Introduction to the Hague Children’s Conventions

International frameworks governing cross-border family disputes & child protection

EUROMED JUSTICE
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Maja Groff
Senior Legal Officer
The HCCH: An Introduction
What is the HCCH?

- An intergovernmental organisation with a legislative function, dating from 1893;
- Works toward “progressive unification of the rules of private international law” (Art. 1 of the Statute)
- Develops and adopts Hague Conventions and Protocols (currently 38 + 1 soft law instrument), dealing with:
  1. Int’l Civil Procedure & Legal Co-operation
  2. Int’l Family Law & Child Protection
  3. Int’l Commercial Law & Finance Law
- Practical outcomes, with direct benefits for children and adults, commercial operators and investors
The Hague Conference on Private International Law (HCCH)

An intergovernmental organisation working toward “progressive unification of the rules of private international law” (Art. 1, Statute)

Which State’s authorities are competent to decide matters in a cross-border situation?

Which State’s laws apply to a cross-border situation?

How may one State’s judgment or decision be recognised / enforced in another State?

How can authorities work together to improve efficiency and overcome challenges in cross-border situations?
Member State

Admitted State
Applied for membership, admitted by affirmative vote, must still accept Statute

Candidate State
Applied for membership (six-month voting period)

Dominican Republic Colombia Lebanon Kazakhstan

NB: Boundaries on this map are based upon those used by the UN Cartographic Section. The number of States reflects the Parties as recorded by the Depositary (NL MFA). Neither should be taken to imply official endorsement or acceptance.
35 New Members since 2000:
(42.6% of the Membership)

- 12 in Asia
- 11 in Europe
- 5 in Africa
- 4 in South America
- 2 in North America
- 1 in Oceania
150 States “Connected” with HCCH

A “Connected” State is either a Member State (incl. candidate and admitted States) or a Contracting State to one or more of the Hague Conventions

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Number of States/REIOs bound by the Core Hague Conventions

- Apostille (113)
- Adoption (98)
- Abduction (97)
- Service (72)
- Evidence (61)
- Child Protection (46)
- Wills (42)
- Maintenance (C) (35)
- Choice of Court (30)
- Access to Justice (28)
- Maintenance (P) (28)
- Trusts (13)
- Adults (9)
- Securities (3)
Regional Presence

Latin America Regional Office
Buenos Aires
(2005)

Main Office of the Permanent Bureau
The Hague

Asia Pacific Regional Office
Hong Kong
(2012)

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An Evolving Landscape: The main activities of the HCCH

**Normative Work**
- Research (identifying other legal needs within mandate)
- Proposals (of new instruments)
- Experts Discussion & Negotiation (drafting process leading to new instruments: Conventions, Protocols, soft law)
- Promotion (of HCCH / its instruments)
- Monitoring (Special Commissions on practical operation)
- Publications (Guides to Good Practice, Handbooks, etc.)
- Technical Assistance (implementation & practical operation)

**Post-Convention Work**
The Hague Children’s Conventions
Provide solutions to cross-border legal issues affecting children and families worldwide: Conventions are designed to be compatible with diverse legal systems throughout the world

1980 Child Abduction Convention:  

1996 Child Protection Convention:  
Hague 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

2007 Child Support Convention:  
Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance
Giving Effect to Human Rights

The Child Abduction, Child Protection, (Intercountry Adoption), and Child Support Conventions give effect to fundamental principles expounded in the 1989 UN Convention on the Rights of the Child:

**Articles 9(2) and 10(3) UNCRC**
Children whose parents do not live together have the right to stay in contact with both parents, except where contrary to the child’s best interests.

**Article 11 UNCRC**
States Parties shall take measures to combat the illicit transfer and non-return of children abroad (promotes conclusion of bilateral or multilateral agreements or accession to existing agreements).

**Article 21 UNCRC**
For adoption, the best interests of the child shall be the paramount consideration (promotes conclusion of bilateral or multilateral agreements, which ensure that the placement of the child in another country is carried out by competent authorities).

