IN-DEPTH ANALYSIS

Requested by the JURI committee

European Parliament

The 1980 Hague Convention

Lessons Learned and Ways Forward

Policy Department for Justice, Civil Liberties and Institutional Affairs
Directorate-General for Citizens' Rights, Justice and Institutional Affairs
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The 1980 Hague Convention

Lessons Learned and Ways Forward

Abstract

The 1980 Hague Child Abduction Convention recently celebrated the 45th anniversary of its signing on 25 October 1980. This in-depth analysis considers its successes and the challenges it faces, what we have learned so far, and what may be realistically achieved in its future operation, to ensure that it maintains its critical support and relevance for the contemporary global community it serves. The European Parliament's current and potential role in this exercise is considered as part of this in-depth analysis.

This in-depth analysis was commissioned by the Policy Department for Justice, Civil Liberties and Institutional Affairs at the request of the JURI Committee.

This document was requested by the European Parliament's Committee on Legal Affairs.

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LIST OF ABBREVIATIONS

Brussels IIb	Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) (Also known as The Brussels II-*ter* Regulation) in force since 1 August 2022
EMI, EMII, EMIII	Experts' Meetings at University of Westminster
EP	European Parliament
GGP	Guide to Good Practice on Article 13(1)(b)
HCCH	Hague Conference on Private International Law
Judges' Newsletter	The Judges' Newsletter on International Child Protection
JURI	The European Parliament Committee on Legal Affairs
NGOs	Non-governmental Organisations
POAM	Protection of Abducting Mothers in Return Proceedings project.
Research Handbook	Freeman, M. and Taylor, N. (Eds) 2023, Research Handbook on International Child Abduction, Edward Elgar Publishing
Special Commission	Special Commission on the Practical Operation of the 1980 and 1996 Hague Conventions
Special Issue	Freeman M, and Taylor, N. (Eds) *Contemporary Issues Relating to International Child Abduction in Contemplation of the Eighth Special Commission into the operation of the 1980 Hague Child Abduction Convention* (Laws 2023) https://www.mdpi.com/journal/laws/special_issues/08G6OB562R
The Convention	The Convention on the Civil Aspects of International Child Abduction 1980
The 1996 Convention	The Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children https://www.hcch.net/en/instruments/conventions/full-text/?cid=70
The 2015 Study	Study on 'Cross-border parental child abduction in the European Union' prepared by Dr. Lukas Heckendorn Urscheler and Dr. Ilaria Pretelli for the European Parliament in 2015 at the request of the LIBE Committee www.europarl.europa.eu/RegData/etudes/STUD/2015/510012/IPOL_STU(2015)510012_EN.pdf

EXECUTIVE SUMMARY

The 1980 Hague Convention on the Civil Aspects of International Child Abduction (hereafter the Convention) recently celebrated the 45th anniversary of its signing on 25 October 1980. It is therefore timely to consider its successes, as well as its current and continuing challenges, what we have learned so far about its operation, and what may be realistically achieved in the future to ensure the Convention maintains its critical support and relevance for the contemporary global community it serves.

The European Parliament's Committee on Legal Affairs (JURI) therefore requested an in-depth analysis from the author entitled '*The 1980 Hague Convention: Lessons Learned and The Ways Forward'.* This work is based on existing available data, reliable statistics, studies and analysis from various sources, as well as documents from national and international institutions, including previous studies this author prepared for the European Parliament (i) in 2020 entitled 'The Child Perspective in the Context of the 1980 Hague Convention' and (ii) in 2024 entitled 'Parental child abductions to third countries'.

The author's previous work on the Long-Term Effects of Abduction, entitled 'Parental Child Abduction: The Long-Term Effects' (2014), *International Centre for Family Law Policy and Practice* www.icflpp.com also informs this in-depth analysis.

Reference was made in the preparation of this in-depth analysis to the study on 'Cross-border parental child abduction in the European Union' prepared by Dr Lukas Heckendorn Urscheler and Dr Ilaria Pretelli for the European Parliament in 2015, at the request of the LIBE Committee www.europarl.europa.eu/RegData/etudes/STUD/2015/510012/IPOL_STU(2015)510012_EN.pdf (hereafter the 2015 Study).
Although it is now ten years old, and significant further developments have occurred since the publication of this study,[1] it is noteworthy that this earlier European Parliament study recognised at that time both 'the evolution of family law' (p. 19) and the issues of 'gendered domestic violence' (p. 32), matters that still feature heavily in the concerns of those working in the field of international child abduction today.

This in-depth analysis argues that the need to nurture the Convention through observing and acknowledging societal changes and then considering, debating and evaluating possible strategies to address these changes within the operation of the Convention, should in no way be viewed as a failure of the Convention. A living instrument needs oxygen to breathe, grow, develop, and to avoid becoming moribund. Such oxygen is provided by the frank and open collaborative approach recommended in this in-depth analysis. The Convention's contribution in the field of international child abduction is invaluable, and the nurturing of the Convention is imperative to ensure its enduring support and utility for present-day society[2].

1 See Lowe, N. and Stephens, V. 'The Value and Challenges of Statistical Studies Looking at the operation of the 1980 Hague Convention on the Civil Aspects of International Child Abduction', in Freeman, M. and Taylor, N. (Eds), *Research Handbook on International Child Abduction,* Edward Elgar Publishing, 2023), 63 et seq.

2 The author has convened a series of Experts' Meetings at The University of Westminster on the topic of nurturing the Convention (1) EMI, 'Nurturing the 1980 Convention' held 19-20 October 2023, chaired by Phillipe Lortie, First Secretary, Hague Conference on Private International Law (hereafter HCCH), with the opening address provided by Mrs. Ewa Kopacz, The European Coordinator on Children's Rights and Vice-President of The European Parliament, where (i) Abduction and Asylum Issues,(ii) Abduction and Domestic Violence Issues, and (iii) Abduction and Child Participation Issues were discussed by an invited group of interdisciplinary, global experts. This meeting and its presentations formed the subject of a Special Issue of The Judges' Newsletter Volume XXVI | Fall-Winter 2024 www.hcch.net (2) EMII 'Continued Nurturing of the 1980 Hague Convention' held 4-5 August 2025, where (i) Relocation in the context of International Child Abduction, (ii) Prevention of International Child Abduction, (iii) After-Care in the Context of International Child

This in-depth analysis considers the successes of the Convention, including the high number of Contracting States it incorporates, some of which are governed by Islamic law. However, the number of Contracting States is not, and cannot be, the only or, indeed, the principal measure of the Convention's success. To be a success, the Convention must also operate effectively. Therefore, the question of whether it does, in fact, operate effectively is considered within this in-depth analysis, with a specific focus on the way in which domestic violence and abuse are addressed in the context of the 1980 Hague Convention.

This is an area of particular disquietude currently[3], reflecting the concerns expressed in the 2015 study. Although space constraints limit the possibility of addressing many of the other challenges which exist in this area, child participation in Convention proceedings is one challenge that is considered. The significant harm that children often experience as a result of abduction, is both highlighted in, and informs the entire content of, this in-depth analysis.

This in-depth analysis examines domestic violence and abuse in cases of international child abduction, and the way in which they are addressed under the Convention. It further discusses the Guide to Good Practice (hereafter the GGP) on Article 13(1)(b)[4]. The GGP was published after exhaustive efforts by the Working Party, which was created specifically to develop it, as mandated by the Special Commission at its 2011-2012 meetings.[5] The wide variation of approaches in the implementation of the Convention by the 103 current Contracting States is mirrored in the ways in which the GGP is viewed by those who work in the field of international child abduction. The author's own research[6] details the mixed reception the GGP has received from the specialist international family justice community.

This in-depth analysis points to the recently published Judicial Factsheets as potentially helpful tools in applying the exception to return under Article 13(1)(b)[7]. Other proposals which have been made for addressing this critical issue are discussed, including a new treaty running alongside the Convention[8];

Abduction, and (iv) Enforcement of International Child Abduction Orders were discussed, again by an invited group of interdisciplinary, global experts. Once again, this meeting will be reported in an upcoming issue of the Judges' Newsletter scheduled for December 2025 but now delayed until the spring of 2026 (3) Experts' Meeting III to be held 26-28 August 2026 which will be focused on identity in the context of international child abduction, and initiatives and strategies for the continued nurturing of the Convention. See also Freeman M. and Taylor, N. 'Contemporary Nurturing of the 1980 Hague Convention' in Freeman M, and Taylor, N. (Eds) *Laws* 12(4), 65 Contemporary Issues Relating to International Child Abduction in Contemplation of the Eighth Special Commission into the operation of the 1980 Hague Child Abduction Convention (2023) https://www.mdpi.com/journal/laws/special_issues/08G6OB562R (hereafter Special Issue)

[3] See (i) The Forum on Domestic Violence and the Operation of Article 13 (1)(b) of the 1980 Child Abduction Convention, held in Sandton, South Africa, on 18-21 June 2024. The author was an invited on-line participant at the Forum;' Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention' https://www.hcch.net/en/news-archive/details/?varevent=984; 'First Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention 18-21 June 2024 | Sandton, South Africa' https://www.hcch.net/en/publications-and-studies/details4/?pid=9035&dtid=50 (ii) Second Forum on Domestic Violence and the 1980 Child Abduction Convention – with a focus on the Operation of Article 13(1)(b) was held in Brazil 27-30 October2025 https://www.hcch.net/en/news-archive/details/?varevent=1114

[4] HCCH, *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, Part VI, Article 13(1)(b), The Hague 2020 https://assets.hcch.net/docs/225b44d3-5c6b-4a14-8f5b-57cb370c497f.pdf

[5] Special Commission on the Practical Operation of the 1980 and 1996 Hague Conventions (25-31 January 2012) Conclusions and Recommendations (Part II), 81, 82 https://assets.hcch.net/upload/wop/abduct2012concl_e.pdf

[6] Freeman, M. and Taylor, N. 'Where International Child Abduction Occurs Against a Background of Violence and/or Abuse'. April 2024. www.icflpp.com.

[7] New factsheet on the Protective Measures available in Scotland in the context of International Child Abduction, Oct 28. 2025 https://judiciary.scot/home/media-information/media-hub-news/2025/10/28/new-factsheet-on-the-protective-measures-available-in-scotland-in-the-context-of-international-child-abduction Factsheet on Protective Measures available in England and Wales re: international child abduction https://www.judiciary.uk/guidance-and-resources/factsheet-on-protective-measures-available-in-england-and-wales-re-international-child-abduction/

[8] Weiner, M., (2025) 'Convention on Safety for Survivors of Family Violence Involved in International Custody Disputes', *Cardozo Laws Review*, Vol 46.4, pp1167-1244

revision of the GGP (despite the hurdles in achieving this being rightly recognised and acknowledged)[9]; and changing domestic legislation in order to address this problem within individual national settings[10]. Examples of existing domestic legislation on this topic are provided, with particular reference to the Supreme Court of Brazil's recent judgement in this area[11] and the evolving legal landscape in Japan [12].

The recognised differences in approach to implementation of the Convention among the Contracting States, and the variety of suggested changes to its operation, raise the question of whether the Convention works differently in different jurisdictions, and importantly to what extent. This is already the case[13], and this in-depth analysis reflects on the ways this occurs, including through the operation of Brussels IIb within the European Union.

The author submits that we may now need to further debate and possibly reconsider the traditional concerns about inconsistency in the operation of the Convention. We also may need to more readily accept the inevitability of such inconsistency within the current 103 Contracting States with their different national structures and settings – an approach termed '**the multi-layerism of the Convention'** by the author**.**

This debate needs to be supported by reliable, evidence-based research. One reason in support of conducting such research was recently recognised and succinctly expressed by Dr Christophe Bernasconi, Secretary General of the Hague Conference on Private International Law (HCCH) . He noted that this research would lead to a better understanding of the long-term effects of the Convention's operation in cases involving domestic violence.

He rightly explained that it is only with such knowledge that we can then evaluate whether our practices truly serve the best interests of children and that we can then refine our approaches where necessary[14].

This, of course, is true not just in relation to domestic violence but in relation to all aspects of the Convention's operation. This author, and other researchers, are currently undertaking research which aims to fill in some of the gaps in our collective knowledge. This research was also recognised as necessary by Conclusion and Recommendation No. 102 from the 2023 Eighth Special Commission into the Operation of the Convention[15].

The knowledge provided by such evidence-based research is an essential component to the successful operation of the Convention within its Contracting States, where differences in approach are to be realistically expected.

There has been a valuable series of Experts' Meetings convened by the author and held at the University of Westminster. These are excellent steps in the right direction. However, it is submitted that influential institutional support is now required, with the capacity to fund the recommended initiatives and

[9] Adrienne Barnett, Hague Mothers, 'The Hague Abduction Convention. What needs to Change?' 27 February 2023 https://www.hague-mothers.org.uk/wp-content/uploads/2023/02/HM-What-needs-to-change-02-23-1.pdf

[10] See fn 9 above

[11] Albuquerque, J. 'Brazilian Supreme Court on the Hague Child Abduction Convention, 6 October 2025', https://conflic-toflaws.net/2025/brazilian-supreme-court-on-the-hague-child-abduction-convention/ Also see Supremo Tribunal Federal, Highlights, Last News https://portal.stf.jus.br/internacional/content.asp?id=540517&ori=1&idioma=en_us

[12] Japanese Law Translation, Act for Implementation of the Convention on the Civil Aspects of International Child Abduction, Act No. 48 of June 19, 2013 https://www.japaneselawtranslation.go.jp/en/laws/view/4008/en

[13] Weiner, M., (2025) 'Convention on Safety for Survivors of Family Violence Involved in International Custody Disputes', *Cardozo Laws Review*, Vol 46.4, pp1167-1244, p1206

[14] 'Second Forum on Domestic Violence and the 1980 Child Abduction Convention With a focus on the Operation of Article 13(1)(b), Fortalesa, Brazil, 27-30 October 2025', Opening address of Dr. Christophe Bernasconi, Secretary General of HCCH, p5. Hereafter Bernasconi, Brazil. https://assets.hcch.net/docs/e70eea3d-8025-418b-b92a-0e18c6ae2110.pdf

[15] https://assets.hcch.net/docs/5b48f412-6979-4dc1-b4c1-782fe0d5cfa7.pdf

activities. The European Parliament is ideally placed to make this necessary and important contribution and to positively influence this area of international family law. It is recommended that it does so on an urgent basis in order to make the crucial progress needed in this field. The urgent **commission of further evidence-based research in relevant topics, including domestic violence in the context of international child abduction, is imperative**.

