Suntec City Guild House
3 Temasek Blvd #05-001
Suntec City Mall Singapore 038983

HAGUE SYMPOSIUM

SEPTEMBER 4, 2012

THE GUILD

SYMPOSIUM MATERIALS

Suntec City Guild House
3 Temasek Blvd #05-001
Suntec City Mall Singapore 038983

HAGUE SYMPOSIUM

SEPTEMBER 4, 2012

THE GUILD

9:00 AM – 9:30 AM	THE HAGUE CONVENTION – INTERNATIONAL PRINCIPLES **ANNE-MARIE HUTCHINSON, LONDON, ENGLAND**
9:30 AM – 9:45 AM	INTERNATIONAL RELOCATIONS **NANCY ZALUSKY BERG, MINNEAPOLIS, MINNESOTA**
9:45 AM – 10:00 AM	OVERVIEW OF MEDIATION DISPUTE RESOLUTION IN CHILD ABDUCTION CASES **GEOFF WILSON, BRISBANE, AUSTRALIA**
10:00 AM – 10:15 AM	OPEN DISCUSSION **NANCY ZALUSKY BERG, MINNEAPOLIS, MINNESOTA**
10:15 AM – 10:30 AM	BREAK
10:30 AM – 11:00 AM	OVERVIEW OF PRACTICE IN THE USA **ROBERT ARENSTEIN, NEW YORK, NEW YORK**
11:00 AM – 11:30 AM	REVIEW OF PRACTICE IN ENGLAND, WALES & EUROPE **JUDGE FINNERTY AND JUDGE CLIVE HEATON QC**
11:30 AM – 11:45 AM	OVERVIEW OF PRACTICE IN SINGAPORE **POONAM MIRCHANDANI, SINGAPORE**
11:45 AM – 12:00 PM	OVERVIEW OF PRACTICE IN HONG KONG **CAROLYN LANGLEY, HONG KONG**

12:00 PM – 12:15 PM	OVERVIEW OF PRACTICE IN NEW ZEALAND **ANITA CHAN, DUNEDIN, NEW ZEALAND**
12:15 PM – 12:30 PM	OVERVIEW OF PRACTICE IN INDIA **PINKY ANAND, NEW DELHI, INDIA**
12:30 PM – 12:45 PM	UPDATE FROM JAPAN **MIKIKO OTANI, TOKYO, JAPAN**
12:45 PM – 1:00 PM	OPEN DISCUSSION **NANCY ZALUSKY BERG, MINNEAPOLIS, MINNEOSTA**

REGISTRATION FEES OF S$50/PER PARTICIPANT WILL BE COLLECTED AT CHECK-IN ON TUESDAY, SEPTEMBER 4, WHICH COVER MEETING ROOM EXPENSES, BREAKS, PROGRAM MATERIALS AND AUDIO VISUAL NEEDS.

28. CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION[1]

(Concluded 25 October 1980)

The States signatory to the present Convention,
Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,
Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,
Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions –

CHAPTER I – SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are –

a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and

b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

Article 2

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

Article 3

The removal or the retention of a child is to be considered wrongful where –

a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph *a)* above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

---

[1] This Convention, including related materials, is accessible on the website of the Hague Conference on Private International Law (www.hcch.net), under “Conventions” or under the “Child Abduction Section”. For the full history of the Convention, see Hague Conference on Private International Law, *Actes et documents de la Quatorzième session (1980)*, Tome III, *Child abduction* (ISBN 90 12 03616 X, 481 pp.).

Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

Article 5

For the purposes of this Convention –

a) "rights of custody" shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;

b) "rights of access" shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

CHAPTER II – CENTRAL AUTHORITIES

Article 6

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

Federal States, States with more than one system of law or States having autonomous territorial organisations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures –

a) to discover the whereabouts of a child who has been wrongfully removed or retained;

b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;

c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;

d) to exchange, where desirable, information relating to the social background of the child;

e) to provide information of a general character as to the law of their State in connection with the application of the Convention;

f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organising or securing the effective exercise of rights of access;

g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;

h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;

i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

CHAPTER III – RETURN OF CHILDREN

Article 8

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain –

a) information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;
b) where available, the date of birth of the child;
c) the grounds on which the applicant's claim for return of the child is based;
d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by –

e) an authenticated copy of any relevant decision or agreement;
f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;
g) any other relevant document.

Article 9

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

Article 10

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –

a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.
In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

Article 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognised or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

Article 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

Article 19

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

Article 20

The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

CHAPTER IV – RIGHTS OF ACCESS

Article 21

An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.
The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.
The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organising or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

CHAPTER V – GENERAL PROVISIONS

Article 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

Article 23

No legalisation or similar formality may be required in the context of this Convention.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.
However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

Article 25

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

Article 26

Each Central Authority shall bear its own costs in applying this Convention.
Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.
However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.
Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

Article 27

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

Article 28

A Central Authority may require that the application be accompanied by a written authorisation empowering it to act on behalf of the applicant, or to designate a representative so to act.

Article 29

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

Article 31

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units –
a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
b) any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

Article 32

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 33

A State within which different territorial units have their own rules of law in respect of custody of children shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.

Article 34

This Convention shall take priority in matters within its scope over the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors*, as between Parties to both Conventions. Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organising access rights.

Article 35

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.
Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

Article 36

Nothing in this Convention shall prevent two or more Contracting States, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provisions of this Convention which may imply such a restriction.

CHAPTER VI – FINAL CLAUSES

Article 37

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fourteenth Session.
It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 38

Any other State may accede to the Convention.
The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.
The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.
The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

Article 39

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.
Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 40

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.
Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

Article 41

Where a Contracting State has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

Article 42

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservation shall be permitted.
Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.
The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 43

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38.

Thereafter the Convention shall enter into force –

(1) for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;

(2) for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

Article 44

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 45

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 38, of the following –

(1) the signatures and ratifications, acceptances and approvals referred to in Article 37;

(2) the accessions referred to in Article 38;

(3) the date on which the Convention enters into force in accordance with Article 43;

(4) the extensions referred to in Article 39;

(5) the declarations referred to in Articles 38 and 40;

(6) the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;

(7) the denunciations referred to in Article 44.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the 25th day of October, 1980, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fourteenth Session.

The Main Principles of the Hague Convention

Anne-Marie Hutchinson OBE

Dawson Cornwell the family law firm

www.dawsoncornwell.com

The Singapore Symposium

Article 3 – the Rights of Custody

The removal or the retention of a child is to be considered wrongful where -

a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph a above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

Article 3
The Hague Convention on the Civil Aspects of International Child Abduction

The Plaintiff has the burden of proving he/she had rights of custody under the law of the requesting state at either: a) the date the child was removed from the requesting state; OR
b) the date the child was detained in the requested state.

Dispute as to rights of custody.

A party must prove he/she has rights of custody in respect of the subject child with reference to:

Evidence:-

1) Expert evidence on foreign law
2) A certificate or affidavit "emanating from a Central Authority or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State (Article 8(f); OR
3) A referral to a court in the requesting state under Article 15 of the convention.

Re F (Abduction: Refusal to Return) [2009] EWCA Civ 416 – LJ Thorpe invited practitioners to make use of the European Judicial Network and of his Office for guidance as to the best approach in a particular case. He also proposed that a non-binding opinion could be obtained from the liaison Judge of a particular member state through his Office.

However in *Kennedy v Kennedy [2009] EWCA Civ. 896 (Fam),* the M's defence was that the F had no rights of custody. Mrs Justice King requested LJ Thorpe's Office investigate assisting the parties to assist a declaration as to the F's rights of custody from the relevant Spanish Court (as per Article 15). It was discovered that in Spain, an application for a declaration under Article 15 was unprecedented and it might well take upwards of a year to resolve. Mrs Justice King therefore decided that "the extent of the F's rights in Spain should be determined as a preliminary issue by a Judge in London, guided by expert evidence as to the Law in Spain".

"Autonomous interpretation"

"An international convention, expressed in different languages and intended to apply to a wide range of differing legal systems, cannot be construed differently in different jurisdictions. The convention must have the same meaning and effect under the laws of all Contracting States"

A 2 stage process:-

Stage 1: The Domestic Law Question
The Plaintiff must first establish what rights he/she had under the law of the State in which the child was habitually resident in, immediately prior to removal/retention

This is determined in accordance to the domestic law of the relevant State. However, the issue is whether the rights afforded to the Plaintiff under domestic law would fall within the Convention definition of right of custody.

Stage 2: The Convention Question
The Plaintiff must establish that the rights held by him/her under the law of the State in which the child was habitually resident in immediately before the removal/retention are property characterised as a right of custody, in accordance with Articles 3 and 5(a).

Rights of Custody and Rights of access.
There is a distinction between rights of custody (rights relating to the care of the person of the child) and rights of access (the right to take a child, for a limited time, to a place other than the child's habitual residence)(article 21).

In New Zealand, a father with access is considered to have a right of custody (*Gross v Boda [1995] 1 NZLR 569* and *Dellabarca v Christie [1999] 2 NZLR 548*).

However, in England, we do not treat a father with access as necessarily having a right of custody: *S v H (Abduction:Access Rights) [1997] 1 FLR 971.*

However, Baroness Hale in *Re D (A Child) [2006] UKHL 51, [2007] 1 FLR 961*, stressed that rights of custody and rights of access were not necessarily mutually exclusive. The question in each case is "do the rights possessed under the law of the home country by the parent who does not have day to day care of the child amount to rights of custody or do they not?"

The Retention of residual rights and a right of custody.

In many jurisdictions, the non-custodial parent retains rights over the child – certain rights convey a right of custody and other rights do not.

1) Right to veto a removal from the jurisdiction

   "It has come to be appreciated in most, but not all, contracting states that for the Convention's purposes a right to grant or withhold consent to the child's removal from the state where he resides is a right of custody"

   Lord Nicholls
   Re D (A Child) [2006]UKHL51

   A parent can acquire a right of veto by obtaining a court order. The court order gives the parent a right of custody because it attributes a right of custody to the court as an "institution or body".

   If such an order has been in place temporarily but has been revoked, that is insufficient - *(S v H (Abduction : access rights)*

A potential right to veto (ie – the right to go to court and seek an order) is insufficient to establish rights of custody.

2) Right to watch over the child's education and living conditions – the right of vigilance

S v H (Abduction : Access rights) a Father who had the right of vigilance was considered not to have a right of custody

Re M (2006 – unreported) there was a sole custody order in favour of the Mother but the Father retained rights, jointly with M to consent to changes of name or religion and the right to sanction major surgery. This was considered not to be sufficient to amount to a right of custody.

3) Right to be informed about important matters regarding the person and property of a child

Re V-B (Abduction: Custody Rights) – a parent with the right to be informed about important matters regarding the person and property of the child and the right to be consulted on any decision that have to be taken in that connection did not have rights of custody.

4) Right to co-decide on their vital problems

Re F (Abduction: rights of custody) [2008] EWHC 272 (Fam) – mother should "exercise parental authority over…[the children]…with restricted authority for the father only to co-decide on their vital problems in connection with upbringing, education and medical treatment".

Potter P thought that a long term change in children's place of residence from Poland to England plainly constituted a "vital problem" in connection with both the upbringing and the education which required a co-decision and thus created a right of veto for the Father. This gave him a restricted custody right.

5) Inchoate rights

Re B (a minor) (Abduction) [1994] 2 FLR 249 – minutes of an order granting the Mother and Father joint rights but with sole custody to the Father were lodged but not approved until after the Mother removed the chid to England. The Court of Appeal held that the Father had rights of custody – this was capable of being applied to the inchoate rights of those carrying out the duties and enjoying the privileges of a custodial character which would be formally granted by the court upon making the appropriate application.

BUT

Re J (Abduction: Acquiring rights of custody by caring for child) [2005] 2 FLR 791 – Mother and Father (unmarried) moved to Greece and had their daughter. The Father acknowledged his paternity but had not rights of custody under Greek law. The Mother left Greece to work in England for a period. Father remained in Greece with the child. Mother returned to Greece and asked Father's permission to allow her to take the child back to Greece. Father refused. Mother returned to England. Father and child visited Mother in England. On the second visit, Mother and Father fell out and the Mother sought to retain the child in England. Baron J rejected the Father's application for the return of the child to Greece under the Convention. She held that his care of the child alone in Greece did not give him rights of custody.

Re O (Child Abduction: Custody rights) [1997] 2 FLR 702 – a 4 year old child who lived with her German grandparents for 14 months gave them a right of custody.

Re J (Abduction: Declaration of wrongful removal) [1999] 2 FLR 653 – unmarried father with shared care of child with mother for 21 months – did not acquire a right of custody.

Rights of custody vested in the Court

A court acquires rights of custody when its jurisdiction has been invoked in respect of matters of custody and it has not disposed of the application.

Re M (2006 unreported) Sumner J – a court acquires rights of custody if its jurisdiction has been invoked in respect of matters of custody within proceedings. It arises on service of the proceedings.

A v B (Abduction: declaration) [2008] EWHC 2524 (Fam) F discovered M had vacated the family home and booked tickets for herself and the child to fly to her native France. Father attended without notice and obtained a PR order and an order prohibiting M from removing the child from the jurisdiction. Order were granted by M avoided service of them.

Bodey J – held that the English court acquired a right of custody on issue of the application. Although service of the application was the point at which the court's jurisdiction was first invoked, interim orders made without notice were a special case in which the vesting of rights of custody in the court could and did precede service on the Respondent.

Article 3(b) – Actual exercise

*b) at the time of removal or retention those rights were **actually exercised**, either jointly or alone, **or would have been so exercised but for the removal or retention**.*

In a situation where the parent has PR but is unable to exercise it because of, for example, imprisonment:-

Re A (Abduction : Rights of Custody : Imprisonment) [2004] 1 FLR 1 – Father had PR but was imprison for the breach of an AVO (the equivalent of a non-molestation order). While the Father was in prison, the Mother secretly removed the child to England. It was held that while the Father was unable to exercise some of his rights, his was still entitled to consent or refuse to the removal of his son from the jurisdiction. His rights of custody were curtailed but not suspended.

Ryan v Phelps [1999] NZFLR 865 – Mother and Father lived in Australia and had joint PR of the children. The Mother went to the US and "washed her hands" of them. The Father took the children to New Zealand. The NZ Court of Appeal said that the Mother had not lost her rights of custody:-

"Her right…was continuously available to her and always capable of particular actual exercise if the prospect of a change of residence arose…it is highly likely that she would have exercised her veto over removal to New Zealand had she been asked".

Keith J

Habitual Residence in the Context of International Child Abduction

The Convention mandates return of any child who was "habitually resident" in a contracting nation immediately before an action that constitutes a breach of custody or access rights.

The concept of Habitual Residence is the jurisdictional link factor that is used in the Hague Convention.

Article 4 of the Convention:-

*The Convention shall apply to any child who was **habitually resident** in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.*

Article 3
The Hague Convention on the Civil Aspects of International Child Abduction
(Emphasis added)

Therefore, the Hague Convention will only be engaged if the relevant child was habitually resident in a Contracting State immediately before any removal or retention from that contracting state and if that removal or retention was wrongful in that it was a breach of "rights of custody".

Habitual Residence + Removal/Retention in breach of Rights of Custody = Engagement of Hague Convention.

The burden of proof in establishing this jurisdictional requirement is on the person or entity seeking relief under the Hague Convention.

Timing

It is the habitual residence of the child at the point in time immediately before the alleged wrongful removal or retention.

Therefore, any subsequent change in the habitual residence after the removal/retention will not provide a defence to the establishment of jurisdictional link.

Habitual Residence and Brussells II Revised

11.1 "Where a person, institution or other body having rights of custody applies to the competent authorities in a Member State to deliver a judgment on the basis of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereinafter the '1980 Hague Convention') in order to obtain the return of a child that has been wrongfully removed or retained in a Member State where the child was habitually resident immediately before the wrongful removal or retention, paragraphs 2-8 will apply:

11.2 When applying Articles 12 and 13 of the 1980 Hague Convention, it shall be ensured that the child is given the opportunity to be heard during the proceedings unless this appears inappropriate having regard to his or her age or degree of maturity.

11.3 A court to which an application for return of a child is made as mentioned in paragraph 1 shall act expeditiously in proceedings on the application, using the most expeditious procedures available in national law.

Without prejudice to the first subparagraph, the court shall, except where exceptional circumstances make this impossible, issue its judgment no later than six weeks after the application is lodged.

11.4 A court cannot refuse to return a child on the basis of Article 13b of the 1980 Hague Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return.

11.5. A court cannot refuse to return a child unless the person who requested the return of the child has been given an opportunity to be heard.

11.6. If a court has issued an order on non-return pursuant to Article 13 of the 1980 Hague Convention, the court must immediately either directly or through its central authority, transmit a copy of the court order on non-return and of the relevant documents, in particular a transcript of the hearings before the court, to the court with jurisdiction or central authority in the Member State where the child was habitually resident immediately before the wrongful removal or retention, as determined by national law. The court shall receive all the mentioned documents within one month of the date of the non-return order.

11.7. Unless the courts in the Member State where the child was habitually resident immediately before the wrongful removal or retention have already been seised by one of the parties, the court or central authority that receives the information mentioned in paragraph 6 must notify it to the parties and invite them to make submissions to the court, in accordance with national law, within three months of the date of notification so that the court can examine the question of custody of the child.

Without prejudice to the rules on jurisdiction contained in this Regulation, the court shall close the case if no submissions have been received by the court within the time limit.

11.8. Notwithstanding a judgment of non-return pursuant to Article 13 of the 1980 Hague Convention, any subsequent judgment which requires the return of the child issued by a court having jurisdiction under this Regulation shall be enforceable in accordance with Section 4 of Chapter III below in order to secure the return of the child.

<u>The meaning of Habitual Residence</u>

Habitual Residence is not defined or explained in the 1980 Hague Convention or the Brussels II Revised Regulation.

The explanatory report in respect of the Hague Convention by Professor Elisa Perez-Vera (at paragraph 66) states that the concept of Habitual Residence is a well-established concept in the Hague Conference "which regards it as a question of pure fact, differing in that respect from domicile".

A concept used in an international instrument is to have the same meaning in the context of that instrument in each State that in which the instrument has effect. However, this is not the position in relation to habitual residence.

Any issue that arises in relation to the meaning of habitual residence falls to be determined in the domestic courts of a member state in which a particular case is being heard. There is no international court which has the power to give rulings as to the construction of the Hague Convention. However, in respect of the construction of EC Regulations, guidance may be sought from the Court of Justice of the European Union.

<u>Traditional approach under the Hague Convention</u>

Re J (A Minor)(Abduction: custody rights) [1990] 2 A.C 562 HL – any issue as to where a child was habitually resident at the relevant time must be decided on the basis of all the circumstances of the individual case, giving the words "habitual residence" their natural meaning.
The traditional approach adopted in England and Wales is that it is "a place of abode, voluntarily adopted for a settled purpose (whether temporary or permanent) for an appreciable period [or, as part of the settled order of life].

There is varied case law on this:-

Cruse v Chittum[1974] 2 ALL ER 940 – to be habitual, residence must not be temporary or of a secondary nature (this was to do with divorce jurisdiction)

Re S and another (Minors) (Abduction: Wrongful Retention) [1994] 1 FLR 82 – a presence in England during a career sabbatical, during which habitual residence was <u>not</u> acquired.

S (Habitual Residence) [2010] 1 FLR 1146, CA – habitual residence in England was held to have been acquired in circumstances in which the family were "house-sitting" in England for about 8 weeks.

Re J (a Minor) (Abduction: Custody Rights)[1990]2 AC 562:-

"There is a significant difference between a person ceasing to be habitually resident in country A and his subsequently becoming habitually residence in country B. A person may cease to be habitually resident in a single day if he or she leaves it with a settled intention not to return to it but to take up long-term residence in country B instead. Such a person cannot, however, become habitually resident in country B in a single day. An appreciable period of time and a settled intention will be necessary to enable him or her to become so. During that appreciable period of time, the person will have ceased to become habitually resident in country A but not yet habitually resident in country B".

The most recent Court of Appeal case *Re H-K (Habitual Residence) [2011] EWCA Civ 1100, [2012] 1 FLR 436* where the Mother was British and the Father was Australian. The parties resided in Australia with their children. They agreed to move to England for a year. The intention was to work but they predominantly survived on state benefits. The older child attended school. After 10 months, it was agreed the Father would return to Australia as planned but the Mother would remain in England for a further 4 months with the children. The Mother in fact had no intention of returning to Australia. Habitual Residence in England was acquired.