**Article 27(4) UNCRC**
States Parties shall take all appropriate measures to secure the recovery of maintenance for the child (promotes accession to international instruments or the conclusion of such agreements).

**Article 35 UNCRC**
States Parties shall prevent abduction of, sale of, or traffic in children (requiring all appropriate national, bilateral and multilateral measures to be taken).
1980 Child Abduction Convention


- Ensures **swift return of children** abducted by a parent
- **97 Contracting States**
  (one of the most widely ratified/acceded to Conventions)
- **Gives effect to** Articles 9(3), 10(2), 11, and 35 of the **UN Convention on the Rights of the Child**
- Based on **effective co-operation** between States
- Is complemented by the **1996 Child Protection Convention**
- **Malta IV** Conference in May 2016
- **Alleviates pressure** on consular officials
- **International Hague Network of Judges (IHNJ)**
  facilitates communication and co-operation between judges internationally, ensuring effective operation of the Convention
  *(Network also open to non-Contracting States)*
Pakistan acceded to the Convention on 22 December 2016 becoming the 96th Contracting State.
**1980 Child Abduction Convention**

**Principal objectives**

- **Protect** children from the *harmful effects* of their wrongful removal or retention;

- Ensure their **prompt return** their State of habitual residence;

- Ensure **stability** and **continuity** in the child’s life (*i.e.*, contact with both parents);

- Avoid **forum shopping**, by depriving the wrongful parent of any advantage that he / she might gain from the abduction.
Requirements

- Child is below **16 years** of age, and was **habitually resident** in the Contracting State from which he/she was removed (Art. 4);
- The removal constituted a **breach** of **custody rights** attributed by the law of that State (Art. 3);
- The applicant was **exercising** those custody rights (Art. 3).
1980 Child Abduction Convention

Remedy
Rapid procedure for the return of the child to his / her State of habitual residence, through co-operation between Central Authorities—status quo ante.

Exceptions
- The application was made over a year after the removal, and the child is now settled in his / her new environment (Art. 12);
- There is consent or subsequent acquiescence (Art. 13);
- Grave risk of exposing the child to physical or psychological harm, or placing the child in an intolerable situation (Art. 13);
- Discretion to refuse because the child objects to the return (Art. 13);
- Fundamental principles related to protection of human rights and fundamental freedoms (Art. 20).
1980 Child Abduction Convention

Recognition and Enforcement of Agreements

Art. 7(2)(c): ‘[Central Authorities] shall take all appropriate measures to secure the voluntary return of the child or to bring about an amicable resolution of the issues’.

- Possibilities:
  - Agreement that the child returns; or
  - Agreement that the child does not return.
Hague 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

- Covers a **wide range of measures** aimed at the protection of the person or property of the child
- **46 Contracting States**
- Provides rules on **jurisdiction, applicable law, and ensures recognition and enforcement** of protective measures in all Contracting States
- Based on **effective co-operation** between States and their authorities
- **Gives effect to** Articles 9(3), 10(2), 11, and 35 of the **UN Convention on the Rights of the Child**
- **Alleviates pressure** on consular officials
Principal objectives

- Improve the **protection of children in international settings**, covering a wide range of civil measures of protection;

- Avoid **conflicting decisions** between different legal systems as to the care and protection of children.
Chapter I: Scope

- Applies to children from **birth** to **18 years** of age (Art. 2).
- Wide range of civil measures of child protection, which **may include** measures relating to (Art. 3):
  - Parental responsibility and rights of custody;
  - Guardianship, curatorship, *etc.*;
  - Placement in foster family, *kafala* or institutional care, *etc.*;
  - Property of the child.