Such research must be high-level, specialist and collaborative work, to ensure it is as meaningful and productive as possible for the international family justice community and ultimately for the children and families concerned. Immediate consideration must be given to the position of any non-EU researchers who are to be involved, for example, those from the United Kingdom, who are excluded from many EU funding schemes. Such participation is essential to assure the necessary collaborative expertise for research of this type. The exclusion of such specialist expertise is counter-productive for all concerned, including the ultimate beneficiaries – the children and families affected.

These actions, together with collaborative specialist work and a committed focus on the search for promising initiatives, may be the most hopeful path forward for the Convention as it strives to meet the current challenges it is facing. As suggested by this author in the study on 'Parental Child Abductions to Third Countries' undertaken for the JURI Committee in March 2024,[16] early consideration of the setting up of a specialist, inter-disciplinary and international working group would bring a helpful focus to these evolving issues[17].

The establishment forthwith of a specialist inter-disciplinary working group of key actors, including the HCCH is now recommended, with a specific remit to consider the concept of multi-layerism in the operation of the Convention and ways to (i) raise awareness, (ii) prevent abductions, (iii) improve support and after-care provision for abducted children and their families, and (iv) nurture the Convention. The recommended after-care project is immensely important, as the absence of the appropriate and accessible support which is urgently required by those who experienced an abduction event will have an impact not only on today's society but also on the society we become tomorrow.

The work done to date by the European Parliament, the JURI Committee, the Policy Department for Justice, Civil Liberties and Institutional Affairs, and by Mrs Ewa Kopacz, the European Parliament Coordinator on Children's Rights[18], has been very helpful. There is now an opportunity for these entities to become welcome beacons of light in the sometimes-fraught debates and circumstances in this area, as well as important, highly valued influences in this critical field of international family law.

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[16] Freeman, M. 'Parental Child Abductions to Third Countries', study requested by the JURI Committee https://www.europarl.europa.eu/RegData/etudes/STUD/2024/759359/IPOL_STU(2024)759359_EN.pdf pp46,

[17] See Barnett A. (2025) 'Domestic Violence and the 1980 Hague Convention: Achieving Cultural Change' who suggests at p10 the establishment of a working group in a narrower context, i.e. to consider a proposed model for the Convention. She stresses that the proposed model is not intended to replace legislative, treaty or other reforms proposed elsewhere but, on the contrary, to enhance the effectiveness of such reforms.

[18] See, for example, the Annual Report 2024 and Work Programme 2025 of the EP Coordinator on Children's Rights and the initiative to act as a central contact point to monitor and actively promote children's rights in EU policies, ensuring coherence and visibility of Parliament's actions in this area; to act in the field of international child abduction, cross-border issues and child friendly justice by participation in events and conferences on cross-border family disputes, promoting child-friendly justice, promoting cross-border mediation and encouraging and informing individual enquirers on the possible use of mediation in their particular cases; be a central information point for citizens of the Member States in international parental child abduction or other cross border family disputes. https://www.europarl.europa.eu/at-your-service/files/be-heard/coordinator-on-childrens-rights/latest-information/en-annual-report-2024-and-future-activities-2025-of-the-ep-coordinator-on-childrens-rights.pdf See also the recent workshop on the Convention organised by the EP Coordinator on Children's Rights with the support of the Policy Department for Justice, Civil Liberties and Institutional Affairs to mark the 45th anniversary of the signing of the 1980 Hague Convention in which the author made a presentation based on this in-depth analysis https://www.europarl.europa.eu/thinktank/en/events/details/the-1980-hague-convention-on-the-civil-a/20251121WKS06621

1. THE 1980 HAGUE CONVENTION

KEY FINDINGS

- The 1980 Hague Convention (hereafter the Convention) was a welcome response to the state of anarchy which existed before its inception.
- At the 45th anniversary of its signing, it is timely to consider its successes and challenges, what we have learned about its operation, and what may be realistically achieved in its future so that it maintains its critical support and relevance for the contemporary global community it serves.
- The Convention is considered a very successful instrument with currently 103 Contracting States. In addition, however, the Convention must operate effectively in order to be successful.
- The Convention operates in different ways in different jurisdictions.
- The profile of international child abduction has changed – 75% of abductors are now mothers who are either primary or joint primary carers of their children, and over half of abductors are 'going home' to the state in which they were brought up or in which they have family ties. The effectiveness of the Convention is considered in light of these circumstances.

INTRODUCTION

The inception of the 1980 Hague Convention[19] (hereafter the Convention) was a welcome response to the recognised need for an effective remedy for international child abduction in what was described by Professor Nigel Lowe, as a 'state of international anarchy'[20].

Elrod's comments on the journey towards the introduction of the Convention are instructive and vividly describe the situation that existed at the time:

> 'The 1980 Hague Convention on the Civil Aspects of International Child Abduction … marked a new era of global cooperation over issues relating to children. Before the Convention, families who formed and dissolved across country borders had no adequate domestic remedy if one parent abducted or retained a child in another state or country. Alarming increases in the number of 'parental kidnappings' following the breakup of relationships fuelled a desire, and a need, for countries to get together to develop some way to deter parental abductions and to return an abducted child to the left-behind parent'[21].

As the Convention celebrates the 45th anniversary of its signing on 25 October 1980, it is timely to consider its successes and challenges, what we have learned about its operation, and what may be

[19] Hague Conference on Private International Law, *Hague Convention on the Civil Aspects of International Child Abduction*, Hague XXVIII, Hague Conference on Private International Law, 25 October 1980, https://www.refworld.org/legal/agreements/hagueprivate/1980/en/13865 [accessed 21 October 2025]

[20] Lowe, N. 'Whither the 1980 Hague Abduction Convention', in Freeman, M. and Taylor, N. (Eds) *Research Handbook on International Child Abduction,* (Edward Elgar Publishing 2023), Ch 25, 389 (hereafter Research Handbook)

[21] Elrod, L. 'The Global Effort to Deter Parental Kidnapping: A History of the Hague Child Abduction Convention' in Research Handbook, Ch. 4, 47.

realistically achieved in the future to ensure it maintains its critical support and relevance for the contemporary global community it serves. It is important here to bear in mind the prescient words of Adair Dyer, one of the founding fathers of the Convention, when he acknowledged the need for continued nurturing of an instrument of this type:

> 'The useful life of a law-making treaty should be at least 30 years. … Flexibility and continuous nurturing can give it a much longer lifespan.'[22]

The need to nurture the Convention through observing and acknowledging societal changes and then considering, debating and evaluating possible strategies to address these changes within the operation of the Convention, should in no way be viewed as a failure of the Convention. Nor should such nurturing be feared. A living instrument needs oxygen to breathe, grow and develop, and to avoid becoming moribund. Such oxygen is provided by the frank and open collaborative approach recommended in this in-depth analysis. The Convention's contribution in the field of international child abduction is invaluable, and the nurturing of the Convention is imperative to preserve its enduring support and utility for present-day society[23].

THE OPERATION OF THE CONVENTION

The Convention is considered to be one of the most successful private international law instruments dealing with family law matters[24]. It is indeed significant that there are such a high number of Contracting States to the Convention[25] – currently 103 – some of which are governed by Islamic law, for example Iraq, Morocco, Pakistan, Turkey, and Uzbekistan[26]. This is clearly encouraging, as there are many countries governed by Islamic law which have not felt able to become parties to the Convention[27], so the willingness of the states which have overcome this reticence is to be welcomed. However, of the countries cited, only Turkey has ratified the Convention.

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[22] A Dyer 'To Celebrate a Score of Years!' (2000) 33:1 *NYU J Int'l L & Pol* 1 at 16, n 60.

[23] The author has convened a series of Experts' Meetings at The University of Westminster on the topic of nurturing the Convention (1) EMI, 'Nurturing the 1980 Convention' held 19-20 October 2023, chaired by Phillipe Lortie, First Secretary, Hague Conference on Private International Law (hereafter HCCH), with the opening address provided by Mrs. Ewa Kopacz, The European Coordinator on Children's Rights and Vice-President of The European Parliament, where (i) Abduction and Asylum Issues, (ii) Abduction and Domestic Violence Issues, and (iii) Abduction and Child Participation Issues were discussed by an invited group of interdisciplinary, global experts. This meeting and its presentations formed the subject of a Special Issue of The Judges' Newsletter Volume XXVI | Fall-Winter 2024 www.hcch.net (2) EM II, 'Continued Nurturing of the 1980 Hague Convention', 4-5 August 2025, where (i) Relocation in the context of International Child Abduction, (ii) Prevention of International Child Abduction, (iii) After-Care in the Context of International Child Abduction, and (iv) Enforcement of International Child Abduction Orders were discussed, again by an invited group of interdisciplinary, global experts. Once again, this meeting will be reported in an upcoming issue of the Judges' Newsletter scheduled for publication in December 2025 but now delayed until the spring of 2026 (3) EMIII to be held 26-28 August 2026 which will be focused on initiatives and strategies for the continued nurturing of the Convention. See also Freeman M. and Taylor, N.' Contemporary Nurturing of the 1980 Hague Convention' in Freeman M, and Taylor, N. (Eds) *Laws* 12(4), 65 Contemporary Issues Relating to International Child Abduction in Contemplation of the Eighth Special Commission into the operation of the 1980 Hague Child Abduction Convention (2023) https://www.mdpi.com/journal/laws/special_issues/08G6OB562R (hereafter Special Issue). For Living Instruments, see fn 139 below.

[24] McEleavy, P. 'Child Abduction', Oxford Public International Law, Max Planck Encyclopedia of Public International Law (MPEPIL) C. Private International Law Remedies. 1. Hague Convention 1980 https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e762?d=%2F10.1093%2Flaw%3Aepil%2F9780199231690%2Flaw-9780199231690-e762&p=emailAeUErnBLtzQRs&print Last Accessed 18.11.25

[25] https://www.hcch.net/en/instruments/conventions/status-table/?cid=24 last accessed 20.10.25

[26] Status table, fn 25 above.

[27] Examples of such States are Malaysia and Saudi Arabia,. See Morley J. 'International Child Abduction and non-Hague Convention Countries', Research Handbook, Ch 17. The Malta Process has been very helpful in encouraging participation amongst this group of non-Convention States. See fn 134 and accompanying text for further discussion about the Malta Process.

The other countries have each acceded to the Convention, meaning their accession must be accepted by other Contracting States in order for the Convention to be in operation between them.

This is one of the repeated lessons learned, seen early on in this in-depth analysis and then repeatedly throughout – not all Contracting States view accessions, or many other issues relating to the Convention and its operation, in the same way. This can be observed in the way that Iraq's accession has not been accepted by the United Kingdom, or the United States; Morocco's accession has been accepted by both; Pakistan's accession has not been accepted by the United Kingdom[28], but has been accepted by the United States; Uzbekistan's accession has been accepted by the United Kingdom but not by the United States[29]. This is therefore an early, but clear, example of how the Convention currently operates in different ways in different jurisdictions.[30]

However, numbers do not necessarily equate with success, and we must therefore be cautious about identifying the Convention's success by its high number of Contracting States.[31] It is certainly one measure to be taken into account, as, without such comprehensive membership, the Convention has only a very limited opportunity to operate. However, it cannot be the only, or even the main, measure of its success, because the Convention must also operate effectively in order to be considered successful.

DOES THE CONVENTION OPERATE EFFECTIVELY?

There are several areas in which the Convention's operation has caused concern, and which have formed the basis of academic and practitioner commentary[32]. One issue in particular has become a focal point for discontent and increased recent activism. It relates to the use of the Convention in the context of domestic violence and abuse, and centres around the assertion that the circumstances surrounding the operation of the Convention have changed significantly since it was drafted and the subsequent assertion that its current design does not address these changed situations satisfactorily.

There is a commonly held and expressed view that the drafters of the Convention did not have in mind the possibility that primary carer mothers might be the abductors of their children[33]. That is not the

[28] NB A judicial understanding is in place between the UK and Pakistan https://www.gov.uk/government/publications/pakistan-child-abduction/pakistan-child-abduction The agreement does not have the force of law.

[29] Status table, fn 25 above.

[30] It is worth keeping this situation in mind when addressing the concern about the Convention operating at different levels if continued and future variations in approach regarding particular matters are adopted, for example domestic violence, as the Convention already applies unequally between its Contracting States. This is demonstrated in many ways which include the approach to accessions under the Convention, the way in which domestic violence is addressed in Convention proceedings, the availability of the protection afforded by the Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (hereafter the 1996 Convention) https://www.hcch.net/en/instruments/conventions/full-text/?cid=70 which will apply in some cases of international child abduction under the Convention, but not others, depending on whether the country involved is also a Contracting State to that Convention (there are 58 Contracting States to the 1996 Convention including all EU member states, Denmark, and 31 non-EU states).

