96). Despite Recital 95, it is not and has never been in force in the United Kingdom, because Brexit intervened with full effect as of 1 January 2021.

Brussels IIb applies only to proceedings instituted as from 1 August 2022 (Art. 100). The prior Regulation remains applicable for proceedings initiated before this date, and also for recognition and enforcement after this date of decisions taken before.

Regarding the wrongful removal and retention of children, Brussels IIb applies only to intra-EU cases. Where the child is taken from a State party to the 1980 Hague Child Abduction Convention⁴ (hereafter the Convention) outside the EU to an EU Member State, or vice versa, the Convention applies and not Brussels IIb. Where both the State of the child's habitual residence and the State of destination are in the EU, the Convention applies with the a few

¹ Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction.

² Council Regulation (EC) 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.

³ See also the original proposal by the European Commission, COM(2016) 411 of 30 June 2016; L. Luszkat, 'The Brussels IIb Regulation – Most significant changes compared to its predecessor and enhancement of the 1980 Hague Convention on International Child Abduction' (2024) *Journal of Private International Law* 20(1), pp. 129-153, at pp. 144-145. DOI:10.1080/17441048.2024.2338625

⁴ Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.

supplements by Brussels IIb. The supplements are, to some extent, based on good practices identified by Special Commission meetings at the Hague Conference for Private International Law (HCCH), as well as on the requirements of the UN Convention on the Rights of the Child (UNCRC) and the case law of the European Court of Human Rights (ECtHR) and the Court of Justice of the EU (CJEU).

2. Enforcement of return orders in the State to where the child was taken

The enforcement of return orders in the first place happens “at home”, making this an issue of domestic law. This approach was indeed the strength of the Convention which does not require a prior judgment concerning custody. The Convention operates through a specific return mechanism available in the State to where the child has been taken, while that court does not have jurisdiction over the substance of the dispute on parental responsibility. This mechanism gave the Convention the edge over the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children,⁵ which focuses on cross-border enforcement of custody orders.

However, the domestic enforcement is the weakest link in the child abduction chain. Many return orders remain unenforced. The ECtHR has repeatedly found that the delays in enforcement amount to an infringement of the right to respect of family life (Art. 8 of the European Convention of Human Rights (ECHR)).⁶

Brussels IIb supplements domestic law and the Convention as far as possible. It inserts a timeframe for enforcement: this should be speedy. If it takes more than six weeks, the party seeking enforcement or the Central Authority of the place of enforcement may request reasons for the delay (Art. 28(1) and (2)).

Moreover, the EU legislator encourages, through Recital 72, Member States to adequately finance and staff Central Authorities.

3. Protective measures

3.1. General rule

Brussels IIb abolished *exequatur* for all decisions, except for provisional measures (see below). Brussels IIa had already abolished *exequatur* for some decisions. Instead of setting up a common regime for all decisions, Brussels IIb maintained the distinction between so-called privileged decisions and other decisions, making the system unnecessarily complex.

The abolition of *exequatur* means that all decisions are immediately enforceable in all other Member States, without any intervention of a court required. The system is difficult in practice, since enforcement authorities (such as the police) have to treat foreign decisions as if they are local ones. They are assisted by a set of certificates which should, in a uniform way, provide

⁵ Concluded in Luxembourg on 20 May 1980 under the auspices of the Council of Europe.

⁶ For example, case 51323/14, *Tóth v Hungary* (30 January 2018) and case 63551/13MR and DR v. *Ukraine* (22 May 2018).

these authorities with the information necessary to understand the decision that they have to bring into effect.

Provisional measures generally are excluded from the regime of abolition of exequatur. The legislator carved out these decisions in Article 2 of the Regulation, which is the definitions provision.

Provisional measures are thus not considered "decisions" for the Regulation's chapter on recognition and enforcement. Yet, for child abduction, Brussels IIb makes an exception to the exception. Measures ordered for the return of the child and accompanying (protective) measures do benefit from recognition and enforcement under the Regulation (Art. 2(1)b)). This allows for the continuity of protection.⁷ The standard certificate in Annex IV on return orders explicitly includes and provisional or protective measures.

3.2. General grounds for refusal

Since the Brussels IIb Regulation abolished exequatur, there is no moment for a court in the enforcing State to consider the grounds for refusal. This means that the decision will be treated as if it were a domestic decision (Art. 51(1)). The authorities responsible for the actual enforcement will be the ones dealing with the decision.

The grounds for refusal are presented in two places in the Regulation. The first is for recognition: if any of the grounds of refusal are present, the decision "shall be refused" (Art. 39).⁸ From a point of view of pure logic, it seems strange that there is a ground for refusal for recognition but not for enforceability: in order to be enforced, recognition is a necessary (implicit) step. The second place referring to the grounds for refusal, is when the party against whom enforcement is to take place applies for non-enforcement (Art. 59). The possible bases for such application are the same as the grounds for refusal of recognition.

Such refusal is limited to clearly circumscribed situations (Arts. 39 and 41). The first is if recognition or enforcement would be manifestly contrary to public policy, taking into account the best interests of the child. A violation of the rights of defence (particular non-timely service) or the right of holders of parental responsibility to be heard will also amount to a refusal of recognition or enforcement.

⁷ I. Pretelli, 'Article 15' in C. González Beilfuss, L. Carpaneto, T. Kruger, I. Pretelli and M. Župan (eds.), *Jurisdiction, Recognition and Enforcement in Matrimonial and Parental Responsibility Matters* (Edward Elgar, 2023), at p. 177.

⁸ K. Trimmings, T. Le Xuan and K. Kalitsoglou, 'The 1996 Hague Convention on international child protection in the UK post-Brexit: focus on jurisdiction and recognition and enforcement' (2024) *International Journal of Law, Policy and The Family* 38, pp. 1-15. At p. 12, the authors explain that the use of "shall" instead of "may" as in Article 23(2) 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 is significant and might lead to more judgments being recognised under the Hague Convention. In my view, the distinction is rather theoretical, since an authority that "may" refuse the recognition of a judgment for one of the severe reasons mentioned in the Convention seems unlikely to nevertheless recognise it. Conversely, an authority in the EU that wishes to recognise a judgment despite the possible presence of a reason to refuse would likely find that the ground for refusal is not present. This is because the grounds for refusal are not set in stone: they require an assessment by the recognising authority. Public policy, for example, is not always clear. Neither is the question of whether a child should have been given the opportunity to be heard. Authorities can differ in their interpretation of the law on these aspects.

This also applies if the child did not get the opportunity to be heard. This ground for refusal has been amended in Brussels IIb. Under the previous Regulation, the yard stick for the standard of hearing the child was that of the domestic law of the EU Member State where enforcement was to take place. That is no longer the case. The yard stick is now no longer related to domestic law, but to the international standard of the UNCRC. The idea is that all Member States are bound by the same standard and, only if that standard is not respected, is there is a right of refusal. This means that the enforcing authority should not expect the standard of hearing the child to be exactly the same as in their own State, but to test whether it is in conformity with the UNCRC. In theory this could lead to more enforcements. The amendment is linked to a new provision in Brussels IIb that requires authorities in Member States to hear the child (Art. 21)⁹ – thus a positive obligation, while this obligation was previously only imposed by international and domestic law. Article 21 refers to the UNCRC and to the EU Charter of Fundamental Rights, which also contains the obligation to give the child an opportunity to be heard (Art. 24). In this sense, the addition of Art. 21 is not really a change of the position in law, but a reminder to authorities of the already applicable legal regime.