Habitual residence could be acquired despite the fact that a move may have only been temporary or on a trial basis, provided it was adopted for ***settled purposes*** *as part of the* ***regular order of life for the time being****. The requirement for permanence should not be taken literally but rather as an indication of a stay of sufficient duration or quality properly to be characterised as habitual.*

The requirement for an intention that residence should be of a lasting character depended more upon the evidence of matters susceptible of ***objective proof*** *than upon evidence as to the* ***state of mind*** *of the parties.*

Lord Justice Ward
(Emphasis added)

<u>Approach under Brussels II Revised</u>

"It corresponds to the place which reflects some degree of integration by the child in a social and family environment. To that end, in particular the duration, regularity, conditions and reasons for the stay on the territory of a member state and the family's move to that State, the child's nationality, the place and conditions of attendance at school, linguistic knowledge and the family and social relationships of the child in that State must be taken into consideration. It is for the national court to establish the habitual residence of the child, taking account of all the circumstances specific to each individual case"

Re A (Case C-523/07)[2009] 2 FLR 1

"in addition to the physical presence of the child in a Member State, other factors must also make it clear that the presence is not in any way temporary or intermittent"

"…in order to distinguish habitual residence from mere temporary presence, the former must as a general rule have a certain duration which reflects an adequate degree of permanence. However, the Regulation does not lay down a minimum duration. Before habitual residence can be transferred to the host State, it is of paramount importance that the person concerned has it in mind to establish there the permanent or habitual centre of his interests, with the intention that it should be of lasting character…"

Mercredi v Chaffe (Case C-497/10) [2011] 1 FLR 1293

With regards to intent, the court will have to consider the intent of the child's carer rather than any intention of the subject child.

Combining the 2 approaches

Re S (Habitual Residence) [2010] 1 FLR 1146 CA – both relevant International instruments were engaged.

V v B (A Minor) (Abduction) [1991] 1 FLR 266 – suggested that there was no distinction to be drawn between the concept of "ordinary residence" and "habitual residence".

However, one difference is that a person can be ordinarily resident in more than one place at a time but a person can only have one habitual residence.

Re P-J (Abduction: Habitual Residence: Consent) – the House of Lords rejected the suggestion that the application of the a "real home" test could be used in connection with the concept of "Habitual Residence".

Re J (A Minor: Abduction: Cusotdy Rights) [1990] 2 AC 562 HL
Nessa v Chief Adjudication Officer [1999] 1 WLR 1937
Re F (A Minor) (Child Abduction) [1992]1 FLR 548 CA

Cases above indicate that the concept of habitual residence involves both temporal and qualities considerations. Therefore, an individual can lose his habitual residence in country A and gain habitual residence in country B within a short time if the individual leaves country A with the intention of emigrating permanently to country B and therefore gives up his home and connections in country A.

What is clear is that the intention of the individual at the commencement of a period of actual residence in a particular country will not in itself be determinative of the question of whether habitual residence in that country had in fact been acquired by the time of departure from it.

The Defences – complete Defences and the discretion

There is a distinction between complete defences and defences where, if established, the court has the discretion to decide whether or not to order a summary return.

Complete Defences:

1) The child is 16 a the time of the hearing (Article 4)
2) The child was not habitually resident in the requesting state (Article 3)
3) The Applicant had no rights of custody (Article 3)

Discretion:

1) The Applicant consented to or acquiesced in the removal or retention (Article 13a)
2) The proceedings commenced more than 1 year after the removal/retention and the child is settled (Article 12)
3) There is a "grave risk" of physical or psychological harm or otherwise intolerable situation upon return (Article 13b)
4) Child objects to a return and is of a sufficient age and degree of maturity for court to take account of views. (Article 13)

Where the Applicant was not exercising a right of custody, this may be a complete defence or the court may have discretion..

INTERNATIONAL JUDICIAL CONFERENCE ON CROSS-BORDER FAMILY RELOCATION

WASHINGTON, D.C., UNITED STATES OF AMERICA
23-25 MARCH 2010

co-organised by
Hague Conference on Private International Law
International Centre for Missing and Exploited Children

with the support of
United States Department of State

WASHINGTON DECLARATION ON INTERNATIONAL FAMILY RELOCATION

On 23-25 March 2010, more than 50 judges and other experts from Argentina, Australia, Brazil, Canada, France, Egypt, Germany, India, Mexico, New Zealand, Pakistan, Spain, United Kingdom and the United States of America, including experts from the Hague Conference on Private International Law and the International Centre for Missing and Exploited Children, met in Washington, D.C. to discuss cross-border family relocation. They agreed on the following:

Availability of Legal Procedures Concerning International Relocation

1. States should ensure that legal procedures are available to apply to the competent authority for the right to relocate with the child. Parties should be strongly encouraged to use the legal procedures and not to act unilaterally.

Reasonable Notice of International Relocation

2. The person who intends to apply for international relocation with the child should, in the best interests of the child, provide reasonable notice of his or her intention before commencing proceedings or, where proceedings are unnecessary, before relocation occurs.

Factors Relevant to Decisions on International Relocation

3. In all applications concerning international relocation the best interests of the child should be the paramount (primary) consideration. Therefore, determinations should be made without any presumptions for or against relocation.

4. In order to identify more clearly cases in which relocation should be granted or refused, and to promote a more uniform approach internationally, the exercise of judicial discretion should be guided in particular, but not exclusively, by the following factors listed in no order of priority. The weight to be given to any one factor will vary from case to case:

    i) the right of the child separated from one parent to maintain personal relations and direct contact with both parents on a regular basis in a manner consistent with the child's development, except if the contact is contrary to the child's best interest;

    ii) the views of the child having regard to the child's age and maturity;

    iii) the parties' proposals for the practical arrangements for relocation, including accommodation, schooling and employment;

    iv) where relevant to the determination of the outcome, the reasons for seeking or opposing the relocation;

    v) any history of family violence or abuse, whether physical or psychological;

    vi) the history of the family and particularly the continuity and quality of past and current care and contact arrangements;

vii) pre-existing custody and access determinations;

viii) the impact of grant or refusal on the child, in the context of his or her extended family, education and social life, and on the parties;

ix) the nature of the inter-parental relationship and the commitment of the applicant to support and facilitate the relationship between the child and the respondent after the relocation;

x) whether the parties' proposals for contact after relocation are realistic, having particular regard to the cost to the family and the burden to the child;

xi) the enforceability of contact provisions ordered as a condition of relocation in the State of destination;

xii) issues of mobility for family members; and

xiii) any other circumstances deemed to be relevant by the judge.

5. While these factors may have application to domestic relocation they are primarily directed to international relocation and thus generally involve considerations of international family law.

6. The factors reflect research findings concerning children's needs and development in the context of relocation.

The Hague Conventions of 1980 on International Child Abduction and 1996 on International Child Protection

7. It is recognised that the Hague Conventions of 1980 and 1996 provide a global framework for international co-operation in respect of cross-border family relocations. The 1980 Convention provides the principal remedy (the order for the return of the child) for unlawful relocations. The 1996 Convention allows for the establishment and (advance) recognition and enforcement of relocation orders and the conditions attached to them. It facilitates direct co-operation

between administrative and judicial authorities between the two States concerned, as well as the exchange of information relevant to the child's protection. With due regard to the domestic laws of the States, this framework should be seen as an integral part of the global system for the protection of children's rights. States that have not already done so are urged to join these Conventions.

Promoting Agreement

8. The voluntary settlement of relocation disputes between parents should be a major goal. Mediation and similar facilities to encourage agreement between the parents should be promoted and made available both outside and in the context of court proceedings. The views of the child should be considered, having regard to the child's age and maturity, within the various processes.

Enforcement of Relocation Orders

9. Orders for relocation and the conditions attached to them should be able to be enforced in the State of destination. Accordingly States of destination should consider making orders that reflect those made in the State of origin. Where such authority does not exist, States should consider the desirability of introducing appropriate enabling provisions in their domestic law to allow for the making of orders that reflect those made in the State of origin.

Modification of Contact Provisions

10. Authorities in the State of destination should not terminate or reduce the left behind parent's contact unless substantial changes affecting the best interests of the child have occurred.

Direct Judicial Communications

11. Direct judicial communications between judges in the affected jurisdictions are encouraged to help establish, recognise and enforce, replicate and modify, where necessary, relocation orders.

Research

12. It is recognised that additional research in the area of relocation is necessary to analyse trends and outcomes in relocation cases.

Further Development and Promotion of Principles

13. The Hague Conference on Private International Law, in co-operation with the International Centre for Missing and Exploited Children, is encouraged to pursue the further development of the principles set out in this Declaration and to consider the feasibility of embodying all or some of these principles in an international instrument. To this end, they are encouraged to promote international awareness of these principles, for example through judicial training and other capacity building programmes.

International Social Service
AUSTRALIA

International Family Counselling and Mediation

International Social Service (ISS) Australia is a national charity with over 50 years' experience defending children's rights and connecting families across the world.

We provide counselling, alternative dispute resolution and mediation services, in cases where families, and particularly parents, are separated by international borders.

All ISS Australia's work is carried out with the utmost respect for those we work with. Counselling and mediation take place with the full consent and cooperation of parents, and their legal representatives where necessary.

ISS Australia's counselling and mediation services aim to:

- Enhance or facilitate communication between parents
- Offer counselling to support children's relationships with both parents
- Assist in the development of parenting agreements, including contact arrangements, potentially forming the basis of court orders
- Reduce hostility between parents by focusing on the needs of their children

ISS Australia can use its extensive international network – covering over 140 countries worldwide – to support parents here and overseas, offering emotional and practical support to parents during all stages of the conflict resolution process.

All services are provided by qualified professional Social Workers experienced in delivering high-quality international counselling and mediation services.

Defending children • **connecting** families • across the **world**

Other Useful Contacts
If you think your child has been taken to a Hague Convention country, contact:

Commonwealth Central Authority
International Family Law Unit
Commonwealth Attorney-General's Department
Ph: 1800 100 480 • www.ag.gov.au

If you think your child has been taken to a non-Hague Convention country, contact:

Department of Foreign Affairs and Trade
Ph: 1300 555 135 • www.dfat.gov.au

Or Contact ISS Australia on:

National Office
Level 2, 313-315 Flinders Lane
Melbourne, VIC 3000
Australia
T: 03 9614 8755
F: 03 9614 8766
E: iss@iss.org.au

NSW Office
Level 1, 518 Kent Street
Sydney, NSW 2000
Australia
T: 02 9267 0000
F: 02 9267 3886
E: isnsw@iss.org.au

Australia-wide, phone (local call cost):
1300 657 843
www.iss.org.au

Defending children • **connecting** families • across the **world**

International Social Service

International Parental Child Abduction

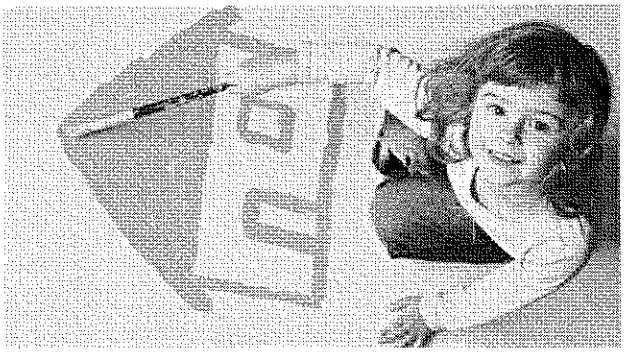
International Social Service (ISS) Australia is a national charity with over 50 years' experience defending children's rights and connecting families across the world.

What is International Parental Child Abduction?

International Parental Child Abduction (IPCA) occurs when a parent takes a child to another country without the other parent's consent, or refuses to return a child from overseas after an agreed period. Cases of IPCA are not uncommon. In Australia, an estimated **3-4 children each week** are abducted by a parent into or out of the country.

ISS Australia offers help to parents and families affected by IPCA, with a focus on the best interests of the child and the utmost respect for the privacy and confidentiality of those we work with.

ISS Australia's IPCA Service is a free national service funded by the Commonwealth Attorney-General's Department and in New South Wales by the State Government.

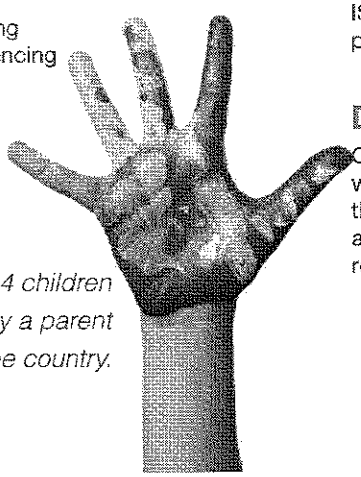


Defending children • **connecting** families • across the **world**

Our Social Workers offer a comprehensive service including:

- Information, advice, support and referral for families and professionals involved in IPCA cases
- Emotional support and counselling
- Practical support and information on who to contact for further advice and assistance
- A mediation-based approach to improve communication between parents and facilitate relationships between parents and children
- Referrals to assist with specific issues requiring long-term support
- Coordination and collaboration with other professional services according to a family's needs
- Support and assistance to access legal advice on IPCA matters
- Community education and training to agencies and community groups about IPCA
- Advocacy and research regarding the concerns of families experiencing IPCA

In Australia, an estimated 3-4 children each week are abducted by a parent into or out of the country.



International Social Service (ISS) Australia is a national charity with over 50 years' experience defending children's rights and connecting families across the world.

Protection under International Law: the Hague Convention on the Civil Aspects of International Child Abduction

The Hague Convention is an international treaty which aims to assist with the prompt return of children who have been wrongfully removed from, or retained outside, their country of habitual residence. The Convention only applies between signatory countries (including Australia).

If a child has been taken to another country without your consent

In the case of an abduction to a Hague Convention country, there is a specific process to be undertaken through the Attorney General's Department to seek the return of the child. If your child has been taken to a country which has not signed the Convention, a different process will be required to apply for return.

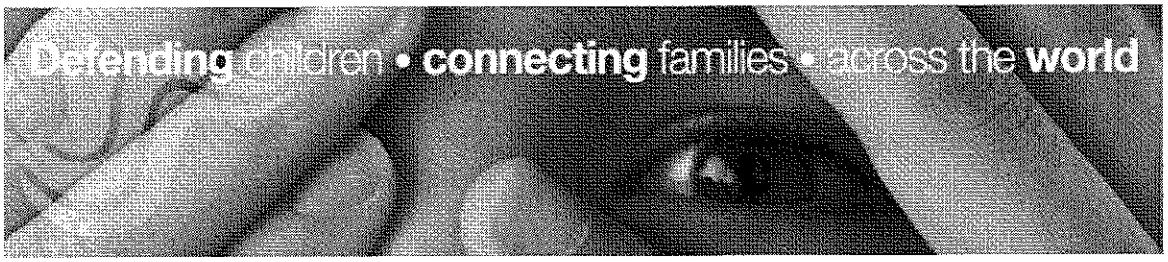
ISS Australia can advise on the best approach in a particular country.

Domestic Violence

One of the reasons a parent might want to leave Australia with their child is domestic violence. If you find yourself in this situation, there is significant support available for you and your children to remain safe and help you leave the relationship and remain in the country.

Australia-wide, phone (local call cost):
1300 657 843

International Social Service AUSTRALIA



Welcome from the Executive Director

"Hello and welcome to ISS Australia's website.

ISS Australia is a dynamic not-for-profit organisation meeting a critical need in Australian society: the need for intercountry social work services, delivered across international borders. ISS Australia is the only Australian non-government organisation focusing exclusively on such services, which we deliver as a member of the international ISS network spanning over 140 countries worldwide.

ISS Australia is a small organisation, but we provide a wide range of services right across Australia.

Many people have never heard of us, but we've assisted tens of thousands of vulnerable families and children since we began operating in the 1950s. In 2011 we celebrated the 50th anniversary of the establishment of ISS Australia in its current form in 1961.

If we are to continue providing a wide range of intercountry social work services, ISS Australia needs the support of funders, individual and corporate donors, members, partners, volunteers and others.

If you're interested in helping in our work, we look forward to hearing from you soon!"

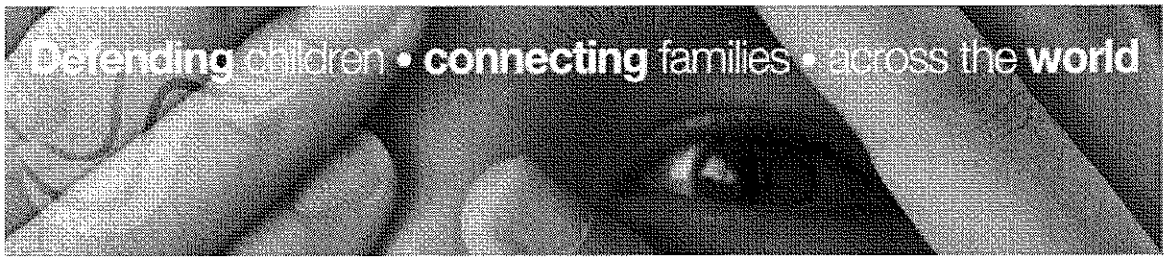
Fionn Skiotis
Executive Director

Search ISS website

PHONE **Toll free:** 1300 657 843 **National Office:** (+61) 3 9614 8755 **NSW Office:** (+61) 2 9267 0300
EMAIL **National:** iss@iss.org.au **NSW:** issnsw@iss.org.au
FAX **National:** (+61) 3 9614 8766 **NSW:** (+61) 2 9267 3886

National Office: Level 2, 313-315 Flinders Lane, Melbourne Vic 3000, Australia
NSW Office: Level 1, 518 Kent Street, Sydney, NSW 2000, Australia

International Social Service AUSTRALIA



Our History, Vision & Principles

Our History

The origins of International Social Service in Australia go back more than half a century, when an Australian branch of the international ISS network was first established.

ISS was founded in Geneva in 1924, in response to the migration of displaced persons after World War I and the need to assist families separated across international borders. To coordinate support for these vulnerable people, ISS established an international social work network, which today spans over 140 countries and continues to assist children and families with a wide range of inter-country social work services.

ISS has had a presence in Australia since the late 1930s. It was established as International Social Service – Australian Branch in 1955, and formally incorporated in 1961.

Today ISS Australia has offices in Melbourne and Sydney. In 2011, ISS Australia celebrated the 50th anniversary of its founding in this country.

Our Vision

ISS Australia works to protect, defend and support children, families and individuals in disadvantaged situations as a consequence of global movement, particularly where these circumstances have led to the separation of families and children. ISS Australia works to ensure that respect for human rights is accorded to every individual.

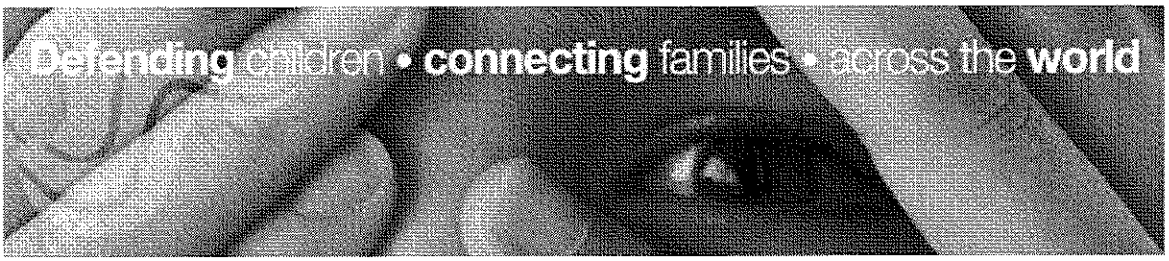
Our Principles

ISS promotes and protects the rights of families, children and other vulnerable persons according to the United Nations Convention on the Rights of the Child and other international human rights standards. The best interests of the child are paramount in all our work. As ISS celebrates diversity, it continually strives to practice in a culturally appropriate manner. The principles of neutrality, confidentiality, independence and impartiality are at the heart of the organisation's work. ISS's shared commitment to families, children and individuals unites its global network.