[31] See Lowe, N. 'Whither the 1980 Hague Abduction Convention', Ch 25. Research Handbook, 388.

[32] See, for example, Freeman, M. and Taylor, N. (2020) 'Domestic Violence and Child Participation: Contemporary Challenges for the 1980 Hague Child Abduction Convention', *Journal of Social Welfare and Family Law* https://doi.org/10.1080/09649069.2020.1751938 ; 'Special Issue, Contemporary Issues Relating to International Child Abduction in Contemplation of the Eighth Special Commission into the Operation of the 1980 Hague Child Abduction Convention' (2023), Freeman, M. and Taylor. N. (eds) *Laws 12*(4), 65; https://doi.org/10.3390/laws12040065

[33] 'The Hague Abduction Convention was set up in 1980 with the best of intentions: to return a child back to the country of their primary carer (usually their mother) if the other, non-resident parent has taken the child against their will to another country'. Buchanan J. Brunel University of London, News. 'Family law expert urges 'abduction reversing' Hague Convention to take account of domestic abuse' https://www.brunel.ac.uk/news-and-events/news/articles/Family-law-expert-urges-'abduction-reversing'-Hague-Convention-to-

case.[34] Nevertheless, it is true to say that 'the common assumption when the Convention was being negotiated was that abductors were usually non-custodial fathers'.[35]

It is now accepted that the profile of abductions has indeed changed since the introduction of the Convention. Most taking parents now are mothers who are either primary or joint primary carers for their children, as opposed to the earlier paradigm, the non-custodial father, who was the more usual abductor of their child when the Convention was first introduced[36].

WHY DOES THIS CHANGE IN PROFILE MATTER?

It would seem that the Convention has been successful in preventing some of the abductions which were being undertaken by non-custodial father abductors, and this may be because they are aware that their children will almost certainly be returned if the countries involved are both parties to the Convention. The change in abduction profile therefore raises the question of whether, and if so to what extent, the increase in the number of mothers who are abducting their children in these cases corresponds to women escaping domestic abuse by the other parent and who want to go home for the support which they desperately need.

The global studies led by Professor Nigel Lowe[37] have been extremely helpful both in providing reliable statistics and identifying trends relating to the operation of the Convention. It is important to recognise, however, that, as stated by Lowe and Stephens, 'the surveys do not answer the question of why abductions take place.

However, they do provide some evidence (on the basis of their nationality and the state of refuge) that over half of abductors are 'going home' to the state in which they were brought up or in which they have family ties'[38].

take-account-of-domestic-abuse#:~:text=The%20Hague%20Abduction%20Convention%20was,send%20their%20children%20back%20alone. Osborne, R. Resolution, News. Global Action of Relocation and Return with Kids (GlobalARRK)' Stuck parents; an unintended consequence of The Hague Abduction Convention 1980': 'When most people think of a "taking" parent, they think of a non-custodial father who is trying to circumvent a family court decision by taking his children abroad. Indeed, the Hague Abduction Convention 1980 was set up to deal with these types of situations'. https://resolution.org.uk/the-review/archive/the-review-issue-222/stuck-parents-an-unintended-consequence-of-the-hague-abduction-convention-1980/#:~:text=When%20most%20people%20think%20of,if%20the%20relationship%20breaks%20down . Hague Mothers, What is the Hague Convention? 'The Convention was originally designed to deal with abducting fathers, and to return children to their primary-carer mothers' https://www.hague-mothers.org.uk/what-is-the-hague-convention/

[34] See Lowe, N. and Stephens, V. 'The Value and Challenges of Statistical Studies Looking at the Operation of the 1980 Hague Convention on the Civil Aspects of International Child Abduction', in Research Handbook, Ch. 5 (hereafter Value and Challenges) , and Baruffi, M.C and Holliday, J. 'Child Abduction' in P. Beaumont and J. Holliday (Eds*) A Guide to Global Private International Law* (Hart Publishing, 2022) Ch 34.

[35] Lowe and Stephens, fn 34 above, at 70, citing A Dyer 'Report on international child abduction by one parent ('legal kidnapping')', Preliminary Document No 1 of 1978, Acts and Documents of the Fourteenth Session, Vol 3, hereafter The Dyer Report, at 19

[36] See Lowe. N., and Stephens, V. Value and Challenges, 70 '[t]he surveys, however, have consistently found that the majority of 'abductors' are mothers'. For the detailed statistics, see Lowe N. and Stephens, V., Statistical Report, para 44 in Global Report – Statistical study of applications made in 2021 under the 1980 Child Abduction Convention, Prel. Doc. No 19A, https://assets.hcch.net/docs/bf685eaa-91f2-412a-bb19-e39f80df262a.pdf which states: 'In 2021, 75% of taking persons were the mothers of the children involved in the application. This marks an increasing trend when compared with the 73% recorded in 2015, 69% in 2008 and 68% in 2003'.

[37] There have been five studies undertaken which have helped inform the Special Commission meetings in 2001, 2006, 2011, 2017, and 2023. 'This now longitudinal dataset, derived from the analysis of applications received by Central Authorities in 1999, 2003, 2008, and 2015, has revealed key trends over time including those relating to the gender and parenting status of abductors, and the way in which international child abductions are approached, and resolved, in Contracting States'. Taylor N. and Freeman, M. 'Introduction and Key Themes', Research Handbook, 7. NB There has been a further statistical survey since the publication of the Research Handbook which was undertaken by Nigel Lowe and Victoria Stephens. The fifth study was prepared for the Eighth Special Commission in 2023 which was based on applications received by Central Authorities under the Convention in 2021. See https://assets.hcch.net/docs/4bf80282-9625-44fc-ac89-f9ad93780b21.pdf

[38] Lowe and Stephen, Value and Challenges, p70

It might be tempting to see this as an indication that, with the majority of abductors being mothers who are either primary or joint primary carers of their children, and over half of abductors having been found to be 'going home', these abductors are women who are going back to where they can obtain support after experiencing domestic abuse by the other parent.

Nonetheless, the surveys, as stated, do not provide the evidence for this assumption, and, in fact, Lowe and Stephens are at pains to point out that the finding about 'going home' is 'no less true of 'abducting' fathers as of mothers'.[39]

Due to the 'huge interest and active engagement in this most delicate issue'[40], this in-depth analysis will now address the subject of domestic violence and abuse in the context of the operation of the Convention.

[39] Lowe and Stephen, Value and Challenges, p70, 'To the contrary, 64 per cent of abducting fathers were found 'to be going home' in both the 2015 and 2008 studies as against 56 per cent and 59 per cent of abducting mothers'. See Barnett, A. Kaye, M. and Weiner, M. on the usefulness of anecdotal evidence in this context - 'The 2024 Forum on Domestic Violence and the Hague Abduction Convention', *International Journal of Law, Policy and The Family,* (2024), 38, p6 'There are no global statistics on the percentage of Hague cases with allegations of domestic violence, so such anecdotal evidence is significant'.

[40] Opening address of Dr Christophe Bernasconi, Secretary General of the HCCH, Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention, Sandton, South Africa, 18-21 June 2024, p2 , available at https://assets.hcch.net/docs/1c00fde2-6656-49cb-9f58-d12899a2114b.pdf

2. DOMESTIC VIOLENCE AND ABUSE IN THE OPERATION OF THE CONVENTION

KEY FINDINGS

- No specific provision in the Convention relates to domestic violence and abuse. The Article 13(1)(b) exception is utilised, which addresses the grave risk of harm to, or intolerable situation on return for, the child.
- Different national approaches exist within Contracting States to the use of Article 13(1)(b) in cases of domestic violence and abuse.
- The HCCH Guide to Good Practice on Article 13(1)(b) was published in 2020 after many years of exhaustive work by the Working Party which was created for the purpose of developing it. However, there are differing views on its effectiveness and utility.
- Forums on Domestic Violence, South Africa 2024 and Brazil 2025.
- Current and proposed initiatives regarding the issue of domestic violence and abuse in Convention proceedings.

INTRODUCTION

The Convention does not contain any specific provision relating to domestic violence or abuse of the taking parent which would allow the receiving state to decide against returning the child on that basis. The only way in which such violence or abuse can be taken into account is under Article 13(1)(b) which provides for the possibility of non-return when such return would expose the child to a grave risk of harm or otherwise place them in an intolerable situation.[41] The harm must be to the child, not to the taking parent, to come within this provision. There has been much discussion on whether harm to a parent also constitutes harm to the child, and although there is now much greater general acceptance that this is the case[42], there continues to be debate around this issue in the context of international child abduction.

The Guide to Good Practice on Article 13(1)(b) (hereafter the GGP)[43] states at paragraph 58: evidence of the existence of a situation of domestic violence, in and of itself, is therefore not sufficient to establish the existence of a grave risk to the child'. This provision, with its accompanying footnote, was challenged in an article by two leading academic commentators[44]as being misleading and potentially

41 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 …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.

42 See Domestic Abuse Act 2021, S3 (England & Wales) which specifically states that a child who sees or hears, or experiences the effects of, domestic violence, will be a victim of that domestic violence. https://www.legislation.gov.uk/ukpga/2021/17/contents

43 HCCH, *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, Part VI, Article 13(1)(b), The Hague 2020. https://assets.hcch.net/docs/225b44d3-5c6b-4a14-8f5b-57cb370c497f.pdf See fn 53 below and accompanying text.

44 See Schuz, R. and Weiner, M. 'A mistake waiting to happen:the failure to correct the Guide to Good Practice on Article 13(1)(b)', [2020] *IFL* 87. Also see the response by the Chair of the Working Party which produced the GGP, Diana Bryant AO KC, 'Response to Professors Rhona Schuz and Merle H Weiner ("The Authors"), A Mistake Waiting to Happen: The Failure to Correct the Guide to Good Practice on Article 13(1)(b)' (2020) *International Family Law Journal* 207-208, at 207.

open to misinterpretation, in that it could be read as meaning that domestic abuse against the taking parent will not amount to a grave risk of harm to the child under Article 13(1)(b). Strenuous but unsuccessful efforts were made to amend this part of the GGP, which continues to cause much concern today[45].

In some jurisdictions, the relationship between harm to the parent as a result of domestic violence in cases of international child abduction and corresponding harm to the child is completely accepted. Mr. Justice Alistair MacDonald highlighted some of the existing jurisprudence in England and Wales which clearly adopts this approach:

> 'while the court's enquiry is focused on the risk faced by the subject child and not the parent, …sufficiently serious threats and violence directed by one parent against the other can nonetheless pose a grave risk of harm to the child sufficient to justify non-return based on the exception provided by Article 13(1)(b)… in the case of *In the matter of S (a child)* [2012] UKSC 10, the Supreme Court of the United Kingdom determined that if the court concludes that, on return, the mother will suffer such anxieties that their effect on her mental health will create a situation that is intolerable for the child, then the child should not be returned'.[46]

However, 'judicial responses remain inconsistent'[47] in relation to this issue, and it should be remembered that, even if an exception to return is established, it is still open to the court in the receiving state to decide to return the child, as the Article 18 provides that a court may order the return of a child at any time.

Once again, this is an area in which the Contracting States adopt very varied approaches to the implementation of the Convention. The GGP[48] was published after exhaustive efforts by the Working Party, which was created for the purpose of developing it, as mandated by the Special Commission at its 2011-2012 meetings.[49] Although its purpose is to provide guidance on the application of Article 13(1)(b) of the Convention, consensus was difficult to reach within the Working Party itself and this issue has continued for those using the GGP in practice subsequently. This diversity was demonstrated in research undertaken by the author[50] where the GGP received mixed reviews from the specialist international family justice community. Some users raised the need for further guidance and said that

[45] Forum Briefing, 'The Guide to Good Practice on Article 13(1)(b): Domestic Abuse Perspective', GlobalARRK Lived Experience Policy Group, October 2025 states 'By failing to recognise this, the Guide falls behind modern legal and psychological understandings, and risks diminishing the protection owed to children under Article 13(1)(b)'. www.globalarrk.org/wp-content/uploads/2025/10/Forum-Briefing-GTGP-Art-13b-2025.pdf However, see Bernasoni, Brazil https://assets.hcch.net/docs/e70eea3d-8025-418b-b92a-0e18c6ae2110.pdf '[t]he starting point is the recognition that a child is also a victim of domestic violence when such violence is exercised against one of the parents – typically the mother. There is no doubt that Article 13(1)(b) covers these situations, and indeed all forms of domestic violence. The main challenge, however, lies in how to apply and operate this provision properly when domestic violence is alleged'.

[46] See MacDonald, Mr. Justice Alistair, 'The Continuing Challenge of the 1980 Hague Convention – a judicial perspective'. Research Handbook, Ch. 20, 306

[47] Hunter. N. 'Between Protection and Parental Rights: The Hague Abduction Convention, Domestic Violence Allegations and Article 13(1)(b). *Athens Journal of Law*, Volume 11, Issue 4, October 2024, 545-566, 548

[48] See fn 48 above

[49] Special Commission on the Practical Operation of the 1980 and 1996 Hague Conventions (25-31 January 2012) Conclusions and Recommendations (Part II), 81, 82. https://assets.hcch.net/upload/wop/abduct2012concl_e.pdf . Work on the GGP by the Working Party began in 2013. See Hale, Brenda, 'Taking Flight—Domestic Violence and Child Abduction'. *Current Legal Problems,70(1)*(2017) 3-16 (hereafter Taking Flight) who discussed at p11 the long delay in the Working Group producing the GGP: 'Some of it is due to the very real difficulty in achieving consensus amongst representatives of legal systems ranging from the USA, Canada, and the UK, through Latin American and continental Europe, to Japan'.