However, it is not certain that this will be the case in practice. Authorities in States that have legislation to hear children from a very young age, might consider their legislation to be in compliance with the UNCRC, yet consider legislation that does not provide the same standard as infringing the UNCRC. However, taking out the reference to domestic law means that the standard is now under the auspices of the CJEU. This Court may thus respond to questions on the appropriate standard and give guidance that leads to a common standard in the EU.

Moreover, a decision cannot be recognised or enforced if there is a later contradictory decision concerning the parental responsibility of the same child. This decision could emanate from the Member State where recognition is sought, or from another Member State, or from the State where the child had their habitual residence outside the EU. It is always the latter decision that gets preference. This explains why there seems to be fewer decisions on recognition and a proliferation of legal proceedings.

It should be noted that there is no ground for refusal in the case of any improper exercise of jurisdiction by the Court that gave the order. This is different from the Hague Child Protection Convention (Art. 23(2)a)).

3.3. Suspension

Brussels IIb allows for the suspension of enforcement in specific situations (Art. 56). The first is if there is an appeal pending of the judgment, or an application for the rectification of the certificate.

The insertion of grave risk for the child due to a temporary impediment or a significant change of circumstances is controversial and caused much debate during the legislative process. According to Baruffi, this provision seeks a balance between automatic enforcement based on

⁹ See also Luszkat, note 3, at p. 142.

mutual trust on the one hand, and the concern for the best interests of the child on the other hand.¹⁰

Enforcement shall be resumed as soon as the obstacle ceases to exist.

3.4. Protection orders Regulation

While the Convention and Brussels IIb allow for mechanisms for the protection of the child, they are silent about the protection of taking parents (particularly mothers).¹¹ In the EU, Regulation 606/2013 on mutual recognition of protection measures in civil matters might be of use here. This Regulation allows for the automatic enforceability of civil protection orders throughout the EU.¹²

4. Enforcement after the second chance procedure

The infamous second chance procedure is more restricted under Brussels IIb than it was under Brussels IIa: it now only applies within proceedings on substance on parental responsibility for the child. This was probably always the intention of the second chance procedure, and it was a misapplication that led to it becoming a separate procedure providing an overriding mechanism.¹³

For these decisions, exequatur had already been abolished under Brussels IIa. The EU legislator has maintained a "privileged" regime for these decisions. Firstly, these decisions may be declared enforceable even despite pending appeal (Art. 45(2)), and even if this possibility did not exist under domestic law. Secondly, the available grounds for refusal are restricted. The only such ground for these decisions is the existence of a later contradictory decision (Art. 50).

The standard certificate in Annex VI aims to facilitate cross-border enforcement.

¹⁰ M.C. Baruffi, 'The Interaction of the 1980 Child Abduction Convention with the Brussels II-ter Regulation: A Focus on the Regime of Recognition and Enforcement' (2023) *Laws* 12(76), pp. 1-10, at p. 6. <https://doi.org/10.3390/laws12050076>

¹¹ See also C. Honorati, 'Jurisdiction to Take Protective Measures in the State of Refuge in Child Abduction Cases' in K. Trimmings, A. Dutta, C. Honorati and M. Župan (eds.), *Domestic Violence and Parental Child Abduction. The Protection of Abducting Mothers in Return Proceedings* (Intersentia, 2022), pp. 139-160, at p. 160. On the other hand, M. Wilderspin, 'The Potential Role of Regulation 606/2013 in Protecting the Abducting Parent in Return Proceedings' in the same book, pp. 177-186, argues at p. 186, that the reference in Art. 27(5) of Brussels IIb to 'measures to protect the child' is sufficiently broad to include the protection of the taking parent.

¹² For its use in the context of wrongful removal or retention of children across borders, see the *Best Practice Guide: Protection of Abducting Mothers in Return Proceedings: Intersection between Domestic Violence and Parental Child Abduction*, prepared by K. Trimmings, O. Momoh, C. Honorati, A. Dutta and M. Župan under the auspices of the POAM project, <https://research.abdn.ac.uk/poam/resources/guide-to-good-practice/>; K. Trimmings *et al.*, note 11.

¹³ Baruffi, note 10, at p. 4, uses the word "clarified" when explaining the amendment. She also confirms that several authors were of the view that this mechanism should have been deleted altogether.

5. Further abduction

As stated above, the usual situation is that the return order must be enforced in the State where it is issued, as this is the place to where the child was taken. However, it may happen, and certainly on a continent where the borders between countries are open, that taking parents take their children to other countries. Brussels IIb acknowledges that the recognition and enforcement regime should also apply to this situation (Recital 16).

As noted under 3.1 above, the certificate in Annex IV facilitates enforcement of return orders. Such an order is enforceable everywhere in the EU from the moment it is enforceable in the Member State where it was issued. The return order thus travels with the child. It is not necessary to institute new return proceedings.¹⁴

6. Enforcement after mediation

In Brussels IIb, the EU legislator encourages mediation (Art. 25). Courts must, at the start of the proceedings and at any stage during the proceedings, invite parties to consider mediation or other forms of alternative dispute resolution.

A mediation agreement can lead to an authentic instrument or agreement, which will be enforceable to the extent that it is enforceable in the Member State in which it was issued (Art. 65(2) and the standard certificate in Annex IX). However, Brussels IIb classifies some agreements approved by a court or other authority as 'decisions' if the court or authority made an examination of the substance (Recital 14).¹⁵ These court-approved agreements will thus fall under the recognition and enforcement regime for decisions (discussed above).

The grounds for refusal of recognition and enforcement of authentic instruments and agreements are similar to those for decisions (but not to those of the privileged decisions).¹⁶ Refusal grounds include incompatibility with public policy, a violation of the rights of defence or of the child's right to be given the opportunity to be heard, and contradictory later judgments (Art. 68).

Conclusion

Enforcement seems to be the weakest link: often this has to take place under domestic law, but it is fraught with practical difficulties. The matter has received much attention in the new Brussels IIb Regulation, which sought to address some of the difficulties. It is unfortunate that the Regulation is so complex, with its different regimes. However, its use of standard certificates can facilitate cross-border enforcement. To establish an effective enforcement regime, the EU legislation has to be complemented by adequate domestic procedures.

¹⁴ See also L. de Lima Pinheiro, *A General Approach to the Recognition of Other Member States' Decisions under the Brussels IIter Regulation*, CIDP Research Paper N.º 20/2022, at p. 7.

¹⁵ *Ibid.*, at p. 9.

¹⁶ This is clear through the structure of this section of Brussels IIb. See also C. González Beilfuss, 'Article 65' in González Beilfuss *et al.*, note 7, at p. 491.

Enforcement of Hague Orders in Brazil: Legal Framework and Challenges

Janaina Albuquerque, Attorney, Brazil

Introduction

Enforcement represents one of the most critical dimensions of the 1980 Hague Convention on the Civil Aspects of International Child Abduction (the Convention). While this treaty establishes the prompt return of children as one of its core aspects, the concrete realisation of this mandate depends on the framework and institutional mechanisms available at the domestic level. This article examines the matter from the Brazilian perspective. It first outlines the jurisdictional structure and procedural rules governing return requests, then turns to the challenges encountered in practice, including legal complexities and divergent judicial approaches. Finally, it considers future developments in light of the recent landmark judgment of the Supreme Federal Court, which established interpretative parameters for the Convention and instituted measures to ensure its application is consistent with constitutional principles.

