

RESEARCH HANDBOOK ON
**International
Child Abduction**

The 1980 Hague Convention



Edited by
Marilyn Freeman • Nicola Taylor



RESEARCH HANDBOOKS IN FAMILY LAW

Research Handbook on International Child Abduction

The 1980 Hague Convention

Research Handbooks in Family Law series

Edited by Marilyn Freeman, Principal Research Fellow, Westminster Law School, University of Westminster, UK and Nicola Taylor, Director of the Children's Issues Centre, Faculty of Law, University of Otago, New Zealand

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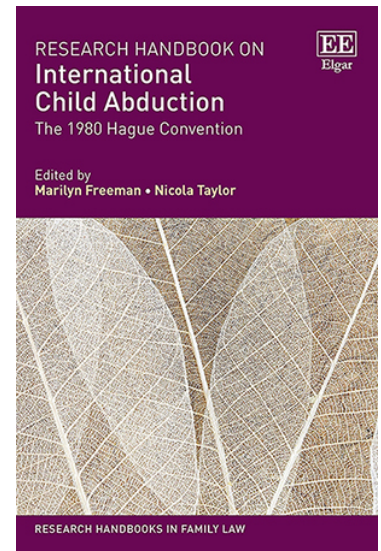
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– Melissa A. Kucinski, MK Family Law, US

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1. Introduction and key themes

Nicola Taylor and Marilyn Freeman

INTRODUCTION

International child abduction involves one parent taking their child to a different country without the other parent's, or a court's, consent for that purpose, or not allowing the child to return home at the end of a trip away. This striking form of interparental conflict means the child may now be in a country with which they may have no, or only limited, familiarity. This may be experienced as a relatively benign event, or even offer the benefit of reconnection with wider family members and/or escape from an abusive left-behind parent. Mostly, though, the abduction of a child by a parent to an overseas destination has a profoundly distressing and enduring impact on the child's wellbeing and identity, and the nature and quality of their intrafamilial relationships.

'International child abduction' was not, however, a recognised legal concept when this issue first properly emerged during the 1970s as a global phenomenon of immense social importance.¹ Then termed 'legal kidnapping' or 'childnapping', it faced the problem of being a topic that 'could not be defined, or even adequately identified'.² Nevertheless, there was recognition of its detrimental effects, including 'the risk of harm to the child and the certainty of distress to the parent from whom the child had been taken'.³ Escalating international mobility, coupled with the growth in cross-border relationships and children born within them, and rising separation/divorce rates, further fuelled the need for action.

Difficulty in securing the child's return from a foreign land also meant that, at an international level, the issue was beginning to capture the attention of lawyers, courts, governments and the public. Locating the abducted child and bringing an application for custody abroad was complicated, expensive, lengthy and exhausting, with no certainty of outcome due to the lack of satisfactory legal remedies and absence of mutual enforcement mechanisms between States. There was also concern that the courts, laws and values of the two countries involved were being unhelpfully pitted against one another.⁴ Similarly, complex inter-State issues could arise domestically when, for example, a child's abduction involved two jurisdictions within a large country like the United States (US).

There had been recognition of the need for an international approach to parental kidnapping since the end of World War Two, but it was during the 1970s that serious new initiatives

¹ Adair Dyer, 'The Hague Convention on the Civil Aspects of International Child Abduction – Towards Global Cooperation: Its Successes and Failures' (1993) *The International Journal of Children's Rights* 1, 273-292, at 274.

² *Ibid.*, at 275.

³ A E Anton, 'The Hague Convention on International Child Abduction' (1981) *International and Comparative Law Quarterly* 30(3), 537-567, at 537.

⁴ N Bala and M J Maur, 'The Hague Convention on Child Abduction: A Canadian Primer' (2014) *Canadian Family Law Quarterly* 33, 267-316; N Lowe and M Nicholls (2016) *International Movement of Children: Law, Practice and Procedure* (2nd ed, Jordan Publishing Ltd, Bristol, 2016).

started to emerge, for example, within the US (including the Parental Kidnapping Prevention Act of 1980) and the Council of Europe (including the Luxembourg Convention of 1980).⁵

Importantly, the Hague Conference on Private International Law (HCCH) started taking steps from 1976 to initiate an international treaty dealing with the ‘legal kidnapping’ of children by one of their parents. The phrase ‘international child abduction’, with which we are so familiar today, was quickly introduced because ‘legal kidnapping’ was considered to be an oxymoron and was untranslatable into French, the HCCH’s other official language:

Thus, we moved to a more neutral expression which could be rendered into French, ‘international child abduction’. This phrase is used in the title of the Hague Convention, but does not appear in the text, where the concept is broken down into two components: ‘wrongful removal’ of children and their ‘wrongful retention’.⁶

A draft Convention formed the basis for discussion at the Fourteenth Session of the HCCH (6–25 October 1980) where, following some expansion and a more defined structure, it was adopted by a unanimous vote on 24 October 1980. The Convention was immediately made available for signature by States, and was first signed the following day by Canada, France, Greece and Switzerland.⁷ The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereafter the Convention) entered into force on 1 December 1983 after its ratification by Canada, France and Portugal.⁸ By the time of its 40th anniversary in 2020, the Convention had attracted 101 Contracting States from all continents, highlighting its widespread acceptance. The Convention is the third most ratified instrument of the HCCH and also the most ratified HCCH Convention among its Member States.⁹

This *Research Handbook* sets out the differing contributions of the many professionals and key agencies involved in the international child abduction field from prevention, through voluntary agreements and Convention proceedings, to post-return and aftercare issues. As well, the critical perspective of victims/survivors who have personally experienced parental abduction as children is highlighted. By addressing the effect and consequences of international child abduction, we aim to set in context the purpose, role and impact of the Convention, which has become the principal global instrument for dealing with international child abduction. However, this cannot be achieved without also giving consideration to the many other initiatives that support or enhance the Convention’s operation including, for example, the Special Commissions; HCCH Permanent Bureau; Central Authorities; International Hague Network of Judges (IHNJ); regional initiatives, including the two HCCH Regional Offices¹⁰

⁵ Also called the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children 1980.

⁶ Dyer (n 1) at 275–76.

⁷ See Appendix 1 for a copy of The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.

⁸ G Goh Escolar, *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: Recent Developments, Current Status and Challenges* (Presentation to the Committee on Legal Affairs, European Parliament, 16 November 2020).

⁹ Ibid. Note that, as at 1 April 2023, there are 103 Contracting States to the Convention.

¹⁰ The Regional Office for Latin America and the Caribbean (ROLAC) and the Regional Office for the Asia Pacific (ROAP).

and the Brussels II-ter Regulation,¹¹ the Malta Process; significant judgments of such courts as the European Court of Human Rights (ECtHR), the Court of Justice of the European Union (CJEU), and the Supreme Courts of the US and the UK. This helps explain why the Convention is such an important mechanism for addressing international child abduction, and why efforts continue to be made to enhance its applicability and expand its reach by encouraging current non-Hague States to come on board. Over the past 42 years our knowledge and understanding of the Convention's global operation have grown enormously through the methodical, and now longitudinal, collection of data from Central Authorities for the last four Special Commissions.¹² As well, researchers have been active in building a fuller picture of the dynamics and impact of international child abduction, and the efficacy of our responses in relation to, for example, the challenges posed by domestic violence and child participation in the abduction context.

