

OUTLINE

1996 HAGUE CHILD PROTECTION CONVENTION



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

The Hague Children's Conventions

The Hague Conference has, for more than a century, concerned itself with the protection under civil law of children at risk in cross-frontier situations. During the last part of the 20th Century, the opening of national borders, ease of travel and the breaking down of cultural barriers have, with all their advantages, increased those risks considerably. The cross-border trafficking and exploitation of children and their international displacement from war, civil disturbance or natural disaster have become major problems. There are also the children caught in the turmoil of broken relationships within transnational families, with disputes over custody and relocation, with the hazards of international parental abduction, the problems of maintaining contact between the child and both parents, and the uphill struggle of securing cross-frontier child support. There has also been an upsurge in the cross-border placement of children through intercountry adoption or shorter-term arrangements, with the risks inherent in a situation where some countries find it difficult to ensure family care for all of their children while in others the demand for children from childless couples grows.

Three Hague Children's Conventions have been developed over the last twenty-five years, a fundamental purpose being to provide the practical machinery to enable States which share a common interest in protecting children to co-operate together to do so. The first of these modern Hague Children's Conventions is the *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* under which many States now co-operate together to protect children from the harmful effects of their wrongful removal or retention abroad. The *Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*, designed to regulate intercountry adoption to protect the interests of the children concerned, is now in force in all major receiving countries and many countries of origin.

The 1996 Convention

The third of the modern Hague Children's Conventions, the *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 much broader in scope than the first two, covering as it does a very wide range of civil measures of protection concerning children, from orders concerning parental responsibility and contact to public measures of protection or care, and from matters of representation to the protection of children's property.

The Convention has uniform rules determining which country's authorities are competent to take the necessary measures of protection. These rules, which avoid the possibility of conflicting decisions, give the primary responsibility to the authorities of the country where the child has his or her habitual residence, but also allow any country where the child is present to take necessary emergency or provisional measures of protection. The Convention determines which country's laws are to be applied, and it provides for the recognition and enforcement of measures taken in one Contracting State in all other Contracting States. In addition, the co-operation provisions of the Convention provide the basic framework for the exchange of information and for the necessary degree of collaboration between administrative (child protection) authorities in the different Contracting States. The following are some of the areas in which the Convention is particularly helpful –

Parental disputes over custody and contact

The Convention provides a structure for the resolution of issues of custody and contact which may arise when parents are separated and living in different countries. The Convention avoids the problems that may arise if the courts in more than one country are competent to decide these matters. The recognition

and enforcement provisions avoid the need for re-litigating custody and contact issues and ensure that decisions taken by the authorities of the country where the child has his or her habitual residence enjoy primacy. The co-operation provisions provide for any necessary exchange of information and offer a structure through which, by mediation or other means, agreed solutions may be found.

Reinforcement of the 1980 Child Abduction Convention

The 1996 Convention reinforces the 1980 Convention by underlining the primary role played by the authorities of the child's habitual residence in deciding upon any measures which may be needed to protect the child in the long term. It also adds to the efficacy of any temporary protective measures ordered by a judge when returning a child to the country from which the child was taken, by making such orders enforceable in that country until such time as the authorities there are able themselves to put in place necessary protections.

Unaccompanied minors

The co-operation procedures within the Convention can be helpful in the increasing number of circumstances in which unaccompanied minors cross borders and find themselves in vulnerable situations in which they may be subject to exploitation and other risks. Whether the unaccompanied minor is a refugee, an asylum seeker, a displaced person or simply a teenage runaway, the Convention assists by providing for co-operation in locating the child, by determining which country's authorities are competent to take any necessary measures of protection, and by providing for co-operation between national authorities in the receiving country and country of origin in exchanging necessary information and in the institution of any necessary protective measures.

Cross-frontier placements of children

The Convention provides for co-operation between States in relation to the growing number of cases in which children are being placed in alternative care across frontiers, for example under fostering or other long-term arrangements falling short of adoption. This includes arrangements made by way of the Islamic law institution of Kafala, which is a functional equivalent of adoption but falls outside the scope of the 1993 Intercountry Adoption Convention.

Other features of the Convention

An integrated and inclusive system

The Convention is based on a view that child protection provisions should constitute an integrated whole. For this reason, the Convention's scope is broad, covering both public and private measures of protection or care. The Convention overcomes the uncertainty that otherwise arises if separate rules apply to different categories of protective measure when both may be involved in the same case.

The Convention takes account of the wide variety of legal institutions and systems of protection that exist around the world. It does not attempt to create a uniform international law of child protection; the basic elements of such a law are already to be found in the 1989 UN Convention on the Rights of the Child. The function of the 1996 Hague Convention is to avoid legal and administrative conflicts and to build the structure for effective international co-operation in child protection matters between the different systems. In this respect, the Convention provides a remarkable opportunity for the building of bridges between legal systems having diverse cultural or religious backgrounds. It is of great significance that one of the first States to ratify the Convention was Morocco, whose legal system is set in the Islamic tradition. A Checklist on the implementation of the Convention is available in the *Protection of Children Section* of the HCCH website.

Monitoring and review

The Hague Conference has developed a unique system of "post-Convention services" in respect of its Children's Conventions. The aim is to promote widespread ratification, to assist Contracting States to implement the Conventions effectively and to promote consistency and the adoption of good practices in the daily operation of the Conventions. Contracting States are both beneficiaries and partners in this continuing enterprise.

For additional information, please visit the *Protection of Children Section* of the Hague Conference website at < www.hcch.net > or contact the Permanent Bureau of the Hague Conference at: secretariat@hcch.net.