Framework, Procedural Steps and Challenges

Proceedings under the Convention in Brazil are governed by the Civil Procedure Code¹ and supplemented by Resolution no. 449/2022 of the National Council of Justice (CNJ).² Jurisdiction lies with the Federal Courts,³ and each Regional Federal Court, through its internal regulations, designates which of its divisions will be exclusively responsible for adjudicating child abduction cases.

As a rule, any dispute involving a child receives priority processing⁴ and necessarily requires the participation of the Public Prosecutor's Office.⁵ Its role is to act as *custos legis*, safeguarding children's rights and ensuring the correct application of the law. This function does not amount to individual representation of the child, since Brazilian law does not provide for the appointment of an independent representative such as a guardian *ad litem*.

Judicial proceedings are generally initiated by the Attorney General's Office (AGU), which acts on behalf of the Brazilian State in requesting the child's return.⁶ Left-behind parents may retain private counsel to assist the AGU, but they also have standing to file an application directly through their own attorney if they prefer to do so. In such cases, the AGU must be summoned

¹ Brazilian Civil Procedure Code (Law no. 13.105/2015). Available in English at: <https://www.lawyerinbrazil.com/wp-content/uploads/2019/06/BRAZILIAN_CODE_OF_CIVIL_PROCEDURE-1.pdf>.

² Resolution no. 449/2022 of the Brazilian National Council of Justice (CNJ). Available in Portuguese at: <<https://atos.cnj.jus.br/files/original131217202204016246fa3199959.pdf>>.

³ As provided by Art. 109 (1), Constitution of the Federative Republic of Brazil of 1988. Available in English at: <<https://www.globalhealthrights.org/wp-content/uploads/2013/09/Brazil-constitution-English.pdf>>.

⁴ As provided in Art. 152 (2), Brazilian Child and Adolescent Statute (Law no. 8.069/1990). Available in Portuguese at: <https://www.planalto.gov.br/ccivil_03/leis/l8069.htm>.

⁵ Art. 178, Brazilian Civil Procedure Code, see note 1.

⁶ Art. 21, Brazilian Constitution, see note 3.

to intervene, acting as an assistant to the applicant. Taking parents, in turn, may request assistance from the Public Defender's Office⁷ if their household income falls within the eligibility threshold. Otherwise, they must hire private representation.

Once the application is received, a mediation hearing must, in principle, be scheduled within 30 days,⁸ which may be likely conducted by the judge assigned to the case. If no agreement is reached, the judge determines the evidence to be produced and tentatively schedules a fact-finding hearing for approximately 30 days later.⁹ It is also common to establish, during the mediation attempt, a provisional contact arrangement between the child and the left-behind parent.

If custody proceedings are initiated by the taking parent, the subsequent filing of a Hague application should result in the suspension of the former, pursuant explicitly to Art. 22 of the Resolution no. 449/2022.¹⁰ As soon as the Central Authority becomes aware of the parallel dispute, it notifies the Family Court of the pending abduction matter, and the Federal Court responsible for the abduction case does the same. This mechanism is intended to safeguard jurisdictional integrity and to ensure full compliance with Art. 16 of the Convention.

In practice, however, coordination between the two spheres is not always straightforward. Proceedings involving children are confidential, and there is currently no established channel for direct communication between Family and Federal Courts to cross-reference information. At times, Family Court judges may be reluctant to suspend custody proceedings, either because they do not regard the Hague framework as directly applicable or due to uncertainty about its operation.

It is important to note that Hague cases are relatively rare, and many judges may preside over only a few, if any, during their tenure. Hence, the level of familiarity with the Convention varies, which adds a layer of complexity and reflects the broader challenge of ensuring consistent and effective application.

Notably, interpretative disparities are recurring with respect to the exceptions to return. Courts have long adopted different approaches, for instance, when assessing what constitutes a grave risk of harm or whether a child is sufficiently mature to object to the return. Given the technical nature of the Convention and its intricacies, doubts may nevertheless arise at earlier stages in regard to the meaning of other key terms. The notion of "rights of custody" under Article 5 exemplifies this complicity, as the determination of whether a removal or retention is wrongful depends on concepts found in foreign law. Another illustration refers to the definition of "prompt return". An excessive emphasis on speed can result in the compromise of procedural safeguards and risk reducing abduction proceedings to an automatic merely enforcement mechanism.

In order to secure the efficiency of the Convention, a wide range of preventive and, at times, coercive measures can be put in place either at the commencement of or during the proceedings despite the lack of legal provision. By default, courts may restrict the child and

⁷ Complementary Law no. 132/2009. Available in Portuguese at: <https://www.planalto.gov.br/ccivil_03/leis/lcp/lcp132.htm>.

⁸ Art. 10 (III), Resolution no. 449/2022 of CNJ, see note 2.

⁹ *Ibid*, Art. 14.

¹⁰ *Ibid*, Art. 22, sole paragraph.

the taking parent's ability to leave the city or State and order the judicial retention of travel and other identification documents. Stricter reports have included the imposition of ankle monitors, the freezing of bank accounts, the interception of telephone communications, and regular police patrols around family residences.¹¹

When it comes to the enforcement of return orders *per se*, divergent practices are likewise observed. Judicial proceedings take the form of search and seizure operations, and any resistance to compliance may therefore entail police intervention. Some courts rely directly on police enforcement, while others adopt a more cautious approach and require the participation of psychologists or social workers to mitigate potential harm to the child. Executing return orders is not, in itself, the main difficulty, since a high level of institutional intervention is available. The greater challenge lies in the procedural framework, as Brazilian law provides multiple avenues for appeal. The need to exhaust these remedies can lead to considerable delays, deferring returns for extended periods in detriment of the urgency that underpins the Convention.

Lastly, Brazil is not yet a Contracting State to the 1996 Hague Convention, which significantly limits the resource to protective measures. Courts are increasingly attentive to the post-return scenario and the potential consequences that affect the taking parent and the child. These extend to the initiation of criminal proceedings; cancellation of residence permits or visas, leading to deportation or impediments to re-entry; the imposition of fines; and the loss of custody and access rights. Other risks relate to the absence of financial provisions, adequate housing, or legal aid, as well as the possible need for restraining or non-molestation orders. Awareness of these circumstances may lead courts to postpone enforcement of a return order until assurances are provided that the relevant measures will be respected.

Future Developments

On 27 August 2025, the Brazilian Supreme Court delivered a landmark judgment in two Direct Actions for the Declaration of Unconstitutionality (ADIs 4245¹² and 7686)¹³ concerning the Convention which also addressed the issue of enforcement. The purpose of these actions was not to withdraw Brazil's accession to the Convention by declaring it unconstitutional, but rather to ensure that it is applied in conformity with the constitutional principles.

ADI 4245 broadly addresses the interpretation of the conventional framework in light of Articles 1, 5, and 227 of the Brazilian Constitution, which respectively safeguard the principles of human dignity, equality, and the best interests of the child. As for ADI 7686, the focus is to demand that courts explicitly consider domestic violence as an exception to the return under Article 13(1)(b) of the Convention. The legal basis for the latter action lies in Article 226(8) of the Constitution, which establishes that the family is the foundation of society and, by virtue of its special protection status, the State must adopt all necessary measures to suppress violence within family relationships.