[50] Freeman, M. and Taylor, N. 'Where International Child Abduction Occurs Against a Background of Violence and/or Abuse' (hereafter violence and/or abuse). April 2024. www.icflpp.com. See further discussion at fn 68 below and acompanying text

the GGP has not made things better for this population[51], while others appreciated the GGP as a helpful explanatory aid which was increasingly being referenced in case law[52].
There have long been expressed concerns about the way in which the Convention operates in cases involving domestic violence and abuse. [53] A particular anxiety relates to women who have escaped violence with their children, often fleeing to their home countries, and who are then not believed when they reference that same violence as a reason for their children not to be returned under the Convention[54].

This reflects the stated concern in non-abduction contexts where abused women are said to be seen as alienating mothers, and violent men are viewed as good fathers, raising the issue of double standards for women and men in child protection and custody proceedings.[55] Having suffered one type of abuse at the hands of the other parent, abducting mothers are then said to be subjected to a further, and different, type of abuse by the legal system. This occurs when their children are returned in the knowledge that the mothers will usually choose to return with them, in order to continue protecting them as best they can[56].

HOW DO CONTRACTING STATES ADDRESS ISSUES OF DOMESTIC VIOLENCE AND ABUSE IN CONVENTION PROCEEDINGS?

Some jurisdictions investigate claims of domestic abuse and refuse to return children if these claims are established, while other jurisdictions adopt a different approach and consider whether there are sufficient protective measures that can be put in place on return to address the concerns which would otherwise amount to an exception to return under article 13(1)(b). The aim of protective measures is

[51] Fn 55 above, 54

[52] Fn 55 above, 57.

[53] For example, see Weiner, M. 'International Child Abduction and the Escape from Domestic Violence' (2000) 69(2) *Fordham Law Re-vie*593, 651. Kaye, M. 'The Hague Convention and the Flight from Domestic Violence: How Women and Children Are Being Returned by Coach and Four' (1999) 13(2) *International Journal of Law, Policy and the Family* 191. Bruch, C. 'The Unmet Needs of Domestic Violence Victims and their Children in Hague Child Abduction Convention Cases' (2004) 38 *Family Law Quarterly* 529, 537; Schuz, R.'The Doctrine of Comity in the Age of Globalization: Between International Child Abduction and Cross-Border Insolvency' *Brooklyn Journal of International Law* 40 (2014) which addresses the issue of comity by examining two seemingly unconnected regimes but which the author argues at p36 reveal remarkable similarities such that 'comparison between them provides insight as to the way that the doctrine of comity is—and ought to be—used by judges in the modern age'. See also K Trimmings, A Dutta, C Honorati and M. Zupan (eds) *Domestic Violence and Parental Child Abduction* (Intersentia Ltd, Cambridge, England, 2022) which was the culmination of the POAM (Protection of Abducting Mothers in Return Proceedings) project. The POAM project developed its own Best Practice Guide to complement the GGP by providing detailed guidance on the issue of protection measures for abducting mothers and the protection of children in cases involving domestic violence https://research.abdn.ac.uk/poam/resources/guide-to-good-practice/; See also K. Trimmings and O Momoh, 'Intersection Between Domestic Violence and International Parental Child Abduction: Protection of Abducting Mothers in Return Proceedings' (2021) *International Journal of Law, Policy and the Family* 35(1), 1–19); Gray, A. and Kaye, M. 'Redressing the balance; how Australia's approach under the Hague Abduction Convention is still endangering victims of domestic violence', *International Journal of Law, Policy and the Family*, 2023, 37

[54] Shaknes, Stringer and Brandt. 'Women's Rights and Child Abductions under the Hague Convention'. *Int'l J Appl Psychanal Studies*, 2023, 1-12, which discusses the tendency to disbelieve allegations of abuse at p3, and at p10 states: 'It remains true that there is a societal tendency to disbelieve the "taking" parent (usually a woman)..and provide support (like ameliorative measures) to the abusive (usually a man) parent'. Shetty, S. and Edleson, J.L. 'Adult Domestic Violence in Cases of International Parental Child Abduction', *Violence Against Women* 2005, 11; 115 which refers at p117 to the motives of the abducting mother who is battered and fleeing across international borders for her safety and that of her children...'whose motives are often doubted' and at p119 cites how adult domestic violence is 'often viewed as an unsubstantiated allegation'. Dr. Christophe Bernasconi recently remarked: We must recognise that the challenges we face are not only legal or procedural, but also deeply rooted in systemic inequalities that have too often silenced or disbelieved victims of domestic violence'. Bernasconi Brazil, 5.

[55] Lapierre, S., Ladoucer, P., Abrahams, N., Vincent, A. Frenette, M. 'Abused Women as 'Alienating'Mothers and Violent Men as 'Good' Fathers: Double Standards in Child Protection and Child Custody Proceedings'. *Child & Family Social Work,* 2024; 0:1–12

[56] See Trimmings, K. Kalaitsoglou, J., and Hussein, R. 'Protection of Abducting Mothers in Return Proceedings under the 1980 Hague Convention on the Civil Apects of International Child Abduction', Policy Brief, July 2023 www.abdn.ac.uk/media/site/law/documents/Protection_of_Abducting_Mothers_in.pdf

sometimes described in terms of risk avoidance, rather than risk elimination[57]as it may be thought impossible to eradicate all risk. Domestic abuse advocates argue, however, that if there is any risk to the safety of the returning parent and child, they should not be returned:

> '.. the Hague proceeding only determines where the taking parent and child should be while a custody contest occurs... there is no good reason to force a victim of domestic violence and her child back to a location where there are safety concerns'.[58]

Some support for this approach may be found in the unanimous decision of the Supreme Court of the United States in *Golan v Saada*[59], which held that courts are not obliged to consider all possible protective or ameliorative measures once they have determined that a grave risk of harm exists under Article 13(1)(b), as nothing in the Convention either forbids or requires their consideration in exercising the discretion not to return the child.

FACT SHEETS ON PROTECTIVE MEASURES

A potentially helpful response to the challenges of domestic violence and protective measures has been created through the initiative of the International Hague Network of Judges and their publication of Fact Sheets on Protective Measures. In 2023, the Special Commission welcomed the Australian factsheet relating to assistance with protective measures and noted that this information would be helpful in many cases where the availability of protective measures was being addressed[60]. Since then, a factsheet, 'Protective Measures Available in Scotland in the Context of International Child Abduction', was published in October 2025. It is aimed towards judges, parties, parents and mediators from other jurisdictions and 'may be useful to refer to in cases of international child abduction involving a child or children allegedly wrongfully removed from, or wrongfully retained out of, Scotland when an application has been made under the 1980 Hague Convention on the Civil Aspects of International Child Abduction ... and the requested party seeks to rely on the "grave risk exemption" under Article 13(1)(b) of the 1980 Convention when opposing a return application'.[61]

The purpose of the Fact Sheet is to help explain which protective measures are available in Scotland so that judges, and others, including those in foreign jurisdictions, can have the necessary information about whether protective measures may be available and adequate for the cases they are dealing with.

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[57] For example, see Lady Wise 'The circumstances of this case necessitate the most effective protective measures to alleviate the identified grave risk of severe physical or psychological harm to SD that would result in an intolerable situation for the children'. *Petition of AD against SD [2023] CHIH 17, P825/22,* p23. See also Fact Sheet for Protective Measures in England and Wales, fn 66 below, p4: By way of example, in England and Wales, when Article 13(1)(b) is relied on, the parties to the application are required to address the issue of protective measures that are available or could be put in place, to meet or ameliorate any alleged identified risks, as early as possible in the proceedings'.

[58] Weiner, M. Hague Mothers, Hague Domestic Violence Forum Expert Paper #6 p6 https://law.uoregon.edu/directory/faculty/all/mweiner

[59] *Golan v Saada* 142 C.Ct 1880 (2022)

[60] Judges' Newsletter on International Child Protection, Special Focus, The Eighth Meeting of the Special Commission on the Practical Operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention, 10–17 October 2023. Volume XXV, Spring–Summer 2024, p27. www.hcch.net See Information Document 20 of October 2023, CHIP, Sharing information regarding agenda items for the 2023 HCCH Special Commision on the Practical Operation of the 1980 Child Abduction Convention and 1996 Child Protection Convention (submitted 9 October 2023), p2, www.hcch.net which states that this 'presents a promising practice of minimum information that every Central Authority should make publicly available regarding an Article 13.b exception to return or otherwise, particularly on the existence of protective measures'.

[61]New factsheet on the Protective Measures available in Scotland in the context of International Child Abduction, Oct 28. 2025 https://judiciary.scot/home/media-information/media-hub-news/2025/10/28/new-factsheet-on-the-protective-measures-available-in-scotland-in-the-context-of-international-child-abduction

A similar, recently published document, the Protective Measures Fact Sheet of October 2025, provides comparable information regarding England and Wales.[62]

It is not suggested that these practical publications will prevent or dispense with the concerns relating to domestic violence. They are, however, a potentially useful tool in applying the Article 13(1)(b) exception to return, within the Convention. It is unarguably beneficial for judges to know promptly and reliably what type of protective measures are available in the requesting state, and how the recognition and enforcement of such measures will be addressed in that jurisdiction. Such knowledge will assist them in deciding whether the grave risk of harm to the child raised under Article 13(1)(b) has been sufficiently ameliorated that return can be ordered.

HOW ARE DOMESTIC VIOLENCE AND ABUSE VIEWED BY PRACTITIONERS

The wide diversity of views which this topic attracts permeated my own recent research findings[63] veering between two very distinct groups;

{i} Those who thought the Article 13{1}{b} defence is overused and that: while domestic violence is now frequently alleged in Convention proceedings: there is often no evidence of this and that the taking parent is raising the allegations to find a strategic way of avoiding the return of the children..and

{ii} Those who believe that the Article 13{1}{b} exception should be used more readily in abduction cases involving domestic violence and that courts need to be aware that their return decisions may drive victims to despair and place them: and their children: at further risk[64],

Notwithstanding these chasmic differences in approach, the research highlighted the increasing practical importance of this topic because the number of primary carer mother abductors has continued to increase, as has the rate of refusals to return based on Article 13(1)(b):

> «In the Fifth Statistical Study on all applications received by Contracting States in 2021: undertaken for the Eighth Special Commission in 2023: Professor Nigel Lowe and Victoria Stephens found that there had been an «exponential increase in refusing return applications on the basis of Art 13{1}{b}»and: furthermore: that «The Article 13{1}{b} exception was more likely to be relied upon if the taking person was the mother of the child {49↙ : compared with 38↙ where the taking person was the father}» Lowe and Stephens also found that the number of taking persons in 2021 who were mothers of the children involved in the applications had increased to 75↙ {compared with 73↙ recorded in 2015: 69↙ in 2008: and 68↙ in 2003}: 94↙ of whom were joint primary carers of their children, These trends: and the responses to our survey: highlight the importance of the issues surrounding the use of Article 13{1}{b} in domestic violence and abuse cases, Over half {*n*~58: 52,3↙ } of our survey respondents reported that the number of these cases was increasing by «a fair amount»{*n*~30: 27,1↙ } or «a lot»{*n*~28: 25,2↙ }, The majority {*n*=95: 83,3↙ } said that the Article 13{1}{b} exception is often: mostly or always

[62]Factsheet on Protective Measures available in England and Wales re: international child abduction https://www.judiciary.uk/guidance-and-resources/factsheet-on-protective-measures-available-in-england-and-wales-re-international-child-abduction/

[63]Freeman, M. and Taylor, N. Violence and/or abuse. See fn 55 above.

[64] Freeman and Taylor, Violence and/or abuse. See fn 55 above, 77

> argued when international child abduction occurs against a background of violence or abuse towards the taking parent and\or abducted child{ren}»[65]

Even though, as stated by Lowe and Stephens[66], the surveys do not provide the answers to why abductions take place, and the data on Article 13(1)(b) does not distinguish between the possible reasons in the cases which gave rise to the use of the exception, these statistics provide, at the very least, a strong incentive to pause for thought. The motivation of such a high level of primary carer mothers abducting their children, when so many of them are also returning home, is worthy of our attention and consideration.

THE FORUMS ON DOMESTIC VIOLENCE AND ABUSE IN THE OPERATION OF THE CONVENTION

The importance of this issue was recently recognised when the long-term efforts of domestic violence advocates were recognised by the holding of two specialist Forums. The first occurred because of the 'countless messages from domestic violence advocates prior to the 2023 Special Commission meeting',[67] and 'a petition, signed by over 37,000 people, saying that the Hague Abduction Convention was unjust when applied to mothers who were fleeing from domestic violence'[68].

The first Forum[69] in Sandton, South Africa, was co-hosted by the HCCH, the Government of South Africa, and the University of Pretoria's Centre for Child law[70]. A report of the Forum was subsequently published by the HCCH[71] and was also the subject of an article written by Barnett, Kaye and Weiner[72] which concluded, with some perceived disappointment, that '[t]he Forum did not produce any conclusions, recommendations, or resolutions. All that emerged was a commitment to hold another Forum in 2025, to be convened in Brazil. There is also a rumour of a subsequent forum to be held in the Philippines. Activists are already trying to ensure that the next Forum advances safety and fairness for survivors and their children in a concrete way'.[73]

The second Forum in Brazil[74] has recently concluded. The aim of this second Forum was to focus on practical solutions, 'identifying concrete and workable approaches to ensure the effective operation of

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[65] Freeman and Taylor, Violence and/or abuse. See fn 55 above, 78

[66] See fn 38 above and accompanying text

[67] Opening address of Dr Christophe Bernasconi, Secretary General of the HCCH, Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention, Sandton, South Africa, 18–21 June 2024, p. 3, available at https://assets.hcch.net/docs/1c00fde2-6656-49cb-9f58-d12899a2114b.pdf. See fn 22 above.