Chapter II: Jurisdiction

- **Primary** basis of jurisdiction is **habitual residence** (Art. 5). For displaced and refugee children, the basis is territorial presence (Art. 6).
- **Other rules** of jurisdiction:
  - Habitual residence immediately before abduction of the child (Art. 7);
  - Transfer jurisdiction (Arts. 8 and 9);
  - Seized of application for divorce / separation of the parents (Art. 10);
  - Urgency (Art. 11);
  - Presence of child or property on territory (Art. 12).
### Chapter III: Applicable Law

<table>
<thead>
<tr>
<th>Measure</th>
<th>Applicable Law</th>
<th>Special Rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exercise of jurisdiction by competent authorities (Art. 15)</td>
<td>The law of their State</td>
<td>Substantial connection with law of another State.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Conditions of application governed by law of State of new habitual residence.</td>
</tr>
<tr>
<td>Attribution / extinction of parental responsibility by operation of law / agreement (Art. 16)</td>
<td>State of habitual residence of the child</td>
<td>Change of habitual residence → law of the new State governs attribution of parental responsibility to a different person by operation of law.</td>
</tr>
<tr>
<td>Exercise of parental responsibility (Art. 17)</td>
<td>State of habitual residence of the child</td>
<td>-</td>
</tr>
</tbody>
</table>

Application of these laws can only be refused if application would be manifestly contrary to public policy (art. 22).
Chapter IV: Recognition and Enforcement

- Measures taken by competent authorities are **recognised by operation of law** in all Contracting States (Art. 23).
- Measures requiring enforcement in another Contracting State shall be **declared** enforceable / **registered** for enforcement upon request (Art. 26).
- Recognition (Art. 23(2)) or enforcement (Art. 26(3)) **may be refused** on the following grounds:
  - Lack of jurisdiction;
  - A person claiming breach of parental rights or the child were not given the opportunity to be heard;
  - Manifestly contrary to public policy;
  - Measure is incompatible with a later measure taken in the non-Contracting State of habitual residence of the child;
  - Consent has not been obtained from authorities for placement of the child on their territory.
## Complementarity of the 1996 Child Protection and 1980 Abduction Conventions

<table>
<thead>
<tr>
<th>Mechanisms of Reinforcement</th>
<th>1996 Convention</th>
<th>1980 Convention</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jurisdiction: reaffirming the <strong>primary role</strong> attributed to the <strong>State of habitual residence</strong></td>
<td>Art. 7</td>
<td>Art. 16</td>
</tr>
<tr>
<td>Measures of protection may be <strong>automatically recognised</strong> in the State to which the child is returned.</td>
<td>Art. 11</td>
<td></td>
</tr>
<tr>
<td>Court seized of a return application under the 1980 Convention has jurisdiction to take <strong>urgent measures</strong> to protect the wrongfully removed child (<strong>e.g.</strong> contact orders).</td>
<td>Art. 11</td>
<td>Art. 8</td>
</tr>
<tr>
<td>An application for securing exercise of rights of access under the 1980 Convention may be discharged by <strong>implementing a protective measure in another State</strong> under the 1996 Convention.</td>
<td>Arts. 23 and 35</td>
<td>Art. 21</td>
</tr>
<tr>
<td>The 1996 Convention rules on the law applicable to parental responsibility may <strong>assist in determining custody rights</strong>.</td>
<td>Arts. 16-18</td>
<td>Art. 3</td>
</tr>
</tbody>
</table>
Central Authorities shall ‘facilitate, by mediation, conciliation or other means, agreed solutions for the protection of the person or property of the child’ (Art. 31(b)).

In order for an agreement to have force of law in another Contracting State as a measure of protection under the 1996 Convention, it must be registered with a court or otherwise homologated in the State of origin.

May provide useful solutions for a number of different types of cases, including those relating to:
- Parental child abduction;
- Custody rights;
- Parental contact;
- Re-location.
2007 Maintenance Convention and Protocol

Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance

- Provides **procedures** for applications seeking:
  - the establishment of **maintenance obligations**
  - the **recognition**, **enforcement** and **modification** of maintenance obligations decisions
- **35 States and 1 REIO (EU)** bound by the Convention
- Based on **effective co-operation** between States
- **Gives effect to** Article 27(4) of the **UN Convention on the Rights of the Child**
- **2007 Hague Convention replaces** 1956 **UN Maintenance Convention** between Contracting States
- **Reduces strain** on States’ welfare and social security
- **Alleviates pressure** on consular officials
2007 Child Support Convention

Background and Scope

- There are more than **1 million** cases of unpaid cross-border child support globally.