¹¹ As described in the testimonials given at a public hearing held on 1 July 2025, by the temporary Sub-Commission of the Brazilian Senate to debate the 1980 Hague Convention. Full video available, in Portuguese, at: <https://www.youtube.com/watch?v=Amu46BaeF6o&ab_channel=TVSenado>.

¹² Available in Portuguese at: <<https://portal.stf.jus.br/processos/detalhe.asp?incidente=2679600>>.

¹³ Available in Portuguese at: <<https://portal.stf.jus.br/processos/detalhe.asp?incidente=6985097>>.

The Justices preliminarily observed that the primary purpose of the Convention is to ensure the prompt return of children wrongfully removed or retained, with reciprocity and legal predictability considered essential both for the effectiveness of international cooperation and for maintaining Brazil's international credibility. Notwithstanding, it was also recognised that the domestic civil procedure legislation, while aimed at safeguarding due process and the right of defense, has contributed to significant delays in practice. For that reason, the judgment ultimately combined interpretative parameters with structural measures intended to improve enforcement.

A first set of determinations was directed to the CNJ, as the Court ordered that, within sixty days, a new regulation must be issued to revise the existing Resolution no. 449/2022. The updated version must establish procedural guidelines to ensure that abduction cases are concluded within one year, while fully guaranteeing adversarial proceedings and the right of defense. In addition, respondents will now be required to disclose the existence of any ongoing custody cases in Brazil, which will be coordinated and monitored by the CNJ's Forum for Children and Youth. The Court further required that electronic case management systems be adjusted to mark actions with preferential tags, thereby reinforcing the need for priority handling.

The Federal Regional Courts were given specific responsibilities such as requiring the establishment of specialised support centers designed to encourage amicable solutions, adopt restorative practices, and provide psychosocial expertise. Moreover, by recognising the frequent overlap between custody disputes in State Family Courts and child abduction proceedings in Federal Courts, the Justices mandated the creation of judicial cooperation protocols to allow for the exchange of information between jurisdictions and the joint use of multidisciplinary teams to reduce the risks of fragmented or contradictory decisions.

The Executive Branch was likewise instructed to reinforce its role in enforcement. The Federal Central Authority (ACAF), which currently belongs to the National Secretariat of Justice of the Ministry of Justice and Public Security, is to be strengthened through the adoption of structural and administrative measures, the setting of clear timelines, and the definition of performance indicators to enhance its effectiveness.

Beyond these immediate initiatives, the Court encouraged Brazil to evaluate accession to the 1996 Hague Convention as a means of broadening the range of undertakings through the adoption of protective measures. It also called on the Legislative Branch, in coordination with the Executive, to consider enacting a specific law to thoroughly regulate the processing of Hague cases. Such legislation would establish clearer procedural steps and evidentiary parameters and thus address existing gaps, as well as ensure greater stability and predictability in terms of enforcement.

As for the material aspects of the judgment, the Court unanimously upheld the Convention's compatibility with the Constitution, affirming its supra-legal status as a treaty designed to protect children's rights. It however held that, in order to be constitutionally compliant, the Convention must be interpreted from a gender-based perspective, given that most taking parents are mothers and that women are therefore a disproportionately affected demographic in child abduction cases.

Three important innovations were introduced to standardise and guide the interpretation of the Convention going forward. First, domestic violence was recognised as a valid exception under Article 13(1)(b), with the Court establishing that this ground can no longer be dismissed simply because it is not expressly mentioned in the Convention. Second, it was clarified that children can be reflexively affected by domestic violence and that courts cannot disregard

that such exposure also constitutes harm. Lastly, it recognised that migrant women face multiple and intersecting vulnerabilities, requiring courts to adopt a contextual assessment of each situation under a gender lens.

This ruling gains additional significance because of its timing, just ahead of the Second Forum on Domestic Violence and the Convention, to be held in Brazil in October 2025. Following the first edition, held in South Africa in 2024, the Forum will once more gather specialists from around the world to discuss the complex challenges that arise in abduction cases involving allegations of domestic and family violence. In this context, the Supreme Court's decision is expected to serve as an important reference point, offering methodological guidance that strengthens a gender-sensitive and human rights-based interpretation of the Convention.

Conclusion

As in many Contracting States, enforcement is a particularly complicated stage of child abduction cases in Brazil. Procedural delays, fragmented application, and divergent approaches compromise the mechanism of the Convention and hinder the achievement of its overarching aims. Nevertheless, recent efforts demonstrate a clear commitment to strengthening its operation. The Supreme Court's decision in ADIs 4245 and 7686 established important interpretative parameters and introduced practical measures to enhance coordination and legal certainty. These developments constitute a significant step toward reconciling the need for procedural urgency with the protection of fundamental rights and the prioritisation of the best interests of children. The forthcoming stage will be decisive, as consistent and timely implementation will determine the effectiveness of this jurisprudential shift and its capacity to ensure compliance with international obligations while upholding constitutional principles.

Enforcing Family Orders in the UAE - Where Are We Now?

Alexandra Tribe, Managing Partner, Expatriate Law

Between 2020 and 2025, the UAE introduced a series of new laws and made substantial amendments to existing legislation to better accommodate the diverse family law needs of its growing expatriate population. Historically, personal status matters in the UAE were governed primarily by Sharia-based principles under the Federal Personal Status Law, which many non-Muslim and foreign residents found incompatible with their cultural and legal expectations. Recognising the need for a more inclusive and internationally aligned legal framework, UAE lawmakers implemented reforms that allowed for alternative legal regimes tailored to non-Muslims and foreign nationals. These changes reflect the government's commitment to modernising its legal system, fostering legal certainty for international families, and enhancing the UAE's global reputation as a progressive jurisdiction for expatriates living, working, and raising families in the region.

There are now four operable family law regimes in the UAE:

1. Federal Decree-Law No. 41 of 2022 for non-Muslims as applied in the personal status court
2. Federal Decree-Law No. 41 of 2024 for Muslims as applied in the personal status court
3. Foreign law as applied within the Personal Status Court
4. Resolution No. (8) of 2022 concerning the Marriage and Civil Divorce Procedures in the Emirate of Abu Dhabi (Resolution 8 of 2022) applied within the Civil Family Court of Abu Dhabi.

The new laws for non-muslims aim to adopt a more western approach to family law matters, moving away from Sharia law principles which underpinned the previous Personal Status Law, by providing equality to parents. The starting point for custody for non-Muslims under the Federal Decree-Law No. 41 of 2022 (applied in all Emirates apart from Abu Dhabi) and Resolution 8 of 2022 applied in Abu Dhabi, is joint custody.

There are also significant updates in the family laws for Muslims. Federal Decree-Law No. 41 of 2024, removes the potential for switching custody of children at 11 (for a boy) and 13 (for a girl) from mother to father and replaces it with a starting point that children remain with their mothers until the age of 15 when they themselves can decide a change if desired.

The recent family law reforms in the UAE carry significant practical implications for lawyers and residents, including both citizens and expatriates. These changes have established a dual legal system: one grounded in Sharia law led principles for Muslims, and a secular civil framework for foreigners and non-Muslims.