[68] See Barnett, A., Kaye, M., Weiner, M. 'The 2024 Forum on Domestic Violence and the Hague Abduction Convention', *International Journal of Law, Policy and The Family*, 2024, 38, p5 ; and GlobalARRK, *Protect Vulnerable Families: Fix the Hague Abduction Convention*, CHANGE.ORG (June 9, 2023), https://www.change.org/p/protecthaguevictims-7b2bde44-d2ad-4626-b284-40fcdffd2b9f

[69] The Forum on Domestic Violence and the Operation of Article 13 (1)(b) of the 1980 Child Abduction Convention, held in Sandton, South Africa, on 18-21 June 2024. The author was an invited on-line participant at the Forum.

[70] 'Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child AbductionConvention' https://www.hcch.net/en/news-archive/details/?varevent=984; First Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention 18-21 June 2024 | Sandton, South Africa https://www.hcch.net/en/publications-and-studies/details4/?pid=9035&dtid=50

[71] Report on the Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention, June 2024, South Africa' https://cdn.prod.website-files.com/5f02fe3bffd6de28dca82125/675234ce2420bdc29a9d0a75_Forum%20on%20Domestic%20Violence.pdf

[72] See fn 73 above

[73] Barnett, Kaye, and Weiner, fn 73 above, pp8-9. NB Following the 2025 Brazil Forum, there does not appear to be any plan at this point for a further Forum to take place.

[74] The second Forum was held from 27-30 October 2025 in Fortaleza, Brazil and was co-hosted by the Government of Brazil and the HCCH. The author was an invited, online participant at the Brazil Forum.

the Convention, in particular Article 13(1)(b), in cases where domestic violence has been alleged'[75]. The Permanent Bureau of the HCCH will prepare a report which 'will be discussed by the Members of the HCCH at the next meeting of its Council on General Affairs and Policy, in March 2026'.[76] How the Brazil Forum and its outcomes will be viewed by domestic abuse advocates remains to be seen in light of the direct calls previously made for concrete and tangible conclusions to emanate from this second Forum 'to fix the domestic violence problem which plagues the Convention' .[77]

CURRENT AND PROPOSED INITIATIVES

As can be seen from the above, consensus about how to address domestic violence in the context of the operation of the Convention appears elusive. Various alternatives and options have therefore been explored by both specialist commentators and Contracting States to the Convention, including the following:

- A NEW TREATY

In advance of the Brazil Forum, and with the express intention to influence policymakers attending the Forum, Professor Weiner's extremely interesting article has proposed a new complementary treaty 'to fix the "domestic violence problem" that plagues the Hague Convention on the Civil Aspects of International Child Abduction'[78]. Weiner reasons that, as it is unknown whether the Brazil Forum will lead to real, beneficial and timely change, a new, separate treaty which is complementary to the Convention should be adopted. She argues that the proposed new treaty would not derogate from the Convention and would be the most efficient way to solve the problem because it would be a much nimbler and faster process than amending the Convention or creating a protocol to it, as those countries which like things the way that they are would not be involved in the negotiations or membership of the treaty itself.

- REVISION OF THE GUIDE TO GOOD PRACTICE ON ARTICLE 13(1)(b)

At the Brazil Forum[79], there was a strong push from domestic violence advocates for a revision of the Guide to Good Practice on Article 13(1)(b) in order to better reflect the needs of domestic violence victims[80]. The reality of the hurdles standing in the way of achieving structural change to the Convention was recognised by Adrienne Barnett on behalf of Hague Mothers[81] when acknowledging that changing the Convention, although in their view desirable, was unlikely to be achieved. They instead suggested strengthening the Guide to Good Practice so that clear guidance would ensure the prioritisation of the safety and wellbeing of children and mothers. They considered including a domestic violence-aware

[75] 'Second Forum on Domestic Violence and the 1980 Child Abduction Convention – with a focus on the Operation of Article 13(1)(b)' https://www.hcch.net/en/news-archive/details/?varevent=1114

[76] See fn 75 above

[77] See See Weiner, M. fn 83 below at 1167. Also see Kaye, M., Barnett, A. and Weiner, M. The 'grave risk' exception and domestic violence www.hague-mothers.org.uk/wp-content/uploads/2024/06/Expert-paper-2.pdf (2024) at p1; Schuz, R. (2018) 'The Hague Child Abduction Convention in a Changing World', in G. Douglas, M. Murch and V. Stephens (eds) *International and National Perspectives on Child and Family Law: Essays in Honour of Nigel Lowe.* Cambridge: Intersentia, pp. 315–328. p. 323).

[78] Weiner, M. 'Convention on Safety for Survivors of Family Violence Involved in International Custody Disputes', (2025) *Cardozo Law Review*, 46.4.1, pp1167 – 1244, at 1167 (hereafter Weiner 2025)

[79] The author was an invited online observer and participant and both the Sandton and Brazil Forums.

[80] 'Towards the end of the Forum, a dedicated session reviewed references to the Guide to Good Practice on Article 13(1)(b) by courts in the five years since its publication and reflected on the possible need to update it'. See 'Second Forum on Domestic Violence and the 1980 Child Abduction Convention – with a focus on the Operation of Article 13(1)(b)' www.hcch.net/en/news-archive/details/?varevent=1114#:~:text=Discussions%20in%20Session%208%20explored,Section%20of%20the%20HCCH%20website

[81] Adrienne Barnett, Hague Mothers, 'The Hague Abduction Convention. What needs to Change?' 27 February 2023 https://www.hague-mothers.org.uk/wp-content/uploads/2023/02/HM-What-needs-to-change-02-23-1.pdf (hereafter Barnett, Change)

Protocol to the Convention as an alternative but, once again, recognised this would not be easy to achieve.[82] Additionally, as noted by Weiner, a new Guide to Good Practice would take a long time to complete and might not alter case outcomes, as this type of soft-law instrument only has, at best, persuasive value[83].

- DOMESTIC LAWS

Individual contracting states are, of course, able to legislate however they wish in relation to the laws which apply domestically, and that includes the laws which regulate the way in which the Convention operates within their specific jurisdiction. Adrienne Barnett, while acknowledging the potential disadvantages of such a piecemeal approach and the consequent unequal treatment which may result, suggested that it would also mean that 'individual countries could provide examples of good practice in relation to safeguarding victims of domestic violence and abuse, and potentially inspire change in others'.[84]

Some of the countries which have already tailored or amended their domestic legislation, or directed its interpretation to a more focused approach on the issue of domestic violence in the context of Convention proceedings, include:

Australia

Australia changed its regulations governing the Convention in 2022. These amendments were described by Trimmings et al.:

> 'A recent example of such legislative intervention is an Australian piece of legislation[85] which provides safeguards to mothers and children fleeing domestic violence when Australian courts consider cases brought under the 1980 Hague Convention ('the 2022 Regulations'). The 2022 Regulations make clear, *inter alia,* that domestic violence is a consideration under the 'grave risk of harm' exception to return and a court does not need to be satisfied that such violence has occurred or will occur before it is taken into account'[86].

[82] On the unlikeliness of a Protocol being added to the Convention, see Weiner 2025 fn 83 above at 1191 as 'all state parties to the Convention would be involved in the drafting and approval of a protocol, providing a substantial obstacle to its creation and appropriate content. Importantly, the Permanent Bureau floated the idea of a protocol to the Hague Abduction Convention in 2012, but it failed to garner sufficient support from state parties. There is little reason to think things have changed'. On the 2012 attempt to secure a Protocol, see Hale, B. 'Taking Flight', see fn 54 above, p11 which details how the GGP emerged from the abandonment of the Protocol as '[w]ithout doing something, there was a very real risk that some countries would pull out of the Convention altogether'.

[83] Weiner 2025 fn 83 above, p1192

[84] See Barnett, Change, 4. This positive view is reflective of the arguments that the current author advances in this in-depth analysis for the 'way forward', see below. However, this derogates from the drive for consistency in practice which has been thought to be desirable in this field – see 'Domestic and Family Violence and the Article 13 "Grave Risk" Exception in the Operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: A Reflection Paper' (hereafter Reflection Paper) (2011) paras 148, 149 https://assets.hcch.net/docs/ce5327cd-aa2c-4341-b94e-6be57062d1c6.pdf

[85] Family Law (Child Abduction Convention) Amendment (Family Violence) Regulations 2022.

[86] Trimmings, K., Kalaitsoglou, K., Hussein, R. 'Protection of Abducting Mothers in Return Proceedings under the 1980 Hague Convention on the Civil Aspects of International Child Abduction', Policy Brief, https://www.abdn.ac.uk/media/site/law/documents/Protection_of_Abducting_Mothers_in.pdf p3

Weiner states that these amendments may have actually achieved nothing positive for survivors[87]. Saladino and Kremer support this view when they question 'whether the amendments effected any true "enhancement", as it [the December 2022 amendments to the *Regulations*] did not alter the existing substantive law and at most confirmed (in confusing language) what had already been stated to be the case'.[88]

Brazil

Brazil acceded to the Convention on 19 October 1999, and the Convention entered into force on 1 January 2000. In 2024 concerns were raised in the European Parliament about the way in which the Convention is implemented in Brazil, with its 'poor track record internationally with regard to compliance with the convention' being questioned[89]. This was answered by a decision for the European Commission to continue monitoring the situation[90].

Since then, an important decision of the Brazilian Supreme Court has confirmed that domestic abuse can amount to the 'defence' against return in Article 13(1)(b), where there are objective and concrete indications of the abuse, even if the child was not directly a victim of it. As Janaina Albuquerque explains, the Supreme Court 'recently delivered a landmark judgement in two Direct Actions of Unconstitutionality (*Ações Diretas de Inconstitucionalidade*, or ADIs), namely ADI 4245 and ADI 7686, concerning the application of the 1980 Hague Convention on the Civil Aspects of International Child Abduction (1980HC). Despite their denomination, these actions did not aim to invalidate the Convention but rather to harmonise its interpretation with the principles enshrined in the Brazilian Federal Constitution. 'The full written judgement has not yet been published … the following judgement thesis was established:

1. *The 1980 Hague Convention on the Civil Aspects of International Child Abduction is compatible with the Federal Constitution and has supra-legal status in the Brazilian legal system due to its nature as an international treaty for the protection of children's rights.*

2. *The application of the Convention in Brazil, in light of the principle of the best interests of the child (Art. 227, CF), requires the adoption of structural and procedural measures to ensure the swift and effective processing of actions for the international restitution of children.*

3. *The exception of grave risk to the child, provided for in Art. 13 (1)(b) of the 1980 Hague Convention, must be interpreted in a manner consistent with the principle of the best interests of the child (Art. 227, CF) and under a gender-based perspective, so as to allow its application when there are objective and concrete indications of domestic violence, even if the child is not a direct victim'.*[91]

[87] See fn 83 above, p1198

[88] See Saladino R, and Kremer. N. 'Secretary, Department of Communities and Justice & Mercado: A Case Study of the 8 December 2022 Changes to the Family Law (Hague Convention) Regulations 1986', 33 *AUSTL. Fam. L*. 67, p71 (2024)

[89] 'International child abduction and Brazil's compliance with the 1980 Hague Convention on Child Abduction, 10.2.2024 Parliamentary Question – P-000075/2024' https://www.europarl.europa.eu/doceo/document/P-9-2024-000075_EN.html

[90] 'Answer given by Mr Reynders on behalf of the European Commission, Parliamentary Question – P – 000075/2024 (ASW) European Parliament https://www.europarl.europa.eu/doceo/document/P-9-2024-000075-ASW_EN.html

[91] Albuquerque, J. 'Brazilian Supreme Court on the Hague Child Abduction Convention, 6 October 2025', https://conflictoflaws.net/2025/brazilian-supreme-court-on-the-hague-child-abduction-convention/ Also see Supremo Tribunal Federal, Highlights, Last News https://portal.stf.jus.br/internacional/content.asp?id=540517&ori=1&idioma=en_us

Japan

The Convention came into force in Japan on 1 April 2014 through its Act for Implementation of the Convention on the Civil Aspects of International Child Abduction. The Implementation Act states that the court must not order the return of the child when it finds that any of the listed grounds exist (although the court may order the return of a child if it finds that it serves their interests).[92] Merle Weiner describes the significance of the chosen language when she states that '[b]y using the word "must" instead of "may", this provision eliminates the discretion that normally exists under Article 13(1)(b) after the grave risk defence is made out'.[93]

Article 28(2) states that the court, when judging whether a grave risk of the child's return to the state of habitual residence would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation, is to consider all of the circumstances, such as:

(i) whether or not there is a risk that the child would be subject to physical violence or any other words and deeds which would cause physical or psychological harm (referred to as "violence, etc." in the following item) by the petitioner in the State of habitual residence;
(ii) whether or not there is a risk that the respondent would be subject to violence, etc. by the petitioner in such a manner as to cause psychological trauma to the child, if the respondent and the child entered into the State of habitual residence;

(iii) whether or not there are circumstances that make it difficult for the petitioner or the respondent to provide custody for the child in the State of habitual residence.[94]

There has been significant discontent expressed about the operation of the Convention in Japan[95]. However, at the recent Seminar for Legal Professionals and Experts held in London on 28 October 2025[96] which was held to commemorate the 11th anniversary of the entry into force of the Convention in Japan, the Director of the Hague Convention Division, Ministry of Foreign Affairs (Central Authority of Japan), spoke convincingly to the specialist audience of 'The Facts and Realities behind Japan's Implementation of the 1980 Hague Convention'. In particular, he addressed the following issues, which he termed 'misconceptions':

1. Once a child is taken to Japan by a parent, they are never coming back.

   He stated that, in reality, 58% of cases concluded in favour of a child's return; 93% of these resulted in the actual return of the children to their states of habitual residence; 57.1% of court decisions resulted in the return of the child, a rate largely in line with the global average.