PHONE **Toll free:** 1300 657 843 **National Office:** (+61) 3 9614 8755 **NSW Office:** (+61) 2 9267 0300
EMAIL **National:** iss@iss.org.au **NSW:** issnsw@iss.org.au
FAX **National:** (+61) 3 9614 8766 **NSW:** (+61) 2 9267 3886

National Office: Level 2, 313-315 Flinders Lane, Melbourne Vic 3000, Australia
NSW Office: Level 1, 518 Kent Street, Sydney, NSW 2000, Australia

International Social Service AUSTRALIA



The ISS international network

ISS Australia is the independent Australian arm of the global International Social Service network, with members (known as Branches, Bureaus or Correspondents) in over 140 countries worldwide. As a stand-alone non-government organisation, ISS Australia is a Branch member of the ISS network.

Established in 1924, the ISS network is the only international body dedicated to the provision of intercountry social work services to children and families separated by international borders.

Branch and Bureau members of the network meet every two years as the ISS International Council, the network's supreme decision-making body. Between International Council meetings, the network is governed by a seven-member Governing Board, headed by an International President (position currently vacant). A body made up of the Executive Directors (chief executives or equivalents) of all Branch and Bureau members, known as the Professional Advisory Committee (PAC), provides advice to and assists the Governing Board in its governance responsibilities.

The network's General Secretariat office is located in Geneva, Switzerland and headed by the network's Secretary-General, Jean Ayoub. The General Secretariat has responsibility for the day-to-day running of the international network and works closely with the PAC on addressing current issues in the international network and identifying future areas for development.

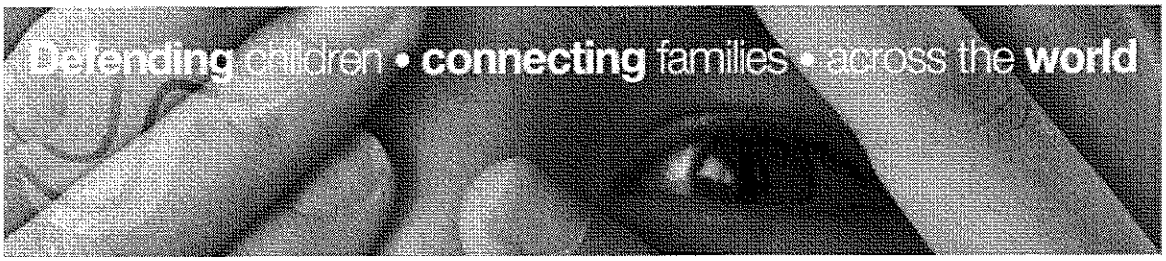
ISS has Consultative Status with the United Nation's Economic and Social Council (ECOSOC) and is recognised as an NGO partner by key international bodies including UNICEF and the Hague Conference on Private International Law.

For further information on the International Social Service network, please visit the network's website at www.iss-ssi.org.

PHONE **Toll free:** 1300 657 843 **National Office:** (+61) 3 9614 8755 **NSW Office:** (+61) 2 9267 0300
EMAIL **National:** iss@iss.org.au **NSW:** issnsw@iss.org.au
FAX **National:** (+61) 3 9614 8766 **NSW:** (+61) 2 9267 3886

National Office: Level 2, 313-315 Flinders Lane, Melbourne Vic 3000, Australia
NSW Office: Level 1, 518 Kent Street, Sydney, NSW 2000, Australia

International Social Service AUSTRALIA



International Parental Child Abduction- Legal Assistance

ISS Australia's International Parental Child Abduction Legal Assistance Service provides free expert legal assistance to:

- parents in Australia whose children have been taken or kept overseas without consent
- parents in Australia seeking access to their children who are living overseas

Our qualified legal staff can assist by:

- providing information to parents and organisations about:

- how to reduce the risk of a child being taken from Australia without consent
- the legal avenues available to secure contact with a child living overseas
- the legal avenues available to help recover children from overseas

- providing legal assistance to:

- recover children who have been taken to or kept in one of the 86 countries bound by the Hague Convention on the Civil Aspects of International Child Abduction 1980 (Hague Convention)
- enforce access rights regarding children living in a Hague Convention country.

We can assist by:

- assessing the likelihood of securing the return of a child from overseas
- assessing the likelihood of obtaining access to a child living overseas
- preparing applications and supporting documents for return or access through the Hague Convention

This service is provided Australia-wide by qualified lawyers experienced in family law and located in ISS Australia's National (Melbourne) and NSW (Sydney) Offices. It is free of charge (funded by the Commonwealth Attorney-General's Department (the Commonwealth Central Authority).

To access our IPCA Legal Assistance Service, or to refer a client to it, please call ISS Australia's National Helpline phone number – 1300 657 843 (local call cost only) – or email legal@iss.org.au.

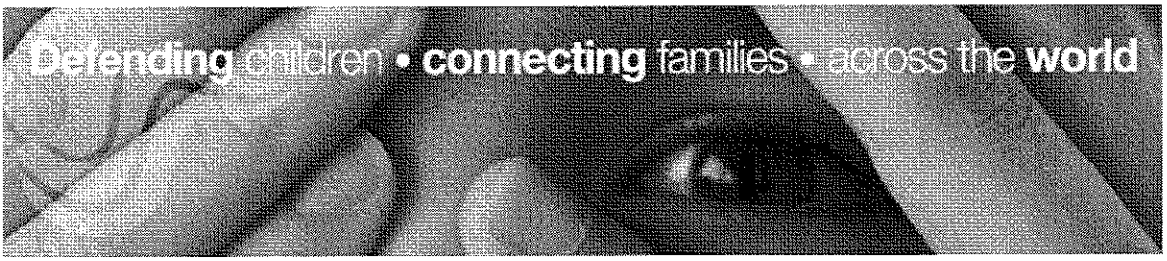
ISS Australia also provides an International Parental Child Abduction Social Work Support Service as well as an International Family Mediation service. Referrals to these services can be made at the request of clients.

International Parental Child Abduction Legal Assistance Service
Download our Service Brochure here

PHONE **Toll free:** 1300 657 843 **National Office:** (+61) 3 9614 8755 **NSW Office:** (+61) 2 9267 0300
EMAIL **National:** iss@iss.org.au **NSW:** issnsw@iss.org.au
FAX **National:** (+61) 3 9614 8766 **NSW:** (+61) 2 9267 3886

National Office: Level 2, 313-315 Flinders Lane, Melbourne Vic 3000, Australia
NSW Office: Level 1, 518 Kent Street, Sydney, NSW 2000, Australia

International Social Service AUSTRALIA



International Family Mediation

ISS Australia's International Family Mediation (IFM) Service can provide expert assistance in the resolution of family disputes across international borders.

What is International Family Mediation (or Dispute Resolution)?

IFM is the process whereby a Family Dispute Resolution Practitioner (FDRP) assists family members affected (or likely to be affected) by separation or divorce across international borders to try to resolve their disputes with each other.

Our professional FDRPs offer a comprehensive IFM Service including:

- Assessment of suitability for mediation
- Mediation provided face-to-face, via telephone or online
- Section 60I certificates for the Family Court, where appropriate

The role of ISS Australia's FDRPs

The FDRP is independent of all parties involved in the process and is experienced in cross-cultural and international family matters. All FDRPs are qualified and accredited by the Commonwealth Government.

In addition to their FDRP qualification, all ISS Australia staff providing this service are qualified Social Workers.

Legal Advice

ISS Australia's FDRPs cannot provide parties with legal advice. All parties have a right to seek legal advice at any time during the mediation process and are encouraged to do so.

ISS Australia provides legal services to clients experiencing International Parental Child Abduction, and an internal referral can be made to this service where appropriate.

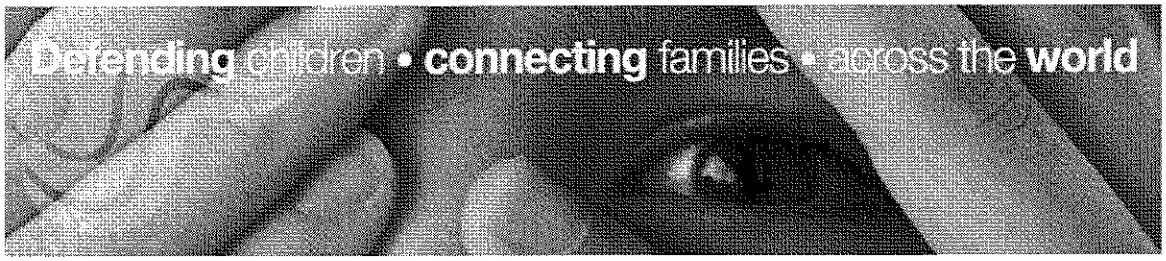
International Family Counselling and Mediation
Download our Service Brochure here

Child welfare and kinship care
International Family Mediation
Tracing and reunification
International Parental Child Abduction-Social Work Support
International Parental Child Abduction-Legal Assistance
Professional services
Fees for services
Client Charter

PHONE **Toll free**: 1300 657 843 **National Office**: (+61) 3 9614 8755 **NSW Office**: (+61) 2 9267 0300
EMAIL **National**: iss@iss.org.au **NSW**: issnsw@iss.org.au
FAX **National**: (+61) 3 9614 8766 **NSW**: (+61) 2 9267 3886

National Office: Level 2, 313-315 Flinders Lane, Melbourne Vic 3000, Australia
NSW Office: Level 1, 518 Kent Street, Sydney, NSW 2000, Australia

International Social Service AUSTRALIA



International Parental Child Abduction- Legal Assistance

ISS Australia's International Parental Child Abduction Legal Assistance Service provides free expert legal assistance to:

- parents in Australia whose children have been taken or kept overseas without consent
- parents in Australia seeking access to their children who are living overseas

Our qualified legal staff can assist by:

- providing information to parents and organisations about:

- how to reduce the risk of a child being taken from Australia without consent
- the legal avenues available to secure contact with a child living overseas
- the legal avenues available to help recover children from overseas

- providing legal assistance to:

- recover children who have been taken to or kept in one of the 86 countries bound by the Hague Convention on the Civil Aspects of International Child Abduction 1980 (Hague Convention)
- enforce access rights regarding children living in a Hague Convention country.

We can assist by:

- assessing the likelihood of securing the return of a child from overseas
- assessing the likelihood of obtaining access to a child living overseas
- preparing applications and supporting documents for return or access through the Hague Convention

This service is provided Australia-wide by qualified lawyers experienced in family law and located in ISS Australia's National (Melbourne) and NSW (Sydney) Offices. It is free of charge (funded by the Commonwealth Attorney-General's Department (the Commonwealth Central Authority).

To access our IPCA Legal Assistance Service, or to refer a client to it, please call ISS Australia's National Helpline phone number – 1300 657 843 (local call cost only) – or email legal@iss.org.au.

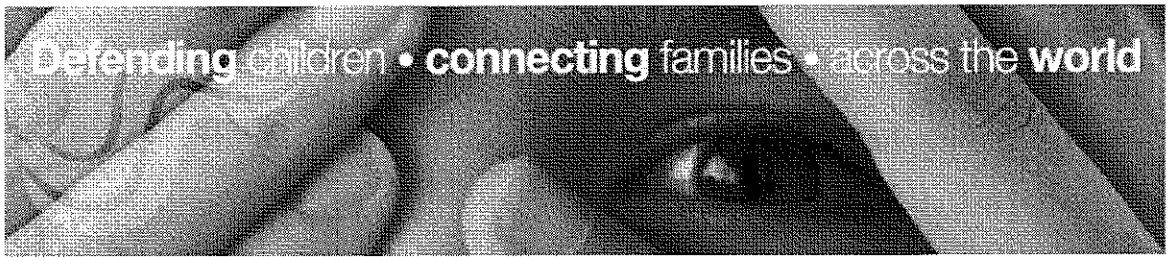
ISS Australia also provides an International Parental Child Abduction Social Work Support Service as well as an International Family Mediation service. Referrals to these services can be made at the request of clients.

International Parental Child Abduction Legal Assistance Service
Download our Service Brochure here

PHONE **Toll free**: 1300 657 843 **National Office**: (+61) 3 9614 8755 **NSW Office**: (+61) 2 9267 0300
EMAIL **National**: iss@iss.org.au **NSW**: issnsw@iss.org.au
FAX **National**: (+61) 3 9614 8766 **NSW**: (+61) 2 9267 3886

National Office: Level 2, 313-315 Flinders Lane, Melbourne Vic 3000, Australia
NSW Office: Level 1, 518 Kent Street, Sydney, NSW 2000, Australia

International Social Service AUSTRALIA



Fees for services

ISS Australia is a not for profit, non-governmental, charitable organisation.

We receive government funding for some services, which are provided free of charge to clients, however several of our services are unfunded.

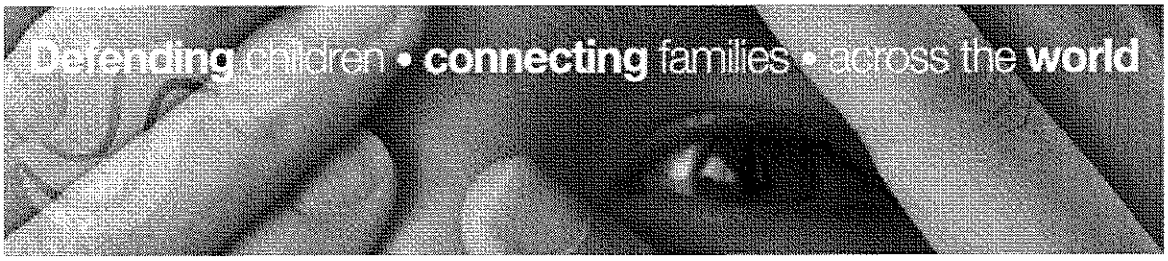
Fees apply to those services without government funding. A concession rate applies for all individual clients (i.e. not government departments, authorities or similar bodies) on low or statutory incomes, and there is a provision for a full fee waiver for individual clients in exceptional cases (severe hardship).

For details, please see our list of fees and charges for the **National Office** and the **NSW Office**, or call 1300 657 843 (local call cost).

PHONE **Toll free**: 1300 657 843 **National Office**: (+61) 3 9614 8755 **NSW Office**: (+61) 2 9267 0300
EMAIL **National**: iss@iss.org.au **NSW**: issnsw@iss.org.au
FAX **National**: (+61) 3 9614 8766 **NSW**: (+61) 2 9267 3886

National Office: Level 2, 313-315 Flinders Lane, Melbourne Vic 3000, Australia
NSW Office: Level 1, 518 Kent Street, Sydney, NSW 2000, Australia

International Social Service AUSTRALIA



International Conventions

ISS Australia works closely with international Conventions relevant to children and families, in particular those established by an international body known as the Hague Conference on Private International Law (HccH).

Further information on the Hague Conference and a full transcript of its Conventions can be found at the HccH website.

Information relating to the application of the Conventions in Australia can be also found at the website of the Commonwealth Attorney-General's Department.

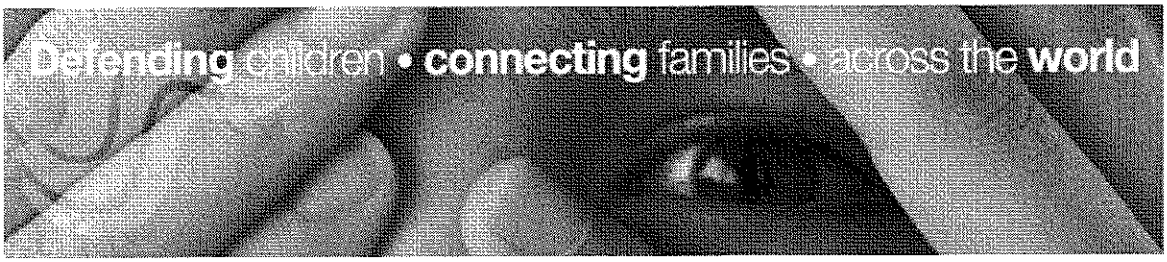
The most widely used Conventions relating to ISS Australia's work with children and families include:

- 1951 UN Convention relating to the Status of Refugees
  - Entered into force in Australia on 22 January 1954
- 1980 Hague Convention on the Civil Aspects of International Child Abduction
  - Entered into force in Australia on 1 January 1987
- 1989 UN Convention on the Rights of the Child
  - Entered into force in Australia on 2 September 1990
- 1993 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption
  - Entered into force for Australia on 1 December 1998
- 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children
  - Entered into force for Australia on 1 August 2003
- 2000 UN Convention against Transnational Organised Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.
  - Entered into force in Australia on 29 September 2003

PHONE **Toll free**: 1300 657 843 **National Office**: (+61) 3 9614 8755 **NSW Office**: (+61) 2 9267 0300
EMAIL **National**: iss@iss.org.au **NSW**: issnsw@iss.org.au
FAX **National**: (+61) 3 9614 8766 **NSW**: (+61) 2 9267 3886

National Office: Level 2, 313-315 Flinders Lane, Melbourne Vic 3000, Australia
NSW Office: Level 1, 518 Kent Street, Sydney, NSW 2000, Australia

International Social Service AUSTRALIA



Child rights

Human rights are afforded to every individual regardless of their age. However the term 'children's rights' is used to describe the human rights of children, in order to highlight their right to special protection and care due to their age and vulnerability.

There is no single definition of children's rights, and views on children's rights differ across countries and cultures. Children have traditionally been viewed as property of their parents rather than as individuals with the same human rights as adults, and therefore discussions of human rights have not always acknowledged children's rights.

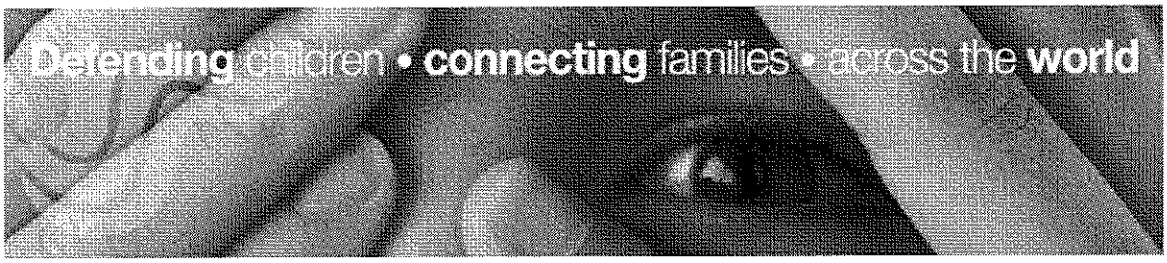
One of the earliest English language documents regarding children's rights was Thomas Spence's The Rights of Infants (1796). However it was not until 1923 that the issue of children's rights began to be widely promoted, when Eglantyne Jebb, a pioneer of children's rights and the founder of Save the Children, drafted a document entitled the Declaration of the Rights of the Child. This Declaration was adopted a year later by the League of Nations, which would later become the United Nations. The Declaration influenced the formation on the UN Convention on the Rights of the Child (CROC), which is the leading international treaty on children's rights today.

The UN views children's rights as including all the human rights outlined in the Universal Declaration of Human Rights, with additional rights that are particular to the situation of children. These include, for example, the right to association with both biological parents, the right to universal education, the right to criminal laws appropriate for the age and development of the child, and the right to care and nurturing.

PHONE **Toll free**: 1300 657 843 **National Office**: (+61) 3 9614 8755 **NSW Office**: (+61) 2 9267 0300
EMAIL **National**: iss@iss.org.au **NSW**: issnsw@iss.org.au
FAX **National**: (+61) 3 9614 8766 **NSW**: (+61) 2 9267 3886

National Office: Level 2, 313-315 Flinders Lane, Melbourne Vic 3000, Australia
NSW Office: Level 1, 518 Kent Street, Sydney, NSW 2000, Australia

International Social Service AUSTRALIA



2009: The 1996 Hague Convention

In 2009, ISS Australia undertook research into the *Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (1996).*

The research report was part of a project funded by the Ian Potter Foundation, "Boosting Outcomes for Australian Children Using International Laws."

The 1996 Hague Convention determines which country's authorities have jurisdiction to take measures to protect children across international borders and enables recognition and enforcement of protection measures in all countries who have signed the Convention.

This project has enabled ISS Australia to deepen its own understanding of the 1996 Hague Convention, positioning us as the leading non-government organisation in Australia with expertise on the Convention.

We have also developed more effective service delivery systems for responding to inter-country cases involving children and have identified key aspects of the Convention that could be applied to improve outcomes for children.