There have been updates too to the laws on enforcement of family orders in the UAE. The new statutory provisions on enforcement of foreign orders in Dubai are set out at Federal Decree-Law No. 42/2022 On the Promulgation of the Civil Procedure Law (Chapter 4, Article 222):

- i. Judgments and orders delivered by a foreign country may be ordered to be executed in the State under the same conditions as prescribed in the law of that country for the execution of judgments and orders issued in the State.

- ii. The execution, including the particulars specified in Article (44) of this Law shall be made on a petition and submitted by the person concerned to the execution judge. The judge shall issue his order within five days from the date of its submission. His order may be appealed in accordance with the rules and procedures prescribed for filing an appeal. It shall not be admissible to order the execution before the verification of the following:
 1. The courts of the State are not exclusively competent in the dispute in which the judgment or order was rendered and the foreign courts that issued it are competent in accordance with the rules of international jurisdiction established by their law.
 2. The judgment or order is delivered by a court in accordance with the law of the country in which it was issued and duly ratified.
 3. The litigants in the case in which the foreign judgment was delivered were summoned and were duly represented.
 4. The judgment or order has the force of *res judicata* in accordance with the law of the court which issued it, provided that the judgment has acquired the force of *res judicata* or provided for in the same judgment.
 5. The judgment does not conflict with a judgment or order rendered by a court of the State and does not contain anything contrary to public order or morals.
- iii. The execution judge shall have the right to obtain the documents supporting the application before issuing his decision.

Enforcement of foreign family orders in the UAE often failed because jurisdiction for similar claims existed in the UAE as a result of the parties' residence there. Claims therefore fell foul of Article 222 (5) above. However, legal changes announced in September 2022 appear to have improved the ability to enforce English family orders in the UAE, particularly where no proceedings are or had been ongoing in the UAE at the time of enforcement. An English commercial case ([Lenkor Energy Trading DMCC v Puri \[2020\] EWHC 75 \(QB\)](#)), saw the successful enforcement of a Dubai order within English courts. On 13th September 2022, the UAE Ministry of Justice wrote a letter to the Dubai courts, citing the above case enforced in England, and inviting the courts to enforce English court orders in Dubai under the principle of reciprocity.

There is anecdotal evidence of foreign family orders now being successfully enforced in the UAE, including for the return of children who had been abducted to the UAE. However, the process can still be slow, particularly if vehemently opposed by the abducting parent through a series of court appeals.

In an abduction context, it is crucial to act quickly to obtain a foreign order and then lodge an enforcement case in the UAE. This must be done before the respondent issues his or her own application in the UAE (for example for custody), thereby seizing jurisdiction of the UAE courts. This could potentially block enforcement as the UAE court has already seized jurisdiction (see Article 222 (5) above).

It is helpful if the foreign order addresses the Article 222 criteria, for example:

1. Include recitals confirming that the respondent was served with the application and attended court or was represented
2. Confirm that the foreign court had jurisdiction to make the orders

The resulting order should then be notarised and legalised at the Ministry of Foreign Affairs and UAE embassy in the foreign country, before being translated into Arabic and notarised further in the UAE. This can take 2 or more weeks to undertake.

When considering the enforcement of children orders in the UAE, it is also important to consider the limitations of enforcement applications. Certain orders would not be enforceable; for example:

1. Orders that are contrary to public order or morals. Those could be orders that relate to children of unmarried parents, or children of same sex couples. Presently, such orders could not be enforced in the UAE.
2. Orders that conflict with orders already made by the UAE courts.

Despite these positive developments, enforcement is often difficult if the foreign order to be enforced was made without the participation of the respondent, or the respondent being represented. This can often be the case in child abduction proceedings.

For this reason, it is still advisable to put in place safeguards for child relocation or contact cases where wrongful retention of a child in the UAE is feared. Such safeguards have been ordered by the English courts within children proceedings for more than a decade for example in [Father v Mother \[2020\] EWHC 1929 \(Fam\) \(03 July 2020\)](#), [M \(Children\) Non-Hague Convention State \[2020\] EWHC 277 Civ, Re A and B \(Children: Return Order: UAE\) \[2022\]](#) and [MA v TA \[2023\] EWFC 271](#). Safeguards can be tailored to the specific facts of each case but usually involve the registration of an agreed order with the UAE courts setting out the living arrangements for the children, travel and contact. Such orders can then be enforced swiftly through the UAE courts as needed.

In cases of outward child abduction from the UAE, parents must exercise caution when considering whether to report the abduction to local authorities. Under UAE law, parental child abduction is classified as a criminal offence and filing a complaint can trigger criminal proceedings against the abducting parent. While this may seem like an appropriate course of action at the time, the existence of criminal charges can later become a significant barrier to the child's safe return, particularly if the accused parent is unwilling to re-enter the UAE for fear of arrest or prosecution. As such, when negotiating the return of a child to the UAE, it is often advisable to include the withdrawal of any criminal complaint as part of a comprehensive package of legal and practical safeguards. This should be formally actioned through the Public Prosecution Office to help facilitate a cooperative resolution and support the enforcement of agreed custody or contact arrangements.

In conclusion, the UAE's evolving family law landscape reflects a deliberate and progressive response to the needs of its diverse population. By establishing distinct legal regimes for Muslims and non-Muslims and improving the enforcement mechanisms for foreign family court orders, the UAE has taken significant steps towards legal modernisation and international cooperation. However, while these reforms offer greater clarity and protection for expatriates and citizens alike, practical challenges remain, particularly in the enforcement of foreign judgments and the complexity of cross-border child custody disputes. Legal practitioners and families must continue to navigate these changes carefully, ensuring that procedural safeguards are in place to protect the welfare of children and uphold the integrity of international legal obligations.

Closing remarks by the Meeting Chair, Professor Marilyn Freeman

Barbara Mills KC spoke last night about the need to keep family law young. If we consider what she meant by that and, if, perhaps, we substitute 'relevant' or 'contemporary' for 'young', she might have been referring to the subject of this Experts' Meeting on the Continued Nurturing of the 1980 Hague Convention. Philippe Lortie spoke at this meeting in the same vein when he referred to this being the time to break the vicious circle and to reset the clock. But how do we do these things? This Experts' Meeting has been an opportunity to think about and discuss precisely that.

We have talked at this meeting about many of the issues of concern relating to international child abduction and the 1980 Hague Convention, some of which were:

Prevention of abduction

There are, of course, many different interests implicit in cases of international child abduction, and they are all important. However, none are more important than the children involved. The powerful video which we watched this morning demonstrated so clearly the trauma this young woman had suffered through her childhood abduction experiences. We have to protect children from these devastating and, sometimes lifelong, effects of abduction, and the best way to do this is to prevent abductions taking place where it is possible to do so. Is there more that we can do about this?

The inconsistencies in legal aid and public funding, and the hardship that these cause.

Needless to say, it would be great if these imbalances could be evened up, but we have to be realistic about this, and the undoubted financial implications for often already over-stretched State Parties mean that an improvement in the availability of public funding is unlikely. What else can be done to address this issue? Although an imperfect answer, is there a way, with concerted professional effort, of further developing the specialist pro bono facilities which exist in some countries, or is there an even better way of meeting this need without relying on the overburdened work diaries and goodwill of family lawyers?

The lack of post abduction support services for children and families who have experienced an abduction event.

Some interesting local initiatives were discussed, but there is a clear need for a broader, accessible system of support which recognises the urgent need which has been identified and observed by family justice professionals around the world.