[92] Japanese Law Translation, Act for Implementation of the Convention on the Civil Aspects of International Child Abduction, Act No. 48 of June 19, 2013 https://www.japaneselawtranslation.go.jp/en/laws/view/4008/en

[93] Weiner, M. fn 83 above, p1197

[94] Freeman, M. and Taylor, N. 'Domestic Violence and Child Participation: Contemporary Challenge for the 1980 Hague Child Abduction Convention', *Journal of Social Welfare and Family Law* 2020, Vol. 42, No. 2, 154–175

[95] For example, see Morley, J. 2023. 'International child abduction and non-Hague Convention countries' in Research Handbook pp. 244–63, p256, who considers that Japan should comply fully with its obligations under the European Parliament Resolution 2020 cf Nishitani who considers that the Japanese Implementation Act has generally enabled the Convention to be implemented successfully in Japan as this has allowed for a flexible approach tailored to the domestic legal system and cultural norms. Nishitani, Yuko. 2023. 'International child abduction in Asia'. In Research Handbook pp. 200–17, pp207-9.

[96] The author was both a consultant for, and an invited guest to, the seminar at the request of the Ministry of Foreign Affairs, Japan (MOFA)

2. The 1980 Convention is not working properly in Japan.

He stated that the Convention is implemented effectively in Japan. The Japanese Central Authority (JCA) supports the child's return and parental access through various services, free of charge, such as: lawyer referral, translation services, the use of ADR and the use of visitation support services.

3. Even if the Japanese court orders a child's return, the order is not implemented.

He stated that the Implementation Act of Japan was amended on 1 April 2020 which led to more successful enforcement of court decisions (successful rate in enforcement has now improved to 75%).

The 2024 Family Law Reform Act in Japan, which is due to come into effect around April 2026, permits parents to agree to joint custody, failing which the court will decide the custody issue on the basis of the child's best interests. By encouraging joint custody, the perception of exclusive control of, and decision-making for, the child by one parent is removed, with a reduced incidence of parental child abduction being the expected corollary resulting therefrom.

Switzerland

Switzerland is one of the Contracting States to the Convention which has included specific provisions relating to domestic violence in their domestic legislation.[97] The Convention came into force in Switzerland on 1 January 1984, and its operation was streamlined through the implementation of the Federal Act of 21 December 2007.

The way that the Federal Act works in Article 5 was described by Freeman and Taylor:

> 'In Switzerland an intolerable situation in Article 13 exists under the Swiss Federal Act on International Child Abduction and the Hague Conventions on the Protection of Children and Adults where a placement with the parent who filed the application is manifestly not in the child's best interests; the abducting parent is not, given all of the circumstances, in a position to take care of the child in the State where the child was habitually resident immediately before the abduction or this cannot reasonably be required from this parent; and placement in foster care is manifestly not in the child's best interest'[98]

Merle Weiner expressed her very positive response to this provision[99]in 2008 when she discussed the helpful implications of the Swiss S5 provision for respondents and children in intolerable situations of domestic violence, and she urged the United States to follow Switzerland's example and adopt similar reforms. However, in line with the differing viewpoints already highlighted in this in-depth analysis, it is noteworthy that Jeremy Morley wrote in 2020 about this 'highly controversial provision of the Federal

[97] See Quillen, B., 2014. 'The new face of international child abduction: domestic-violence victims and their treatment under the Hague Convention on the Civil Aspects of International Child Abduction'. *Texas International Law Journal*, 49, 621-644

[98] Freeman, M. and Taylor, N. 'Domestic Violence and Child Participation: Contemporary Challenge for the 1980 Hague Child Abduction Convention', *Journal of Social Welfare and Family Law* 2020, Vol. 42, No. 2, 154–175, referencing Weiner, 2008. 'Intolerable situations and counsel for children: following Switzerland's example in hague abduction cases'. *American University Law Review,* 58 (2), 335–403. For Swiss Federal Act see https://www.fedlex.admin.ch/eli/cc/2009/379/en

[99] Weiner, M. 'Intolerable Situations And Counsel For Children: Following Switzerland's Example in Hague Abduction Cases' [2008] *American University Law Review* Vol. 58:335, 358.

Act…Section 5, which on its face unnecessarily expands the scope of Article 13(b) of the Convention'. Morley argued that Article 5 expressly violates the 'bedrock principle of the Hague Abduction Convention … that a case brought under the Convention is not a custody case and that, unless one of the very limited exceptions is established, wrongfully-removed or wrongfully-retained children should be returned promptly to their country of habitual residence, whose courts may then determine the children's best interests'[100]. However, Morley takes comfort in the way in which the Swiss jurisprudence has 'sensibly applied Article 5 in a restrictive manner'.[101]

United Kingdom

Although not specifically relating to international child abduction, it is interesting to note that the United Kingdom government has announced its intention to repeal the presumption of parental involvement (i.e., the assumption that the involvement of both parents in a child's life will further the child's welfare), which is contained in S1(2A) of the Children Act 1989. This announcement follows the publication in October 2025 of the Presumption of Parental Involvement Review, which found that 'where a parent poses a risk, or has caused harm to a child, children's welfare was not always supported by parental involvement'. [102] The domestic abuse commissioner, Dame Nicole Jacobs, described the announcement as one which would allow courts to make safer decisions,[103]and it has been said to have 'ushered in a new era of hope for countless women and children who historically had the courts system weaponised by perpetrators as a means of continuing abuse. It also marks a significant shift in the 'pro-contact' culture that has, for so long, dominated family courts, and placed the 'rights' of abusive fathers over the safety and wellbeing of children'.[104]

The effect of this repeal, if any, on international child abduction remains to be seen. However, it is possible that its impact, although oblique, may nonetheless be important in the field of international child abduction where it is accepted that prevention is by far the best way of avoiding the usually very serious impacts of this event[105]. As domestic decision-making will no longer need to be based on contact with both parents being automatically assumed to be in a child's best interests, it is possible that a mother who has experienced domestic violence or abuse and knows that her child will not have to see the abusive parent for contact, may now feel less inclined to abduct her child.

[100] Morley, J. 'International Family Law, Switzerland and International Child Abduction', Thursday, April 16, 2020. https://international-divorce.com/switzerland_and_child_abduction/

[101] See above. All quotes used appear on the unnumbered pages of this online article.

[102] Ministry of Justice, *Review of the Presumption of Parental Involvement, Final Report*, October 2025 https://assets.publishing.service.gov.uk/media/68f5f5c206e6515f7914c7e3/Review_of_the_Presumption_of_Parental_Involvement_Final_Report_.pdf

[103] The Guardian UK News. Family law shift hailed as victory for children facing domestic abuse. 'Groundbreaking' repeal of presumption of parental involvement in England and Wales 'will ensure courts place safety of children above all else'. https://www.theguardian.com/uk-news/2025/oct/21/family-law-shift-hailed-as-victory-for-children-facing-domestic-abuse

[104] Women's Aid until women & children are safe. 22 October 2025. 'Women's Aid marks momentous Ministry of Justice decision by honouring children killed and ignored by dangerous practices in family courts'. https://womensaid.org.uk/womens-aid-marks-momentous-ministry-of-justice-decision/

[105] Reunite. Prevention of Abduction https://www.reunite.org/prevention-of-abduction/#:~:text=We%20believe%20that%20it%20is,seek%20support%20from%20the%20police

4. OTHER CHALLENGES, LESSONS LEARNED, WAYS FORWARD AND MULTI-LAYERISM[106]

KEY FINDINGS

- Children often suffer significant and long-lasting harm as a result of international child abduction. The distinction between harmful and protective abductions is considered.
- The possibility and manner of child participation in the context of Convention proceedings varies widely in contracting states to the Convention.
- Awareness raising and information provision are key components of active child participation in Convention proceedings, and need to be improved.
- FindingHome.World https://findinghome.world/ is a resource which aims to raise awareness and provide information to children, young people, their families, and advisers.
- The Convention cannot be frozen in time. Society and circumstances change. Injustices may occur through changed circumstances during the currency of a living instrument like the Convention. Nurturing is required.
- Concerns exist about the inconsistent operation of the Convention within the Contracting States. The possible benefits of individual state and regional initiatives for the Convention community are considered. The concept of 'multi-layerism' is addressed.
- Research is urgently required so that Contracting States can evaluate whether their practices truly serve the best interests of children and may refine their approaches where necessary (per Bernasconi, C.; see fn 14).
- Collaborative specialist work is urged as the way forward to address Convention challenges.

OTHER CHALLENGES

Although domestic violence is a real and continuing challenge for the operation of the Convention, it is certainly not the only one. This in-depth analysis is unable to address most of these challenges due to space constraints[107]. However, it must be remembered that the significant harm which children often

[106] This term has been borrowed from an artistic context. For a definition of multilayerism in an artistic context, see Schlich, Detlef. (2023). Multilayerism: A New Paradigm in Contemporary Art - A Manifesto by Detlef Schlich. 10.13140/RG.2.2.24279.04008 https://www.researchgate.net/publication/375665507_Multilayerism_A_New_Paradigm_in_Contemporary_Art_-_A_Manifesto_by_Detlef_Schlich

[107] These challenges span the various isuses which make up the unequal playing field of Convention proceedings including the inequalities of the provision of public funding and specialist representation, the need for concentrated judicial jurisdiction, and the variable services provided by central authorities. The complexities of habitual residence, and the interraction of the asylum jurisdiction with the area of international child abduction, provide further examples of current challenges to the operation of the Convention. On the latter issue, see G v G [2020] EWCA Civ 1185 in which the International Centre for Family Law Policy and Practice, of which the author is Director, was granted permission to intervene. Also see Practice Guidance Case Management and Mediation of International Child Abduction Proceedings https://www.judiciary.uk/wp-content/uploads/2023/03/Presidents-Practice-Guidance-on-Case-Management-and-Mediation-of-International-Child-Abduction-Proceedings.pdf . Challenges in this area also relate to the topics of prevention and after-care. Prevention is required to avoid the usually very serious effects of international child abduction. There are many ways in which prevention might be assisted including specialist mediation, and the use of practical co-parenting resources like those provided by OurFamilyWizard https://www.ourfamilywizard.co.uk/ One other important challenge relates to the current discussion on identity and selfhood in international family law and, in this context, decisions relating to international child abduction under the Convention– see Marilyn Freeman and Nicola Taylor, 'Nurturing the 1980 Hague Convention' in Marilyn Freeman and Nicola Taylor (eds) *Research Handbook on International Child Abduction: The 1980 Hague Convention (*Edward Elgar Research Handbooks in Family Law Series), 2023, 403-429, and Nicola Taylor

suffer as a result of abduction remains one of the most challenging issues in this area. The author's own research findings, which supported earlier studies about the long-lasting effects of abduction, detailed the high proportion of previously abducted children in the research sample who reported suffering very significant effects from their abduction in terms of their mental health.[108]

It is this harm to children which the Convention aims to prevent. It was the subject of discussion at the Brazil Forum, where Dr Christophe Bernasconi sought to address the distinctions which are sometimes made between harmful and protective abductions, and any suggestion that only the former fall within the scope of the Convention. He respectfully disagreed with that contention and stated that 'a wrongful removal or retention is also a form of violence…an abduction inflicts harm. Domestic violence inflicts harm.

Both are wrong. Both cause trauma. But two wrongs do not make one right'.[109] It is certainly the case, as highlighted in the author's own research, that a child abducted for protective reasons is still susceptible to some of the general effects of abduction encountered by other children[110]. However, we do not know whether abductions undertaken for protective reasons result in less harmful outcomes for the child than those undertaken for non-protective abductions. Specialist, evidence-based, research in this area is urgently required to provide this much-needed information and fill in this crucial gap in our knowledge.

Child Participation

This in-depth analysis will now turn to the issue of child participation, which is a major challenge in the operation of the Convention[111].

As is well-known, Article 12 of the United Nations Convention on the Rights of the Child (UNCRC) 1989[112] assures children capable of forming their own views the right to express those views freely in all matters affecting them, with due weight being accorded to those views in line with the age and maturity of the child. Article 13(2) of the Convention permits a court to refuse to order a child's return if the abducted child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of their views.

How far this provision accords with Article 12 and the linked articles of the UNCRC[113]has been a topic of concern for this author and others for many years[114], with the European Parliament taking a particular

and Marilyn Freeman, 'Relocation and international child abduction: the impact on children's identity' in Marilyn Freeman and Nicola Taylor (eds), *Children's Right to identity, Selfhood and International Family Law,* (Edward Elgar) 2025, 128-136.

Freeman, M. 'Parental Child Abduction: The Long-Term Effects' (2014) *International Centre for Family Law, Policy and Practice* https://www.icflpp.com/wp-content/uploads/2017/01/ICFLPP_longtermeffects.pdf (hereafter Freeman 2014)

[109] Bernasconi, Brazil pp 2-3.

[110] Freeman 2014, fn 32

[111] Child participation is one of the six areas in which steps are to be taken at European Union and Member State level to protect and promote children's rights across the European Union and beyond – see Annual Report 2024 and Work Programme 2025 of the EP Coordinator on Children'S Rights, Mrs Ewa Kopacz, Vice President of the European Parliament, p2 https://www.europarl.europa.eu/at-your-service/files/be-heard/coordinator-on-childrens-rights/latest-information/en-annual-report-2024-and-future-activities-2025-of-the-ep-coordinator-on-childrens-rights.pdf

[112] Convention on the Rights of the Child, adopted 20 November 1989, General Assembly, resoluton 44/25 https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child

[113] E.g. Article 5 regarding a child's evolving capacities.