It is the combination of all these perspectives that is at the heart of this *Handbook*. We next turn to discuss the strengths and successes of the Convention, including its novel purpose and distinctive features, and briefly review the contribution made by research to our evidence base on international child abduction. Finally, an overview of Parts II to VIII of the Handbook, including their 25 comprehensive chapters, is provided.

STRENGTHS AND SUCCESSES OF THE CONVENTION

The Convention was implemented to provide for cooperation between its Contracting Parties to ensure that a child wrongfully removed or retained from their State of habitual residence in breach of rights of custody is returned forthwith. Unlike most other types of family law proceedings, the focus is on deciding the jurisdiction which will make the decisions regarding the child, not the child's welfare, unless one of the limited Convention exceptions to return applies and, even then, the court still retains a discretion to order the child's return anyway. The Convention thus adopted a novel approach whereby 'traditional private international law remedies were eschewed in favour of an untried procedural mechanism which would attempt to restore the *status quo ante*'.¹³ While some of its distinctive elements were not without controversy,¹⁴ and there is no supra-national body controlling its implementation, application and interpretation, the Convention is nevertheless respected and admired for its flexibility and responsiveness to the cross-border challenges posed by international child abduction and for its significant global reach.¹⁵

¹¹ Council 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, applied as from 1 August 2022.

¹² Nigel Lowe and Victoria Stephens, *Part I: A Statistical Analysis of Applications Made in 2015 under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction – Global Report* (HCCH Permanent Bureau, The Hague, 2017).

¹³ Diana Bryant, 'The 1980 Child Abduction Convention – The Status Quo and Future Challenges' in T John, R Gulati and B Köhler (eds) *The Elgar Companion to the Hague Conference on Private International Law* (Edward Elgar Publishing, Cheltenham, UK, 2020), 181–195 at 182.

¹⁴ *Ibid.*

¹⁵ Rhona Schuz, '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*

The Convention marked a new era of bilateral cooperation and its successful operation has depended enormously upon the key role undertaken by the Permanent Bureau of the HCCH in monitoring, overseeing and supporting the Convention's overall operation. This is achieved through the regular convening of Special Commissions (seven to date with the eighth in October 2023) and the provision of key resources, including a website, Guides to Good Practice, experts' groups, working groups, networks, conferences, meetings, country profiles, databases, statistical data and online tools. Central Authorities in each Contracting State are also critical to the Convention's smooth running. They cooperate across borders and provide specialised and cost-effective access to justice in the foreign country to which the child has been taken or in which they have been retained. As well, a diverse range of interdisciplinary professionals, including judges, lawyers, mediators and psychologists, and specialist NGOs, work to address the voluntary or court-ordered return of abducted children. Courts in the 103 Contracting States have been instrumental in interpreting and applying the Convention to build its rich global jurisprudence. Most importantly, the Convention has led to the return of thousands of children since its inception in 1980. It provides a mechanism for left-behind parents to more confidently seek their child's return, while the exceptions offer the possibility of the child's non-return where warranted.

The Convention has matured into a credible and valued instrument in the international family law portfolio. Its strengths and successes in helping to ameliorate the harmful effects of international child abduction, and the extensive buy-in it now enjoys, have helped it to weather over four decades of operation amidst enormous social change. Nevertheless, there are gaps and challenges that need to be addressed to maintain the Convention's integrity and responsiveness in contemporary times. We address this more directly in our final chapter where we articulate some of these key gaps and challenges and consider how best to future-proof the Convention for its continuing and critical role ahead.

THE RESEARCH CONTRIBUTION

Studies into the dynamics, effects and impact of international child abduction began in the US during the 1980s, but were small-scale in nature and typically involved case studies and case file analyses undertaken in clinical and therapeutic contexts¹⁶ and in missing children's organisations.¹⁷ Subsequently, questionnaires, telephone surveys and semi-structured telephone interviews were used to achieve larger sample sizes, including, from 1989, in the collection of longitudinal data on 371 US parents' perspectives about abducted children's wellbeing.¹⁸

in Honour of Nigel Lowe (Intersentia Ltd, Cambridge, UK, 2018, 315–28); Rhona Schuz, *The Hague Child Abduction Convention – A Critical Analysis* (Hart, 2013).

¹⁶ See, e.g., LC Terr, 'Child Snatching: A New Epidemic of an Ancient Malady' (1983) *Journal of Pediatrics* 103, 151–6; MW Agopian, 'The Impact on Children of Abduction by Parents' (1984) *Child Welfare*, 63, 511–19.

¹⁷ See, e.g., RF Janvier, K McCormick and R Donaldson, 'Parental Kidnapping: A Survey of Left-behind Parents' (1990) *Juvenile and Family Court Journal* 41, 1–8.

¹⁸ GL Greif, 'The Long-term Impact of Parental Abduction on Children: Implications for Treatment' (1998) *The Journal of Psychiatry and Law* 26, 45–60; RL Hegar and GL Greif, (1991) 'Parental Kidnapping Across International Borders' (1991) *International Social Work* 34, 353–63; RL Hegar and

Using small-scale qualitative research methods, Marilyn Freeman investigated the outcomes and effects of international child abduction.¹⁹ Left-behind and abducting parents reported the effects were on-going several years after the abduction and return; 72 per cent believed their children had been adversely affected by the abduction experience.²⁰ Parents also spoke of the effects of the abduction on themselves – particularly depression, lack of security, absence of trust, and unavailability of post-return support. Interviews with ten abducted children revealed the vividness of the abduction event and the dislocation and stress they endured.²¹ A further study into the long-term effects of abduction provided insight into the experiences of previously abducted children, both at the time of their abduction and on into their adult lives.²² Very significant mental health effects were reported by 74 per cent, including blanking out, isolation, and a lack of trust pervading their ability to form and maintain satisfying friendships and intimate relationships. The challenges of return/reintegration into the left-behind family, at whatever stage that might occur, were often major obstacles for all members of the abducted child's family, and the psychological barriers created by the abduction were sometimes impossible to repair. The tensions experienced, and often handled on their own, while trying to understand the way they actually felt, as opposed to the way they thought they were supposed to feel, led on many occasions to mental health issues requiring treatment in adult life. Those not returned experienced difficulties that included an enhanced sense of unworthiness linked to a feeling of not being good enough to be found by the left-behind parent, by whom they felt abandoned and unprotected.

In recent times, several European research projects have yielded findings on current issues of concern regarding children's wellbeing, child participation, mediation and domestic violence. An analysis was undertaken of 667 files, open during 2007 and 2008, primarily involving children abducted from, or to, Belgium.²³ The EWELL project was aimed at ensuring the wellbeing of children in judicial cooperation in cases of international child abduction.²⁴ Children's voices in international child abduction proceedings in Europe were examined through an analysis of 2005–17 case law concerning the 'best interests' concept and hearing the child in judicial return proceedings in 17 countries, the ECtHR and the CJEU.²⁵ AMICABLE, an EU

GL Greif, 'How Parentally Abducted Children Fare: An Interim Report on Families Who Recover Their Children' (1993) *The Journal of Psychiatry and Law* 21, 373–84.