Enforcement

This was agreed to be a most critical issue as, without an effective means of enforcing orders relating to the return of the child, the orders obtained are, at best, meaningless and may, in fact, add greatly to the distress already suffered. Enforcement is subject to the diverse domestic systems of the State Parties. What can we learn from the various systems in place about what was labelled during the meeting as the weak link of the 1980 Hague Convention. If it is, indeed, the weak link, we must not allow it to remain so.

The rights of the child under the UNCRC

In particular, we considered Article 3 (best interests), Article 5 (evolving capacities), Article 8 (identity), Article 11 (illicit transfer and non-return), and Article 12 (right to express views freely) and we reminded ourselves of the need for those rights to be fully implemented in our treatment of children who have been abducted and whose cases are dealt with under the 1980 Convention.

Outcomes

There was general agreement that we need to know more about what happened following the return decision being made. Were welfare proceedings held in the State of habitual residence as anticipated? Did relocation proceedings take place? Did the abduction feature in those proceedings and was Article 19 of the Convention (status quo ante) honoured appropriately post-return?

I informed EMII of the survey-based research project on outcomes which will be undertaken by Nicki Taylor and me. This has now received ethical approval from the University of Westminster and will commence shortly. We asked for the help of those present regarding recruitment for the research sample to ensure that the surveys reach as many eligible people as possible around the world. In that way, we can gather a sufficiently sizable sample to make the resulting data useful to the fullest extent possible for those working in this emotionally-charged field. We were greatly heartened by the enthusiasm with which this news was received by the Experts present, and their willingness to assist us as requested.

How do we get there? Think Global, Act Local

How do we get to the point of keeping the 1980 Hague Convention young? Of addressing the issues which will nurture the Convention?

My suggestion is that we think global and act local¹. We shouldn't feel that there is nothing that we can do to make improvements and changes. We shouldn't be put off by the perceived enormity of what needs to be done. Instead, we should all continue to think about, and where possible introduce, ways we can address these issues within our own jurisdictions, our own disciplines, and our own practices.

Philippe came up with some suggestions this morning. Let's find other suggestions and ideas to go with them which fulfil the aim of this gathering – the Continued Nurturing of the 1980 Hague Convention. Let's see what we can come up with when we really focus on what can be done.

EMIII

We look forward enormously to EMIII which will be held in London around this time next year when we expect to be able to report on our Outcomes Research Project, hear about solutions

¹ As far as I am aware, this is a phrase which was coined by Patrick Geddes, a Scottish Urban Planner and Sociologist, to explain the need to understand and appreciate the whole environment while actively engaging with local practice.

and new initiatives in place around the world, plan where to go next, and draw to a conclusion the work which we, and others, have done together on these issues at EMI and EMII.

International Child Protection and the Activities of the International Hague Network of Judges in Brazil

Guilherme Calmon Nogueira da Gama¹ and Inês Virgínia Prado Soares²

SUMMARY:

1. International legal cooperation
2. Structure of the International Hague Network of Judges
3. Responsibilities of Brazilian Network Judges before judicial and administrative authorities in Brazil
4. Responsibilities of Brazilian Network Judges before judicial authorities in other States
5. Development of the international community of Network Judges.

1. International legal cooperation

In contemporary times, due to the phenomenon of globalization and the internationalization of relations, Private International Law is increasingly called upon to resolve specific issues regarding complex cases. In the context of family relationships, this finding is heightened due to numerous factors that occur in conflicts between couples whose relationship has broken down, and the consequences for their children's well-being and assets.

International legal cooperation is provided for in Article 26 of the Brazilian Code of Civil Procedure, in the following terms: "Art. 26. International legal cooperation shall be governed by treaties to which Brazil is a signatory party and shall observe: I – the guarantees of the due process of law in the requesting State; II – equality of treatment of nationals and non-nationals, resident or not in Brazil, with regard to access to justice and the handling of the lawsuits, assuring legal aid to the indigent; III – the public nature of proceedings, except in cases of confidentiality as provided for in Brazilian statutory law or in that of the requesting State; IV – the existence of a central authority to receive and send cooperation requests; V – spontaneity in the transfer of information to foreign authorities". Furthermore, the practice of acts that contradict or produce results incompatible with the fundamental norms that govern the Brazilian State shall not be permitted (Article 26, § 3, of the CPC).

Cooperation, collaboration and solidarity lead to the unification of people and institutions, including at the international level, and lead to the building of a freer, fairer and more supportive community.

In the international system of human rights protection, it is essential to give effectiveness to the conventional rules that deal with the protection of children at the international level. It is noteworthy to highlight the jurists' and court concerns in this regard.

¹ Judge of Liaison (IHNJ) National Coordinator of the Brazilian Network of Judges in Brazil, President of the Federal Court of the 2nd Region (Rio de Janeiro) in Brazil.

² Judge of Liaison (IHNJ). Judge of Appeal of the Federal Court of the 3rd Region (São Paulo) in Brazil.

For some time now, the European Court of Human Rights has been deciding on some cases on whether the possible failure to comply with a court order to return a child to the State of habitual residence constitutes a violation of Article 8 of the European Convention on Human Rights based on the systematic and teleological interpretation of Article 13 of the 1980 Hague Convention – which deals with the exceptions to the return of abducted child – and the right of the child to have his or her case decided based on his or her best interests (BEAUMONT, Paul R., p. 19).

Interestingly, in 2023, the Inter-American Court of Human Rights made an unprecedented and important analysis of the links between violations of rights and guarantees established by the 1969 American Convention on Human Rights and the 1980 Hague Convention. It ruled that delaying the return of a child after a court decision constituted a violation of the 1969 American Convention on Human Rights.

In Brazil, the National Council of Justice (CNJ) regulated the issue of judicial cooperation through Resolution No. 350/2020, providing for cooperation between the bodies of the Judiciary, as well as the inter-institutional cooperation between the bodies of the Judiciary and other institutions or entities – whether or not they are part of the Justice System – that can contribute to the administration of Justice (art. 1).

Among the guiding principles of judicial cooperation, we can highlight efficiency, reasonable duration of the process, and unity of national jurisdiction. This new feature introduced by the Brazilian Code of Civil Procedure (CPC) of 2015 and regulated by the CNJ enables collaborative action by the actors in the justice system in the search for celerity and efficiency in the Judiciary, both in its judicial and administrative activities.

Judicial cooperation opens a range of possibilities for joint action by the bodies of the Judiciary, in pursuit of a common goal: improving the service provided to society, as Mauro Cappelletti and Brian Garth had already announced within the scope of the renewal waves linked to access to justice.

Since its inception, the Hague Conference on Private International Law has given a prominent place in its work agenda to issues of Family Law in general and, in particular, to the protection of children (HERRANZ BALLESTEROS, Mónica, p. 27). There is currently a better legal environment at the international level for cross-border issues related to the protection of children (HCCH, Practical Manual of the 1996 Convention, p. 9).

In recent times, the Hague Conference on Private International Law is gradually expanding the clause of the best interests of the child as a guiding criterion for the interpretation and application of conventional rules, with the Convention on the Civil Aspects of International Child Abduction – the 1980 Hague Convention – and the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children – the 1996 Hague Convention – being the greatest examples of such conventional treatment.