Capacity Building
National Helpline
"In the Best Interests of the Child" Training
Kinship Care Across Borders
The Pacific: building capacity & networks
2009: The 1996 Hague Convention
2008: Victorian kinship care project
2000-06: Former child migrants project

PHONE **Toll free:** 1300 657 843 **National Office:** (+61) 3 9614 8755 **NSW Office:** (+61) 2 9267 0300
EMAIL **National:** iss@iss.org.au **NSW:** issnsw@iss.org.au
FAX **National:** (+61) 3 9614 8766 **NSW:** (+61) 2 9267 3886

National Office: Level 2, 313-315 Flinders Lane, Melbourne Vic 3000, Australia
NSW Office: Level 1, 518 Kent Street, Sydney, NSW 2000, Australia

INTERNATIONAL ACADEMY OF MATRIMONIAL LAWYERS
AMERICAN CHAPTER
MINNEAPOLIS, MINNESOTA

THE HAGUE CONVENTION IS NOT A CUSTODY PROCEEDING

June 11, 2012

©2012 By Robert D. Arenstein[1]
295 Madison Avenue
New York, New York 10017
(212) 679-3999
E Mail- arensteinlaw@aol.com

Introduction

The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction is a multilateral treaty, which seeks to protect children from the harmful effects of abduction and retention across international boundaries by providing a procedure to bring about their prompt return.

The United States ratified the Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11,670 ("Hague Convention") on July 1, 1988.Congress implemented the Hague Convention by passing the International Child Abduction Remedies Act ("ICARA"). That Act sets forth the procedures applicable to handling actions brought in the United States pursuant to the Hague Convention.

The Convention is to be given uniform international interpretation. 42 U.S.C. 11601. The opinion of sister signatories to the Convention are entitled to significant

[1] A Fellow of the American Academy of Matrimonial Lawyers and the International Academy of Matrimonial Lawyers. A Member of the New York, New Jersey, Florida and District of Columbia Bars. I have tried, advised, participated and served as an expert witness in almost four hundred Hague cases.

weight. *Air France v. Saks*, 470 U.S. 392, 404 (1985). Although a court of first instance may not be bound by the decisions of courts in other states or by the manner in which a treaty has been interpreted in other nations, *Ex parte Charlton*, 185 F. 880, 886 (D.N.J. 1911), aff'd 229 U.S. 447 (1913) [33 S. Ct. 945, 57 L. Ed. 1274], a proper regard for promoting uniformity of approach in addressing a treaty of this kind requires that the views of other courts receive respectful attention. *Tahan v. Duquette,* 259 N.J. Super. 328 (1992) [613 A. 2d 486]. "Treaties are construed more liberally than private agreements, and to ascertain their meaning we may look beyond the written words to the history of the treaty, the negotiations, and the practical construction adopted by the parties." *Chocotaw Nation of Indians v. United States*, 318 U.S. 423, 431-432 (1943); *Air France v. Saks,* 470 U.S. 392, 396 (1985); *Sale v. Haitian Ctrs. Council,* 509 U.S. 155 (1993) [113 S. Ct. 2549, 2565-67, 125 L.Ed. 2d 128].

In every action brought for the return of a child under the terms of the Convention, the central legal question is whether there has been a wrongful removal or retention of the child. The burden of proof of wrongful retention or removal is on the petitioner and the standard of proof required is that beyond a preponderance of the evidence. If a wrongful removal or retention is established, the Convention mandates the return of the child subject to a limited number of narrowly defined defenses.

ICARA was designed as a tool for the left-behind parent to obtain assistance from foreign governmental adjudicating authorities to locate the child and quickly determine where the custody hearings should take place. Under ICARA, the adjudicating tribunal does not have the authority to determine custody issues, unless one of the Convention's Article XIII defenses can be invoked. As such, potential

conflicts are less likely because a Country Addressed is not empowered by ICARA to resolve custody disputes,

As our society becomes increasingly globally connected through the ease of international air travel, the advent of the internet, and the strength of international commerce, it is inevitable that family relationships will also enjoy international diversity. However, when parents from diverse national origins decide to dissolve their matrimonial ties, parental preferences concerning where to raise the children of that marriage can result in conflict. In response to the growing problem of international child abduction, approximately 80 countries have now adopted the Hague Convention on the Civil Aspects of International Child Abduction [Hague Convention].[2] Since the Treaty is fairly new in the United States, the attorney's job is often twofold. First, the attorney must, as always, represent his or her client vigorously. Second, the attorney is often faced with the task of educating both the bench and the bar on the provisions and the proper application of the Convention.

EXPEDITED PROCEEDINGS.

The Convention's drafters envisioned a streamlined process that would lead to the abducted child's prompt return to his or her habitual residence. The Convention provides that "[c]ontracting [nation-]States shall act expeditiously in proceedings for the return of children. The goal of ICARA is that the Country Addressed will reach a

[2] Hague Convention, on the Civil Aspects of International Child Abduction, October 25, 1980, *reprinted in* 19 I. L. M. 1501 [hereinafter Hague Convention].

decision as to where the custody hearings will take place within six weeks. If a determination has not been made in six weeks, then "[t]he applicant or the Central Authority of the requested State . . . shall have the right to request a statement of the reasons for the delay[ed proceedings]." Moreover, a reply from the Country Addressed shall be provided as to the reason for the delayed proceedings.

In a case involving the return of children to a parent in Mexico, the *March* court interpreted the term "prompt" to apply to the nature of the court proceedings. This ruling was confirmed by the appellate court. The *March* court stated that "[ICARA] provides a generous authentication rule." "No authentication of such application, petition, document or information shall be required in order for the application, petition, document or information to be admissible in court." The *March* court clarified that, "the provision served to expedite rulings on petitions for the return of children wrongfully removed or retained. Expeditious rulings are critical to ensure that the purpose of the treaty—prompt return of wrongfully removed or retained children—is fulfilled."

CIVIL AND NONEXCLUSIVE REMEDY.

ICARA is intended as a civil remedy. Although the term "wrongful abduction" suggests criminal conduct, ICARA is not designed as an extradition treaty. Unlike the extradition process, where the criminal is returned to the United States to face charges, ICARA was enacted to facilitate return of the child to the nation of habitual residence.3 Upon the child's arrival at the location of habitual residence, the courts of the habitual residence may further resolve custody disputes.

.

In addition, ICARA is a nonexclusive remedy The Convention provides the Central Authority with "[t]he power… to order [the] return of the child at any time . For instance, in *Zajaczkowski,* the court ordered the prompt return of the child, adopting the writ of habeas corpus as a procedural device to be used in conjunction with ICARA remedies.

The primary thing to remember when dealing with alleged international child abduction cases is that a proceeding under the Hague Convention and ICARA is not a custody proceeding; it is a proceeding to compel the return of the child to his country of habitual residence so that the courts of that country can determine questions relating to custody of that child. Article 3 of the Hague Convention provides that, in order to prevail on a claim, a petitioner must show: 1) That the child was habitually resident in one nation and has been removed to or retained in a different country; 2) That the removal or retention was in breach of the petitioner's custody rights under the law of the country of habitual residence; and 3) That the petitioner was exercising those rights at the time of the removal or retention. The petitioner must establish these requirements by a preponderance of the evidence. 42 U.S.C. § 11603(e)(1)(A).

Once wrongful removal is shown, return of the child is "required" unless the respondent establishes one of four defenses: 1) The proceeding was commenced in the responding state more than one year after the wrongful removal or retention, and "the child is now settled in its new environment" (Article 12); 2) The party now seeking return of the child was not actually exercising custodial rights at the time of the wrongful removal or

retention of the child; or there was consent to the removal; or there was acquiescence to the retention (Article 13 (a)); 3) The return of the child would expose him or her to physical or psychological harm "or otherwise place the child in an intolerable situation" (Article 13(b)); or the child objects to being returned and is of such age and maturity that it is appropriate to take account of his views (Article 13 (b)); and/or 4) That human rights and fundamental freedom would be abridged if the return were permitted (Article 20).

Rights of Custody and Rights of Access

A right of custody and/or a right of access "may arise in particular by operation of law or by reason of judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State."[4] For example, if custody has already been awarded to one parent then that parent has a right of custody. If the other parent has been granted visitation rights, then that parent has a right of access. This right of access, though, is not sufficient in and of itself to qualify as a right of custody sufficient to order a return under the Convention. In a very controversial case, the Second Circuit in a 2-1 decision ruled in the case of Croll v. Croll that a ne exeat order did not give a "right of custody" under the treaty.[5] In a stinging dissent, Justice Sotomayor is critical of the majority looking at "right of custody" as a pure custody terminology. The Croll decision was distinguished in a First Circuit Case, Whallon v. Lynn, [6], the court discusses that Croll's ne exeat clause was one of a negative right and in this case the

[4] Hague Convention, *supra*. note 1, Article 3; *see* Roy Peter Costa v. Debra Jean Costa, (U.K. 1991) High Court of Justice, Family Division CA 518/91; *see also* In re C

[5] Croll v. Croll, 229 F3d. 133 (2nd Cir, 2000) , 122 S.Ct. 340, 151 L.E. 2d 256. cert.denied (10/09/2001)

[6] Whallon v. Lynn 2000WL1610609 (1st Cir, 2000)

ne exeat was a positive right. There are presently two cases before the Supreme Court on Petition for Certiorari asking for a right to argue for a uniform decision on the “rights of custody”. The Supreme Court had never taken a case involving the Hague Convention until January 12, 2011 when it heard the arguments on the case of **Abbott v. Abbott** 130 S.Ct. 1983, 176 L.Ed.2d 789, 78 USLW 4373, 10 Cal. Daily Op. Serv. 5983, 2010 Daily Journal D.A.R. 7161, 22 Fla. L. Weekly Fed. S 317. The Supreme Court finally took the first two Hague Cases of **Abbott v. Abbott** and **Duran v. Beaumont.**130 S.Ct. 3318, 176 L.Ed.2d 1216, 77 USLW 3369, 78 USLW 3687, 78 USLW 3009, 78 USLW 3678. Both cases decided that a ne exeat order is not a right of custody. However in the first case ever to heard by the Supreme Court on any issue involving the Hague Convention, The Supreme Court, Justice Kennedy, held that father's ne exeat right granted by Chilean family court was “right of custody,” under Hague Convention, abrogating Croll v. Croll, 229 F.3d 133, Fawcett v. McRoberts, 326 F.3d 491, Gonzalez v. Gutierrez, 311 F.3d 942. Both cases were remanded to the Circuit Court for trial on the issues of the exceptions to the treaty for returning children. The majority opinion in Furness v. Reeves, supra held the day and is the law of the land. Justice Sotomayor whose dissenting opinion in Croll was vindicated in this opinion and she was in the majority here.

If one parent suspects that the other might abduct the child[ren], that parent may obtain a court order that prevents the other parent from leaving the jurisdiction with the child[ren]. This is known as a ne exeat order. This too may give the parent a right of

custody as defined by Article 3 and 5 of the Hague Convention.[7]

There are times however when the notion of who has a right of custody becomes clouded.[8] If parents are married and have not begun any divorce or custody proceedings, and thus have joint custody, the United States views them as having an equal right of custody of the child[ren]. However, this may not be true in other countries. In a situation where the child was born out of wedlock, many countries will give a superior right of custody to the mother. Custody rights are defined by the laws of the country of the child's habitual residence,[9] so the attorney may have to do some research into rights of custody and access in the foreign jurisdiction prior to filing the petition.

A parent does not have to have actual physical custody to be exercising rights of custody. Decisions regarding the child's well-being, including the right to determine the place of residence of the child[ren], are considered rights of custody.[10] In the case of Costa v. Costa,[11] the court found that, "the right to determine a child's place of residence is therefore included among the rights of custody to which Article 3 applies.[12]" Therefore, if a court or a parent must approve a relocation of a child[ren], that very fact

---

[7] Hague Convention, supra note 1, Article 3 & 5; *see* Costa *supra* note 40, but see Croll v. Croll *supra* note 41.

[8] It, therefore, becomes the job of the attorney to explain to the judge that the right of custody can mean different things.

[9] Meredith v. Meredith, 759 F.Supp. 1432, 1434(D.Ariz.1991).

[10] Hague Convention, *supra* note 1 Article 5.

[11] Costa *supra* note 40.

[12] Id.

gives rise to a recognizable non-custodial "right of custody" within the meaning of the Convention[13]

In an Australian case, C v. C,[14] the court found that a clause in a custody order stating that "neither the husband or the wife shall remove the child from Australia without the consent of the other..." was sufficient to find that the father had rights of custody.[15] Although the father did not have the right to determine the place of residence within Australia, he did have the right to decide whether the child remained in Australia or lived anywhere outside that country.[16]

In some instances, it may be beneficial to obtain a custody decree prior to applying for return of the child[ren] under the Convention. An order which is based, in part, upon a finding that there was a wrongful removal or retention within the meaning of Article 3 may speed up the process of return.[17] Even if there is a custody decree, the Convention does not require its enforcement or recognition;[18] "it only seeks to restore the factual custody arrangements that existed prior to the wrongful removal or retention."[19]

Custody rights must have actually been exercised by the left-behind parent at the time of the breach by the abducting parent, or would have been exercised but for the breach, in order for the Convention to apply.[20] The burden is on the petitioner to prove

---

[13] Costa, *supra* note 40, but see Croll v. Croll, *supra* Note 41.

[14] 1 FLR 403 (1989), 1 WLR 654 (1989).

[15] Id.

[16] Id.

[17] 51 Fed. Reg. 10498, 10506 (1986).

[18] Hague Convention, *supra* note 1, Article 17.

[19] 51 Fed. Reg. at 10507(1986).

[20] Id.

that his or her custody rights were or would have been exercised. The burden is on the party opposing return to prove the nonexercise of custody rights.[21]

For example, in Meredith v. Meredith[22], Mrs. Meredith brought an action under the Hague Convention, in the United States, claiming that her child was wrongfully removed from England by the child's father. Mrs. Meredith had taken her child to France, on December 7, 1989, with the consent of the child's father. A few weeks later, she telephoned her husband and notified him that she would not be returning to Arizona with their child. Instead, she moved to England without notifying her husband and, with the help of her family, concealed her whereabouts from him.

On April 26, 1990, Mr. Meredith was awarded custody by an Arizona court after Mrs. Meredith had been served with notice, through her parents, and given an opportunity to be heard to which she had not responded. A month later, Mr. Meredith, with the help of an attorney in England, regained physical custody of the child and brought her back to the United States. It was after the child's removal that Mrs. Meredith filed a petition under the Convention.

The Court determined that Mrs. Meredith only had physical possession of the child rather than legal rights of custody at the time of the removal, even though prior to the custody order both parents had legal custody and denied the petition.[23]

---

[21] Hague Convention, *supra* note 1, Article 13.

[22] 759 F.Supp. 1432 (D.Ariz.1991).

[23] Id. at 1436.

FOURTEENTH SESSION FINAL ACT

Excerpts containing the text of the

1980 Hague Convention
on the Civil Aspects of
International Child Abduction

Final Act of the Fourteenth Session

The undersigned, Delegates of the Governments of Argentina, Australia, Austria, Belgium, Canada, Czechoslovakia, Denmark, the Arab Republic of Egypt, Finland, France, the Federal Republic of Germany, Greece, Ireland, Israel, Italy, Japan, Jugoslavia, Luxemburg, the Netherlands, Norway, Portugal, Spain, Surinam, Sweden, Switzerland, Turkey, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Venezuela; and the Representatives of the Governments of Brazil, the Holy See, Hungary, Monaco, Morocco, the Union of Soviet Socialist Republics and Uruguay participating by invitation or as Observer,convened at the Hague on the 6th October 1980, at the invitation of the Government of the Netherlands, in the Fourteenth Session of the Hague Conference on Private International Law.

Following the deliberations laid down in the records of the meetings, have decided to submit to their Governments--

A. The following draft Conventions--

CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

The States signatory to the present Convention, firmly convinced that the interests of children are of paramount importance in matters relating to their custody, desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,

Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions--

CHAPTER I -- SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are--

(a) to secure the prompt return of children wrongfully removed to or retained in any contracting State; and

(b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

Article 2

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

Article 3

The removal or the retention of a child is to be considered wrongful where--

(a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

(b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph (a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

Article 5

For the purposes of this Convention--

(a) 'rights of custody' shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;

(b) 'rights of access' shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

CHAPTER II -- CENTRAL AUTHORITIES

Article 6

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

Federal States, States with more than one system of law or States having autonomous territorial organizations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other object's of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures--

(a) to discover the whereabouts of a child who has been wrongfully removed or retained;

(b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;

(c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;

(d) to exchange, where desirable, information relating to the social background of the child;

(e) to provide information of a general character as to the law of their State in connection with the application of the Convention;

(f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;

(g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel. and advisers;

(h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;

(i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

CHAPTER III -- RETURN OF CHILDREN

Article 8

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain--

(a) information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;

(b) where available, the date of birth of the child;

(c) the grounds on which the applicant's claim for return of the child is based;

(d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by--

(e) an authenticated copy of any relevant decision or agreement;

(f) a certificate or an affidavit emanating from a Central Authority, or

other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;

(g) any other relevant document.

Article 9

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

Article 10

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that--

(a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

(b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

Article 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognized or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

Article 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

Article 19

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

Article 20

The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

CHAPTER IV -- RIGHTS OF ACCESS

Article 21

An application to make arrangements for organizing or, securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfillment of any conditions to which the exercise of those rights may be subject. The

Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organizing or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

CHAPTER V -- GENERAL PROVISIONS

Article 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

Article 23

No legalization or similar formality may be required in the context of this Convention.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

Article 25

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

Article 26

Each Central Authority shall bear its own costs in applying this Convention. Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of

legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise or rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

Article 27

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

Article 28

A Central Authority may require that the application be accompanied by a written authorization empowering it to act on behalf of the applicant, or to designate a representative so to act.

Article 29

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

Article 31

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units--

(a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;

(b) any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

Article 32

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 33

A State within which different territorial units have their own rules of law in respect of custody of children shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.

Article 34

This Convention shall take priority in matters within its scope over the Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors, as between Parties to both Conventions. Otherwise, the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organizing access rights.

Article 35

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.

Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

Article 36

Nothing in this convention shall prevent two or more Contracting States, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provisions of this Convention which may imply such a restriction.

CHAPTER VI -- FINAL CLAUSES

Article 37

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time Of its Fourteenth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 38

Any other State may accede to the Convention.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands. This Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

Article 39

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.

Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 40

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

Any such declaration shall be notified to the ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

Article 41

Where a Contracting state has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

Article 42

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservation shall be permitted.

Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 43

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38.

Thereafter, the Convention shall enter into force--

1. For each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;

2. For any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

Article 44

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it. If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies. The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 45

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 38, of the following--

1. The signatures and ratifications, acceptances and approvals referred to in Article 37;

2. the accessions referred to in Article 38;

3. the date on which the Convention enters into force in accordance with Article 43;

4. the extensions referred to in Article 39;

5. the declarations referred to in Articles 38 and 40;

6. the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;

7. the denunciations referred to in Article 44.

In witness whereof the undersigned, being duly authorized thereto, have signed this Convention.

Done at The Hague, on the 25th day of October 1980 in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fourteenth Session.

Public Law 100-300
100th Congress
[H.R. 3971, 29 Apr 1988]

42 USC 11601 et seq

An Act

INTERNATIONAL CHILD ABDUCTION REMEDIES ACT (ICARA)

To establish procedures to implement the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC 1. SHORT TITLE.

This Act may be cited as the "International Child Abduction Remedies Act".

SEC. 2. FINDINGS AND DECLARATIONS [42 USC 11601]

(a) Findings. -- The Congress makes the following findings:

(1) The international abduction or wrongful retention of children is harmful to their well-being.

(2) Persons should not be permitted to obtain custody of children by virtue of their wrongful removal or retention.

(3) International abductions and retentions of children are increasing, and only concerted cooperation pursuant to an international agreement can effectively combat this problem.

(4) The Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980, establishes legal rights and procedures for the prompt return of children who have been wrongfully removed or retained, as well as for securing the exercise of visitation rights. Children who are wrongfully removed or retained within the meaning of the Convention are to be promptly returned unless one of the narrow exceptions set forth in the Convention applies. The Convention provides a sound treaty framework to help resolve the problem of international abduction and

retention of children and will deter such wrongful removals and retentions.

(b) DECLARATIONS. -- The Congress makes the following declarations:

(1) It is the purpose of this Act to establish procedures for the implementation of the Convention in the United States.

(2) The provisions of this Act are in addition to and not in lieu of the provisions of the Convention.