- ‘Desiring to improve co-operation among States for the international recovery of child support and other forms of family maintenance’ (Preamble).

- Applies to **international child support claims** in relation to a person **under 21 years** of age, and to (recognition and) enforcement of a spousal support claim made in conjunction with a child support claim (Art. 2(1)).
Central Authority Functions

- ‘Central Authorities shall co-operate with each other’ (Art. 5), provide assistance in relation to applications, and take measures e.g. (Art. 6):
  - Providing legal assistance;
  - Locating the creditor / debtor;
  - Obtaining information on financial circumstances, etc.

- There are a number of available applications (Art. 10):
  - Recognition or recognition and enforcement of a foreign decision;
  - Enforcement of a decision made or recognised in the requested State;
  - Establishment of a new decision (including establishment of parentage);
  - Modification of a decision.
Central Authority Functions

- Set **timeframes** for Central Authority action (Art. 12):
  - Within 6 weeks → acknowledge receipt of an application
  - Thereafter, within 3 months → inform of status of the application

- Application process is streamlined through the use of mandatory and recommended **model forms** (Arts. 11-12).
Transmittal form under Article 12(2)

CONFIDENTIALITY AND PERSONAL DATA PROTECTION NOTICE

Personal data gathered or transmitted under the Convention shall be used only for the purposes for which it was gathered or transmitted. Any authority processing such data shall ensure its confidentiality, in accordance with the law of its State.

An authority shall not disclose or confirm information gathered or transmitted in application of this Convention if it determines that to do so could jeopardise the health, safety or liberty of a person in accordance with Article 40.

☐ A determination of non-disclosure has been made by a Central Authority in accordance with Article 40.

1. Requesting Central Authority

   a. Address
   b. Telephone number
   c. Fax number
   d. E-mail
   e. Reference number

2. Contact person in requesting State

   a. Address (if different)
   b. Telephone number (if different)
   c. Fax number (if different)
   d. E-mail (if different)
   e. Language(s)

3. Requested Central Authority: ____________________________

   Address: ____________________________________________

4. Particulars of the applicant

   a. Family name(s): ____________________________
   b. Given name(s): ____________________________
   c. Date of birth: ____________________________ (dd/mm/yyyy)
   or
   a. Name of the public body:

5. Particulars of the person(s) for whom maintenance is sought or payable

   a. ☐ The person is the same as the applicant named in point 4
   b. i. Family name(s): ____________________________
       Given name(s): ____________________________
       Date of birth: ____________________________ (dd/mm/yyyy)
   ii. Family name(s): ____________________________
       Given name(s): ____________________________
       Date of birth: ____________________________ (dd/mm/yyyy)
   iii. Family name(s): ____________________________
       Given name(s): ____________________________
       Date of birth: ____________________________ (dd/mm/yyyy)

6. Particulars of the debtor

   a. ☐ The person is the same as the applicant named in point 4
   b. Family name(s): ____________________________
   c. Given name(s): ____________________________
   d. Date of birth: ____________________________ (dd/mm/yyyy)

7. This transmittal form concerns and is accompanied by an application under:

   ☐ Article 10(1) a)
   ☐ Article 10(1) b)
   ☐ Article 10(1) c)
   ☐ Article 10(1) d)
   ☐ Article 10(1) e)
   ☐ Article 10(1) f)
   ☐ Article 10(2) a)
   ☐ Article 10(2) b)
   ☐ Article 10(2) c)

8. The following documents are appended to the application:

   a. For the purpose of an application under Article 10(1) a), and:

      In accordance with Article 25:
2007 Child Support Convention

Recognition and Enforcement

- **Broad bases** for recognition and enforcement (Art. 20):
  - Habitual residence of the respondent / creditor / child in State of origin;
  - Respondent submitted to jurisdiction;
  - Agreement on jurisdiction in writing by the parties (except disputes relating to child maintenance obligations);
  - Decision was made by an authority exercising jurisdiction on a matter of personal status or parental responsibility.