The purpose of this presentation is to highlight the importance of judicial cooperation in the combat against international child abduction, focusing on the instruments related to the work of the International Hague Network of Judges (IHNJ). With 25 years of experience, the Hague Network of Judges for the 1980 and 1996 Hague Conventions has improved the development of its duties with respect to procedural guarantees of due process, in addition to allowing greater spontaneity and speed in the transmission of information to foreign judicial and administrative authorities. The article is developed along three main axes: i) the structure of the International Hague Network of Judges; ii) the duties of Network Judges before the judicial

and administrative authorities of their own State; iii) the duties of Brazilian Network Judges before the judicial authorities of another State.

It is increasingly necessary to develop an international framework with regard to cross-border child protection issues. The operating structures of the Hague Network of Judges should promote a better exchange of information and their cross-border reciprocal assistance, ensuring the implementation and development of mechanisms that allow legal rules to produce their full practical effect.

2. Structure of the International Hague Network of Judges

At the time the 1980 and 1996 Conventions were issued by the Hague Conference on Private International Law, there was no provision for the role of members of the Judiciary of the various States Parties in the area of international legal cooperation. In those years, the role of judicial authorities for international legal cooperation was not considered, hence the reason why only the role of the central authorities of the different States was provided for.

At a seminar on international child protection held in June 1998, it was recommended that judges from States Parties to the Hague Conventions, following the example of Australia, should contact the authorities in their respective States (e.g. presidents of courts, heads of national judicial councils for example) with a view to designating one or more members of the judiciary to act, at least initially, as a channel of communication and liaison with national central authorities, other judges in their own jurisdictions and other judges from other States in order to address relevant issues concerning the application of the 1980 Convention (Judges' Seminar on International Protection of the Child - De Ruwenberg, 22-25 June 1998).

Thus, in 1998, the International Hague Network of Judges was created, completing twenty-five years of activity in 2023 in the area of international judicial cooperation. At the Eighth Meeting of the Special Commission of the Hague Conference on the 1980 and 1996 Conventions, a gathering was held between forty-three judges from thirty-three States Parties, on the occasion of which the twenty-fifth anniversary of the Hague Network of Judges was celebrated.

A number of conclusions and recommendations were drawn from the Eighth Meeting of the Special Commission: a) Network members play an important role at the domestic level in their State, and also at the international level – they are a national point of reference, carry out training activities for professionals to better interpret and apply the rules of the Hague Conventions, and can also cover other cross-border and national Family Law issues in the international context.; b) Network members should meet regularly, using technological resources that allow for remote meetings in real time; c) Network members should contribute to the Judges' Newsletter on international child protection issues; d) Network members should provide support, as necessary and appropriate, to new members; e) Network members should use the secure communication platform for various matters, such as exchanging good practices and training manuals, and receiving updates on cases published in the database of judicial decisions based on the Conventions; f) Network members are encouraged to prepare annual reports of their activities, which can be published on the secure platform; g) Network members can develop a guide for court practice.

This includes **direct judicial communications**, allowing for the exchange of information and cross-border dialogue between judges from different jurisdictions involved in a specific case with international elements.

Among other measures, the International Network of Judges can take the following measures: a) to coordinate the holding of a hearing in a foreign jurisdiction; i) to issue child protection orders; ii) to ensure that a summary hearing is held; b) to establish whether there are available protection measures for the child or other parent in the State to which the child is to be returned; c) to verify whether the foreign court can accept or enforce commitments offered by the parties in the jurisdiction of origin; d) to establish whether the foreign court can issue a mirror order; e) to confirm whether the foreign court has issued any order resulting from a court decision; f) to verify whether there has been an episode of domestic violence in the State of the child's habitual residence; g) to verify whether it is a case of transfer of jurisdiction; h) to verify the application of foreign law regarding the unlawful transfer or retention of the child; i) to verify the means of access to justice in the foreign jurisdiction; j) to identify whether there are civil or criminal sanctions for the parent upon returning to the State of habitual residence; k) to resolve situations of simultaneous proceedings or acceptance of jurisdiction.

The improvement of the system of international legal cooperation encourages the use of direct judicial communications within the framework of the Hague Network of Judges. The duty to co-operate in the administration of justice is inspired by the spirit of co-operation which permeates relations between States and their judicial and administrative authorities. After the safe return of the child to the State of his or her habitual residence, it is important for the Network Judge of the requested State to monitor the situation of the child and to verify the situation of the parent who has also returned to the State of his or her habitual residence. To this end, the spirit of cooperation which should inspire a constant dialogue between the judges of the Hague Network in order to build a global judicial community is essential.

3. Responsibilities of Brazilian Network Judges before the judicial and administrative authorities in Brazil

The National Council of Justice (CNJ), a body of the Brazilian Judiciary provided for in the Federal Constitution (art. 92, I-A) – by reason of Constitutional Amendment No. 45/2004 –, is competent to exercise control over the administrative and financial activities of the Judiciary, and may, among other attributions, issue regulatory acts, within the scope of its competence (CF, art. 103-B, § 4º, I).

When addressing the issue of international legal cooperation in the area of protection of abducted children, some time ago the CNJ approved Resolution No. 257/2018, which already dealt, in a pioneering manner, with some issues related to the application of the Hague Convention on civil aspects of international child abduction. However, there were still some other issues that were not addressed in the aforementioned Resolution No. 257 – in addition to an outdated rule (due to the repeal of the previous Code of Civil Procedure regarding the provision of search and seizure actions in the list of precautionary measures)³ – which motivated the publication of a new Resolution.

³ "The fact is that the previous resolution needed to be updated not only due to the common records of delays in legal proceedings of this nature, but mainly because its normative basis was the 1973 Code of Civil Procedure. It determined, for example, the application of the procedure adopted for search and seizure actions (article g), which no longer exists in the current Code of Civil Procedure" (MOURA, Maria Thereza de Assis et alii. *A nova Resolução sobre sequestro internacional de crianças*. <https://www.conjur.com.br/2022-mar-28/opiniao-resolucao-sequestro-internacional-crianca#author>. Viewed on 04/20/2022).

Thus, the CNJ issued Resolution No. 449/2022, which did not modify any rule of substantive law or procedural law contained in Brazilian legislation; indeed, it is an infra-legal act, as indicated by its position in the normative pyramid of the Brazilian legal system. There are provisions on procedures to be followed in actions based on the 1980 Hague Convention, but with a focus on the role of Brazilian Network Judges, Resolution n° 449/22, in accordance with the provisions contained in international documents, provided for the designation and duties of Brazilian Network Judges.

The rule on the role of Network Judges for the 1980 Convention (art. 26) provides that their appointments must be made by the Chief Justice of the Brazilian Supreme Federal Court from among the judges of the Federal Regional Courts, with a Coordinating Judge.

There is a list of duties of the Network Judges regarding the following measures: a) sharing general information about the Convention and the International Hague Network of Judges; b) encouraging judges to participate in seminars and events on the topics of the Convention; c) establishing direct communication with Brazilian judges on specific cases to collaborate in resolving the impasse; d) maintaining relations with the Brazilian central authorities and all those involved in the issue of international protection of abducted children; e) acting as intermediaries between judges competent for the cases and the Disciplinary Board of the Courts to solve operational problems that hinder compliance with the guidelines; f) participating in meetings of the Disciplinary Board of the National Council of Justice (CNJ) on topics related to the 1980 Convention.

This is clearly an exemplary list of activities and actions aimed at improving the judicial system, especially in the exercise of jurisdiction on Brazilian territory.