¹⁹ Marilyn Freeman, 'The Effects and Consequences of International Child Abduction' (1998) *Family Law Quarterly* 32(3), 603–21; Marilyn Freeman, *The Outcomes for Children Returned Following an Abduction*. (Research Report, reunite International Child Abduction Centre, Leicester, 2003); Marilyn Freeman, *International Child Abduction: The Effects* (Research Report, reunite International Child Abduction Centre, Leicester, 2006).

²⁰ *Ibid.*, Freeman (2006).

²¹ *Ibid.*

²² Marilyn Freeman, *Parental Child Abduction: The Long-term Effects* (International Centre for Family Law, Policy and Practice, London, 2014).

²³ Thalia Kruger, *International Child Abduction: The Inadequacies of the Law* (Hart Publishing, Oxford, UK, 2011).

²⁴ K Van Hoorde, M Putters, G Buser, S Lembrechts, K Ponnet, T Kruger, W Vandenhole, H Demarré, N Broodhaerts, C Coruz, A Larcher, D Moralis, C Hilpert and N Chretiennot, *Bouncing Back: The Wellbeing of Children in International Child Abduction Cases* (EWELL, with the support of the European Union, 2017).

²⁵ L Carpaneto, T Kruger and W Vandenhole, *The Voice of the Child in International Child Abduction Proceedings in Europe – Work Stream Two: Case Law Results* (Universities of Genoa and Antwerp, with the support of the European Union, 2019).

co-funded project on recognition and enforcement of mediated family agreements, developed a Best Practice Tool and Model for incorporating mediation into Convention proceedings.²⁶ The collaborative POAM project explored the intersection between domestic violence and parental child abduction with the aim of better protecting abducting mothers in return proceedings within the EU.²⁷

In 2017, we undertook a project funded by the British Academy to ascertain global use of, and experience with, the child objection exception in the Convention. Our online survey was completed by 97 family justice professionals from 32 countries and informed a series of workshops we convened in Auckland, Genoa and London in 2018.²⁸

Finally, an important set of statistical surveys on the Convention's operation, led by Professor Nigel Lowe KC (Hon), and reported on in this *Handbook* (see Chapter 5), has been undertaken to help inform the four most recent meetings of the Special Commission in 2001, 2006, 2011 and 2017.²⁹ 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.

Research on international child abduction has provided much-needed insight into its intrafamilial dynamics and harmful effects, and the operation of the Convention generally. However, the methodological and sample recruitment challenges of conducting research in this field help explain the limitations and gaps in the existing evidence base. There is strong international consensus on the need for further rigorous research to be undertaken, including a significant Conclusion and Recommendation approved by the Seventh Special Commission, in 2017, on the desirability of further research to (i) improve the short-term and long-term outcomes for children and relevant family members, including taking and left-behind parents; and (ii) the impact and effectiveness of protective measures, other judicial and legal processes, support services, and/or arrangements to apply post-return.³⁰

²⁶ AMICABLE, *Best Practice Tools for the Enforceability of Mediated Agreements and Best Practice Model for Incorporating Mediation into Child Abduction Proceedings* (MiKK, 2019–2021): <https://www.amicable-eu.org/> accessed 23 January 2023.

²⁷ K Trimmings, A Dutta, C Honorati and M. Zupan (eds) *Domestic Violence and Parental Child Abduction* (Intersentia Ltd, Cambridge, England, 2022); 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;

²⁸ Nicola Taylor and Marilyn Freeman, 'Outcomes for Objecting Children under the 1980 Hague Convention on the Civil Aspects of International Child Abduction' (2018) *The Judges' Newsletter on International Child Protection*, XXII, Summer–Fall, Special Focus: The Child's Voice – 16 Years Later. HCCH Permanent Bureau, The Hague, 8–12.

²⁹ Lowe and Stephens (n 12).

³⁰ Conclusion and Recommendation No 81, Seventh Meeting of the Special Commission to Review the Operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (HCCH, The Hague, 17 October 2017); see also Nicola Taylor and Marilyn Freeman, 'Using Research to Improve Outcomes for Abducted Children' in G Douglas, M Murch and V Stephens (eds) *International and National Perspectives on Child and Family Law: Essays in Honour of Nigel Lowe* (Intersentia Ltd, Cambridge, England, 2018), 329–42 at 342.

OVERVIEW OF THE HANDBOOK

This *Handbook* was written during a remarkable period of world history as State borders closed and lockdowns were imposed in response to the COVID-19 pandemic. The pandemic had significant implications for separated families whose parenting arrangements had to be quickly modified. In addition, the HCCH Permanent Bureau, Central Authorities, courts, legal practitioners and NGOs had to immediately adapt their practice to work remotely or online.

The *Handbook* comprises 25 chapters, beyond this introductory one, which are set out in the next seven Parts; 35 specialist authors have shared their expertise on, and experience in, the field of international child abduction and the Convention. We are confident their contributions will inform and inspire readers and now briefly review the content and issues addressed in each chapter of the Handbook.

Part II: The Impacts of International Child Abduction

Part II of the *Handbook* commences, in Chapter 2, with the personal story of Sarah Cecilie Finkelstein Waters whose father abducted her, as a four-year-old, from Norway to the US in 1974, changing her name from Cecilie to Sarah in the process. Her abduction therefore preceded implementation of the Convention by six years, but she makes a compelling case for why such a Convention is necessary. At the age of 12, Sarah Cecilie found herself pictured on a milk carton as a missing child – hence the title of her chapter: *Long-term Reflections of a Former Milk Carton Kid*. However, her fear that her life, as she then knew it, would be turned upside down meant she was too frightened to call the number on the carton for help in reuniting with her mother. Instead, Sarah Cecilie tucked the photo away and looked at it frequently to remind herself of the little girl she once was. Her vivid account in Chapter 2 highlights the emotional disconnection, loss, trauma and fear, as well as the choppy, broken and confused memories that abducted children struggle with, often into their adult lives. Positioning this chapter at the forefront of the *Handbook* ensures that Sarah Cecilie’s personal experience, and its enduring impact, sets the scene for the more professionally-oriented chapters that follow.

In Chapter 3, Dr Sarah Calvert, a clinical psychologist and specialist report writer from New Zealand, discusses the adverse psychological outcomes for children from high levels of interparental conflict and dispute, which often require resolution by the courts. She identifies international child abduction as a specific childhood experience that has significant capacity to cause psychological harm to children. This is because it involves exceptional and unexpected changes for children, reduces their access to social capital, and creates potential for the loss of essential relationships. Sarah also considers how psychological knowledge can aid court systems to better hear and consider children’s views, as well as how courts can make decisions for children which might mitigate some of the known adverse outcomes of high conflict and abduction.

