



## Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction – *Recent Developments, Current Status and Challenges*

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[Title Slide]

Madam Vice-President  
Distinguished Chair, Distinguished Vice-Chair of the Committee on Legal Affairs  
Honourable Members  
Ladies and Gentlemen

Good afternoon. I am honoured to address this Committee and the European Parliament on behalf of the Hague Conference on Private International Law (HCCH). Allow me to thank the Committee for its invitation to participate in this Workshop. This Workshop, which celebrates the 40<sup>th</sup> anniversary of the HCCH 1980 Convention on the Civil Aspects of International Child Abduction, is yet another testament to the close cooperation between the HCCH and the European Union. As a Member of the HCCH, the European Union is an active contributor and important ally in the HCCH's work towards the progressive unification of private international law.

Allow me, before I go further, to note that I will be brief in the interests of time. The slide deck being presented, and the notes on my contribution, will be circulated via the JURI Secretariat.

Ladies and Gentlemen

1. 2020 marks the 40<sup>th</sup> Anniversary of the HCCH 1980 Convention on the Civil Aspects of International Child Abduction. As we discuss the current status, recent developments and challenges to the Convention, it is helpful to first take a brief look at how we got here.
2. The next slide shows the *avant-projet* of what would become the Child Abduction Convention.

[Slide 2: Picture | Avant-projet]

HISTORY

3. The origins of the Convention are rooted in a Canadian proposal, made at a Special Commission meeting held at The Hague in January 1976. Discussions on the Convention started during the meeting held in March 1979. The preliminary draft Convention resulted from a following meeting held in November 1979.
4. The next slide shows a photograph taken at the end of the 14<sup>th</sup> Session of the HCCH, held from 6 to 25 October 1980.

[Slide 3: Picture | 14<sup>th</sup> Diplomatic Session]

5. The Convention was adopted at the end of that 14<sup>th</sup> Diplomatic Session. It opened for signature and was immediately signed by several States: Canada, France, Greece and Switzerland. The Convention entered into force on 1 December 1983 after its ratification by Canada, France and Portugal.
6. Allow me to take you to the next slide, as we discuss changes in the global landscape in the last 40 years.

[Slide 4: Picture | Section Break | Changes in the Global Landscape in the last 40 Years]

7. The next four slides provide a good illustration of these changes.
  - a. The next slide shows the exponential increase in cross-border movement of people.  
[Slide 5: Graph | Exponential increase in cross-border movement of people]
  - b. The next slide illustrates the increase in global expatriate dual citizenship, indicating a change in the way people across the world consider family and personal links.  
[Slide 6: Graph | Increase in global expatriate dual citizenship]
  - c. The next slide is a good illustration of the growth of the international migrant population. Today, more than 272 million people are migrant outside the borders of the country of their nationality. Put together, the population of international migrants is just slightly below that of the five most populous EU Member States: Germany, France, Italy, Spain and Poland.  
[Slide 7: Graph | Increase in international migrant population]
  - d. The next slide makes the point – today, one in every 30 people in the world is a migrant.  
[Slide 8: Today, 1 in every 30 people in the world is a migrant.]
8. If I could have the next slide please? This brings us to a discussion of the current status of the Child Abduction Convention.

[Slide 9: Picture | Section Break | Current Status]

CURRENT STATUS

9. The next slide illustrates the widespread acceptance and implementation of the Child Abduction Convention. The Convention currently has 101 Contracting Parties, and is the third most ratified instrument of the HCCH. Between 2015 and 2020, eight new States have acceded to the Convention: Philippines, Bolivia, Pakistan, Jamaica, Tunisia, Cuba, Guyana and Barbados.  
[Slide 10: Widely ratified Convention: 101 Contracting Parties]