[114] See, for example, Freeman, M, and Taylor, N., fn 32 above. Also Wolfreys, A. (2024) 'Cafcass External Research Project: Children's participation in Hague child abduction proceedings heard in England and Wales', *Open University* https://www.cafcass.gov.uk/sites/de-

and welcome interest in 2020, when commissioning an in-depth report from this author to consider the matter[115].

Once again, this is an area where practice differs widely between Contracting States, as demonstrated by the responses of 97 family justice professionals from 32 countries in the British Academy-funded cross-jurisdictional and interdisciplinary project in England & Wales and New Zealand conducted by the author, together with Professor Nicola Taylor, from March 2017 to March 2018. One of the key findings from our research is particularly germane to this issue:

> 'One of the most striking of our findings relates to the wide range of specialists involved with the child/family to inform the legal process when a child's objections are raised - 17 different types of specialists were identified within our global survey, including psychologists, family consultants, counsellors, social workers, guardians ad litem, children's officers, child protection officials, youth department workers and child protection officials'.[116]

The Brussels IIb Regulation[117] (also known as the Brussels IIa Recast and Brussels II-ter), which came into operation in EU Member States on 1 August 2022, obliges Member States to provide children with a genuine and effective opportunity to express their view[118], but, as noted by Kruger et al., 'Brussels IIb does not regulate how the hearing must be conducted: national law is left untouched'[119]. The broad variation of approaches to Convention matters identified in this in-depth analysis means that, even within EU states, the Brussels IIb provision does not achieve comprehensive fulfilment of the Article 12 UNCRC right.

What can be done to improve child participation in Convention proceedings?

An essential starting point is to provide the necessary information to children and young people to enable them to know about their right to participate in these proceedings, and how they may exercise it. Kruger et al. made reference to the dearth of information available for children in this context when they stated:

> 'Regrettably, Brussels IIb makes no reference to the right of the child to be informed. Research on children involved in international child abductions has shown how children are often unaware of the fact that they can raise an objection to their return and that children would need to be better informed about the mechanism of the 1980 Hague Convention – as well as of their opportunities to participate and raise their voice in the proceedings. Information is an

fault/files/2024-08/Children%27s%20participation%20in%20Hague%20child%20abduction%20proceedings%20heard%20in%20England%20and%20Wales%20-%20A%20Report%20by%20Allison%20Wolfreys%20%28%20Final%29.pdf; Wolfreys, A. (2025) 'Objecting children and party status in Hague child abduction proceedings heard in England and Wales: searching for rationality and authenticity'. *Child and Family Law Quarterly* 2025 (3) 293 - see further fn 125 below.

[115] See Freeman, M. (2020) 'The Child Perspective in the Context of the 1980 Hague Convention'. https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/659819/IPOL_IDA(2020)659819_EN.pdf

[116] See Taylor, N. & Freeman, M. 'The Judges' Newsletter on International Child Protection, Special Focus, The Child's Voice – 15 Years Later', Volume XXII www.hcch.net (hereafter Judges' Newsletter), 8-12, p11

[117] Council Regulation (EU) 2019/111 of 25 June 2019 on Jurisdiction, the Recognition and Enforcement of Decisions in Matrimonial Matters and the Matters of Parental Responsibility, and on International Child Abduction (recast) [2019] OJ L178/1

[118] See Articles 21 and 26 of the B11b Regulation. Also see Luznat. L. (2024) 'The Brussels 11b Regulation – Most Significant Changes compared to its Predecssor and Enhancement of the 1980 Hague Convention on International Child Abduction'. *Journal of Private International Law*, Vol 20, No. 1, 129-153

[119] Kruger, T., Carpaneto, L., Maoli, F., Lembrechts, S. Van Hof, T., Sciaccaluga, G. 'Current-day international child abduction: does Brussels 11b live up to the challenges?' *Journal of Private International Law*, 2022, Vol 18, No.2, 159-185, 178

> underlying component of the child's right to participate under the CRC: a meaningful and safe participation of the child in the proceedings is impossible if they do not receive adequate information. A lack of information could, moreover, influence the engagement of the child in all the stages of the decision-making process, including the enforcement stage. Unfortunately, Brussels IIb has not made any advances on this front[120].

In order to meet this urgent need for information and legal literacy, the author has worked with other legal specialists to develop, together with young people, a website which explains what international child abduction is, how the Convention works, and the right to be heard, and provides example stories about typical child abduction situations[121]. Through a memorandum of understanding, the website is now operated by Missing Children Europe[122] and has been translated into thirteen languages in addition to the original English in which it was initially published.

The author is a member of the small specialist international steering committee driving FindingHome's further development. An innovative summer campaign aimed at raising awareness about international child abduction took place during the last week of August 2025 to coincide with the spike in abduction incidents often observed during holiday periods[123].

Raising awareness and providing information, are key components of active child participation in proceedings relating to international child abduction. Appropriate participation will not occur without these fundamental building blocks, which take time, effort, and commitment to achieve. The website founders are delighted to have made substantial progress on this front with the support of Missing Children Europe and look forward to further developments in the future.

LESSONS LEARNED

One of the primary lessons learned is that society and circumstances change, and the Convention cannot be frozen in time if it is to continue to provide its helpful framework of support in the field of international child abduction. However, we have also learned that it is possible through collaborative specialist work to constructively highlight injustices that may occur through such changed circumstances during the currency of a living instrument. What is possible to achieve having highlighted these issues, is more difficult to predict. There have been many suggestions made by commentators about how to address these issues, some of which have been described in this in-depth analysis,[124] but there is a significant concern that introducing these amendments and encouraging individual interpretations of the Convention by Contracting States, for example, in relation to the domestic approach to family violence in local implementing legislation, will undermine the operation and effectiveness of the Convention in its global context. Weiner addresses this concern when she states:

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[120] See fn 124 above at p179. See also Wolfreys, A. 'Objecting children and party status in Hague child abduction proceedings heard in England and Wales: searching for rationality and authenticity', *Child and Family Law Quarterly* 2025 *(3)* 293 who argues that the current process serves the adults and court process rather than the child. Wolfrey calls for for timely accessible information to be provided to children in fulfilment of our international obligations arising from their Article 12 UNCRC rights, in particular enabling them to access their own legal advice at an early stage.

[121] FindingHome.World Helping children and young people understand international parental child abduction https://findinghome.world/

[122] Missing Children Europe. Our Work. International Child Abduction https://missingchildreneurope.eu/international-child-abduction/

[123] Missing Children Europe. 'Museums across Europe come together for missing children, September 1, 2025, Highlights, Press Release, Success Story' https://missingchildreneurope.eu/museums-across-europe-come-together-for-missing-children/

[124] For example, see the proposal by Merle Weiner at fn 83 above, and Adrienne Barnett for Hague Mothers at fn 86 above.

> 'Some people will be bothered by the call for a parallel treaty because uniformity is an important purpose of private international law conventions. While uniformity is important, it has its limits. Those limits have been reached because the existing application of the Hague Abduction Convention is unjust to a large number of people whose situation was not sufficiently considered by the drafters, and reform is consistent with the Convention's object and purpose. Consequently, there is no good reason to forego reform even if it results in different approaches to Article 13(1)(b)'.[125]

As Weiner both accurately and persuasively states:

> 'The call for uniformity falsely asserts that there is currently uniformity. There really is no uniformity at present'[126].

There are, indeed, already many differences between Contracting States in the way in which the Convention operates in their individual jurisdictions, some of which have been highlighted above. I have argued that regional initiatives which create an imbalance in the operation of the Convention, including the Brussels IIb Regulation, may nevertheless, if they are considered to be improvements, have the potential to set an example for and encourage positive change in other Contracting States.[127]

One such initiative relates to the challenge to the operation of the Convention by non-Contracting States [128]. This has been addressed with some success through the Malta process, which was launched in 2004. This process 'has played a key role in promoting ratification of/accession to the 1980 Hague Child Abduction and 1996 Hague Child Protection Conventions to non-Contracting States whose legal systems are based on or influenced by Sharia. The Malta Process has also fostered co-operation to resolve international family disputes involving children when these conventions do not apply and contributed to a better understanding on the different legal systems' approaches to solving international child abduction, access or custody cases'. [129]

The Malta Process has expanded over the years since its inception to include child protection more broadly and child support issues, as well as the original topic of child abduction and the Convention. This is a clear example of how regional initiatives can encourage good practice and positive change.

WAYS FORWARD AND MULTI-LAYERISM

Perhaps what is required is that we may now need to further debate and possibly reconsider the historical concerns about inconsistency in the operation of the Convention and potentially more readily

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[125] Fn 83 above, p1206.

[126] See fn 83 above, p1206. Uniformity is thought to help prevent forum shopping and promotes certainty and predictability. On the search for uniformity, see Schuz, R. 'Disparity and the Quest for Uniformity in Implementing the Hague Abduction Convention', *Journal of Comparative Law*, 9:1 (2014), 48 'In order to ensure that the Convention successfully fulfils the overarching objective intended by the drafters of defending the interests of children by protecting them from the harm caused by international child abduction, it is necessary to act to reduce the disparities which exist in the operation of the Convention'. On the inevitability of inconsistency, see Henaghan, M. Poland, C, and Kong, C. 'International Child Abduction in Aotearoa New Zealand, Australia and the Pacific: Similarities and differences' in Research Handbook, Ch 12: '[t]his chapter has shown that it is inevitable that the wording and thrust of the Convention will be interpreted differently, even between countries like Australia and New Zealand that have much in common yet still have different approaches. The approaches are likely to be even more diverse between countries of different histories or cultures', p191.

[127] Freeman, M. and Taylor, N. 'Nurturing the 1980 Hague Convention', Research Handbook, 409.

[128] See discussion on The Operation of the Convention on p10 of this in-depth analysis.

[129] https://www.hcch.net/de/news-archive/details/?varevent=349; https://www.hcch.net/en/news-archive/details/?varevent=1016

accept the inevitability of such variation within the 103 Contracting States with their different national structures and settings. This is what the author of this in-depth analysis refers to as 'the multi-layerism of the Convention', which may be seen as a more positive, and conceivably helpful, way of viewing these individual approaches than the possibly more judgement-laden term of 'inconsistency'. If we fail to do so, we may, once again, face the unpalatable possibility identified by Baroness Hale when she referred to the real risk that some countries would pull out of the Convention altogether if nothing was done at the time that a Protocol to do more to protect children and to cater for the problems posed by domestic violence was discussed and ultimately abandoned.[130]

Without doubt, we need to know more about what happens once a return decision has been made in abduction proceedings. That is the end of the legal process for return, but often the beginning of many new challenges for the families concerned. The calls for research made by this author in previous work undertaken for the European Parliament[131] and supported by Conclusion and Recommendation No. 102 from the 2023 Eighth Special Commission into the Operation of the Convention[132], are being heeded, although further research is also urgently required.

The author of this in-depth analysis is currently undertaking a research project with Professor Nicola Taylor, University of Otago, on outcomes in cases of international child abduction where a return decision has been made.[133]

The knowledge provided by such evidence-based research is an essential component of the successful operation of the Convention within its Contracting States where differences in approach are to be realistically expected. We hope to be in a position to report on our outcomes research data at the next Experts' Meeting (EMIII) which will take place at the University of Westminster from 26 to 28 August 2026, where, with the support of international, interdisciplinary specialists, we will continue the work already done on nurturing and maintaining the successes of the Convention for its future users whilst responding to the inevitable challenges it faces as a dynamic, living instrument[134].

This may not be the quick fix that some members of the family justice community desire – it is perhaps more evolution than revolution[135] . However, these actions, together with the recommended influential institutional support structure which provides for collaborative specialist work and a committed focus on the search for promising initiatives, may be the most hopeful path forward for the Convention as it strives to meet the current challenges.

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[130] Hale, B. Taking Flight, fn 54 above, at p11

[131] See Parental Child Abductions to Third Countries at fn 16 above

[132] See fn 15 above Also see Bernasconi, Brazil, fn 14 above who states that we can then evaluate whether our practices truly serve the best interests of children and refine our approaches where necessary

[133] Freeman, M. and Taylor, N. Supporting Families Following International Child Abduction – An Online Survey for Parents and Family Members, and Adults who were abducted as Children. See The Judges' Newsletter on International Child Abduction, Volume XXVII, Spring-Summer 2025, p217 https://assets.hcch.net/docs/a796bcc2-a69b-440f-84d1-120b4aa59209.pdf This research project is being undertaken under the ethical approval of the University of Westminster. Other academics are similarly undertaking research to help fill in the gaps in our collective knowledge on these issues Including research by Dr Valerie van Mulukom and Dr Adrienne Barnett who are currently researching the impact of alleged domestic abuse and perceived gender bias in international child relocation cases

[134] See *Tyrer v the United Kingdom* (1979-80) 2 EHRR 1, European Court of Human Rights where the European Convention on Human Rights was held to be a living instrument.

[135] A descriptive term used by former UK Prime Minister, David Cameron , NHS Reforms 2011 https://www.gov.uk/government/speeches/speech-on-the-nhs

5. CONCLUSIONS AND RECOMMENDATIONS

KEY FINDINGS

- The Experts' Meetings, convened by the author, and held at The University of Westminster in 2023 and 2025, and to be held in August 2026, are valuable steps in the right direction. Representation from the European Parliament at EMIII is recommended and would be greatly welcomed.
- Influential institutional support is now required with the capacity to fund the initiatives and activities recommended in this in-depth analysis.
- The European Parliament is ideally placed to make this valuable contribution and positively influence this critical area of international family law. It is recommended that it does so on an urgent basis in order to make the necessary progress in this field and that prompt consideration be given to these recommendations.