Part III: The 1980 Hague Convention – History and Longitudinal Trends

Professor Linda Elrod traces the history of the global effort to deter and deal with parental kidnapping / international child abduction in Chapter 4. The need for an international approach had become evident after World War Two when the challenge of finding and returning abducted children was recognised as almost insurmountable. Left-behind parents often did not

know how to get help as they were faced with the unfamiliar task of trying to obtain a return order from a foreign court. Parallel projects developed in Europe, the US and Canada from the late 1960s to curb abduction. In 1976, the HCCH commenced the work that led to the Hague Convention on the Civil Aspects of International Child Abduction being adopted on 25 October 1980. The Convention entered into force in 1983 and marked a new era of global cooperation over issues relating to children. Linda discusses the structure of the Convention, its post-ratification history, its progressive growth in membership globally, and its many other successes.

In Chapter 5, the critical longitudinal value of the series of statistical studies examining the operation of the 1980 Hague Convention is outlined by Professor Nigel Lowe KC (Hon) and Victoria Stephens. Four statistical studies, led by Nigel, have involved analysis of the applications received by Central Authorities in 1999, 2003, 2008 and 2015 to help inform the Special Commissions held in 2001, 2006, 2011 and 2017. A fifth study, based on applications received in 2021, is currently underway to assist the Eighth Special Commission in October 2023. These findings are the only global source of data on the operation of the Convention and provide vital information to the HCCH, Contracting States, family justice professionals and scholars. Nigel and Victoria examine the studies' history and methodology, summarise the findings and key trends, and assess the value and influence of this longstanding dataset. They also consider the challenges confronted in undertaking the surveys, their limitations, and the possibilities for future studies.

Part IV: The 1980 Hague Convention – Implementation and Operationalisation

In Part IV, the *Handbook* turns to consider key aspects of the implementation and operationalisation of the Convention. These include in relation to the role of the Permanent Bureau, domestic violence and Article 13(1)(b), child participation and the child objection exception, judicial activism, direct judicial communication and the International Hague Network of Judges.

Dr Gérardine Goh Escolar, Deputy Secretary General of the Hague Conference on Private International Law, explains the pivotal role, activities and impact of the Permanent Bureau in supporting the proper operation of the 1980 Hague Convention in Chapter 6. The HCCH is an intergovernmental organisation with the mission to provide internationally agreed solutions to issues of private international law. These are developed through the negotiation, adoption and operation of international treaties, such as the 1980, and other, Conventions. The Permanent Bureau is seated in The Hague, the Netherlands, and has two Regional Offices for the Asia Pacific (ROAP) and for Latin America and the Caribbean (ROLAC). It prepares, organises and acts as Secretariat of Sessions and Meetings of the HCCH. Amongst many other tasks, it also facilitates communication and maintains networks, undertakes training, and organises and participates in international meetings and conferences.

Chapter 7 is devoted to issues concerning international child abduction in the context of domestic violence, including the efficacy of Article 13(1)(b). Professor Jeffrey Edleson, Sudha Shetty and Mary Fata note that the majority of taking parents are now mothers, most of whom are the primary carer or joint-primary carers of their children, and that many allege domestic violence by left-behind fathers. Very little research on the impact of domestic violence on children was available when the Convention was drafted. However, social science research is now conclusive that a child's exposure to adult-to-adult domestic violence will likely result

in significant adverse physical and psychological risks and outcomes for them. Jeffrey, Sudha and Mary consider that the Convention's drafters were prescient in including Article 13(1) (b) as an exception to return and they encourage courts in their interpretation of this provision to recognise the dangers of returning a child to an environment where there is a high risk of continuing exposure to violence. They also report that the few studies undertaken on the use of voluntary undertakings or mirror orders indicate that these are often ineffective and rarely enforced. Nevertheless, Jeffrey, Sudha and Mary highlight several positive changes over the past decade in considering a child's exposure to domestic violence as a potential grave risk in abduction cases. They also discuss the HagueDV Project, research on US case outcomes, and the importance of expert witnesses and judicial training in helping judges to better understand domestic violence and its potential future risk to abducted children. Chapter 7 concludes with multiple recommendations to the Permanent Bureau, Central Authorities and professional legal associations and domestic violence programmes.

Professor Rhona Schuz notes, in Chapter 8, that the Convention includes the child objection exception in Article 13(2), but does not otherwise provide for the participation of children in return proceedings. Rather, it is left to national law and practice to determine whether and how children should be heard. The Convention preceded, by a decade, the recognition that children have a right to participate in legal proceedings concerning them, as now provided in Article 12 of the United Nations Convention on the Rights of the Child (UNCRC) 1989. Rhona discusses the main methods of hearing children, and the structure of the exception and its two-stage decision-making process. Issues concerning the child's age and maturity, the nature and strength of the objection, the independence and validity of the child's views, and exercise of the discretion to return are also addressed. Since children's right to participate is not limited to cases where they object to return, Rhona argues that active steps need to be taken to promote greater uniformity and a more child-centric approach in Convention proceedings consistent with the philosophy of the United Nations Convention on the Rights of the Child (UNCRC).

In Chapter 9, The Right Honourable Sir Mathew Thorpe, the Former Head of International Family Justice for England and Wales reports on the 20-year evolution of judicial activism regarding Convention proceedings. As the number of Contracting States increased it had become increasingly evident that the Convention's successful operation depended not only upon the role of the Central Authorities, but also upon the effective work of the judges hearing Convention cases. Sir Mathew discusses the use of direct judicial communication in such cases and the development of international judicial networks – principally, the International Hague Network of Judges (IHNJ) from 1998 and, in so far as it operates independently, the European Network of Judges. He also gives consideration to the impact of the COVID-19 pandemic on judicial communication and collaboration.

Part V: International Child Abduction in Selected Geographical Regions

The approach to international child abduction in selected geographical regions of the world is addressed in Part V of the Handbook. This includes the European Union, Australasia and the Pacific, the US, Asia, Africa, and the Caribbean. We wish to acknowledge the extensive outreach efforts that the authors of Chapters 10–16 made to seek information on international child abduction and the operation of the Convention from countries within their region. This was not always straightforward, particularly when there was scant information available or

there were many non-Convention States within a region (as in Africa, the Caribbean and the Pacific).

In Chapter 10, Professor Thalia Kruger and Sara Lembrechts provide an overview of the European Court of Human Rights (ECtHR), which is a regional court that guards over the application of the European Convention on Human Rights (ECHR). Individuals can, after they have exhausted domestic remedies, bring a case to the ECtHR against a Council of Europe Member State when they consider that the State has violated their rights. The ECtHR has issued 84 judgments in the field of international parental child abduction since January 2000. Some cases were brought by the left-behind parent, and others by the taking parent. Judgments assess the alleged infringement of the right to respect for family life (Article 8, ECHR) or of the right to a fair trial (Article 6, ECHR), or both. Thalia and Sara provide an overview of the main judgments of the ECtHR and address the operation of the 1980 Hague Convention in light of the regional human rights framework.