- **Grounds for refusing** recognition and enforcement (Art. 23):
  - Manifest incompatibility with public policy, or fraud;
  - Same proceedings already pending before another authority;
  - Incompatibility with another decision;
  - Respondent did not have notice of the proceedings and did not have an opportunity to be heard / to challenge the decision;
  - Debtor applied for a new decision / modification of a decision already made in the State in which the creditor was and remains habitually resident.

- To accompany an application: a number of **documents** (listed in Art. 25), and mandatory and model **forms** (e.g. transmittal and receipt form) (Arts. 11-12).
“Maintenance arrangement” means an agreement in writing relating to the payments of maintenance which—

i) has been formally drawn up or registered as an authentic instrument by a competent authority; or

ii) has been authenticated by, or concluded, registered or filed with a competent authority’ (Art. 3(e)).

Central Authorities shall encourage amicable solutions with a view to obtaining voluntary payment of maintenance, where suitable by use of mediation, conciliation or similar proceedings (Art. 6(2)(d)).

A maintenance arrangement shall be entitled to recognition and enforcement as a decision, provided it is enforceable as a decision in the State of origin (Art. 30(1)).
Electronic case management and secure communication system. Enhances the efficiency of the Central Authority network.

Designed to facilitate:

- Rapid, secure communication;
- Paperless management of international cases;
- Monitoring of cross-border maintenance transfers;
- Surmounting the language and communication barriers.

Commenced in September 2014

Successful pilot phase

Already fully implemented in 2 States, with others making significant progress
Direct Judicial Communications

International Hague Network of Judges

- May play a role in relation to a broad range of international instruments, including the 1980 Child Abduction Convention, the 1996 Child Protection Convention, and, in the future, the 2007 Child Support Convention.
- First communication function: **general sharing of information**.
  - Circulating information received from the Network or the Permanent Bureau among colleagues at the domestic level, and vice versa.
Direct Judicial Communications

International Hague Network of Judges

- Second communication function: **direct judicial communications** regarding specific cases. Examples of communications:
  - Scheduling the case in a foreign jurisdiction;
  - Establishing whether protective measures are available in the State to which the child would be returned;
  - Verifying whether the foreign court can enforce undertakings offered by the parties;
  - Ascertaining whether the foreign court can issue a mirror order;
  - Confirming that the foreign court made a relevant order, or any findings of domestic violence by a foreign court;
  - Co-ordinating a transfer of jurisdiction.

- Commonly-accepted safeguards:
  - Parties are to be notified of the nature of the communication;
  - Record must be kept and made available to the parties;
  - Conclusions reached should be in writing;
  - Parties / representatives should have the opportunity to be present in certain cases.
The October 2017 Special Commission on the 1980 and 1996 Conventions

**Who:** States Parties or States considering accession

**What (1):** Hague 1980 Child Abduction Convention

**What (2):** Hague 1996 Child Protection Convention

**Where:** The Hague, Netherlands

**When:** October 2017

**Why:** to review the practical operation of the Conventions

**How:**
- Statistical Survey on 2015 cases (INCASTAT)
- Questionnaires on 1980 and 1996 Conventions
- Guide to Good Practice on 13b) “grave risk”
- Study on Article 15 of 1980 Convention
- Info. Doc. on Direct Judicial Communications (DJC)
- Info. Doc. on Legal Bases for DJC
- Revised Form for Return Applications
- Travel Form, etc.
Globally, **244 million** persons live in a country other than where they were born (2015).

**Human rights backdrop to Hague family law conventions—the 1989 United Nations Convention on the Rights of the Child:**

- Art. 2: non-discrimination;
- Art. 3: best interests of the child;
- Arts. 9-10: right to maintain personal relations and direct contact with both parents;
- Art. 11: combatting the illicit transfer and non-return of children abroad;
- Art. 27: obligation to take measures to recover child maintenance from abroad;
- Art 35: prevention of child abduction, sale and trafficking.
The Application of the 1996 Convention to Unaccompanied and Separated Children
“**Unaccompanied children**” (also called unaccompanied minors) are children, as defined in article 1 of the UNCRC Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

“**Separated children**” are children, as defined in article 1 of the UNCRC Convention, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.

