



The HCCH Children's Conventions

An introduction to
the Conventions

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A smiling child with light brown hair and a blue shirt is shown from the chest up. Their hands are raised in front of their face, with fingers spread. The palms and fingers are covered in colorful paint, creating a vibrant, multi-colored pattern. The background is a soft, out-of-focus light blue.

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The Hague Conference on Private International Law (HCCH)

For over 130 years, the HCCH, an international intergovernmental Organisation with over 90 Members (including 1 Regional Economic Integration Organisation, the European Union) on all continents, has provided legal security and protection for persons and businesses whose movements and activities cross national frontiers.

The mandate of the HCCH is to harmonise private international law rules at the global level through the preparation, negotiation and adoption of HCCH Conventions (multilateral treaties to which over 150 States around the world are currently Parties).

HCCH Conventions (40 adopted since World War II, in addition to the Statute of the Organisation) deal with topics as diverse as international child abduction, intercountry adoption, legalisation of documents, obtaining evidence abroad, trusts, securities held with an intermediary, parental responsibility and measures for the protection of children, international recovery of child support and other forms of family maintenance, among others.



Protecting children across international frontiers

For more than a century, the HCCH has been a pioneer in developing systems of international cooperation, at the administrative and judicial levels, to protect children in cross-frontier situations.

The opening up of national borders, increased ease of travel, worker mobility and the breaking down of cultural barriers have, along with their many benefits, brought new risks for children. For example, the cross-border trafficking and exploitation of children and their international displacement as a result of war, civil disturbance or natural disaster have become significant global problems.

Children also find themselves caught up in the turmoil of broken relationships within transnational families, which can lead to disputes over custody and relocation, the hazards of international parental abduction, problems of maintaining contact between the child and parents living in different States, the struggle of securing cross-frontier child support, and the pressures and profiteering which can sometimes accompany the cross-border placement of children through intercountry adoption or shorter term arrangements.

As the 1989 *United Nations Convention on the Rights of the Child* (UNCRC) underlines, effective protection of children's rights across frontiers cannot be achieved without inter-State cooperation. The four modern HCCH Children's Conventions have been developed over the last twenty-five years, and provide the practical machinery to enable States to work together where they have a shared responsibility to protect children.

The HCCH Children's Conventions provide workable systems and practical procedures for implementing some of the more broadly expressed principles set out in the UNCRC.

HCCH 1980 Child Abduction Convention

More than 100 Contracting Parties

The *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* seeks to **combat parental child abduction** by providing a system of cooperation between Central Authorities and a rapid procedure for the **return of the child** to the State of the child's habitual residence.

Central Authorities in each State provide assistance in **locating the child** and in achieving, if possible, a voluntary return of the child or an amicable resolution of the issues. They also **cooperate** to prevent further harm to the child by initiating or helping to initiate proceedings for the return of the child, and by making necessary administrative arrangements to secure the child's safe return.

The HCCH 1980 Convention has contributed to resolving thousands of abduction cases and has served as a deterrent to many others through the clarity of its message (abduction may be harmful to children, who have a right to contact with both parents) and through the simplicity of its central remedy (the return order).

The International Child Abduction Database-INCADAT

<www.incadat.com>. INCADAT was established by the Permanent Bureau with the objective of making freely accessible many of the leading decisions rendered by national courts in respect of the 1980 Child Abduction Convention. It contains summaries of decisions in English and French (and increasingly in Spanish). INCADAT may be used by judges, legal practitioners, Central Authorities, academics, researchers and others around the world.

"A child whose parents reside in different States shall have the right to maintain, on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents"

Article 10.2 of the UNCRC.

*Also gives effect to **Articles 9(3), 11, and 35 of the UNCRC.***

The 1980 Child Abduction Convention helps to give effect to the fundamental rights of the child and has been found in court decisions in different parts of the world to be consistent with national Constitutions, as well as regional and international human rights instruments.

Guides to Good Practice on:

Part I - Central Authority Practice

Part II - Implementing measures

Part III - Preventive Measures

Part IV - Enforcement

Part V - Mediation

Part VI - Article 13(1)(b)



*1980 and 1996 Conventions:
Transfrontier Contact Concerning Children*

HCCH 1993 Adoption Convention

More than 105 Contracting Parties

The *Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption* establishes **minimum standards** for the protection of children who are subject of intercountry adoption and **safeguards** to ensure that intercountry adoptions take place in the best interests of the child and with respect for the child's fundamental rights.

The 1993 Adoption Convention recognises that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in their State of origin. It requires that possibilities for the placement of the child within the State of origin be considered first (the subsidiarity principle).

The Convention establishes a system of **cooperation** between authorities in States of origin and receiving States, designed to ensure that intercountry adoption takes place under conditions which help to guarantee the best adoption practices and the elimination of abuses. The Convention safeguards aim to **prevent the abduction, the sale of, or traffic in children**.