Dr Professor Costanza Honorati focuses on the Court of Justice of the European Union (CJEU) and international child abduction in Chapter 11. All of the EU Member States are Contracting States to the 1980 Hague Convention. The Brussels II-bis Regulation incorporated the Convention within the framework for EU judicial cooperation, but set a higher standard in the level of protection of abducted children. The Brussels II-ter Regulation, which took effect on 1 August 2022, further confirms this approach. The EU has thus developed a complex set of rules for the international abduction of children, which, while based on a formal reference to the Convention, experimented with new solutions and acquired its own specificity. After nearly 20 years of this combined set of rules being applied under the guidance of the CJEU, Costanza suggests that some of the guidance offered to EU national courts may also be of some interest to third States. She addresses several issues including the child's habitual residence, termination of retained jurisdiction, provisional measures, hearing the child, the override mechanism, the child's right to personal relations with both parents, and adequate arrangements for the child's safe return. These are issues where the impact of the CJEU has been stronger and where she argues a welcome cross-fertilisation with the practice of third States could be possible.

Professor Mark Henaghan, Christian Poland and Clement Kong review the similarities and differences in the approach to international child abduction in Australasia and the Pacific in Chapter 12. New Zealand, Australia and Fiji are the only signatories to the Convention in this region and have each adopted a different philosophy to the handling of cases. Mark, Christian and Clement compare each country's approach to such key aspects as the 'rights of custody' threshold, the definition of habitual residence and the exceptions to return, including when the child has become settled in their new environment, when returning the child exposes them to a grave risk of harm or an intolerable situation, or when the child objects to return. They report on a trend to move away from rigid application of the Convention to a greater focus on the welfare of the child, particularly in cases involving domestic violence. They also express concern about the narrow interpretation of the child objection exception which does not reflect current thinking on child participation nor the essential role that children's views play in family law decision-making. Finally, Mark, Christian and Clement provide an overview of the jurisprudence in several non-Convention Pacific countries (Samoa, Tonga, Papua New Guinea and the Cook Islands) where the courts nevertheless generally follow Convention principles.

In Chapter 13, Stephen Cullen and Kelly Powers, both highly experienced cross-jurisdictional specialist legal practitioners, describe the Convention as remaining strong and robust in the

US. Their jurisprudence has continued to develop throughout the COVID-19 pandemic with several of the circuit conflicts on key issues in Convention litigation now resolved. The US Supreme Court and Courts of Appeal have recently published important Convention cases resolving the test for habitual residence, expanding the ‘rights of custody’ analysis, and clarifying at what point in time a wrongful retention is to be calculated. There is also developing and helpful law on the concept of undertakings. However, Stephen and Kelly report that US courts continue to struggle with the mature child’s objection exception, with no clear appellate jurisprudence in sight on how children’s views can, and should, be considered. Furthermore, the Supreme Court has not yet taken up a case allowing the justices to settle upon a nationwide test for grave risk in the US.

In Chapter 14, Professor Yuko Nishitani discusses the challenge for Asian countries in accepting and implementing the Convention due to their divergent culture and family law traditions. She explains that family law institutions in Asia often lack a clear concept of parental rights or obligations for custody or favour the father as the natural custodian or guardian of the child. It has therefore been a delicate issue for some Asian countries to accept that a primary caregiver’s act of removing or retaining the child without the other parent’s consent is wrongful, and to also accept the fundamental aim of the Convention to secure the prompt return of a wrongfully removed or retained child, thereby protecting the child by restoring the status quo. Currently, there are eight Contracting States in Asia: China (only Hong Kong (1997) and Macao (1999)), Sri Lanka (2001), Thailand (2002), Singapore (2011), Republic of Korea (2013), Japan (2014), the Philippines (2016) and Pakistan (2016). Yuko outlines the background to Japan’s Implementation Act which enabled the Convention to take effect there from 1 April 2014. Practice has since evolved and case law has developed, particularly through three Supreme Court decisions in 2017, 2018 and 2019 which are outlined in this chapter. Yuko discusses the specific provision inserted into the Implementation Act to further define the grave risk exception. Despite initial concern this would allow judges to extend the scope of grave risk and readily dismiss a petition for return of the child, she states that Japanese courts have followed a restrictive interpretation. She also considers issues relating to habitual residence, the child’s objection, and enforcement of return orders. Finally, Yuko examines the situation in India and Islamic countries which have not yet joined the Convention and addresses the remaining challenges for Asian jurisdictions.

In Africa, a continent spanning 55 countries, only 14 States have ratified the Convention: Botswana, Burkina Faso, Cabo Verde, Gabon, Ghana, Guinea, Lesotho, Mauritius, Morocco, South Africa, Seychelles, Tunisia, Zambia, and Zimbabwe (which has yet to properly designate a Central Authority). Professor Julia Sloth-Nielsen reports, in Chapter 15, that with the exception of South Africa, there is almost no Convention literature or case law in Africa, and information on the practical application of the Convention is very limited. However, there is a rich jurisprudence from South Africa and Julia analyses their case law in relation to several key issues, including the best interests of the child, acquiescence, and habitual residence. Children’s objections have often formed the basis of a refusal to return the child from South Africa to the state of habitual residence. There is compulsory legal representation of the child. South African courts often use conditions and mirror orders to support the return of the child. Julia argues that the Convention should be popularised to a greater extent in Africa, and be accompanied by judicial training to support its implementation. Much more also needs to be done to encourage the 41 countries not currently part of the Convention to become so.

In Chapter 16, Diahann Gordon Harrison, Children's Advocate of Jamaica, examines the extent to which countries within the Caribbean region engage with the Convention. While the benefit of a structured framework within which to pursue the swift and effective return of wrongfully removed or retained children is recognised, only nine of the 32 territories in the Caribbean region are Contracting Parties to the Convention in their own right by virtue of instruments of accession: The Bahamas, Barbados, Belize, Cuba, Dominican Republic, Guyana, Jamaica, St Kitts and Nevis, and Trinidad and Tobago. However, the Convention applies to five other territories in the region by virtue of it being extended to them in their capacity as territorial units. Four are the UK territories of Anguilla, Bermuda, the Cayman Islands and Montserrat, while the fifth is The Caribbean Netherlands, a Dutch owned territory. Diahann discusses the important distinctions that exist in relation to operation of the Convention between the nine Contracting Parties and the five dependent territories. She also gives consideration to the many gaps and challenges that continue to confront the Caribbean region and makes several recommendations for the future.

Part VI: Non-Hague Convention Countries

Jeremy Morley, a highly experienced New York attorney, focuses Chapter 17 on international child abduction and non-Hague Convention countries. For a variety of reasons, these countries have resisted significant international pressure to adopt the Convention. Some, like India, have made an affirmative decision not to accede, while others may be concerned about a potential interference with their sovereignty, disturbance with their cultural or religious norms, have more pressing problems to address, or see no benefit to doing so. Jeremy discusses the great variety of bilateral agreements that have been entered into between specific countries, but concludes that these have generally been ineffective. He also examines the Malta Process which is intended to promote dialogue and cooperation between Hague countries and non-Hague countries whose legal systems are based upon, or influenced by, Islamic (Sharia) law. Jeremy states that it is usually extremely challenging, and often impossible, to recover children abducted to non-Hague countries. He discusses several strategies to prevent children's abduction to these countries or ways of trying to recover them if they are.