(3) In enacting this Act the Congress recognizes-

(A) the international character of the Convention; and

(B) the need for uniform international interpretation of the Convention.

(4) The Convention and this Act empower courts in the United States to determine only rights under the Convention and not the merits of any underlying child custody claims.

SEC. 3. DEFINITIONS. [42 USC 11602]

For the purposes of this Act--

(1) the term "applicant" means any person who, pursuant to the Convention, files an application with the United States Central Authority or a Central Authority of any other party to the Convention for the return of a child alleged to have been wrongfully removed or retained or for arrangements for organizing or securing the effective exercise of rights of access pursuant to the Convention;

(2) the term "Convention" means the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980;

(3) the term "Parent Locator Service" means the service established by the Secretary of Health and Human Services under section 453 of the Social Security Act (42 U.S.C. 653);

(4) the term "Petitioner" means any person who, in accordance with this Act, files a petition in court seeking relief under the Convention;

(5) the term "person" includes any individual, institution, or other legal entity or other legal entity or body;

(6) the term "respondent" means any person against whose interests a petition is filed in court, in accordance with this Act, which seeks relief under the

Convention;

(7) the term "rights of access" means visitation rights;

(8) the term "State" means any of the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(9) the term "United States Central Authority" means the agency of the Federal Government designated by the President under section 7(a).

SEC. 4. JUDICIAL REMEDIES. [42 USC 11603]

(a) JURISDICTION OF THE COURTS. -- The courts of the States and the United States district courts shall have concurrent original jurisdiction of actions arising under the Convention.

(b) PETITIONS. -- Any person seeking to initiate judicial proceedings under the Convention for the return of a child or for arrangements for organizing or securing the effective exercise of rights of access to a child may do so by commencing a civil action by filing a petition for the relief sought in any court which has jurisdiction of such action and which is authorized to exercise its jurisdiction in the place where the child is located at the time the petition is filed.

(c) NOTICE. -- Notice of an action brought under subsection (b) shall be given in accordance with the applicable law governing notice in interstate child custody proceedings.

(d) DETERMINATION OF CASE. -- The court in which an action is brought under subsection (b) shall decide the case in accordance with the Convention.

(e) BURDENS OF PROOF. --

(1) A petitioner in an action brought under subsection (b) shall establish by a preponderance of the evidence-

(A) in the case of an action for the return of a child, that the child has been wrongfully removed or retained within the meaning of the Convention; and

(B) in the case of an action for arrangements for organizing or securing the effective exercise of rights of access, that the petitioner has such rights.

(2) In the case of an action for the return of a child, a respondent who opposes the return of the child has the burden of establishing-

(A) by clear and convincing evidence that one of the exceptions set forth in article 13b or 20 of the Convention applies; and

(B) by a preponderance of the evidence that any other exception set forth in article 12 or 13 of the Convention applies.

(f) APPLICATION OF THE CONVENTION. -- For purposes of any action brought under this Act--

(1) the term "authorities", as used in article 15 of the Convention to refer to the authorities of the state of the habitual residence of a child, includes courts and appropriate government agencies;

(2) the terms "wrongful removal or retention" and "wrongfully removed or retained", as used in the Convention, include a removal or retention of a child before the entry of a custody order regarding that child; and

(3) the term "commencement of proceedings", as used in article 12 of the Convention, means, with respect to the return of a child located in the United States, the filing of a petition in accordance with subsection (b) of this section.

(g) FULL FAITH AND CREDIT. -- Full faith and credit shall be accorded by the courts of the States and the courts of the United States to the judgment of any other such court ordering or denying the return of a child, pursuant to the Convention, in an action brought under this Act.

(h) REMEDIES UNDER THE CONVENTION NOT EXCLUSIVE. -- The remedies established by the Convention and this Act shall be in addition to remedies available under other laws or international agreements.

SEC. 5. PROVISIONAL REMEDIES. [42 USC 11604]

(a) AUTHORITY OF COURTS. -- In furtherance of the objectives of article 7(b) and other provisions of the Convention, and subject to the provisions of subsection (b) of this section, any court exercising jurisdiction of an action brought under section 4(b) of this Act may take or cause to be taken measures under Federal or State law, as appropriate, to protect the well-being of the child involved or to prevent the further removal or concealment before the final disposition of the petition.

(b) LIMITATION ON AUTHORITY. -- No court exercising jurisdiction of an action brought under section 4(b) may, under subsection (a) of this section, order a child removed from a person having physical control of the child unless the applicable requirements of State law are satisfied.

SEC. 6. ADMISSIBILITY OF DOCUMENTS. [42 USC 11605]

With respect to any application to the United States Central Authority, or any petition to a court under section 4, which seeks relief under the Convention, or any other documents or information included with such application or petition or provided after such submission which relates to the application or petition, as the case may be, no authentication of such application, petition, document, or information shall be required in order for the application, petition, document, or information to be admissible in court.

SEC. 7. UNITED STATES CENTRAL AUTHORITY. [42 USC 11606]

(a) DESIGNATION. -- The President shall designate a Federal agency to serve as the Central Authority for the United States under the Convention.

(b) FUNCTIONS. -- The functions of the United States Central Authority are those ascribed to the Central Authority by the Convention and this Act.

(c) REGULATORY AUTHORITY. -- The United States Central Authority is authorized to issue such regulations as may be necessary to carry out its functions under the Convention and this Act.

(d) OBTAINING INFORMATION FROM PARENT LOCATOR SERVICE. -- The United States Central Authority may, to the extent authorized by the Social Security Act, obtain information from the Parent Locator Service.

SEC. 8. COSTS AND FEES. [42 USC 11607]

(a) ADMINISTRATIVE COSTS. -- No department, agency, or instrumentality of the Federal Government or of any State or local government may impose on an applicant any fee in relation to the administrative processing of applications submitted under the Convention.

(b) COSTS INCURRED IN CIVIL ACTIONS. --

(1) Petitioners may be required to bear the costs of legal counsel or advisors, court costs incurred in connection with their petitions, and travel costs for the return of the child involved and any accompanying persons, except as provided in paragraphs (2) and (3).

(2) Subject to paragraph (3), legal fees or court costs incurred in connection with an action brought under section 4 shall be borne by the petitioner unless they are covered by payments from Federal State, or local legal assistance or other programs.

(3) Any court ordering the return of a child pursuant to an action brought under section 4 shall order the respondent to pay necessary expenses incurred by or on behalf of the petitioner, including court costs, legal fees, foster home or other care during the course of proceedings in the action, and transportation costs related to the return of the child, unless the respondent establishes that such order would be clearly inappropriate.

SEC. 9. COLLECTION, MAINTENANCE, AND DISSEMINATION OF INFORMATION. [42 USC 11608]

(a) IN GENERAL. -- In performing its functions under the Convention, the United States Central Authority may, under such conditions as the Central Authority prescribes by regulation, but subject to subsection (c), receive from or transmit to any department, agency, or instrumentality of the Federal Government or of any State or foreign government, and receive from or transmit to any applicant, petitioner, or respondent, information necessary to locate a child or for the purpose of otherwise implementing the Convention with respect to a child, except that the United States Central Authority--

(1) may receive such information from a Federal or State department, agency, or instrumentality only pursuant to applicable Federal and State statutes; and

(2) may transmit any information received under this subsection notwithstanding any provision of law other than this Act.

(b) REQUESTS FOR INFORMATION. -- Requests for information under this section shall be submitted in such manner and form as the United States Central Authority may prescribe by regulation and shall be accompanied or supported by such documents as the United States Central Authority may require.

(c) RESPONSIBILITY OF GOVERNMENT ENTITIES. -- Whenever any department, agency, or instrumental of the United States or of any State receives a request from the United States Central Authority for information authorized to be provided to such Central Authority under subsection (a), the head of such department, agency, or instrumentality shall promptly cause a search to be made of the files and records maintained by such department, agency, or instrumentality in order to determine whether the information requested is contained in any such files or records. If such search discloses the information requested, the head of such department, agency, or instrumentality shall immediately transmit such information to the United States Central Authority, except that any such information the disclosure of which --

(1) would adversely affect the national security interests of the United States or the law enforcement interests of United States or of any State; or

(2) would be prohibited by section 9 of title 13, United States enforcement Code;

shall not be transmitted to the Central Authority. The head of such department, agency, or instrumentality shall, immediately upon completion of the requested search, notify the Central Authority of the results of the search, and whether an exception set forth in paragraph (1) or (2) applies. In the event that the United States Central Authority receives information and the appropriate Federal or State department, agency, or instrumentality thereafter notifies the Central Authority that an exception set forth in paragraph (1) or (2) applies to that information, the Central Authority may not disclose that information under subsection (a).

(d) INFORMATION AVAILABLE FROM PARENT LOCATOR SERVICE. -- To the extent that information which the United States Central Authority is authorized to obtain under the provisions of subsection (c) can be obtained through the Parent Locator Service, the United States Central Authority shall first seek to obtain such information from the Parent Locator Service, before requesting such information directly under the provisions of subsection (c) of this section.

(e) RECORDKEEPING. -- The United States Central Authority shall maintain appropriate records concerning its activities and the disposition of cases brought to its attention.

SEC. 10. INTERAGENCY COORDINATING GROUP. [42 USC 11609]

The Secretary of State, the Secretary of Health and Human Services, and the Attorney General shall designate Federal employees and may, from time to time, designate private citizens to serve on an interagency coordinating group to monitor the operation of the Convention and to provide advice on its implementation to the United States Central Authority and other Federal agencies. This group shall meet from time to time at the request of the United States Central Authority. The agency in which the United States Central Authority is located is authorized to reimburse such private citizens for travel and other expenses incurred in participating at meetings of the interagency coordinating group at rates not to exceed those authorized under subchapter l of chapter 57 of title 5, United States Code, for employees of agencies.

SEC. 11. AGREEMENT FOR USE OF PARENT LOCATOR SERVICE IN DETERMINING WHEREABOUTS OF PARENT OR CHILD.

Section 463 of the Social Security Act (42 U,S.C. 663) is amended --

(1) by striking "under this section" in subsection (b) and inserting "under subsection (a)";

(2) by striking "under this section" where it first appears in subsection (c) and

inserting "under subsection (a), (b), or (e)"; and

(3) by adding at the end the following new subsection:

"(e) The Secretary shall enter into an agreement with the Central Authority designated by the President in accordance with section 7 of the International Child Abduction Remedies Act, under which the services of the Parent Locator Service established under section 453 shall be made available to such Central Authority upon its request for the purpose of locating any parent or child on behalf of an applicant to such Central Authority within the meaning of section 3(1) of that Act. The Parent Locator Service shall charge no fees for services requested pursuant to this subsection."

SEC. 12. AUTHORIZATION OF APPROPRIATIONS. [42 USC 11610]

There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the purposes of the Convention and this Act.

Approved April 29, 1988.

LEGISLATIVE HISTORY-H.R. 3971:
HOUSE REPORTS: No. 100-525 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol, 134 (1988):
Mar. 28, considered and passed House.
Apr. 12, considered and passed Senate, amended.
Apr. 25, House concurred in Senate amendment.

THE OPERATION OF THE HAGUE CONVENTION IN ENGLAND AND WALES

1 BACKGROUND

The convention on the Civil Aspects of International Child Abduction (Hague Child Abduction Convention) was signed at The Hague on 25th October 1980. The Child Abduction and Custody Act 1985 and Part V1 of the Family Proceedings Rules 1991 give effect to it in English Law.

The Hague Convention establishes both administrative procedures and legal remedies for the prompt return of children who have been wrongfully removed from or retained outside of their countries of habitual residence. The Convention seeks to protect children from the harmful effects of parental kidnapping, and reflects a strong desire to deter such conduct. In cases involving rights of access, there is no right to have the child ordered to his or her country of habitual residence. However, a parent may seek assistance either administratively or through the Court to organize or secure the effective exercise of access rights. (Article 21) This paper will concentrate upon child abduction.

Re D (Abduction Rights of Custody) (2007) 1 FLR 961 Baroness Hale;

The whole object of the Hague Convention is to secure the safe return of children wrongfully removed from their home country, not only so that they can return to the place which is properly their 'home' but also that any dispute about where they should live in the future can be decided in the courts of their home country and in accordance with the evidence which will mostly be there rather than in the country to which they have been removed

2 STRUCTURE.

The Convention establishes both legal rights and administrative procedures to implement its objectives.

(a) Administrative Procedures.

1 Every country must designate a Central Authority "CA" to carry out the duties imposed by the Convention.

2 The CA is a government agency set up to help process requests for assistance. CA's must cooperate with one another to secure the prompt return of children.

In England and Wales the CA is the Lord Chancellor, but the work is carried out by the International Child Abduction and Contact Unit " ICACU " which is located in the Office of the Official Solicitor and Public Trustee in London.

Cases are divided into incoming and outgoing cases.

Incoming cases are those in which a child is abducted from a Convention Country into England and Wales and outgoing cases are those in which the child is abducted from England and Wales to another Convention Country.

Incoming Cases.

A parent whose child has been abducted to or retained in England and Wales may make an application for the return of the child to the CA of the country in which they are living. That CA will forward the application to the CA for England and Wales or if the parent wishes he may apply directly to the CA for England and Wales.

The ICACU will assess the application and, if appropriate, will refer it to an experienced solicitor drawn from a firm familiar with abduction cases. The solicitor appointed is then responsible for;
Making an application for public funding
Taking instructions from the Applicant
Assembling the evidence
Filing affidavits of fact about foreign law
Instructing Counsel.

Often orders will be sought from the Court immediately after proceedings have been issued e.g. if the whereabouts of the subject child are unknown for " a seek and find order" (Family Law Act 1986 s34) or an order for disclosure of the subject child's whereabouts (Family Law Act 1986 s33)

If the whereabouts of the subject child are known orders may be sought requiring the surrender of passports and/or prohibiting the removal of the child from the jurisdiction or a specific address.

All incoming cases are dealt with in London by a High Court Judge of the Family Division and the High Court Administrative Officer responsible for listing cases who is known as the Clerk of the Rules. The cases are listed for hearing very quickly. Adjournments are limited to a maximum of 21 days so that the Court exercises close control over the progress of the case.

Applicants are not usually required to attend the hearing in person. They are legally represented and entitled to non means tested (free) legal aid.

Outgoing Cases.

Outgoing cases are those where a child is abducted or retained away from England and Wales in a country which is a party to the Hague Convention. Cases within the European Union are handled under the Revised Brussels 11 Regulation which is not dealt with in this paper.

In outgoing cases the ICACU assist the parent in the preparation of an application and supporting documentation which is then sent off with translations if necessary to

the CA of the country to which the child has been taken or retained.Thereafter the ICACU will monitor the progress of the case, liase with the CA of the requested State and the applicant and do all that it can to help to bring a speedy resolution to the proceedings. There is no charge for the services of the ICACU.

International Judicial Liason- The Office of the Head of International Family Justice.

This Office was created in January 2005 by the appointment of Lord Justice Thorpe by The Lord Chief Justice and The Lord Chancellor. The Office deals with a range of legal queries including relating to the Hague Convention from a range of sources including direct contact with the appropriate Judge in the Requested State
The Office is easily accessable by telephone or email.

(b) Legal Rights: Right of Prompt Return.

Article 11,

The judicial and administrative authorities are obliged to act expeditiously in proceedings for the return of Children. If a decision is not reached within six weeks from the date of the commencement of the proceedings The Applicant or the Central Authority of the State from where the child has been abducted has the right to request a statement setting out the reasons for the delay.

Article 12

Where there has been a wrongful removal or retention and less than one year has elapsed between the wrongful removal or retention and the commencement of return proceedings, the child has to be ordered to be returned forthwith unless the Court finds one of the limited exceptions to the return duty applies.

If more than a year has elapsed since the wrongful removal or retention the Court is still obliged to order a return unless the child is **now settled in its new environment**

now refers to the date when proceedings were commenced and not the date of the hearing.

Re M (Abduction: Zimbabwe) 2007) 1 AC 1288

In settlement cases,it must be borne in mind that the major objective of the Convention cannot be achieved. These are no longer 'hot pursuit' cases. By definition, for whatever reason the pursuit did not begin until long after the trail had gone cold. The object of securing a swift return to the country of origin cannot be

met. It cannot any longer be assumed that that country is the better forum for the resolution of the parental dispute. So the policy of the Convention would not necessarily point towards a return in such cases, quite apart from the comparative strength of the counterveiling factors, which may ..include the child's objections, as well as integration in her new community. All this is merely to illustrate that the policy of the Convention does not yield identical results in all cases and has to be weighed together with the circumstances which produced the exception and such pointers as there are towards the welfare of the particular child

Re O (Abduction: Settlement) (2011) 2 FLR 1307 Court of Appeal.

Facts.

The Nigerian parents had made their home in the USA; their two children, both girls had been born in the USA and like their father had US citizenship. When the girls were 5 and 3 the mother wrongfully retained them in Nigeria after a holiday visit. The father promptly contacted the US court alleging that the mother was planning to have the girls circumcised. This allegation was dropped. The father then applied to the Nigerian Court for custody of the girls. Over one year after her wrongful retention of the girls the mother brought them to the UK for a holiday.The father applied to the English court for the summary return of the girls to the USA. The Judge ordered the return. The mother appealed arguing that the judge appeared to have been applying a presumption in favour of the children being returned to the country of habitual residence, giving the Hague Convention considerations overriding weight and failing to factor the welfare of the children into the decision whether to exercise discretion.

Held Allowing the Appeal and substituting an order dismissing the father's application for summary return to the USA.

(1) Hague policy considerations were by no means irrelevant in exercising the discretion that arose in settlement cases, but their relevance was strictly part of the whole picture. Re M (see dicta above) made it clear that when exercising a discretion under the Hague Convention as to whether to return a child, the individual circumstances of the particular child were what had to be examined and weighed in the balance…..The judge should have tested the notion that it would be best for these children to return to the USA for their future to be determined against the evidence in this particular case.

(2) There were overwhelming reasons to deny a summary return; this was not a hot pursuit case; the children were comfortably settled in Nigeria with appropriate arrangements for their welfare and very significantly the Nigerian Court was already seised at the father's invitation and would be a more appropriate forum than the USA for any future litigation.

3 CHILD ABDUCTION.

Article 3 of the Convention establishes when a removal or retention of a child is considered wrongful and thus remediable under Article 12.

Child Abduction can consist of either a move from one country to another (removal) or if a child is kept in another country and not returned (wrongful retention)

Article 3

The removal or retention of a child is considered wrongful where

(a) it is in breach of rights of custody attributed to a person, an institution, or any other body, either jointly or alone under the law of the State in which the child was habitually resident immediately before the removal or retention

(b) at the time of removal or retention those rights were actually exercised either jointly or alone or would have been so exercised but for the removal or retention.

Thus, to be wrongful, the child's removal or retention must be in breach of custody rights that were actually exercised, or would have been but for the removal or retention. The rights of custody arise under the laws of the country in which the child was habitually resident immediately before the removal or retention.

4 HABITUAL RESIDENCE

This term is not defined in either the 1985 Act or the Convention. Its definition is a question of fact, thus distinguishing it from "domicile, citizenship or nationality"

Mecredi v Chaffe (2011) 1FLR 1293 (a decision of the European Court of Justice)

…no definition of the concept of "habitual residence" it merely follows from the adjective "habitual" that the residence must have a certain permanence or regularity.

Re H-K (2011) 2FLR 437

Ward L.J.

The European Approach in…Mecredi v Chaffe was that to be habitual, residence must "have a certain permanence or regularity" I would treat that with some caution.I certainly cannot accept that permanence is necessary to establish habitual residence.

FACTS

The Australian father and British mother lived in Australia with their two children aged 8 and 2.The parents marriage fell into difficulties and they decided to move to the UK for a year to live in a house owned by the mother.The parents intended to work but were largely dependent on State Benefits. The 8 year old attended school. Most of the family's possessions remained in Australia, a school placement had been secured for the 8 year old in Australia the following year and they had purchased return flight tickets.The relationship continued to deteriorate during their stay in the UK. After 10 months the mother decided that she was not going to return to Australia and informed the father.It was agreed that he would return as planned but that the mother and the children would remain in the UK for a further 4 months.The mother in fact had no intention of returning to Australia and had misled the father by sending him Valentines and birthday cards and she had also led his family to believe that she would return. The mother remained in the UK and the father brought proceedings under the Hague Convention. The first instance judge found that the family had not become habitually resident in the UK and that the children should be returned to Australia. The mother's appeal was allowed.