A “**child as defined in article 1 of the UNCRC Convention**”, means “every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier”. 
Children Involuntary Separated from Parents

**Orphan:** A child whose parents are both dead.

**Lost:** A child unintentionally separated from the parents.

**Abducted:** A child involuntarily and illegally taken from parents.

**Removed:** A child removed from the parents as a result of legal suspension or loss of parental rights.

**Runaway:** A child who intentionally left his or her parents without their consent. From the parent’s point of view this is an involuntary separation, but it is a voluntary one on the child’s part.
**Entrusted:** A child voluntarily placed in the care of another adult or institution by the parents who intend to reclaim the child. Evacuation of children in wartime or other emergencies is an example.

**Abandoned:** A child whose parents have deserted him or her with no intention of reunion.

**Surrendered:** A child whose parents have permanently given up their parental rights.

**Independent:** A child voluntary living apart from his or her parents with their consent.
Article 20

1. A child temporarily or permanently deprived of his or her family environment [...] shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, *inter alia*, foster placement, *kafalah* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.
Article 22(1)

States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures **shall**, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
Article 22(2)

For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or nongovernmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.
**UNCRC Rights and Obligations**

**Fundamental Rights**

**Article 2** – Non-discrimination.

**Article 3** – In all actions concerning children, the best interests of the child shall be a primary consideration.

**Article 6(1)** – Children have inherent right to life.

**Article 6(2)** – Right of survival and development of the child.

**Article 7** – Right to know and be cared for by his or her parents.

**Article 8** – Right of the child to preserve his or her identity.

**Article 14** – Right to freedom of thought, conscience and religion.
**UNCRC Rights and Obligations**  
**Right to maintain Contact**

**Article 9(1)** – A child shall not be separated from his or her parents against their will except when necessary for the best interest of the child.

**Articles 9(3) & 10(2)** – The right to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the best interest of the child.

**Article 10(1)** – Application to enter or leave a State Party for the purpose of family reunification shall be dealt with in a positive, humane and expeditious manner.
**UNCRC Rights and Obligations**

**Legal Rights**

**Article 12** – The views of the child and the opportunity to be heard directly, or through a representative or an appropriate body.

**Article 34** – Protection from sexual exploitation and sexual abuse.

**Articles 11 & 35** – States Parties shall take measures to combat the illicit transfer and non-return of children abroad and to prevent the abduction, the sale of or traffic in children.

**Article 37(a)** – Protection from torture or other cruel, inhuman or degrading treatment or punishment.

**Article 37(b-c)** – No unlawful or arbitrary detention. Right to prompt access to legal assistance when deprived of liberty.
Article 24 – Enjoyment of the highest attainable standard of health and access to health care services.

Article 27 – Right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.

Article 28 – Right of the child to education.

Article 31 – Right of the child to rest and leisure.

Finally, Article 4 - States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.
1996 Convention facilitates implementation of UNCRC

- Measures of protection under the UNCRC fall under the scope of the 1996 Convention (Arts 3 and 4).

- 1996 Convention provides jurisdiction for refugee children and children who are internationally displaced or whose habitual residence cannot be established (Art. 6)

- 1996 Convention provides for transfer of jurisdiction (Arts 8-9).

- Authorities in Contracting States where the child is present can take urgent measures of protection with effect in any State (Art. 11).

- Authorities in Contracting States where the child is present can take provisional measures of protection with limited territorial effect (Art. 12).
1996 Convention facilitates implementation of UNCRC

- 1996 Convention provides for the applicable law *inter alia* with regard to parental responsibility (Arts 15-22).

- Measures of protection taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States (Art. 23).

- Decisions can be declared enforceable or registered for the purpose of enforcement (Art. 26).

- CAs shall provide assistance in discovering the whereabouts of a child (Art. 31(a)).

- CAs shall provide report on the situation of the child (Art. 32).