The Convention guarantees the **recognition** in all Contracting Parties of adoptions made in accordance with the Convention.

The Intercountry Adoption Technical Assistance Program (ICATAP) provides assistance to States which face challenges in the implementation and operation of the 1993 Adoption Convention.

*The 1993 Adoption Convention, gives effect and adds guarantees to **Article 21 of the UNCRC**.*

The 1993 Adoption Convention sets up a system of accreditation for bodies which provide intercountry adoption services.



By setting out clear procedures and prohibiting improper financial gain, the Convention provides greater predictability and transparency.

The 1993 Adoption Convention has been embraced equally by States of origin and receiving States.

Contracting Parties may adopt additional safeguards where needed to protect the child.

Guides to Good Practice:
GGP 1 "Implementation"
GGP 2 "Accreditation and
Adoption Accredited Bodies"



HCCH 1996 Child Protection Convention

More than 50 Contracting Parties

The *Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children* builds a structure for effective **international co-operation in child protection matters** and provides a unique opportunity for the building of bridges between legal systems having diverse cultural or religious backgrounds.

The 1996 Child Protection Convention addresses a wide range of international **child protection issues** from parental disputes over custody or contact to the protection of runaway teenagers; from jurisdiction in respect of refugee or internationally displaced children to the placement of children abroad in foster or institutional care; from the law applicable in determining who has parental responsibility in respect of a child, to the recognition of custody and access rights, amongst other measures of protection.

The uniform rules set out in the Convention:

- ⇒ allow any State where a child is present to take necessary **emergency or provisional measures** of protection;
- ⇒ determine which State's **laws** are to be applied and which **authorities** are competent to take the necessary measures of protection;
- ⇒ give primary responsibility to the authorities of the State where the child has their **habitual residence**;
- ⇒ avoid the possibility of conflicting decisions and provide for the **recognition and enforcement** of measures taken in one Contracting Party in all other Contracting Parties.

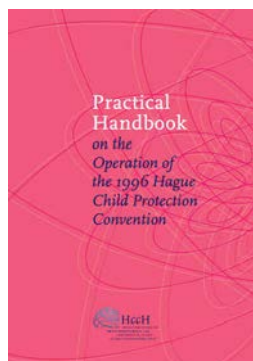
*The 1996 Child Protection Convention offers States a practical means of fulfilling in part the obligations which arise under, among others, **Articles 9(3), 10(2), 11, 22 and 35 of the UNCRC.***

The Convention is in force for the whole of the European Union.

*The **cooperation** provisions set out the framework for a global child protection network at the national level, which benefits many categories of at-risk children.*



*There is a **Practical Handbook** on the Operation of the 1996 Child Protection Convention.*



HCCH 2007 Child Support Convention & Protocol

More than 50 States and 1 REIO (EU) are bound by this Convention
More than 30 States and 1 REIO (EU) are bound by this Protocol

The **Convention** of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance is designed to offer children and other family members a **simpler, swifter and more cost-effective** international system for the **recovery of maintenance**. Thousands of children and other family members worldwide will benefit from this new Convention.

The Convention is built on a solid system of **administrative cooperation** according to which Central Authorities transmit to each other applications for establishment, recognition and enforcement or modification of maintenance decisions. Access to child support procedures set up by the Convention is virtually without cost. The Convention is a flexible instrument which includes a thorough system of **recognition and enforcement** of foreign decisions, adapted to diverse national conditions. It offers **modern solutions** for enforcement and allows public bodies to benefit from the system.

The Convention is built upon the best existing instruments such as the *United Nations Convention of 20 June 1956 on the Recovery Abroad of Maintenance* (also known as "the New York Convention") and on the Conventions of 1973 on the Recognition and Enforcement of Decisions relating to Maintenance Obligations and on the Law Applicable to Maintenance Obligations.

The **Protocol** of 23 November 2007 on the Law Applicable to Maintenance Obligations includes rules which guide judges to **identify the law applicable** in international litigation with respect to maintenance.

iSupport – A case management and secure communication system, including a high security communication protocol.

UNCRC Article 27.4 encourages States to join Conventions that facilitate the international collection of child support.

Reduces strain on States' welfare and social security systems.



There is a **Practical Handbook** for Caseworkers under the 2007 Child Support Convention and an **Implementation Checklist**.



> **Practical Handbook** for Caseworkers under the 2007 Child Support Convention

The Malta Process

More than 35 States involved in the Malta Process

The Malta Process promotes cooperation with States with legal systems influenced by or based upon Shari'a law, for the international protection of children and the resolution of complex, transfrontier family conflicts. The Malta Process is guided by the principles set out in the UNCRC.