10. As the next slide illustrates, the Convention is also the most ratified HCCH Convention among its Member States.  
[Slide 11: Most ratified HCCH Convention among Member States]
11. As you can see from the next slide, the Convention has global reach, with Contracting Parties from all continents.  
[Slide 12: Map | Global reach]
12. The next slide shows the continual increase in the number of return and access applications annually.  
[Slide 13: Continual increase]
13. The 2,270 return applications made in 2015 involved 2,997 children, which is, as you can see on the next slide, approximately 425% of the number of MEPs in the European Parliament.  
[Slide 14: European Parliament]
14. What does this mean? The next slide shows that, of the 2,270 return applications, we are aware of slightly over 2,000 outcomes recorded. Among these, 17% of all return applications ended in voluntary returns.  
[Slide 15: Number of return applications and children involved]
15. Of the 965 return applications sent to court, the next slide shows that the main outcome was the decision to return.  
[Slide 16: Applications with a judicial decision]
16. The next slide shows the average time taken to reach a decision of judicial return was 158 days –less than in the previous study in 2008, but still a great challenge to overcome. It is important to overcome this challenge because the Convention seeks to counter the increase in abductions by promptly restoring the *status quo*, therefore depriving the taking person of any advantage gained by the wrongful removal or retention.  
[Slide 17: Average number of days to reach a final outcome]
17. The next slide shows the comparison between Brussels Regulation cases compared to global return applications. In all categories, whether relating to cases where only the requested State is a Brussels II a State, or cases where both the requested and requesting States are Brussels II a States, the trend shows an upward tick in terms of numbers.  
[Slide 18: Europe: Brussels Regulation cases]
18. If we could have the next slide please: Where does this current status leave us in light of recent developments?  
[Slide 19: Section Break | Recent Developments]

#### RECENT DEVELOPMENTS

19. As you can see from the next slide, the HCCH has, to date, convened seven Special Commission meetings to monitor the practical operation of the Convention. The next meeting of the Special Commission is currently being planned for 2023.  
[Slide 20: Post-Convention follow-up on Practical Operation: Special Commissions]
20. Possible topics for the next Special Commission:
  - a. Hearing the child (Article 13(2)) – my fellow panellist Professor Freeman will address this topic in detail;

- b. Relocation, also in regards of the Brussels II a Regulation;
  - c. Rights of contact and access;
  - d. Interaction with other international treaties; and
  - e. Non-parental child abduction (*c.f. Jacquety v. Baptista*).
21. The next slide shows the six Guides to Good Practice of the Convention that the HCCH has published, addressing
- a. Central Authority Practice
  - b. Implementation of Measures
  - c. Preventive Measures
  - d. Enforcement
  - e. Mediation, and
  - f. The “Grave Risk” Exception in Article 13(1)(b).  
[Slide 21: Guides to Good Practice]
22. On the next slide you see the cover of the most recent Guide on Article 13(1)(b), approved by the Members of the HCCH in December 2019.  
[Slide 22: GGP on Art 13(1)(b) Cover]
23. Allow me to take you to the next slide, which shows the last meeting of the International Hague Network of Judges.  
[Slide 23: IHNJ Last meeting in Miami]  
The Network was developed in order to facilitate direct judicial communications and co-operation between judges at the international level. Currently, 86 jurisdictions represented by 137 Judges<sup>1</sup> across the globe are part of this Network. The next Network meeting is to be hosted by Singapore.
24. The next slide illustrates the Malta Process and the participating States to that project.  
[Slide 24: Map, Malta Process: Participating States]  
These are conferences aimed at fostering dialogue between current Contracting Parties and non-Contracting Parties of Islamic tradition. The accession of Pakistan to the Convention in 2016 is a tangible result of the Malta Process, which is effectively supplemented by the *Working Party on Cross-border Family Mediation*. Co-chaired by Canada and Jordan, the Working Party is currently comprised of members from 17 States representing both Contracting and non-Contracting Parties to the Convention.
- a. Non-Contracting Parties include Egypt, India, Jordan, Lebanon, Malaysia, Qatar and Senegal.
  - b. Contracting Parties include Australia, Brazil, Canada, France, Germany, Morocco, Pakistan, South Africa, the United Kingdom and the United States of America.
25. If I could have the next slide please? This brings us to the challenges faced by the Convention and its stakeholders in the world both today and tomorrow.  
[Slide 25: Section Break | Challenges]