- CAs cooperate regarding cross-border placements (Art. 33).
1996 Convention v. BX II a

Article 61

As concerns the relation with the [1996 Convention], this Regulation shall apply:

(a) where the child concerned has his or her habitual residence on the territory of a Member State;

(b) as concerns the recognition and enforcement of a judgment given in a court of a Member State on the territory of another Member State, even if the child concerned has his or her habitual residence on the territory of a third State which is a contracting Party to the said Convention.
Article 6

(1) For refugee children and children who, due to disturbances occurring in their country, are internationally displaced, the authorities of the Contracting State on the territory of which these children are present as a result of their displacement have the jurisdiction provided for in paragraph 1 of Article 5.

(2) The provisions of the preceding paragraph also apply to children whose habitual residence cannot be established.

(See Art. 13 of Brussels II a)
A competent authority can request another competent authority to assume jurisdiction or to take jurisdiction.

Contracting States whose authorities may be addressed are:

a) a State of which the child is a national,
b) a State in which property of the child is located,
c) a State whose authorities are seised of an application for divorce or legal separation of the child's parents, or for annulment of their marriage,
d) a State with which the child has a substantial connection.
1996 Convention
Urgent measures of protection

Article 11

(1) In all cases of urgency, the authorities of any Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take any necessary measures of protection.

(2) The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken the measures required by the situation.

(3) The measures taken under paragraph 1 with regard to a child who is habitually resident in a non-Contracting State shall lapse in each Contracting State as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question.
Article 12

(1) [...] the authorities of a Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take measures of a provisional character for the protection of the person or property of the child which have a territorial effect limited to the State in question, in so far as such measures are not incompatible with measures already taken by authorities which have jurisdiction under Articles 5 to 10.

(2) The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken a decision in respect of the measures of protection which may be required by the situation.

(3) The measures taken under paragraph 1 with regard to a child who is habitually resident in a non-Contracting State shall lapse in the Contracting State where the measures were taken as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question.
1996 Convention
Immediate measures of protection

- Hearing the child
- Appointment of a guardian or adviser and legal representative
- Care and accommodation arrangements
- Full access to education
- Right to an adequate standard of living
- Right to enjoy the highest attainable standard of health
- Access to asylum procedures, regardless of age

(See UNICEF and UNHCR “Safe & Sound” and UNCRC Gen. Comment No 6)
1996 Convention
Durable Solutions

- Family reunification
- Return to the country of origin (non-refoulement principle)
- Local integration
- Intercountry adoption (1993 Hague Convention)
- Resettlement in a third country

(See UNICEF and UNHCR “Safe & Sound” and UNCRC Gen. Comment No 6)
Conclusions

- Raising awareness regarding the usefulness of the 1996 Convention in the context of unaccompanied minors
- Closer co-operation between child protection agencies and immigration authorities
- Inviting States to become Parties to the 1996 Convention
Example:

A girl, aged 11, is habitually resident in Contracting State X. Her father disappeared when she was very young and recently her mother has passed away as a result of AIDS. The authorities of Contracting State X determine that the girl should live with her maternal aunt, who is willing to care for her. Two months later the girl goes missing after school. The maternal aunt immediately reports this to the authorities. The police suspect that she has been abducted by a well-known child trafficking ring and taken to Contracting State Z where girls are sold into child prostitution. Using the Central Authority to assist with locating the girl, she is eventually found in Contracting State Z. The measure of protection of Contracting State X is recognised by operation of law in Contracting State Z. However, the girl refuses to co-operate with the authorities and claims that she is living with her father (a man whom the authorities in Contracting State Z are concerned is involved in the trafficking ring). The authorities in Contracting State Z consider the girl is in immediate danger and take measures under Article 11 to take the girl into temporary State care.
Example (ctd):

The maternal aunt applies for the custody order in her favour made in Contracting State X to be declared enforceable. The aunt’s application comes before the authorities in Contracting State Z and the declaration is granted. The custody order is enforced in accordance with the law of Contracting State Z and the girl is returned to her maternal aunt’s care in Contracting State X.