In the light of hypothetical cases studied at the last international Malta meeting (Malta IV of May 2016), experts recognised the utility of finding solutions to the difficulties encountered in the area of international child protection, affecting the fundamental rights of children, through reinforced international cooperation and, in particular, through accession to or ratification of certain HCCH Children's Conventions.

At Malta IV, experts recognised that the 1980 Child Abduction Convention, the 1996 Child Protection Convention and the 2007 Child Support Convention support a number of key principles expressed in the UNCRC, all in the best interests of children. The experts noted that these HCCH Children's Conventions are designed to be global in reach and to be compatible with diverse legal traditions. Experts underlined the important benefits of the HCCH Children's Conventions for Contracting Parties.



Infrastructures supporting the HCCH Children's Conventions

Central Authorities

Inter-State cooperation through Central Authorities.

*A growing international network of more than 300 Central Authorities in
nearly 120 States working to improve the protection of children.*

One of the distinctive features of the four HCCH Children's Conventions is the role which they give to Central Authorities in each Contracting State as the focus for administrative cooperation in achieving child protection.

In the case of all four Children's Conventions, the Central Authorities have general functions of cooperation with respect to international child protection. The following are among the functions given to Central Authorities within specific Conventions:

- ⇒ locating missing children;
- ⇒ exchanging information about children at risk;
- ⇒ promoting agreed solutions, where these are appropriate;
- ⇒ exchanging information with other Central Authorities about the child protection laws and services operating in their States;
- ⇒ providing assistance or advice to foreigners who are seeking to obtain or enforce child protection orders;
- ⇒ removing obstacles to the proper functioning of the various Conventions; and
- ⇒ ensuring effective access to cross-border maintenance procedures.

Central Authorities established under the HCCH Conventions constitute the core of a global network of inter-State cooperation for the protection of children. Among the advantages for States in being part of this international network is the opportunity it gives for sharing knowledge, experience and expertise about child protection.

International Judicial Networking

*The International Hague Network of Judges (IHNJ) -
Direct judicial communications - Liaison judges - Judicial conferencing
and cooperation.*

More than 155 judges from more than 85 States are Members of the IHNJ

Another important development has been the growth around the HCCH Children's Conventions of the **International Hague Network of Judges** (the "IHNJ") concerned with international child protection matters. For the HCCH Conventions to work successfully, a degree of judicial cooperation, including, in some cases, direct communications between judges in different Contracting Parties, is necessary. Collaboration between judges at the international level also assists in promoting consistent interpretation of the Conventions.

The recent increase in international judicial conferences and seminars, has, in turn, led to the establishment of a network of contact or **"liaison" judges** in Contracting Parties, *i.e.*, judges who act as a liaison in facilitating international direct judicial communications where these may be needed in HCCH cases. This development has also been assisted by the bi-annual publication of the *Judges' Newsletter on International Child Protection*.

Brochure - Direct Judicial Communications.
It presents the latest version of Emerging Guidance regarding the development of the IHNJ and a set of General Principles for Judicial Communications in matters of international child protection, including commonly accepted safeguards.



Supporting and monitoring the HCCH Children's Conventions

Nearly 125 States have joined one or more of the HCCH Children's Conventions

The Secretariat of the HCCH (the Permanent Bureau) is charged with monitoring and supporting the functioning of the HCCH Conventions in cooperation with Member States of the Organisation, Contracting Parties and other international organisations, including non-governmental organisations.

The HCCH has developed a unique system of post-Convention services to monitor the operation of the HCCH Children's Conventions, to assist Contracting Parties with their effective implementation and to promote consistency and the adoption of good practices in the daily operation of the Conventions.

Contracting Parties are both beneficiaries and partners in this developing system.

Methods and techniques developed by the HCCH include:

- ⇒ maintaining an international network of Central Authorities and other bodies charged with implementing the Conventions;
- ⇒ supporting an international network of judges (the IHNJ) concerned with cross-border child protection cases;
- ⇒ convening periodic Special Commission meetings at which Contracting Parties and others review the practical operation of the Conventions;
- ⇒ providing technical assistance to States on matters of implementation;
- ⇒ assisting in legislative drafting and policy reform;
- ⇒ developing good practice guides, handbooks and other materials;
- ⇒ maintaining an international database of judicial decisions (INCADAT – International Child Abduction Database);

- ⇒ organising and supporting training / familiarisation seminars, colloquia for judges, Central Authority personnel, and other professionals concerned in the operation of the Children's Conventions;
- ⇒ maintaining statistics concerning the operation of the Conventions (INCASTAT – International Child Abduction Statistical Database; ICASTAT – Intercountry Adoption Statistical Database), and developing electronic case management systems (iChild and iSupport).

The Children's Specialised Sections on the HCCH website contain the latest information about the status of the the 1980, 1993, 1996 and 2007 Conventions and Protocol, and the contact details of Central Authorities.

For this, and additional information, see:

www.hcch.net



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