India is not a signatory to the 1980 Hague Convention, so when a child is abducted to India it is the Indian domestic legal system that decides whether the child will be returned to their State of habitual residence or will remain in India. In Chapter 18, Anil Malhotra and Ranjit Malhotra, lawyers who specialise in private international law cases, discuss the implications of international parental child abduction not being subject to legislative definition in India. They also highlight how it remains a subject of varying judicial interpretation from the Supreme Court of India. Anil and Ranjit consider The Protection of Children (Inter-Country Removal and Retention) Bill 2018, drafted by The Justice Rajesh Bindal Committee, which, notwithstanding the efforts of those involved, did not become law. They discuss the use of a writ of Habeas Corpus and find encouragement in the evolving use of mirror orders as a possible way forward until a law on the subject is enacted and an adjudicatory dispute resolution process is implemented. Until then, they say, matters will continue to be decided on ad hoc parameters, in the best interests and welfare of the children on a case-by-case basis.

Part VII: Key Perspectives on International Child Abduction and Convention Proceedings

Part VII of the *Handbook* sets out a range of interdisciplinary perspectives on international child abduction and Convention proceedings. These include contributions on the CRC, judicial, legal, Central Authority, specialist NGO/support services, and mediation perspectives.

In Chapter 19, Professor Ann Skelton, a child law expert and a member of the UN Committee on the Rights of the Child, addresses the CRC perspective in the context of international child abduction and the 1980 Hague Convention. She argues that discerning this perspective requires a constructive approach because there is no clear statement, such as a General Comment, that presents an official position by the CRC Committee. The debates in academic and practitioner circles about the Convention and its compatibility with the UNCRC and with a children's rights approach remain unresolved. After reviewing the scholarly literature, Ann analyses the CRC Committee's jurisprudence relevant to the Convention from concluding observations to State Parties, relevant General Comments (e.g., on the right of the child to have his or her best interests taken as a primary consideration, and on the right of the child to be heard), and decisions adopted under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OPIC). From these sources, she constructs the current CRC perspective on international child abduction and the 1980 Hague Convention. Her conclusion evaluates factors that may shape future directions in the CRC perspective on the Convention.

The Honourable Mr Justice Alistair MacDonald, a Judge of the Family Division of the High Court of England and Wales and the Deputy Head of International Family Justice for England and Wales, sets out a judicial perspective on the Convention in Chapter 20. He notes, at the outset, that proceedings under the Convention constitute challenges to what might be considered the traditional or welfare role of a family judge in day-to-day proceedings concerning children. Mr Justice MacDonald particularly focuses on a tension arising in the operation of Article 13(1)(b) between the need to adopt a summary process to meet the Convention aim of ensuring a prompt return of the abducted child to the State of their habitual residence, and the need to ensure a procedurally and forensically robust examination of whether the child would thereby be exposed to a grave risk of physical or psychological harm or otherwise placed in an intolerable situation. This tension is increased in cases where the grave risk is said to be grounded in domestic abuse comprising a subtle pattern over time of coercive and/or controlling behaviour that may never give rise to specific and identifiable incidents of physical harm. As we come to understand more about this form of domestic abuse, Mr Justice MacDonald examines the arguments in favour of a more detailed fact-finding exercise being undertaken in those cases involving disputed allegations of domestic abuse comprising coercive and/or controlling behaviour. He also considers the best interests principle, noting that it is not directly addressed by the articles of the Convention nor mentioned in its objects. The jurisprudence concerning the role of best interests in cases under the Convention has witnessed a degree of oscillation. Mr Justice MacDonald considers it important that judges determining applications under the Convention are properly trained with respect to the identification and impact of all types of domestic abuse.

Henry Setright KC and Michael Gratton KC, leading specialist barristers practising in London, provide a legal perspective on the impact of international developments upon the English legal approach in Chapter 21. They trace how legal practice in cases of international child abduction generally, but specifically in cases brought under the Convention, has devel-

oped significantly over the life of the Convention, to the point where the way in which cases are determined in 2023 would be unrecognisable to an abduction specialist practising in England and Wales between 1985 and 2010. They state that a significant driving force in the development of the Convention has been the intervention of the ECtHR and the CJEU, particularly in relation to the determination of a child's habitual residence, Article 13(1)(b), and the role that children play in abduction proceedings. Henry and Michael note that children now play a much greater part in abduction proceedings in England and Wales than was previously the case. However, when children's separate representation is necessary, this does increase the complexity of the proceedings in a way that is entirely understandable and justified, but which can lead to delay. Henry and Michael also chart the developments in practice in relation to habitual residence and Article 13(1)(b) and find that these have significantly complicated abduction cases from a practitioner's perspective. The additional complexity has resulted in an increased number of cases that require oral evidence and/or complicated legal analysis to resolve. This has, in turn, resulted in longer hearings and increased delay in resolving cases. Despite the process now being less expeditious, Henry and Michael nevertheless conclude that it is probably fairer, particularly to children.

In Chapter 22, Joëlle Schickel-Küng and Dr Anna Claudia Alfieri, who both hold senior positions in the Private International Law Unit at the Federal Office of Justice of Switzerland, which also undertakes the Swiss Central Authority functions under the 1980 Hague Convention, discuss international child abduction from the perspective of a Central Authority under the 1980 Hague Convention. They discuss Article 7 of the Convention and the duty of Central Authorities to cooperate with each other and to promote cooperation amongst the competent authorities in their respective States to secure the prompt return of abducted children. Joëlle and Anna Claudia consider the role and functions of Central Authorities and address practical difficulties, challenges and best practices from a Swiss perspective. The COVID-19 pandemic posed exceptional challenges, but the willingness of Central Authorities globally to rapidly adapt their work practices, knowing that relationships between children and their parents were at stake, ensured greater flexibility. Joëlle and Anna Claudia discuss the principles that Central Authorities follow when processing return (and access) applications, incoming and outgoing, and also explain their other duties, including discovery of the child's whereabouts and the provision of arrangements to secure the child's safe return. Finally, Joëlle and Anna Claudia analyse the strengths and benefits of the Central Authority model, and conclude by discussing the instrumental role they perform, when properly empowered and resourced, in ensuring the optimum functioning of the Convention.

In Chapter 23, Drs. Suzanne Labadie, Senior Jurist at the International Child Abduction Center (Center IKO) in the Netherlands, brings a specialist NGO and support services perspective to the *Handbook*. She advocates for the establishment of a Central Point of information (CPI), as proposed in the 2005 Guide to Good Practice on Preventive Measures, within each State Party to the 1980 Hague Convention, either in the Central Authority or another body. The work of several NGOs with a diverse portfolio (e.g., ISS, NCMEC, Take Root, Child Focus) or an exclusive focus on international child abduction (e.g., reunite, Center IKO) is described. The chapter is primarily devoted to explaining the history and role of the Center IKO, which acts as a CPI, and was established in 2006 as an independent legal expertise centre on international family conflicts, especially international child abduction. The Center offers free information, support and advice to parents, professionals and children, including a website, telephone help-lines, campaigns, networking, and a five-step training model (ASSAA). In 2009, a Mediation

Bureau was added to organise and co-ordinate cross-border mediation according to the Dutch Model. Suzanne emphasises that prevention of abduction is preferable to having to recover and return children later – the accessibility of information is crucial to this focus.