#### CHALLENGES

26. The next slide shows the first challenge, which is to increase the acceptance of the Convention across the world. At the same time, increasing ratification numbers brings with it certain challenges.  
[Slide 26: Increasing ratification numbers]  
To that end, we work to
- a. Ensure proper application through training and other post-Convention services;
  - b. Build bridges between different legal traditions through the Malta Process;

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<sup>1</sup> <https://www.hcch.net/en/instruments/conventions/specialised-sections/child-abduction/iwnj>

- c. Safeguard children in international families; and
  - d. Provide tools for the protection of children.
27. This brings us to the next slide, which illustrates the issues we face in improving compliance with the Convention.  
[Slide 27: Improving compliance]  
Non-compliance happens in various situations, including:
- a. Where a significant proportion, up to 100%, of requests for the return of abducted children remain unresolved for more than 12 months
  - b. Where there is a significant delay between the receipt of the request for return by a Central Authority and the resolution (judicial or non-judicial) of the case, and
  - c. Where there are no effective means to enforce an order for the return of the child to his/her State of habitual residence.
28. Keeping the Convention relevant is another challenge, as shown on the next slide.  
[Slide 28: Keeping interpretation of the Convention relevant]  
With changes in the global context, interpretation of the Convention must consider evolving interpretations of
- a. Habitual residence, with the emerging “totality of circumstances” approach, reflecting contemporary configurations of family life and the complexity of cases involving very young children (*c.f. Monasky v. Taglieri*);
  - b. Remote hearings and hearing the child: Especially in crises such as the current Covid-19 pandemic; and
  - c. Rights of remote access.
29. The next slide shows, however, the continuing relevance of the Convention  
[Slide 29: Continuing relevance of the Convention]  
In an increasingly interconnected world, with a volatile, uncertain, complex and ambiguous (or VUCA) economy and its impact on society, greater awareness of the rights of children (as my fellow panellist Ms de Ruiter will address in detail), and multilateralism in international cooperation, the Convention remains relevant. An interesting issue that arises going forward is the implications of the exit of the United Kingdom from the European Union.
30. On the next slide, we have some considerations in regard to the Convention in global crisis response.  
[Slide 30: Responding to crises]  
The Convention seeks to secure the safe and prompt return of children to the State of habitual residence, with a case-by-case individual application of the Convention. In carefully navigating exceptions raised to the obligation to return the child and ensuring continuing and suitable contact between parent and child, the application of the Convention can effectively address international child abduction scenarios in times of crises.
31. How does it do so? The next slide, about which I will not go into detail, shows an example: the various assertions related to the current Covid-19 pandemic that have been raised in relation to abduction cases.  
[Slide 31: Example – assertions related to the Covid-19 pandemic raised in relation to abduction cases]
32. As you see on the next slide, in response to the concerns due to the current pandemic situation, the Permanent Bureau of the HCCH published a toolkit for the Convention in Times of Covid-19.  
[Slide 32: Toolkit for the 1980 Child Abduction Convention in Times of Covid-19]

33. The last challenge I would like to touch upon is shown on the next slide.

[Slide 33: The Convention in the context of international law]

As the world becomes increasingly interconnected, the interaction of the Child Abduction Convention with other international law frameworks and norms must be actively discussed and considered. These include

- a. UN Conventions such as the 1989 Convention on the Rights of the Child and the 1951 Refugees Convention; as well as
- b. Regional frameworks such as the European Convention on Human Rights and the Brussels Regulations.

34. Allow me to take you to the next slide where we look to the future of the Child Abduction Convention.

[Slide 34: The next 40 years]

As we look to the next 40 years, to borrow from the eminent Jean Monnet, the Convention seeks, much like this European Union, to “build union among people, not [only] cooperation among States”. To that end, the HCCH relies on the continued support of its Members and the Contracting Parties to the Convention, in particular the European Union and the EU Member States.

35. Thank you.

[Slide 35: End Slide]

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