Held

Habitual Residence could be acquired despite the fact that a move may only have been temporary or on a trial basis, provided it was adopted for a settled purpose as part of the regularity of life for the time being.The requirement for permanence should not be taken literally but rather as an indication of a stay of sufficient duration or quality properly to be characterised as habitual.At first instance the judge had been in error in allowing her focus to move erroneously to require more permanence for their sojourn than was necessary to establish habitual residence. All of the indicia of integration into a social and family environment had been present in this case. The family lived in a house owned by the mother her family was nearby and supportive, the parents worked when they could, they sought and obtained social security and the oldest child was in school…..The judge had been in error in finding that the parents had not agreed to change their habitual residence because the father had not abandoned his intention to return to Australia.

5 RIGHTS OF CUSTODY.

By Article 5 (a) Child Abduction and Custody Act 1985, "rights of custody" shall include rights relating to the care of the person of the child and, in particular the right to determine the child's place of residence.

Rights of custody includes all those with parental responsibility and those who have acquired the right to be consulted about a child's place of residence by statute, order or agreement.

Rights of custody are determined according to the law of the country from where the child has been abducted.

The law in England and Wales is primarily governed by the Children Act 1989 which came into effect in 1991.This Act created the new concept of parental responsibility " PR " meaning the duties, fights and authority which a parent has in relation to a child. When a child's parents are married they both have PR. When the father is not married to the mother he does not have PR simply by being the father, but he may acquire it either by Court Order or by a formal agreement with the

mother.Since December 2003, if both parents are present when the birth of a child is registered, an unmarried father will automatically acquire PR for his child.

The Children Act emphasises that parents have continued involvement in their child's upbringing even after separation.

If there is any doubt whether a parent or other interested person in the U.K. had custody rights at the time when a child has been abducted abroad, there should be an immediate application to the English Court for a declaration that they had custody rights.

If the child has been abducted to England and Wales the court will accept any declaration of custody rights from the requesting State. If there is any doubt about whether the parent or interested party has custody rights, the English Court may determine the issue on expert evidence adduced before it.

6 DEFENCES.

Article 13

….the judicial or administrative authority of the requested State is not bound to order the return of the child if the person institution or other body which opposes the return can establish that,

(a) the person… was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

(b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

Lack of exercise of custody rights.

This defence is unlikely to arise when the non primary carer has an ongoing involvement in the child's life. It could probably only apply in cases of an absentee parent or one who had abandoned the child.

Consent or acquiescence.

The Leading Case in the U.K.on the meaning of consent or acquiescence is

Re H (Abduction: Acquiesence) (1997)1 FLR 872.

The House of Lords laid down the principles to be adopted when considering the meaning of "acquiescence" within Article 13.

(a) The English Law concept of acquiescence which was normally viewed objectively had no direct application to the proper construction of

Article 13. Under the Convention it must have the sane meaning and effect throughout the laws of all the Contracting States. Acquiesence in Article 13 means looking to the subjective state of mind of the wronged parent and asking has he in fact consented to the continued presence of the children in the jurisdiction to which they have been abducted.It is a question of the actual subjective intention of the wronged parent, not the outside world's perception of his intention.

(b) Acquiesence is a pure question of fact to be determined by the trial judge on the material before him. In the process of the fact finding operation to ascertain the subjective intention, the Court is more likely to attach weight to the contemporaneous express words and actions of the wronged party than to his subsequent bare assertions in evidence of his intention.

(c) The burden of proving that the wronged party has consented to or acquiesced in the abduction is on the abducting parent. The standard of proof being the balance of probabilities.

(d) Judges should be slow to infer an intention to acquiesce from attempts by the wronged parent to effect a reconciliation or agree a voluntary return of the child.

(e) There is only one exception to the general principle. Where the words or actions of the wronged parent clearly and unequivocally lead the other parent to believe that the wronged parent is not asserting or going to assert his right to summary return of the child and are inconsistent with such return, justice requires that the wronged parent be held to have acquiesced.

Grave risk.

C v B (Abduction: Grave Risk) (2006) 1FLR 1095. Sir Mark Potter.

The Australian father of two children aged 9 and 5 sought their return to Australia. The mother had brought the children to England in August 2005 with the father's consent but had not returned them as arranged. The mother had previously been denied permission to relocate to the UK by the Family Court in Australia. The judge had found that the mother was sufficiently resilient to cope with the depression and anxiety she would suffer as a result of the refusal.The mother's case was that a combination of factors including social isolation, lack of support, financial difficulties, lack of career development opportunities, concern over the father's drinking and his bullying and controlling behaviour, would result in her becoming anxious and depressed to the extent that she would not be able to provide the children with a happy home life should she have to return to Australia.

Held ordering the return of the children upon the father agreeing to certain undertakings .

Despite evidence that the mother's psychological state might well deteriorate were she to return to Australia, she was currently in reasonable psychological shape and there was no clear evidence that should she have to return her health would deteriorate to an extent which would remove or seriously impair her ability to provide proper parental care to the children. There was therefore no serious risk of harm to the children.

The burden of proving grave risk rests upon upon the Defendant. The standard of proof being the balance of probabilities.

Re E (Children) (Abduction: Custody Appeal) (2011) 2FLR 724. Thorpe L.J.

It is to be noted that the domestic courts do not apply domestic law in the interpretation and application of the Hague Convention. They must apply the autonomous law of the Convention which is derived from leading cases in the appellate courts of the States party to the convention…….. There can be no doubt that the policy underlying the Hague Convention is clear. The welfare of children is of paramount importance. It is in the interests of children to be protected from the harmful effects of abduction. Minimising the damage to the child demands expedition. On return full investigation of custody and other issues can then be made by the court of habitual residence best placed to undertake a full investigation…… In the assessment of an Article 13(b) defence the court's focus must be on the child's interests in the sense of evaluating whether the return would entail specific risks and not on the child's welfare within the context of the underlying family problems and disputes which have probably given rise to the abduction and which will have to be investigated and addressed after the child's return.

Where the abducting parent makes allegations against the Applicant which are denied, the Court will not embark upon a fact finding exercise but will explore what protective measures can be put in place in the requesting state for protection of the children. If the abducting parent intends to return to the country of habitual residence with the child the English Court will frequently seek undertakings from the Applicant which Are to be lodged at the requesting Court, for example:

1 Without making any admissions not to assault, molest, harass or otherwise interfere with (the abducting parent) until further order of the requesting Court.

2 Not to attend the airport upon the arrival of the children and the abducting parent.

3 Not to attend the home of the abducting parent.

4 Not to have any contact with the Children save for that agreed between the parties until further order of the requesting Court.

The Child's Objections.

When this defence is raised the Court must investigate the following,

1 whether the child is of sufficient age and maturity for the Court to take account of his objections and whether in the circumstances it is appropriate to take account of his view.

2 whether the objections are made out.

3 whether the court should exercise its discretion.

The English Court will ensure that a Child is given the opportunity to be heard during the proceedings unless that appears to be inappropriate having regard to the child's age or maturity. Generally the child's views and the strength of his objections will be communicated to the court by a member of the Child and Family Court Advisory Service (CAFCASS) High Court Team who will meet with the child .

Re G (Abduction; Children's Objections) (2011) 1 FLR 1645 Thorpe L.J.

In this jurisdiction judges in the High Court have not traditionally in modern times heard the voice of the child directly but through the officer of the court, the Cafcass Officer. That is now under debate and revision. The subcommittee of The Family Justice Council that is concerned to ensure the safeguarding of the rights of children has forcefully expressed the view that judges in this jurisdiction should be meeting children and hearing their voice in carefully arranged conditions.

Expressed views of children must be carefully and cautiously assessed, bearing in mind that the wishes and feelings they express may vary according to mood, adult influence and / or their reaction to the person carrying out the assessment. Where a child's objection to return arises from a desire to remain with an abducting parent little or no weight will be given to the child's views.

7 A Judicial perspective.

The Children Act 1989 makes the Child's welfare paramount. As a result a Family Judge in England spends much time looking at the future of a subject child from a detailed welfare perspective by reference to s1(3) Children Act 1989, the Welfare check list.

Hague cases require a completely different judicial approach.

Once the court determines that the child's removal or retention was wrongful and no exceptions apply Article 12 provides that the court " shall order the return of the child forthwith "

CASE STUDY.

Father (Tom) is a citizen of Canada. Mother (Ellie) is a U.S. citizen living in Canada. They married in Canada in 2008 and have one Child, Charlie who is 3 years old. Charlie is a dual citizen of the U.S. and Canada.

When Charlie was 12 months old the marriage between his parents broke down Tom moved to London in 2010 and Charlie continued to live with Ellie in Canada. Ellie hates Tom. He has remarried Caroline and they are expecting a baby together in September 2011. Tom does his best to maintain contact with Charlie in the face of Ellie's hostility.

There are no Court Orders.

Ellie receives financial support from Tom but she has expensive tastes and is finding it very difficult to make ends meet. She is an aspiring actress and works as a waitress waiting for her 'big break' In July 2011 she is offered a part in a reality television programme which is to be shot in Canada over July – October 2011. She is desperate for the opportunity but cannot take Charlie with her. She arranges for Charlie to stay with a friend (Polly) in the US during the school Summer Vacation. She is unsure what arrangements she will make when Charlie should resume school in Canada in September 2011, however, she proceeds on the basis that she might be voted off the show before September comes round.

Ellie did not tell Tom of these plans. He finds out by chance in August 2011. He is desperately worried about Charlie who effectively has been left in the care of a stranger in a strange country. Tom immediately travels to the US and,without consulting Ellie, removes Charlie from the care of Polly and takes him to live with him in London. Ellie finds out about this and telephones Tom demanding that he returns Charlie to the care of Polly.

Tom persuades Ellie to let Charlie stay with him in London until school resumes in Canada in September. Ellie could see some merit in this plan as it would allow some father/son bonding time.

Ellie calls Charlie twice a week during his visit with Tom. Charlie is having a great time and Ellie has no concerns.

September comes round and Tom does not return Charlie. In fact he had enrolled him at a school in London. Ellie was uncertain about what she should do. On the one hand she could not bear the thought of Charlie living with Tom in London, but, on the other hand she has proved to be a great success on the reality show,and has high hopes of making it through to the final. An immediate return would also be difficult as Ellie has got herself a new boyfriend, Howard, who is another contestant on the show. She has not told Howard about Charlie.

She tells Tom that Charlie has to be returned to her by Christmas 2011

Christmas 2011 came and went. Charlie stayed in London with Tom, Caroline and the new baby. Tom says that Charlie is very happy and settled .

Ellie's life is not so good. Howard won the reality show. He has dumped Ellie. She has not been offered any other media work.. She has resumed her job as a waitress. She lives alone. She misses Charlie.

Ellie issues a petition in London for the return of Charlie under the Hague Convention. Charlie is very upset. He wants to stay in London he loves his new school, has plenty of friends and adores his new baby sister. He does not want to live with Ellie.

How did things turn out for Ellie, Tom and Charlie?

1 Ellie's Case
Was there a wrongful removal or retention ?
Was Canada Charlie's country of habitual residence?
Was there a breach of Ellie's custody rights?
The answer to all these questions is YES.
Canada was Charlie's country of habitual residence. England is a contracting country.
Tom breached Ellie's custody rights (which included the right to determine that Charlie should live temporarily with Caroline) and he continued to breach those rights in refusing to return him.
Her agreement to him staying with Tom until Christmas did not amount to acquiescence to his retention of the child.

2 Tom's Case.
Was Tom exercising his rights of custody when he removed Charlie from his grandmother.?
Would a return of Charlie subject him to grave risk of harm ?
Will Charlie's objections prevent a return to Canada?

The answer to these questions is NO.
Under the Convention it is wrong to remove a child from his country of habitual residence even if the abductor has rights of custody.
Ellie's situation in Canada is now no different to that which existed before she left Charlie with Polly.
At 3 he is too young to determine his future.

Charlie's welfare needs must be determined in the Canadian Court.

Her Honour Judge Angela Finnerty
Designated Family Judge
North Yorkshire

United Kingdom

THE OPERATION OF THE HAGUE CONVENTION ACROSS THE EUROPEAN UNION

THE REVISED BRUSSELS 2 REGULATION.

Council Regulation (EC) No 2201/2003 came into effect across the European Union (other than Denmark) on 1st March 2005 (the Revised Brussels 2 Regulation)

It underpins the Hague Convention and works on the principle of the mutual recognition of orders made by Courts across the European Union.

Article 10 Jurisdiction.

In cases of Child Abduction within the EU, the Court of the State within which the child was habitually resident immediately before the abduction will retain jurisdiction until the child has acquired a habitual residence in another State in circumstances where the 'left behind' parent acquiesced in the removal or retention or where the child has lived in another State for at least one year in circumstances where the 'left behind ' parent knew or ought to have known where the child was.

Article 11 Return of the Child.

Article 11(2)

Unless inappropriate by reason of age or maturity the Court has to give the subject child the opportunity to be heard in the proceedings. This is usually done through a CAFCASS report, but a child may also have separate representation.

Article 11(3)

Save in exceptional circumstances an Application for the return of a Child has to be dealt with no later than six weeks after the Application has been lodged.

Article 11(4)

A court cannot refuse to return a child on the basis of Article 13(b) of the Hague Convention (grave risk) if it can be established that there are adequate protective measures in place to secure the child's protection on return.

In the English Court there is a rebuttable presumption that an EU State can put in place sufficient protective measures following a return, thus making it very difficult for a s13(b) defence to succeed.

Article 11(6-8)

If State B (the requested State) has refused to order the return of the child to State A (the requesting State) on the basis of a defence under Article 13 of the Hague Convention (consent, acquiescence, child's objections or grave risk) the requested State must notify the parent 'left behind' and invite submissions to the court in accordance with national law within a period of three months of the date of notification so that the court can examine the question of return of the child on welfare grounds. If a return order is made it has to be enforced in the country where the child is located notwithstanding the earlier non return order.

HER HONOUR JUDGE FINNERTY

Designated Family Judge

North Yorkshire

United Kingdom

The Hague Convention

New Zealand

Anita Chan

New Zealand acceded to the Hague Convention on the 1st of August 1991.

Hague Convention obligations are enacted into domestic law via sections 94-124 of the Care of Children Act 2004, and are therefore codified into New Zealand law. The Convention itself appears in full as a schedule to the Act.

The main focus of the Convention is the return of children to the country from which they have been abducted. However, the Convention in Article 21 also covers rights of access to a child, and sections 112 and 113 of the Care of Children Act 2004 address rights of access. This paper will focus on applications to return the child to the country from where it has been uplifted.

The Central Authority

Under Article 6 of the Convention, all contracting states must designate a Central Authority, and the responsibilities of the Central Authority are listed in Article 7.

Section 100 of the Care of Children Act appoints the Secretary for Justice as the Central Authority in New Zealand. Under section 100(1), the Secretary for Justice, as the Central Authority "may exercise all the powers, and must perform all the functions, that a Central Authority has under the Convention [ie, Article 7]."

What the Central Authority Does

Child Abducted from New Zealand

When a child has been abducted from New Zealand, the person applying to have the child returned to New Zealand may make application to the Central Authority in New Zealand, or the Central Authority in the country to which the child has been abducted, for the return of the child.

If application is made to the Central Authority in New Zealand, the first step is for the Central Authority to determine whether the application is in accordance with the requirements of the Convention. In particular, section 102(1) of the Care of Children Act sets out four criteria which the person applying to the Central Authority must satisfy:

(a) That a child has been removed from New Zealand to another Contracting State; and

(b) That the child was removed from New Zealand to that other Contracting State in breach of that person's rights of custody in respect of the child; and

(c) That at the time of the removal, those rights of custody were actually being exercised by that person, or would have been so exercised but for the removal; and

(d) That the child was habitually resident in New Zealand immediately before the removal.

Under section 102(3), if the Central Authority is satisfied that these criteria are met, then it **must** "take on behalf of the applicant any action required to be taken by the Authority under the Convention."

Section 116 of the Act states that, where an application is made under section 102, and the applicant has not appointed his or her own lawyer, then the Authority "must, if the circumstances so require, appoint a lawyer to act for the applicant for the purposes of the application".

Through a combination of sections 116(3) and 131, the cost of legal representation will be met by the State and the applicant does not need to pay. This is despite New Zealand placing a reservation on article 26 of the Convention, stating that it reserves the right not to be bound to assume any costs resulting from the participation of legal counsel or advisers or from Court proceedings except where these costs may be covered by its system of legal aid.

There is no obligation on the Central Authority to appoint, arrange or fund legal representation for any appeal. In practice however, it appears that the Central Authority often will appoint and pay for representation in such circumstances.

<u>Child abducted to New Zealand</u>

As with children abducted from New Zealand, the applicant may apply either to the Central Authority in the country from which the child was abducted, or to the New Zealand Central Authority. If the former option is taken, the Central Authority in the other country will transmit the application to the New Zealand Central Authority to secure the return of the child.

When it receives an application, either directly from the applicant or via the Central Authority of another country, the Central Authority must take action to secure the prompt return of the child to the country from which it was abducted (s 103). However, this is subject to two provisos. The first is that, under section 104, the Central Authority can seek further information. The second, under section 123, is that the Central Authority can refuse to take action where the case is "not well founded". When the Central Authority refuses to take action under section 123, the applicant has the right to appeal to the District Court or the Family Court.

The Central Authority will initially try to find and secure the voluntary return of the child. If the whereabouts of the child are unknown, the Central Authority will normally contact New Zealand Interpol for assistance. Interpol forms part of the Central Intelligence Bureau support group of the New Zealand Police.

Interpol has access to the New Zealand Customs Department computer (CAPPS), which contains all passenger details, including international arrivals and departures. In addition it has arrival card details, which are kept on file for up to three months.

With this information, the Central Authority can arrange with the police for enquiries to be made as to the child's whereabouts.

In circumstances where the Authority has cause to believe the child may be taken into hiding or flee to another country, the Authority has the right to seek a warrant to uplift the child under section 117 of the Care of Children Act. It can also obtain an order preventing the child's removal from New Zealand under section 118 of the Care of Children Act. A CAPPS listing of a child's name on the customs computer at all international airports (which are the only effective places to leave the country) is a most effective means of ensuring that that child shall not make it through the border.

The Central Authority has an obligation to ensure the safety of the child. If there are care and protection concerns, the Central Authority may choose to send a copy of the application to Child, Youth and Family Services, together with details of the concerns to be investigated.

Application to Court

If the Central Authority is unable to secure the voluntary return of the child, section 105 of the Care of Children Act allows application to be made to the Family Court. Subject to

section 106, the Court must order return of the child to the country of habitual residence, if the Court is satisfied that the grounds of the application are made out.

Section 106 lists the grounds for refusal to return a child, and in effect implements articles 12, 13 and 17 of the Convention. The grounds are that:

i. Application was made more than one year after removal and the child is now settled (section 106(1)(a));
ii. The applicant was not exercising custody rights at the time of removal of the child (section 106(1)(b)(i));
iii. The applicant has consented to, or acquiesced in, removal of the child (section 106(1)(b)(ii));
iv. There is a grave risk that the child's return would expose the child to physical or psychological harm (section 106(1)(c)(i));
v. There is a grave risk that return would place the child in an intolerable situation (section 106(1)(c)(ii));
vi. The child objects to being returned and that the child's views should be given appropriate weight (section 106(1)(d)); and
vii. The return of the child is not permitted by fundamental principles of New Zealand law for the protection of human rights and freedoms (section 106(1)(e).

Because section 106(1) states that the Court "may refuse" (rather than "must refuse") to order return of a child if any of the grounds are satisfied, the Court has a residual discretion to order return even when a defence has been made out.

The majority of the Supreme Court in *Secretary for Justice v HJ* [2007] 2 NZLR 289, (2006) 27 FRNZ 213 (SC) at [68] found that a Court, in "the exercise of the discretion must recognise, and seek to balance, both the welfare and best interests of the child and the general purpose of the Convention."

When an application is filed, the Family Court Caseflow Management Practice Note states that cases shall be disposed of within 6 weeks. The exception is where a specialist report is required, or where other information is required which cannot be obtained immediately, in which case the case shall be disposed of within 13 weeks.

The Judiciary has issued two Practice Notes relating to Hague Convention cases. One covers appointment of lawyer for child, counsel to assist, and/or specialist reports, and the other covers mediation processes.