4. Responsibilities of Brazilian Network Judges before the judicial authorities of other States

Resolution n° 449/22 also assigned Brazilian Network Judges: a) facilitating the performance of procedural acts involving the jurisdiction of the State of habitual residence of the child; b) identifying difficulties and obstacles during proceedings and related to requests made by a foreign central authority.

These responsibilities involve the need to carry out actions to maintain contact with authorities of the States Parties to the 1980 Hague Convention in order to allow greater effectiveness in the progress of legal cases involving the action of the natural judge – that is, the Judge of the State of habitual residence of the child –, in addition to being able to diagnose some problems and barriers to the effective resolution of the legal claim in which the return of the child to the State of habitual residence is sought.

Regarding the Coordinator of the Brazilian Network Judges, Resolution No. 449/2022 also provides for the following attributions: a) establishing contact with counterparts, central authorities and other authorities abroad, in the interest of the 1980 Convention and the Hague Conference on Private International Law; b) conducting direct communications with foreign judges regarding specific cases to resolve impasses detected; c) coordinating the work of the Network Judges.

In the case of the Brazilian State, since 2021, by appointment of the President of the Federal Supreme Court, the Brazilian Network is formed by seven Judges, each member coming from one of the Regions of the Brazilian Federal Justice, including the National Coordinator of the Network.

There is currently great concern regarding the establishment of guarantees for the safe return of the abducted child and the abducting parent to the State of habitual residence, which normally requires prior communication between the Judges of the Hague Network in order to obtain information regarding the measures related to such return. For example, information regarding the immigration status of the child and the abducting parent, the existence of any criminal proceedings involving the abducting parent, and issues relating to the agencies and measures for protection against domestic violence can be obtained through contact between Brazilian judges and judges in the Requesting State – that is, the state where the child is habitually resident. Direct judicial communications within the framework of the Hague Network of Judges also make it possible to clarify certain issues relating to the support and care network for the child and the abducting parent, such as mechanisms for accessing justice in the Requesting State in order to resolve the issue of custody and access rights to the child.

5. Development of the international community of Network Judges

International texts on judicial cooperation were not drawn up to regulate material aspects, but rather to help in the achievement of justice, both procedural and material. This spirit of international cooperation, in the achievement of justice, underpins the duty of collaboration between the authorities of different States (Mónica HERRANZ BALLESTEROS – p. 192).

The growth of cooperation between judicial authorities will be much more satisfactory for cases in which the judge of the State to which the child was taken intends first to ensure that the judicial authorities of the other State will take protective measures for the child before ordering his or her return (p. 204).

It is important to note that the 1996 Hague Convention provides a mechanism for direct cooperation - through a waiver of jurisdiction that allows communication between authorities to exchange views on whether or not the above transfer of jurisdiction is in the best interests of the child.

And among the powers of the authorities of the States Parties to the Convention, there are some related to the monitoring and follow-up of the situation of the child in the period after his/her return to the State of habitual residence (p. 224).

The broad interpretation of art. 7 of the Hague Convention compels the central authorities to ensure that the return of the child to his or her habitual residence takes place with the greatest possible guarantees. Monitoring the situation of the child, as well as helping the parent accompanying him or her, is recommended, in order to reinforce the best interests of the child in resolving the case of return to habitual residence.

A relevant aspect considered by the Judges who decide specific cases before ordering the return of the child is the feasibility of the parent who abducted him or her returning to the Requesting State (p. 225). The monitoring function was included in intercountry adoption (art. 20 of the 1993 Convention), but it is not mandatory. The 1996 Convention grants an important space for decision-making by the judicial body (p. 286).

The puerocentric nature of 21st century Private International Law is expressed in different issues: i) the urgency and emergence of children's rights; ii) in the texts of Private International Law focused on the minor (Alfonso Calvo Caravaca, p. 327). The relevant issue is the situation of the minor after restitution (post return situation facing the child) (p. 370).

This presentation aimed to portray the current situation regarding the functioning of the

Hague Network of Judges, as well as child protection measures at the cross-border level, with emphasis on the provisions contained in the 1980 and 1996 Hague Conventions on the protection of children. The 1980 and 1996 Conventions seek to implement a system that prevents legal and administrative conflicts on the subject of child protection measures and, at the same time, creates effective international cooperation mechanisms on this issue.

The best interests of the child, a value and principle internationally recognized by several Conventions of the United Nations (UN) and other international organizations, including the Hague Conference on Private International Law, is the basis and interpretative criterion of the rules contained in the international sphere and, also, in the Brazilian case, in the legal rules contained in Brazilian laws (including the 1988 Constitution of the Republic).

Thus, one of the reasons why it is advisable for States to accede to the 1996 Hague Convention is precisely the provision of mechanisms and instruments that enable the most effective and adequate protection of children at the cross-border level, which is not yet the case with the use of the rules of the 1980 Convention on International Child Abduction, among other international Conventions that deal with rules and principles aimed at the human and fundamental rights of children around the world.

The aim of strengthening the Hague Network is to encourage greater participation and involvement of Network Judges in the debate and discussion of the most current and specific issues that have occurred in the world, such as the impact generated by the COVID-19 pandemic in cases related to international child abduction, in addition to the outbreak of wars and worsening of political crises, which lead to an increase in the flow of migrants between States Parties to the 1980 and 1996 Conventions.

Due to the recommendations and conclusions reached at the 8th Meeting of the Special Commission on the 1980 and 1996 Conventions, it is important to debate the issue of domestic violence and the application of art. 13, I, b, of the 1980 Convention. After the 1st Regional Meeting of the International Hague Network of Judges in Latin America and the Caribbean, the Meeting's Letter was published, addressed to the international community and civil societies and the governments of the States Parties to the 1980 Hague Convention, with the following proposals: a) The creation of a Working Group, within the scope of the HCCH, to discuss gender issues that permeate the 1980 Hague Convention, especially the issue of domestic violence, in all its forms: physical, psychological, financial and sexual; b) Holding an open forum within the scope of the International Hague Network of Judges to discuss the return of children to States that make it difficult to issue residence visas, or the regularization of the migration status of the abducting parent; c) Holding training courses for actors in the Latin American and Caribbean Justice Systems, who act in cases of the Hague Convention between States of the region, under the responsibility of the Judiciary of each State Party; d) Creating a Working Group in each State Party of Latin America and the Caribbean to identify obstacles to resolving disputes within the agreed timeframe and forwarding suggestions to local institutions for improving the justice system with regard to the 1980 Hague Convention; e) Creating an inter-institutional Working Group in each State Party of Latin America and the Caribbean to assess the advisability of suggesting the accession of States of the region to the 1996 Hague Convention on Parental Responsibility and Child Protection Measures.

Thus, it is time to celebrate the construction of an international community of Network Judges. In the case of Brazil, Resolution n° 449/2022 consolidates the guidelines and practices that have been used in the field of child protection and guardianship at the international level. At the same time, it encourages all persons and institutions involved in the issue of international child abduction to increasingly identify issues that deserve to be improved,

proposing solutions and paths that prove to be appropriate, so that the younger generations will have their interests duly protected and promoted, always from the perspective of their superior (or best) interests.

Therefore, a legal system is consolidated – transparent and protective of children who, in the future, will be the adults that shall need to confirm all the civilizing achievements that acted for their benefit –, enabling the construction of a fairer, freer and supportive global society, as provided for in the Brazilian Federal Constitution (CF, art. 3º, IV).

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