The mediator's perspective is provided in Chapter 24 by Ishtar Khalaf-Newsome of the MiKK International Mediation Centre for Family Conflict and Child Abduction in Berlin, Germany. Mediation has been widely promoted and practised in domestic family disputes since the 1970s. Ishtar discusses the advantages offered by the use of mediation in family conflicts involving children and the momentum it started gaining in international parental child abduction cases just a decade ago. Several hard and soft law instruments, as well as the pioneering efforts of the specialist mediation services around the world, have aided the evolution of cross-border family mediation (CBFM) into a distinct discipline. Ishtar explains how the complexity and high escalation of child abduction cases involving different cultures, languages and two legal systems requires specialist training for mediators to equip them with the knowledge, skills and understanding of the best practices to mediate such cases under immense time pressure.

Part VIII: Reflections and Future Directions

Given the length of time the Convention has now been in force, Professor Nigel Lowe KC (Hon) considers, in Chapter 25, that it is timely to review its operation, to consider what challenges it has faced and to examine whether the instrument needs a more radical overhaul. He begins with a brief overview and early perceptions of the Convention and examines how the HCCH Permanent Bureau, the Special Commissions and Good Practice Guides have helped to nurture the Convention. Nigel discusses the challenges posed by human rights considerations, challenges to the Convention's *raison d'être*, and operational challenges, particularly the need for speedy disposals of applications. He identifies gaps in its coverage, such as enforcement and ensuring safe returns. Nigel concludes that while the Convention is not in need of a radical overhaul, it should not be immune to some change.

In our role as the *Handbook's* Co-editors, we applied a critically analytical lens to scrutinise the contents of, and issues raised in, Chapters 2–25. In the *Handbook's* final chapter, Chapter 26, we unpack the four key themes that our thematic analysis of these chapters revealed as particularly important to consider:

1. The effects and consequences of international child abduction.
2. The uneven playing field of the 1980 Hague Convention.
3. The 1980 Hague Convention as an instrument to protect children must not become an instrument of harm to them.
4. Nurturing the 1980 Hague Convention so it remains fit for purpose.

There are important opportunities ahead to enable the Convention to successfully continue, in contemporary circumstances, to honour and fulfil its laudable aim of protecting children internationally from the harmful effects of abduction. The themes, issues and challenges identified in this *Handbook*, which represent specialist thinking about international child abduction and the operation of the Convention, provide compelling arguments justifying the necessity for further discussion and possible developments in this field. The Eighth Special Commission, taking place in October 2023, will be especially timely in enabling many key members of the international child abduction community to meet for the first time since the global experience

of the COVID-19 pandemic. This, together with other future initiatives, will be critical in supporting and nurturing the Convention going forward.

CONCLUSION

This *Handbook* considers the field of international child abduction and the Convention's strengths, successes, gaps and challenges, some of which have been evident since its inception and others which have become starker, or have emerged, as our world has changed and our knowledge of the international child abduction field has expanded. We hope the *Handbook* encourages you to think deeply about the dynamics and impact of international child abduction, how well the Convention promotes children's interests in the way intended by its drafters and set out in its Preamble, and how best to future-proof its operation as it heads towards its golden 50th anniversary.

RESEARCH HANDBOOK ON INTERNATIONAL CHILD
ABDUCTION

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Research Handbook on International Child Abduction

The 1980 Hague Convention

Edited by

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This Handbook is dedicated to the memory of Anne-Marie Hutchinson, OBE, QC (Honoris Causa), PhD (Honorary), (1957–2020), and her invaluable contribution to the field of international child abduction.



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Nicola Taylor is a Professor specialising in Child and Family Law, and the Director of the Children's Issues Centre, in the Faculty of Law at the University of Otago in New Zealand. She also holds the Alexander McMillan Leading Thinker Chair in Childhood Studies. Nicola has qualifications in both law and social work, a PhD, has been admitted as a Barrister and Solicitor of the High Court of New Zealand, and is a qualified mediator. She is Secretary of the International Association of Child Law Researchers (IACLaR). Nicola is a leading socio-legal researcher and has undertaken many studies with children, parents and professionals on family law and children's rights issues including post-separation care arrangements, relocation, international child abduction, children's views and participation, family dispute resolution, relationship property division and succession law. Her research findings have been invaluable in informing legislative, legal policy and professional practice developments within New Zealand and internationally.

Sir Mathew Thorpe is the Former Head of International Family Justice for England & Wales, and an Associate Member, 1 Hare Court, London, England. He proposed the creation of the International Hague Network of Judges (IHNJ) and nurtured its global growth and development throughout his career.

Foreword

The Hague Convention on the Civil Aspects of International Child Abduction was and is rightly lauded as an innovative approach to meeting a serious and growing risk to children in today's world, a world of transnational personal relationships and easy international travel (COVID-19 apart). No one reading the harrowing story of the 'milk carton kid' in Chapter 2, or about the near-impossibility of recovering children from countries which are not party to the Convention in Chapter 17, can be in any doubt about how necessary the Convention was and is. But that does not mean that it is perfect. After more than 40 years' experience, it is important to gather together as much information as there is about how the Convention is working all over the world, its strengths and its successes, but also its weaknesses and its failures.

The strengths are simple. One parent uproots (or keeps) a child or children from their home country without lawful authority, thus destabilising the children's whole world, with what can be devastating effects, not only at the time but long afterwards. The obvious answer is to get them back to their home country as quickly as possible, so that stability is restored and disputes about their future can be decided in the place where they belong.

But human life is not so simple and two dilemmas in particular have emerged over the years. The first is that there may be good reasons for the unlawful taking (or even keeping) of a child. The taking or keeping parent may be the victim of domestic violence or abuse. She may have felt that flight was the only option. Her problem may be particularly acute in cases of controlling or coercive behaviour on the part of the other parent, because its hallmark is depriving the victim of all feelings of agency and self-worth. Threatening to deprive her of her children is a common feature. There is now a mountain of evidence of the harmful effect upon children of being exposed to domestic violence or abuse between their parents. But the Convention has been slow to work out a coherent response even to this known risk, because of fears that investigating the facts and exploring the risks will frustrate the object of speedy return. The problem becomes even more acute as we begin to understand the harm done by coercive or controlling behaviour, because this is so much harder to prove.

One benefit of a Handbook which tells us what we do know is that it also shows up what we don't know. We do not know much about the reasons why parents take or keep their children when they shouldn't. Why did the milk carton kid's father think it remotely appropriate to uproot her from her settled home, her country, her language, her religion and take her to a very different and uncertain future? It looks like the most extreme example of coercive or controlling behaviour. But what about other reasons why a parent might see flight as the only option? What about poverty? A parent may have been abandoned without resources in a country with little or no welfare benefit provision. What about inequality of arms? A parent may be vulnerable to losing her children to the other parent if he has money for lawyers and she does not. If we knew more about why parents abduct, we might be able to find better ways of preventing it in the first place.