The first practice note states that wherever a defence under section 106 is raised, the Court shall consider appointing a Lawyer for Child (who is paid for by the State). The practice note identifies three issues which the Court must have regard to in deciding whether to appoint a Lawyer for Child. They are:

- Whether a specialist report writer would be more suitable;
- The Article 7 functions of the Central Authority; and
- The importance of dealing with cases as speedily as is consistent with justice.

The same practice note identifies that the Court may appoint Counsel to Assist the Court (again, who is paid by the State). This can be done where "by virtue of special circumstances or difficulties, the judge needs the assistance of Counsel".

One area where the Judge may need such assistance from Counsel is where mediation is appropriate. This is covered by the second practice note, which covers mediation processes. Under this practice note, at the time of filing the application in the Court, counsel instructed by the Central Authority must advise whether he or she considers mediation to be appropriate.

If the Court determines that mediation is appropriate, the practice note states that the Court will appoint Counsel to Assist the Court, with a brief to conduct counsel-led mediation.

The practice note states that mediation can occur any time after an application is filed, but that it should be within 7 – 14 days from receipt of the application. The mediation runs parallel to, but separate from, the Court proceedings. This means that if mediation fails, the Court proceedings are still in train. Consistent with normal practice, the practice note states that any statements or admissions made to the mediator or during mediation are not admissible in Court.

Anita Chan
IAML
Hague Symposium
Singapore, September 2012

DRAFT IMPLEMENTING LEGISLATION OF JAPAN FOR THE HAGUE CONVENTION ON CHILD ABDUCTION

Mikiko Otani

International Academy of Matrimonial Lawyers

September 2012
Singapore

2

Status of process for ratification

- Cabinet announced the decision to start the preparation for ratification (May 2011)
- Consultation for drafting implementing legislation started under Ministry of Justice and Ministry of Foreign Affairs (July 2011)
- Draft implementing legislation introduced into the Diet (February 2012)
- Current Diet session to be closed on 8 September 2012. No date for deliberation scheduled
- Objection still heard
- Practical preparation under way

3

Central authority and jurisdiction of courts

- **Central Authority**
  Minister of Foreign Affairs (MOFA)
- **Jurisdiction of courts**
  Family Court
- **Concentration of jurisdiction**
  Tokyo Family Court for Eastern part of Japan
  Osaka Family Court for Western part of Japan

4

Child location and disclosure

- **Debate**
  - Protection of DV victims
  - Ensuring the judicial intervention
  - Gap with the practice for domestic cases
- **Proposal**
  - MOFA can request information from relevant organs/entities
  - Disclosure of information restricted
    - Name of the person living with the child ⇒ LBP
    - Location of the child ⇒ court only unless TP agrees
  - Access to case record needs permission of the court

Information of the child location protected throughout the court procedure

5

Exception (grounds for refusal of return)

- **Debate**
  - Providing particular circumstances (DV, criminal prosecution, no financial resources, etc.) as exceptions
  - Sticking to the Convention language
- **Proposal**

Circumstances to be considered in assessing "grave risk" defense are listed

- violence against the child from LBP
- violence against TP from LBP
- difficulties for LBP/TP to provide care for the child

6

Return order, appeal and enforcement

- **Return order**
  - To country of habitual residence not to LBP
  - No undertaking to be used
- **Appeal**
  - To High Courts, within two weeks, stay of execution
  - To Supreme Court, within two weeks, only constitutional grounds, no stay of execution
- **Enforcement**
  - Mandatory initial indirect compulsory execution before execution by substitute
  - Indirect compulsory execution: by order of money payment
  - Execution by substitute: by a court execution officer and the person appointed as a return executor by the court

7

Child's voice and participation

- **Investigation of the child's view**
  - In relation to the child objection defense
  - Conducted by family court probation officers
  - Language an issue?
- **Child participation**
  - Allowed unless the court finds it harmful
  - Lawyer may be appointed for the child
  - Child may appeal against the return order

8

Amicable resolution (Art. 7 of Convention)

- **General preference for amicable resolution**
- **Assistance by MOFA**
  MOFA informs TP of opportunities for amicable resolution by sending a letter unless LBA requests otherwise.
- **Available methods**
  - Family court mediation with consent of parties
  - Settlement in the return procedure
  - Private mediation/ADR
- **Challenges**
  Expertise, skill, language, cost, practicality

9

Return procedures: some practical issues

- **Language**
  Official court language: Japanese only
  Cost & time implication of translation
- **Oral evidence**
  No restriction as a policy
  Through audio visual equipment ?
- **Expeditiousness**
  No set scheduling rule

10

Legal representation

- **Lawyer Referral**
  - Assistance by MOFA and discussion
  - Creation of list of lawyers by bar associations under discussion
- **Legal aid**
  - Amendment proposed to provide legal aid to LBP in signatory countries
  - Japanese legal aid system: loan
  - Limited scope/amount covered by legal aid
- **Challenges for lawyers**
  - Language, relationship with clients, experience, expertise

11

Visitation cases (Art. 21)

- Same assistance by MOFA available
- Same restriction of disclosure of information
- Existing domestic rule of procedures for visitation cases
- No concentration of jurisdiction for visitation cases ⇒50 Family Courts

12

Interpretation of legal concepts

- **Habitual residence**
  - Used in the domestic law of conflict of laws
  - No case laws developed for the domestic law
- **Rights of custody**
  - Little familiarity to foreign custody laws
  - Translated texts/commentaries not always available
- **Case laws of other jurisdictions**
  - Foreign court jurisprudence generally not referred to
  - Hague Convention as exception?
  - language issue

13

Rights of custody under the Japanese law for outgoing cases

- **Married parents**
  - Parents share parental authority (Art. 818(3) of Civil Code)
    ⇒ LBP has the rights of custody "by operation of law"
  - It is possible for one parent to be given custody by agreement/court decision if parents are separated (Art. 766).
    ⇒ Does the other parent ha the rights of custody?
- **Divorced parents**
  - One parent solely holds parental authority by agreement/court decision (Art. 819(1)(2)).
    ⇒ The other parent does not have the rights of custody.
  - It is possible for one parent to hold parental authority and for the other parent to hold custody (Art. 766)
    ⇒ Does both parents have the rights of custody?
- **Unmarried parents**
  - Mother solely holds parental authority (Art. 819(4)).
    ⇒ Father does not have rights of custody.
  - Father solely holds parental authority if so decided by agreement/court decision (Art. 819(4)(5)).
    ⇒ Mother does not have rights of custody.

14

Hague Child Abduction Convention and Japanese child custody law

- No reform of custody law
- "Visitation" introduced in the amended Art. 766 of Civil Code
- Gap between international child abduction cases and domestic child abduction cases
- Possible influence on practice of domestic child abduction/custody/visitation cases

ANNE-MARIE HUTCHINSON OBE

Anne-Marie was admitted in 1985 and in 1988 joined Dawson Cornwell, one of the UK's leading family law firms, as Head of the Children Department. She is consistently named as one of the leading family lawyers in London in both Chambers and The Legal 500.

Anne-Marie specialises in international divorce and jurisdictional disputes, with particular expertise in international custody disputes, child abduction, the EU Regulation on jurisdiction in family matters and international adoption.

Anne-Marie is accredited by Resolution as a specialist family lawyer with particular specialisms in child abduction and children law. She was awarded the inaugural UNICEF Child Rights Lawyer award in 1999. She received an OBE for her services to international child abduction and adoption in the 2002 Queen's New Year's Honours List. In 2004 she was selected as Legal Aid Lawyer of the Year for her work with the victims of forced marriage. In 2010 she received the IBA Outstanding International Woman Lawyer Award.

Anne-Marie is Chair of the Family Law Committee of the International Bar Association, Chair of the Trustees of Reunite: International Child Abduction Centre, a member of the International Issues Committee of The Law Society and Governor at Large of the International Academy of Matrimonial Lawyers. She is a member of numerous associations and committees including the International Society of Family Law, the Institute of Advanced Legal Studies Working Group on the Cross Border Movement for Children, the International Centre for Missing and Exploited Children, The Home Office Working Group on Forced Marriages and The Commonwealth Working Group on AIDS. She is a member of the Central Authority Panel of Hague Lawyers.

She is a regular speaker and lecturer both within the United Kingdom and abroad and has made numerous television appearances. She is consultant editor of "Children Law and Practice" by Hershman and McFarlane published by Family Law and an international correspondent for "International Family Law" published by Jordans. She is joint author of the text book "International Parental Child Abduction". She sits on the Editorial Board of the Child and Family Law Quarterly, published by Jordans.

Anne-Marie has for many years been a tireless defender of the victims of forced marriage, often on a pro bono basis. Prior to the introduction of the Forced Marriage (Civil Protection) Act 2007 which came into force on 25th November 2008, she creatively developed legal remedies to protect the victims of forced marriage using the High Court's inherent jurisdiction commencing with Re: KR in 1997, where she successfully achieved the return of a 15 year old from the Punjab. As well as providing her free expertise and support to the Forced Marriage Unit at the Foreign & Commonwealth Office, she also assisted in the drafting of the Forced

Marriage (Civil Protection) Act 2007 and The Law Society's information leaflet on Forced Marriage for Practitioners. More recently, she acted for Dr Humayra Abedin in one of the very first cases under the Act. This high profile case, which attracted extensive TV and newspaper coverage worldwide, brought the plight of the victims of forced marriage to the attention of the wider public.

Anne-Marie has also acted in the leading child abduction/custody cases relating to Islamic states in the jurisdiction of England and Wales, including *Al Habtoor v. Fotheringham [2001] 1 FLR 951* and *Re.J (Child Returned Abroad: Convention Rights) 16.6.05 [2005] 2 FLR 802*.

Nancy Zalusky Berg

Nancy Zalusky Berg is a founding partner of Walling, Berg & Debele, P.A., a thirteen lawyer firm limiting its practice to family, juvenile and adoption law. Ms. Berg has limited her practice to family law since 1985. She is certified by the National Board of Trial Examiners as a Family Law Litigation Specialist. She is a member of the American Academy of Matrimonial Lawyers, (www.aaml.org) International Academy of Matrimonial Lawyers (www.iaml.org) and past President of the IAML – USA Chapter and a member of the International Bar Association. She sits on the Minnesota Lawyers Board of Professional Responsibility; she has been listed in the "Best Lawyers in America" and has been identified as one of Minnesota's "Super Lawyers" of *Law & Politics*, *Minnesota Monthly* and *Mpls-St. Paul* magazines since 1993. She has been listed as one of the top 100 lawyers in Minnesota for several years and is one of the top 40 lawyers in the Family Law practice area by *Law & Politics*. Ms. Berg has received a peer review rating of AV Preeminent by American Registry since 1995. Ms. Berg has also served on a variety of community non-profit boards and is an active glass and mosaic artist. *Walling, Berg & Debele, P.A., 121 South 8th Street, Suite 1100, Minneapolis, MN 55402 Phone: (612)340-1150 Fax: (612)340-1154 Email: nancy.berg@wbdlaw.com*

Geoff Wilson

PARTNER

Phone
+61 7 3024 0360

Email
g.wilson@hopgoodganim.com.au

Geoff co-manages HopgoodGanim's Family Law practice, one of the largest in Australia. He is a Queensland Law Society Accredited Family Law Specialist and has practiced in family law for over 25 years. His specific focus is on relationship agreements, representation of third parties, trusts, and relationship property disputes.

Geoff was named the market leader in the list of leading family lawyers in the Doyle's Guide Queensland Family Law Review for 2012, and is recognised internationally for his expertise in binding financial agreements and the enforcement of international pre-nuptial agreements within the Australian legal system. He authored the Australian chapter of 2011 legal guidebook *International Pre-Nuptial and Post-Nuptial Agreements*, published by Jordans in London, and advises on the impact of overseas financial agreements on property settlements and spousal maintenance in Australia.

Geoff regularly presents at industry seminars on topics as diverse as trusts, superannuation, relationship agreements, estate planning and family law, corporate structures, de facto relationships, drafting and evidence. He has prepared over 80 papers on family law topics throughout his career and has been a contributing author to the CCH loose-leaf Services, Australian Family Law and Practice, Australian De Facto Relationships Law, Matrimonial Property Guide and Queensland Law Handbook.

Geoff is currently the parliamentarian of the International Academy of Matrimonial Lawyers, and has been invited to present at a number of its international family law conferences. He was previously a lecturer in family law at Queensland University of Technology, and is the legal advisor to the Australian website www.pre-nuptialagreements.com.au

Areas of Practice

- Family Law

Curriculum Vitae of.

ROBERT D. ARENSTEIN, ESQ.

NEW YORK OFFICE

295 Madison Avenue
New York, NY 10017
212/679-3999

NEW JERSEY OFFICE

691 Cedar Lane
Teaneck, NJ 07666
201/836-9648

EDUCATION

Ithaca College (B.S., *cum laude*, 1968)
St. John's University (J.D., 1972)
Certified Public Accountant (NY 1973)
New York University (LL.M., Taxation, 1976)

COURT ADMISSION

1973	--	Admitted to Bar, New York and U.S. Tax Court
1974	--	U.S. District Courts, Southern and Eastern Districts of New York
	--	U.S. Court of Appeals, Second Circuit
1976	--	U.S. Supreme Court and District of Columbia
1979	--	New Jersey and Florida

PUBLISHED ARTICLES

The Hague Convention - Understanding & Litigating Under the Treaty
The Hague Convention - Educating the State Court Judge
Distribution of Military Benefits - The Need for Reform
Distribution of Military Benefits - Congressional Reform
Interjurisdictional Enforcement of Matrimonial Orders - A Proposal
Divorce Law in China - Domestic Relations Tax Reform Act, 1984
How to try a Hague Case.
Made a Tape for Students studying for certification to American Academy of Matrimonial Lawyers

EXPERTISE

Expert Witness on various court cases throughout the nation on Interstate and International Child Abduction Cases

Liaison to International Child Abduction Project sponsored by the ABA Center on Children and the Law - Department of Justice OJJDP, (1993-96)

Chairman of the Mentoring Committee of the International Child Abduction Attorneys Network (ICAAN), funded by the Dept. of Justice OJJDP in conjunction with ABA Center on Children and the Law and the National Center for Missing and Exploited Children (NCMEC)

Consultant to the United States State Department, Bureau of Consular Affairs, Children's Issues Department and National Center for Missing and Exploited Children (MCMEC) on International Child Abductions

Certificate of Appreciation from the United States Department of State- March 1996

Participant in Hague Convention Meetings on Implementation of Treaty, Hague Convention on Civil Aspects of International Child Abduction, Netherlands, 1993, 1996, 1999, 2003, 2007

Member of United States delegation to the Hague-1996

Expert Witness before U.S. House of Representatives; House Ways and Means Committee, Child Support Amendments, 1984, 1988, Social Security Amendments, 1989

Expert Witness before Senate and Assembly Judiciary Committee of New York on Hearings of Surrogate Parent Bill, 1986

Expert Witness before U.S. Senate, Committee on Armed Services, Uniform Services Former Spouses Protection Act, 1982

Speaker/Lecturer on Interstate and/or International Child Custody, at various Institutes, including:

- Second World Congress on the Rights of Children (1997)
- American Bar Association's annual winter and spring meetings
- International Academy of Matrimonial Lawyers (1997; 1992)
- American Family Conciliation Courts National Conferences
- American Association of Trial Lawyers
- Hispanic Bar Association
- New Jersey Continuing Legal Education Institute
- COURT TV
- American Academy of Matrimonial Lawyers 2002, 2006
- International Academy of Matrimonial Lawyers 2004
- Hague Convention Delegate on the Implementation of the Treaty on Child Abduction September, 2007
- Fairfield County Bar Association, Connecticut , 2007
- Cross Border Mediation and the Hague Convention on International Parental Child Abduction, University of Miami School of Law, February, 2008

  How to try a Hague Convention Case- International Academy of Matrimonial Layers June, 2008 Boston, Mass
-

I have been continuously active in the practice of law for the past thirty nine (39) years, and for the last thirty six (36) years have devoted my practice, almost entirely, to that of matrimonial and family law. I am a Fellow of the American Academy of Matrimonial Lawyers and Secretary of the New York Chapter and a previous chair of the National Legislation Committee. I have chaired many committees in that organization. I am a Fellow of the International Academy of Matrimonial Lawyers and Vice President and Former Secretary of the American Chapter of that organization. I am a member of the National Panel of Marital Arbitrators of the American Arbitration Association. I am also a member of the Executive Committee of the Family Law Section of the New York Bar Association. In addition, I was a member of the Executive Council of the American Bar Association's Family Law Section, and a member of various matrimonial law committees both in New York State and American Bar Associations. I chaired the Federal Kidnapping Committee of the Academy of Matrimonial Lawyers and I was liaison to ABA Parental Abduction Project. I was the Chairman of the Mentoring Committee of the International Child Abduction Attorneys Network (ICAAN), funded by the Dept. of Justice OJJDP in conjunction with ABA Center on Children and the Law and the National Center for Missing and Exploited Children. I have been an expert witness before the United States Senate Armed Services Committee on issues relating to military pension, the House Ways and Means Committee on issues relating to child support, and before the New York State and New Jersey State Assembly's Judiciary Committees on the subject of surrogate parenting and have advised the U.S. State Department on various occasions including speaking in the North American Symposium on International Child Abduction. My experience in the matrimonial field is extensive and varied and includes the handling of all types of matrimonial actions and proceedings in the trial and appellate courts of the State of New York and elsewhere including almost four hundred (400) cases under the Hague Convention. I have been a Lecturer at Various Institutes on Interstate and International Child Custody, including American Family Conciliation Courts National Conferences, American Bar Association's annual winter and spring meetings, American Academy of Matrimonial Lawyers, International Academy of Matrimonial Lawyers, American Association of Trial Lawyers, Hispanic Bar Association, New Jersey Continuing Legal Education Institute, COURT TV, and various other bar associations. My firm has handled many international custody actions and many interstate custody actions involving the Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act.