- **The commission of further evidence-based research is urgently needed** in relevant topics including domestic violence in the context of international child abduction. Such research must be high-level, specialist, collaborative work to ensure it is as meaningful and as productive as possible for the international family justice community, and ultimately for the children and families concerned. Immediate consideration must be given to the position of any non-EU researchers who are to be involved, for example those from the United Kingdom, who are excluded from many EU funding schemes. Such participation is essential to assure the necessary collaborative expertise for research of this type. The exclusion of such specialist expertise is counterproductive for all concerned.

- **A specialist interdisciplinary, international working group (SWG) of key actors, including the HCCH, should be established forthwith** to bring focus to, and work collaboratively on, the lessons learned and the ways forward. **The SWG is to work collaboratively on all issues of concern and to specifically consider ways to**:

  (i) **raise awareness** about international child abduction, its implications and effects;
  (ii) **prevent** abductions from happening where possible to alleviate the potential of significant harm caused by abduction;
  (iii) improve the **support/after-care** provision available for abducted children and families where abduction has occurred so that children are properly supported in dealing with the often serious and long-lasting effects and consequences of international child abduction;
  (iv) **nurture the Convention** so that it continues to protect children as envisaged.

- **The critical matter of post-abduction support for children and families who have experienced an abduction event** was raised in the recommendations of this author's 2024 study undertaken for the European Parliament, entitled 'Parental Child Abductions to Third Countries'(p. 47). Unfortunately, no progress appears to have yet been made on this recommendation. Preliminary work in this area has been undertaken by the author, together with other specialist researchers and European NGOs who are all keen to work collaboratively to create, implement, and evaluate a pilot support and aftercare project which may act as a laboratory for other countries and regions. Funding is required for this important project which impacts current and future society, again with required consideration for any involvement of non-EU researchers and participants. The European Parliament has the opportunity to make a meaningful difference in this field, and for society generally, and is very strongly encouraged to do so.

EXPERTS MEETINGS, UNIVERSITY OF WESTMINSTER, LONDON

It is submitted that the series of Experts' Meetings the author has convened at The University of Westminster[136] is a valuable step in the right direction. The meetings are free of charge to those attending who are invited because of their multidisciplinary, specialist involvement in the field of international child abduction. The aim of the meetings is to provide a specialist forum for focusing on the current issues of concern in the operation of the Convention. In order to retain the specialist nature required of an Experts' Meeting, rather than a conference, the number of participants is restricted to approximately 45.

The first meeting, EMI, was on the topic of 'Nurturing the 1980 Hague Convention' and was held from 19 to 20 October 2023. It was chaired by Philippe Lortie, First Secretary of the HCCH. There were three specialist session chairs: Nuala Mole, The Aire Centre, London, who chaired the session on Abduction and Asylum Issues; Professor Merle Weiner, University of Oregon, USA, who chaired the session on Abduction and Domestic Violence Issues; and Professor Rhona Schuz, Sha'arei Mishpat Law School, Israel, who chaired the session on Abduction and Child Participation Issues. The author made a presentation on her research undertaken with Professor Nicola Taylor, University of Otago, New Zealand: 'Project to investigate the effects and outcomes of abduction where the abduction is alleged to have occurred against a background of violence or abuse to the taking parent and/or the abducted child'. The three meeting themes were subjects of Conclusions and Recommendations at the Eighth Special Commission on the Practical Operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention held in The Hague from 10 to 17 October 2023 which had ended shortly before the commencement of the Experts' Meeting. Professor Nicola Taylor acted as meeting rapporteur.

EMI and its presentations formed the subject of a special issue of the Judges' Newsletter in which Philippe Lortie remarked on the title of the meeting, saying that 'one could not have chosen a better title for the Experts' Meeting'. He also noted that conventions are rarely amended because 'finding a consensus for such amendments is extremely challenging' and 'if amended, it is challenging to ensure that all States will join the amended version of the Convention in a timely manner. Until all States join the amended version, we risk having the old version of the Convention operating in some States and the amended version operating in others, leading to the Convention operating "at different speeds". Instead, the HCCH "nurtures" its Conventions'. Lortie recognised the significance of the Experts' Meeting when he stated that it takes more than the work of the HCCH to nurture a Convention, and that the 'dedication and hard work of a multitude of actors, many of whom are in attendance today, is also required: judges, members of central authorities, lawyers, barristers, mediators, enforcement officers, academics, researchers, social workers, psychologists, and representatives of non-governmental organisations (NGOs), just to name a few'. [137] He stressed the need for awareness raising for all actors involved in cases of child abduction as well as general information directed to the public on the impact of international child abduction to assist in prevention, and again emphasised the need for further evidence-based research to help fill the gaps that exist in our collective knowledge and understanding.[138] Mrs Ewa Kopacz, Vice-President of the European Parliament and the European Parliament Coordinator on Children's Rights, provided the opening address for EMI, during which she acknowledged the importance of the meeting when thanking the author for 'her tireless work on behalf

[136] See fn 2 above

[137] Lortie, P. The Judges' Newsletter on International Child Protection. Special Focus, Experts' Meeting on Nurturing the 1980 Hague Convention, University of Westminster, London. 19-20 October 2023. Volume XXVI Fall-Winter 2024 P9 (hereafter JN 2023)

[138] JN 2023, pp70-71

of children affected by parental abduction and for creating this forum where experts from around the world can meet'.[139]

The second Experts' Meeting, EMII, was held on 4-5 August 2025 on the topic of 'International Child Abduction: Continued Nurturing of the 1980 Hague Convention'. The author chaired the meeting, and there were four specialist session chairs: Professor Rob George, KC, Professor of Law and Policy, University College, London, who chaired the session on Relocation; Professor Nigel Lowe, Emeritus Professor of Law, Cardiff Law School, who chaired the session on Prevention; Philippe Lortie, First Secretary, HCCH, who chaired the session on After-Care; and Henry Setright, KC, Barrister, 4PB, London, who chaired the session on Enforcement. The author made a joint presentation with Professor Nicola Taylor on 'Relocation, International Child Abduction and Children's Identities', which focused on the Article 8 UNCRC right to identity which is the subject of their most recent research and published book: 'Children's Right to identity, Selfhood and International Family Law'[140].

Professor Taylor, once again, acted as rapporteur for the meeting. EMII was attended by a wide group of multidisciplinary and international actors, including: the HCCH, judges, lawyers, academics, researchers, central authorities, NGOs, mediators, and psychologists. EMII will, once again, feature in a Special Issue of the Judges' Newsletter, which was due to be published in December 2025 but, because of translation delays, has been delayed until around March 2026.

The third in the series of Experts' Meetings, EMIII, will be held at the University of Westminster from 26 to 28 August 2026. The topics for discussion at EMIII are currently under consideration. The meeting will, once more, be supported by the HCCH, and representation at the meeting by the European Parliament is recommended and would be greatly welcomed.

The series of Experts' Meetings initiated by the author are important fora for discussion and have made valuable contributions in this area. However, influential institutional support is now required with the capacity to fund the recommended initiatives and activities. The European Parliament is ideally placed to make this contribution, and it is recommended that it does so on an urgent basis in order to make the necessary progress in this field.

The following recommendations are therefore made:

It is respectfully recommended that the support and leadership of the European Parliament in the fulfilment of these recommendations be prioritised through the active commitment of the JURI Committee working in collaboration with the European Parliament Coordinator on Children's Rights. The following issues are to be considered on an urgent basis.

(a) **The commission of further evidence-based research** in relevant topics, including domestic violence in the context of international child abduction; it is necessary for this to be done as soon as possible both because of the inherent urgency of the situation and also because of the practicalities of the considerable lead-in time required to build an appropriate project team, discuss and prepare research project methodology, and obtain the necessary ethical approval. Numerous calls for this research have been made, including in my 2024 study undertaken for the European Parliament: 'Parental Child Abductions to Third Countries', which on p.46 concluded that 'More needs to be done including further collaborative evidence-based research on the outcomes of international child abduction, including where the abduction occurred against a background of violence or abuse to the taking parent and/or the abducted

[139] JN 2023, P13

[140] Freeman, M. and Taylor, N. (Eds) (2025) 'Children's Right to Identity, Selfhood and International Family Law'(Edward Elgar).

child. Evidence-based research provides an important and necessary tool to assist in the required nurturing of the Convention'. This research must be high-level, specialist, collaborative work to ensure it is as meaningful and productive as possible for the international family justice community and ultimately for the children and families concerned. However, the need for research funding must be simultaneously addressed when considering its commission as research of this type needs appropriate and adequate financial support.

(b) **The establishment of a specialist interdisciplinary, international working group (SWG) of key actors, including the HCCH,** to bring focus to, and work collaboratively on, the lessons learned and the ways forward, as detailed in this in-depth analysis. This should be established forthwith to build upon the work done, and the contributions made, in the series of Experts' Meetings convened by the author. Once again, this requires the allocation of funding, as, although the Experts' Meetings have all been free of charge to the participants, they have required support from the Law School at the University of Westminster and other professional supporters. Although remote meetings are possible, they do not provide the opportunities of a 2-3 day in-person meeting, which is the model used for the series of Experts' Meetings, and it is recommended that it should be the model used for the proposed SWG. This recommendation was also made in my 2024 study undertaken for the European Parliament: 'Parental Child Abductions to Third Countries', on p. 46, and it is noted that no progress has yet been made on this issue. The European Parliament and the JURI Committee are urged anew to advance this recommendation at the earliest opportunity.

The SWG is to work collaboratively on all issues of concern including the concept of **multi-layerism** in the operation of the Convention, which should be further debated, possibly re-considered, and potentially more readily accepted. **The SWG is to specifically consider ways to**:

(i) **raise awareness** about international child abduction, its implications and effects;
(ii) **prevent** abductions from happening where it is possible to do so, to alleviate the potential harms caused by abduction
(iii) improve the **support and after-care** provision available for abducted children and families where abduction has occurred, so that children are properly supported in dealing with the often serious and long-lasting effects and consequences of international child abduction
(iv) **nurture the Convention** so that it continues to protect children as envisaged.

The critical area of post-abduction support for children and families was raised in the recommendations of this author's 2024 study undertaken for the European Parliament, entitled 'Parental Child Abductions to Third Countries' (p. 47) but, unfortunately, no progress appears to have yet been made on this recommendation. Support is undeniably needed, but there is scant attention paid to this need and how it may be fulfilled. I have been involved in preliminary work in this area with other specialist researchers who all recognise this urgent need based on the reported research we have done both individually and collectively.

We have the support of specialist European NGOs who are keen to work collaboratively with us to create, implement, and evaluate a pilot support and aftercare project which may act as a laboratory for other countries and regions which similarly wish to provide such aftercare support for their citizens who have been involved in abduction events. Our difficulty has been in securing funding which would be available for a project of this type with some element of UK involvement. This is such an important matter – international child abduction does not just affect those who were part of the abduction. It

affects the society in which they live, including those with whom they work, their partner, and their parents. It affects the world we live in now. It affects the future. The European Parliament has the opportunity to make a meaningful difference in this field and to society generally and is very strongly encouraged to do so in these recommendations.

These recommended actions would bring the necessary focus to the evolving challenges in the operation of the Convention[141] and these actions have the potential to create change. The work to date of the European Parliament, the JURI Committee, the Policy Department for Justice, Civil Liberties and Institutional Affairs, and Mrs Ewa Kopacz, the European Parliament Coordinator on Children's Rights[142], has been extremely helpful. There is now an opportunity for these bodies to become welcome beacons of light in the sometimes-fraught debates and circumstances in this area, as well as important, highly valued influences in this critical field of international family law.

[141] See Barnett A. (2025) 'Domestic Violence and the 1980 Hague Convention: Achieving Cultural Change' who suggests at p10 the establishment of a working group to consider a proposed model for the Convention. She stresses that the proposed model is not intended to replace legislative, treaty or other reforms proposed elsewhere but, on the contrary, to enhance the effectiveness of such reforms.

[142] See, for example, the Annual Report 2024 and Work Programme 2025 of the EP Coordinator on Children's Rights and the initiative to act as a central contact point to monitor and actively promote children's rights in EU policies, ensuring coherence and visibility of Parliament's actions in this area; to act in the field of international child abduction, cross-border issues and child friendly justice by participation in events and conferences on cross-border family disputes, promoting child-friendly justice, promoting cross-border mediation and encouraging and informing individual enquirers on the possible use of mediation in their particular cases; be a central information point for citizens of the Member States in international parental child abduction or other cross border family disputes. https://www.europarl.europa.eu/at-your-service/files/be-heard/coordinator-on-childrens-rights/latest-information/en-annual-report-2024-and-future-activities-2025-of-the-ep-coordinator-on-childrens-rights.pdf See also the recent workshop on the Convention organised by the EP Coordinator on Children's Rights with the support of the Policy Department to mark the 45th anniversary of the signing of the 1980 Hague Convention in which the author made a presentation based on this in-depth analysis https://www.europarl.europa.eu/thinktank/en/events/details/the-1980-hague-convention-on-the-civil-a/20251121WKS06621

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As the 1980 Hague Child Abduction Convention celebrates the 45th anniversary of its signing on 25 October 1980, this in-depth analysis considers its successes and challenges, what we have learned so far about its operation, and what may be realistically achieved in its future so that it maintains its critical relevance and support for the contemporary global community it serves. The European Parliament's current and potential role in this exercise is also considered as part of this in-depth analysis.

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