But once it has happened, the other great dilemma is how to accommodate the child's own point of view. The 1980 Hague Convention was agreed before the Convention on the Rights of the Child 1989 put children at the centre of all questions affecting them. Debate rages about whether and how the two Conventions can be reconciled in principle. In practice, the only way

is to give the child a voice in the Hague Convention process, yet the Convention itself appears to suggest that the child's point of view is only relevant if the child objects to returning to the home country. But the child may have relevant views on many other issues – such as the ever more complex question of what is the home country, when parents may be moving around the world for work or study, or the best and safest way to return to the home country.

The overall message from research and practice is that the Convention is a good thing. But there are undoubtedly ways in which practice could be improved, particularly in the two areas mentioned here, and there may even be room for some minor tweaks to the Convention itself. Experience so far suggests that agreeing changes, or even good practice, can be very difficult. Just as mediation has become a useful tool in resolving Convention claims, perhaps it could also become a useful tool in mediating solutions to the dilemmas posed by the Convention itself. In the meantime, in this Handbook, we have an invaluable resource in understanding the Convention, how it works, and where and why improvement in practice is needed.

Baroness Brenda Hale
Former President
Supreme Court of the United Kingdom

Acknowledgements

A Handbook incorporating diverse perspectives on international child abduction and the 1980 Hague Convention requires the generosity and enthusiasm of many. We gratefully acknowledge the 33 chapter authors from across the globe who so readily accepted our November 2020 invitation to participate in this project and thank them all for their insightful contributions. We are confident these will inspire further developments in dispute resolution, jurisprudence, service delivery, training, prevention and aftercare in the abduction field and in the operation of the Convention.

We also thank Edward Elgar Publishing, especially Stephanie Tytherleigh, Commissioning Editor (Law), and Laura Mann, Senior Editor, Handbooks and Reference (Law), for the opportunity to work together on a topic of such global significance to children and families and, thus, to which we have devoted so much of our professional careers. We have greatly appreciated their assistance and advice regarding the publication of this Handbook.

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Spelling, reference or style conventions

British English spelling is used throughout the Handbook, as are the following commonly accepted reference styles even though they do not precisely reflect the way these Articles are set out in the 1980 Hague Convention:

Article 13(1)(b) Grave risk/intolerable situation exception

Article 13(2) Child's objection exception

Article 7(1) Central Authorities: duty to cooperate

Article 7(2) Central Authorities: duty to take all appropriate measures

Abbreviations

ABA	American Bar Association
ACES	Adverse Childhood Experiences framework
AISME	Asociación de Profesionales contra la Sustracción Internacional de Menores en España (Spain)
ANAR	Aid to Children and Adolescents at Risk Foundation (Spain)
ASEAN	Association of Southeast Asian Nations
ASSAA	Awareness, Situation, Signals, Analysis, and Action: a five-step ICA training method developed by Center IKO (The Netherlands)
AtJL	Access to Justice Institute (School of Law, Seattle University, US)
BLIK	Dutch Office of the Liaison Judge for International Child Protection
CA	Central Authority
CALA	Child Abduction Lawyers Association (UK)
CALI	International Child Abduction Lawyers (Italy)
CARICOM	Caribbean Community (an intergovernmental organisation headquartered in Georgetown, Guyana)
CBFM	Cross-Border Family Mediation
CEA	Civil Execution Act (Japan)
Center IKO	International Child Abduction Center (The Netherlands)
CJEU	Court of Justice of the European Union
CRC Committee	United Nations Committee on the Rights of the Child
DIAL	Dutch Association of International Child Abduction Lawyers
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ETJN	European Judicial Training Network
EU	European Union
FA-ACA	Federal Act of 21 December 2007 on International Child Abduction and the Hague Conventions on the Protection of Children and Adults (Switzerland)
FLS	Family Law Section
GGAP	HCCCH Council on General Affairs and Policy
GWA	Guardian and Wards Act 1890 (India)
HagueDV Project	Hague Domestic Violence Technical Assistance Project (US)

HCCH	Hague Conference on Private International Law
HMA	Hindu Marriage Act 1955 (India)
HMGA	Hindu Minority and Guardianship Act 1956 (India)
IACLaR	International Association of Child Law Researchers
IAFL	International Academy of Family Lawyers
ICA	International Child Abduction
ICACU	International Child Abduction and Contact Unit, England & Wales
ICALI	International Child Abduction Lawyers Italy
ICARA	International Child Abduction Remedies Act 1988 (US)
IHNJ	International Hague Network of Judges
INCADAT	HCCH International Child Abduction Database
INCASTAT	HCCH electronic statistical database
IPKCA	International Parental Kidnapping Crime Act 1993 (US)
ISS	International Social Service
JCA	Central Authority of Japan
JJ Act	Juvenile Justice (Care and Protection of Children) Act 2015 (India)
LEPCA	Network of Lawyers in Europe on Parental Child Abduction
MCE	Missing Children Europe
MiC Model	Mediator-in-Court Model
MiKK	International Mediation Centre for Family Conflict and Child Abduction (Germany)
MOUs	Memoranda of Understanding
NCCUSL	National Conference of Commissioners on Uniform State Laws (US)
NCMEC	National Center for Missing & Exploited Children (US)
NGO	Non-Governmental Organisation
OECS	Organization of Eastern Caribbean States
OPIC	Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure
PB	Permanent Bureau of the Hague Conference on Private International Law
PIL	Private International Law
PKPA	Parental Kidnapping Prevention Act of 1980 (US)
PTSD	Post-traumatic Stress Disorder
RIAEJ	Iberoamerican Network of Judicial Schools
ROAP	HCCH Regional Office for the Asia Pacific
ROLAC	HCCH Regional Office for Latin America and the Caribbean
SCA	Supreme Court of Appeal of South Africa
SMA	Special Marriage Act 1954 (India)

TCI	Turks and Caicos Islands
The Convention	The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction [or the 1980 Hague Convention]
UAE	United Arab Emirates
UCCJA	Uniform Child Custody Jurisdiction Act 1968 (US)
UCCJEA	Uniform Child Custody Jurisdiction and Enforcement Act (US)
UK	United Kingdom
UMDA	Uniform Marriage and Divorce Act (US)
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child 1989
US	United States of America
USCA	Central Authority of the United States of America





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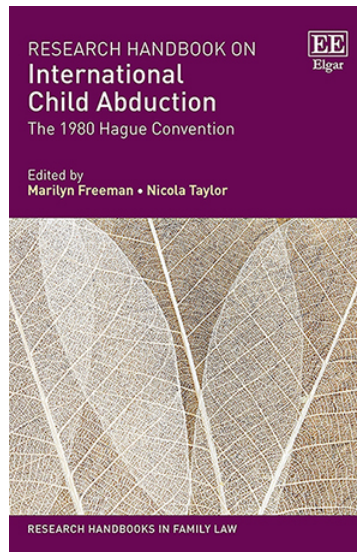
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– Karolina-Zoi Andriakopoulou, Family Lawyer, Greece

'Marilyn and Nicola have assembled some of the world's most influential experts on international parental child abduction in a treatise that combines complex legal topics with highly practical issues faced by attorneys, courts, and governments. This book should grace the shelves of any professional who works with families.'

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