AMERICAN ACADEMY OF MATRIMONIAL LAWYERS - New York Chapter

Fellow (1984-present)
Chairman/Member, Kidnapping Committee (1994-6), (1996-present)
Chairman, Meeting Committee (1986-1998)
Member, Legislation Committee (1991-1998)
Parliamentarian (1995-96; 1991-92)
Member, National Budget and Finance Committee (1994-95)
Co-Chairman, National Legislation Committee (1990-91)
Chairman, Committee on Surrogate Parenting (1986)
Board of Managers, New York Chapter (1986-90) (1993-1996) (1999-2002)
Specialization Committee (1985)
Secretary (1999- Present)

AMERICAN BAR ASSOCIATION - Member (1972-present)

Family Law Section --

Council Member (1996-99; 1985-91)
International Law and Procedures (1991-present)
Chairman/Member, Federal Legislation & Procedures (1989-present)
Vice Chair/Member, Federal Task Force on Legislation (1992-present)
Parliamentarian (1995-96)
Liaison to International Child Abduction Project (1993-96)
Co-Chairman, Bankruptcy Committee, (1992-94)
Advisory Committee (1991-94)
Chairman, By-Laws Committee (1990-91; 1982-84)
Law and the Fifty States (1985-94)
Chairman/Member, Scope & Correlations Committee (1987-90)
Ad hoc Committee on Surrogacy (1987-88)
Editorial Board, Family Law Quarterly (1987)
Chairman, Research Committee Member (1986)
Member, Annual Meeting Coordination Committee (1985-86)
Chairman, Policy & Procedures Handbook Committee (1982-86)
Membership Chairman (1983-85)
Chairman, Interstate/Federal Support Laws & Procedures Committee (1981-85)
Vice Chairman Divorce Laws and Procedures Committee (1980-82)
Alimony, Support and Maintenance Committee (1977-80)

Young Lawyers Division
Member, Liaison with Other Professions and Organizations (1981-82)
Member, Child Advocacy and Protection Committee (1980-82)
Delegate (1974-81)

INTERNATIONAL ACADEMY OF MATRIMONIAL LAWYERS - Member (1988-present)
Vice President, American Chapter (2010- present)
Board of Managers, American Chapter (1996-present)
Secretary, American Chapter (1994-95)
Counsel to the President (2006-2008)

NEW YORK STATE BAR ASSOCIATION - Member (1972-present)

Chairman, International Custody Committee (1995-1998)
Executive Committee (1979-2009)
Program Chairman, Annual Meeting (1985-91)
Co-chairman, Committee on Surrogate Parenting (1986-87)
Program Chairman, Young Lawyers Section (1985)
Chairman, Long Range Planning, Family Law Section (1979-85)
Liaison, Executive Committee, Young Lawyers Section (1979-82)
At Large Delegate- 2006-present

ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK - 1973

Member, Committee on Matrimonial Law (1991-1996)
Liaison to Committee on Matrimonial Law (1985)

NEW JERSEY BAR ASSOCIATION -
Co-chairman, Specialization Committee Member (1983-84)
Legislation Committee (1984)

Westchester County Bar Association - 1973
Bergen County Bar - 1979
Essex County Bar Association - 1979
District of Columbia Bar Association
Florida Bar Association
American Association of Attorneys-CPA's - 1973
American Arbitration Association - 1973
National Panel of Marital Arbitrators (1978-present)
Commercial Panel Arbitrators (1975)

Employment

Law Offices of Robert D. Arenstein (New York & New Jersey) (1984 to present)
Arenstein & Huston, P.C., President (1980-84)
Self-Employed (1975-80)
Shapiro, Weiden & Mortman, P.C. (1974-75)
Hofheimer, Gartlir, Gottlieb & Gross (1973-74)

Born: January 16, 1947
New York, New York

Her Honour Judge Angela Finnerty

Designated Family Judge
North Yorkshire
England

Professional

1975 L.L.B. First Class Leeds University.
1976 Called to the Bar Middle Temple. Harmsworth Scholar.
1977 Pupillage 2, Harcourt Buildings London.
1978 Tenant Pearl Chambers Leeds West Yorkshire.
1978-2000 Practising Barrister in Leeds.
1998 Appointed a Recorder.
2000 Appointed to the Circuit Bench.
2011 Appointed Designated Family Judge for North Yorkshire.
Circuit Judge Member of the Family Procedure Rule Committee
Member of the Tutor Teams at the Judicial College for

- Family
- Craft of Judging

Personal

Married to His Honour Judge Heaton Q.C.
Two Children

- Thomas, a Solicitor with Clifford Chance based in Singapore
- Elisabeth, an account manager with Google based in London

Two step children David and Richard both Students,

His Honour Judge Clive Heaton QC

Family Court Judge
Leeds
England

Education\Professional

Keble College, Oxford. Degree in Modern History 1978

Qualified as solicitor 1982

Transferred to the Bar 1992

Appointed Recorder 2002

Appointed Queens Counsel 2006

Appointed Deputy High Court Judge 2008

Appointed Circuit Judge 2011

Personal

Married to HHJ Finnerty

Manchester United supporter

POONAM MIRCHANDANI

Precedent partner of M/s Mirchandani & Partners.

Graduated from the National University of Singapore, Poonam Mirchandani was admitted to the Singapore Bar in 1984. In August 1991, she set up Mirchandani & Partners, which over the years has developed into a reputed boutique family law practice/chambers.

Poonam Mirchandani advises on all issues arising out of family breakdown, including financial and property settlements. She specialises in international divorce and jurisdictional disputes, with particular expertise in conflict of law principals involving cross-border divorces, international custody disputes, child abduction, financial resolutions, etc.

She was one of the pioneers of the Legal Clinic in AWARE, a leading women's advocacy group in Singapore, providing free monthly legal advice to members of public. Poonam Mirchandani was also one of the members in AWARE, who mooted for stricter laws against domestic violence in the form of The Family Violence Bill and appeared before the Special Committee of the Singapore Parliament. Parts of the Bill was enacted into law in the Women's Charter.

On 30 April 1999, Poonam Mirchandani was appointed by Singapore Family Court as an "amicus curiae" or a court-appointed counsel for children in high-conflict custody cases. She is a member of the International Academy of Matrimonial Lawyers.

She speaks English, basic Malay and Hindi.

Anita Chan

Princes Chambers
155 Princes Street
PO Box 1424
Dunedin 9054
New Zealand

Tel: + 64 3 477-8781
Fax: + 64 3 477-8382
Email: anita@princeschambers.net
Website: www.familylaw.net.nz

Anita Chan is one of New Zealand's leading Family Law barristers.
Anita's practice is in complex property and child disputes, and representation of children. She leads a team of specialist family law barristers who handle all types of Family Law dispute.

Anita is generally briefed as counsel in cases involving farms, trusts, high-worth assets, and complex asset structures. She has particular expertise in cases involving international issues (parties or property overseas, child abduction, conflict of laws/international forum shopping).
She is a member of the IAML Committee on surrogacy.

Anita is a director of Dispute Resolution Services Ltd, and a former director of ChildFund (New Zealand) Ltd.

She is Vice-President of the International Academy of Matrimonial Lawyers, and former Chair of the New Zealand Law Society Family Law Section.

A graduate of the University of Otago, Anita is a regular guest lecturer in Family Law at the University.

She is the author of the chapter on New Zealand Family Law in 'Family Law – Jurisdictional Comparisons 2011' (part of the European Lawyer Reference series published by Thomson Reuters UK).

Dr. Pinky Anand

Senior Advocate
A-126 Niti Bagh
New Delhi 110 049
India

Tel: + 91 11 2696 2273
+ 91 11 2686 2282
+ 91 11 4164 0960
Fax: + 91 11 4174 0656
Email: pinkyanand@gmail.com

Designated Senior Advocate practicing in the Supreme Court of India since 1980.

Graduate, Harvard Law School.

Expert in the fields of Constitutional Law, Property Matters, Private International Law, Family Law, Environmental and Corporate law with over 25 years of extensive exposure in the above mentioned fields. Head, All India Legal Cell (BJP); Additional Advocate General for the State of Uttarakhand.

Represented India to the European Union in 2003; member, National Delegation to China in 2005; received the 19th Bharat Nirman Award for Excellence in Law, 2007.

Lecturer in prestigious Universities in India and abroad including Rhodes House, Oxford and in various international conferences such as Women's Forum Global Meeting, Deauville, France 2008 & Terra Madre Turin Italy 2008. Expert panelist for major Television networks and has numerous publications to her credit in National Newspapers and Magazines such as Times of India and Hindustan Times.

1942 Broadway, Suite 314
Boulder, CO 80302

T 303-323-1938
F 480-772-4219
langley@familylawint.com

http://family-law-international.com

Profile: Caroline Langley

Experienced Founder and Senior Partner of Family Law International, who combines a personal passion for children and families with their search for concrete guidance and the means to cope with the unexpected burdens commensurate with global legal issues ranging from divorce, child custody and intricate financial matters. Proven success in negotiating complex matters and alliances that optimize an extensive international network. Cases have ranged across the world, inter alia, Europe, South Africa, North America, Canada, necessitating conversance with the laws of those countries and providing successful results while creating an environment of accountability, trust and mutual respect.

Qualifications

2009	Fellow	International Academy of Matrimonial Lawyers
2006	Attorney	US District Court 10th Circuit, U.S.A.
2003	Certified Trainer	National Institute for Trial Advocacy
2003	Attorney	Colorado, U.S.A.
2001	Mediator	U.S.A.
1999	Mediator	Hong Kong
1997	Barrister	Hong Kong
1989	Barrister	England & Wales, The Honourable Society of Lincoln's Inn

Positions Held

Member: **ICCAN**
This is the United States Central Authority for the Hague Convention on the Civil Aspects of International Child Abduction and the International Child Abduction Attorney Network, Department of State, Office of Children's Issues.

Member: **American Bar Association International Child Abduction Mediation Task Force.**
The purpose of this new International Child Abduction Mediation Task Force is to examine the issues inherent in establishing an international child abduction mediation program in the United States, including discussions on mediator background and training, mediation of domestic violence allegations, how best to educate the judiciary and public, the role of the child's voice in mediation, the lawyer's role in mediation, and the enforcement of mediated agreements in implicated jurisdictions, among other topics. The International Child Abduction Mediation Task Force will further collaborate with the Global Justice Initiative, a Washington, D.C. based not for profit organization that is designing a mediator training curriculum and a pilot mediation program. 2011 – Present

As of August 2012

CURRICULUM VITAE

MIKIKO OTANI

SPECIALITY

Family Law (Japanese and International), International human rights law, Women's rights, Child rights, Access to justice

EDUCATIONAL BACKGROUND

LL.B. in International Legal Studies, Faculty of Law, Sophia University, Tokyo, 1987

Diploma (Training in Law Practice), Legal Training and Research Institute of the Japanese Supreme Court, Tokyo, 1990

Master of International Affairs (Concentration: Human Rights and Humanitarian Affairs), School of International and Public Affairs, Columbia University, New York, 1999

LL.M. in International Law, Graduate School of Law and Politics, University of Tokyo, Tokyo, 2003

PROFESSIONAL QUALIFICATION AND WORKING EXPERIENCES

Admitted to Tokyo Bar Association (1990)

Shin-kojimachi Law Office (Tokyo, April 1990 - June 1999)
Associate Lawyer
Area of practice: civil, criminal and family law

Otani Law Offices (Tokyo, June 1999 – October 2009)
Partner Lawyer
Area of practice: family law with focus on international family cases

Toranomon Law & Economic Offices (Tokyo, October 2009 – present)
Partner Lawyer
Area of practice: family law with focus on child issues and international family cases

Office of the United Nations High Commissioner for Human Rights/New York Office (New York, May 1998 - August 1998)
Intern

Director, Office of International Affairs, Japan Federation of Bar Associations (January 2006 – December 2007)

Family Affairs Mediator, Tokyo Family Court (October 2004 – present)

Lecturer (International Human Rights Law), Temple University Law School, Program in Japan, (Tokyo, January 2002 – January 2003), Soka University Law School (Tokyo, April 2004 – present), and Omiya Law School (Saitama, April 2004 – present)

Visiting Professor (The Law Concerning Women and Children in Japan and East Asia), University of Hawaii, School of Law (Honolulu, November 2011)

PUBLIC SPEECH ENGAGEMENT

Have actively engaged in public speeches and lecturers on human rights issues in the regional/international conferences and training seminars for law profession in other countries including:

- Presentation titled "Revisiting Benefits of Creating National Human Rights Institutions: Japanese and the Asia-Pacific Contexts" in the session "Human Rights in the Asia-Pacific" at the 19th Biennial LAWASIA Conference in Australia in 2005
- Lecture titled "Current Situation of Gender Issues in Japan and the World: From Legal Point of View" at the Gender Seminar for Cambodian lawyers organized by the Japan Federation of Bar Associations in Phnom Penh in 2005
- Presentation titled "Human Rights and Justice: Critical for a Just and Sustainable Peace" at the Global Conference on "Building a Just and Sustainable Peace" in Hiroshima in 2006
- Lecture in the International Human Rights Treaties Seminar for Legal Profession in Mongolia organized by the Japan International Cooperation Agency in Ulan Bator in 2007
- Panelist at the Symposium organized by the Ministry of Foreign Affairs of Japan titled "Towards Arc of Freedom and Prosperity: New Developments in Japan's Foreign Policy for the Promotion of Human Rights and Democracy" in Tokyo in 2007
- Presentation titled "Abduction of Children to and from non State Parties to the Hague Convention: Japanese Experience" in the session "Family – Abduction of children to Asian countries, Remedies under the Hague Convention" at the 20th Biennial LAWASIA Conference in Hong Kong in 2007
- Lecture on International Human Rights Law at the United Nations University in Tokyo in 2007
- Presentation titled "Networking of the International Human Rights Experts in Asia" in the International Symposium "Toward Abolition of Prostitution of Children" organized by Waseda University in Tokyo in 2008
- Presentation titled "Trafficking in Women and Children: Situation in Japan and in Asia" in the session "Trafficking in Women and Children" at the International Bar Association Annual Conference in Buenos Aires in 2008
- Lecture titled "Victims of Child Exploitation" in the Course "Development of Comprehensive Assistance System for Victims" organized by Tokiwa International Victimology Institute in Tsukuba in 2008 and 2009
- Panelist at the Symposium "Divorce and Children: Best Interests of the Child" organized by Japan Federation of Bar Association in Tokyo in 2008

- Lecture titled “Practice of International Family Case” in Webcast Training by Japan Federation of Bar Associations in Tokyo in 2009 and 2010
- Lecture titled “Practice of International Family Case” at the Exchange Meeting of the Kanto Federation of Bar Associations, Committee on the Rights of Foreigners, with International Exchange Associations in Tokyo in 2009
- Lecture on the international human rights framework, women’s rights and children’s rights as Faculty at the Training for Iraqi Lawyers on International Human Rights and Humanitarian Law organized by the International Legal Association Consortium, the International Bar Association, the Japan Federation of Bar Associations and the CEELI Institute in Prague in 2009
- Presentation titled “Challenges to the Rule of Law in our region and the world: Bar associations should engage more with the UN in the areas of human rights and criminal justice” at the 36th Australian Legal Convention in Perth in 2009
- Presentation titled “Situation of Child Abduction in Japan” at the International Symposium on Child Abductions” in Berlin in 2009
- Panelist at the Symposium “Reform of Discriminatory Provisions in Civil Code” organized by Japan Federation of Bar Association in Tokyo in 2010
- Speaker in the family law session “Matrimonial Disputes Alternative Models for Resolution” at the LAWASIA 23rd Conference in New Delhi in 2010
- Panelist at the Symposium “Joint Custody System” organized by Japan Federation of Bar Association in Tokyo in 2010
- Lecturer on trafficking in women at the training for management level of immigration officers in Tokyo in 2011
- Panelist at the side event “Women & Human Right to Peace” during UN Commission on Status of Women (CSW 55) sponsored by the Permanent Mission of Bangladesh to UN, New York, The Spanish Society of International Human Rights Law and Women’s UN Report Network in New York in 2011
- Lecturer on the international human rights framework, women’s rights and the children’s rights at the Training for Iranian and Malaysian Lawyers on International Human Rights organized by the International Bar Association in Kuala Lumpur in 2011
- Speaker in the session “Child Abduction and Relocation – Cultural and Religious Sensitivities” at the LAWASIA Child and Law Conference in Siem Reap in 2011
- Panelist at the Symposium “Hague Convention on Civil Aspects of International Child Abduction” jointly organized by the Asia-Pacific Human Rights Information Center and the Osaka Bar Association in Osaka in 2011
- Invited speaker on the topic “Japan’s Joining the Hague Child Abduction Convention: Solution or New Cause of Conflict?” at the Supreme Court of Hawaii in Honolulu in 2011

PROFESSIONAL SOCIETIES AND ACTIVITIES

Japan Federation of Bar Associations
Vice-Chair, International Human Rights Committee
- Attended the various UN meetings in the human rights area such as the UN Commission on the Status of Women in New York in 1998 and 1999, the UN Sub-commission on the Promotion and Protection of Human Rights in Geneva in 1999, the World Conference against Racism in Durban in 2001, the UN Congress on Crime Prevention and Criminal Justice in Bangkok in 2005, the UN General Assembly Informal Interactive Hearings with NGOs, Civil Society Organizations and Private Sector on UN Reform in New York in 2005, the UN Human Rights Council in Geneva in 2006, 2008 (for UPR of Japan).

Vice-Chair, Committee on Establishment of National Human Rights Institution
Vice-Chair, Working Group on Hague Convention on International Child Abduction
Vice-Chair, Editorial Committee
Member, Committee on Family Law Legislation
Member, Center on Gender Equal Participation

Tokyo Bar Association
Member, Family Law Section

Japan Women's Bar Association
Former Vice-president

Lawyers Network for Foreigners
Co-Representative

Japan Society for Socio-Legal Studies on Family Issues
Member

Japan Association of Gender and Law
Member

International Human Rights Law Association
Executive Council Member

Japanese Society of International Law
Member

Japanese Association of World Law
Member

Japan Association for United Nations Studies
Member

Asia Pacific Forum on Women, Law and Development
Regional Council Member, Member of the Programme and Management Committee

Asian Society of International Law
Executive Council Member of Japan Chapter

LAWASIA (The Law Association for Asia and Pacific)
Country Representative of Japan for the Family Law and Family Rights Section

International Bar Association

Council Member of Public and Professional Interest Division
Secretary of the Women Lawyers Interest Group

International Academy of Matrimonial Lawyers
Fellow

Alternative Representative of the Delegation of Japan to the 60th and the 61st UN General Assembly (Third Committee)

Advisor (NGO Representative) of the Delegation of Japan to the 53rd UN Commission on the Status of Women

Member of the Specialist Committee on Monitoring of the Council for Gender Equality

Member of the Legislative Council on the Hague Convention of Ministry of Justice and the Round Table on the Modality of the Central Authority for the Implementation of the Hague Convention of the Ministry of Foreign Affairs

Participant of the International Visitor Leadership Program 2011 "Children in the U.S. Justice System"

International Society of Family Law
Member

The World Society of Victimology
Member

PUBLICATIONS

National Human Rights Commissions in the Asia-Pacific Region and the Ratification of Human Rights Treaties, So-Dai Heiwa Kenkyu, Vol. 20/21 (1998/1999) (English)

Toward the Introduction of the Individual Complaint Procedure under the Adopted Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, Gekkan Human Rights, No. 140 (1999) (Japanese)

Toward Further Steps to Prevent Violence against Women under Armed Conflict, Proceedings of the Expert Meeting and Open Forum of the Asian Women's Fund (2000) (Japanese/English)

Commentary on the Convention against Torture, in Amnesty Human Rights Report, Vol.9 – Eradication of Torture, (2000) (Japanese)

Human Rights and Humanitarian Affairs – International Protection of Human Rights and the Agenda for Japan, Kosuke Ninomiya and Arseny Besher (ed.), "Thinking World and Japan at Columbia University Graduate School", (2001) (Japanese)

Need of Anti-Discrimination Act in Japan: Why and What Kind of? – From Women's Viewpoint, Gendai Sekai to Jinken Series, Vol.16 (2001) (Japanese)

Problems in Each Area in Implementing the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Japan: Measures to Protect the Women Detainees; Commentary of the Individual Complaint Procedure and Some Important Cases, Jiyu to Seigi (Journal of the Japan Federation of Bar Associations) Vol.52-9 (2001) (Japanese)

Analysis of Codes of Conducts of 34 Japanese Companies, International Human Rights Committee of Japan Federation of Bar Associations (ed.), Corporate Social Responsibility and Standards of Conducts: Compliance Management and Protection of Whistle Blowers, Bessatsu Shoji Homu No.264 (2003) (Japanese)

Protection of Human Rights in a state of Emergency: From a legal Practitioner's Viewpoint, Kokusai Jinken (Journal of International Human Rights Law Association) Vol.14 (2003) (Japanese)

Addressing Trafficking in Persons as Transnational Organized Crime, Hyu-rights Osaka (ed.), Asia-Pacific Human Rights Review 2006 (2006) (Japanese)

Protection of Children from Violence (Corporal Punishment), Kentaro Serita et al. (ed.), "International Human Rights Law Making and Development, Lecture on International Human Rights Law, vol.2" (2006) (Japanese)

Revisiting the Role of the International Human Rights Law: Review of and Challenges to the Human Rights Education in Japan, Hyu-rights Osaka (ed.), Asia-Pacific Human Rights Review 2007 (2007) (Japanese)

Co-editor of "Handbook on Practice of International Human Rights Law", (2007) (Japanese)

Situation of Japan: Working Towards the Establishment of an Independent NI, Asian Forum for Human Rights and Development (FORUM-ASIA), 2008 Report on the Performance and Establishment of National Human Rights Institutions in Asia, (2008) (English)

Access to Justice, Matsui Ryosuke and Satoshi Kawashima (ed.), "Gaisetsu Convention on the Rights of Persons with Disabilities" (2010) (Japanese)

Child Abduction in Japan, International Family Law Journal (September 2010) (English)

Committee on the Rights of the Child, Kentaro Serita et al. (ed.), "International Implementation of International Human Rights Law, Lecture on International Human Rights Law, vol.4" (2011) (Japanese)

Practical Issues on Child Custody involved in Separation/Divorce, Jurist, No. 1430 (2011) (Japanese)

The Hague Convention on Child Abduction, Horitsu Jiho, No. 1040 (2011) (Japanese)

International Issues on Child Custody: Internationalization of Families and Need of International Response, International Affairs, No. 607 (2011) (Japanese)

Co-author of "Family Law: Jurisdictional Comparisons" (European Lawyer Reference) (Chapter on Japan" (2011) (English)

Co-author of "Practice of International Divorce", (2012) (Japanese)
