8-2017

Report of the law reform committee on the 1996 Hague convention on the protection of children

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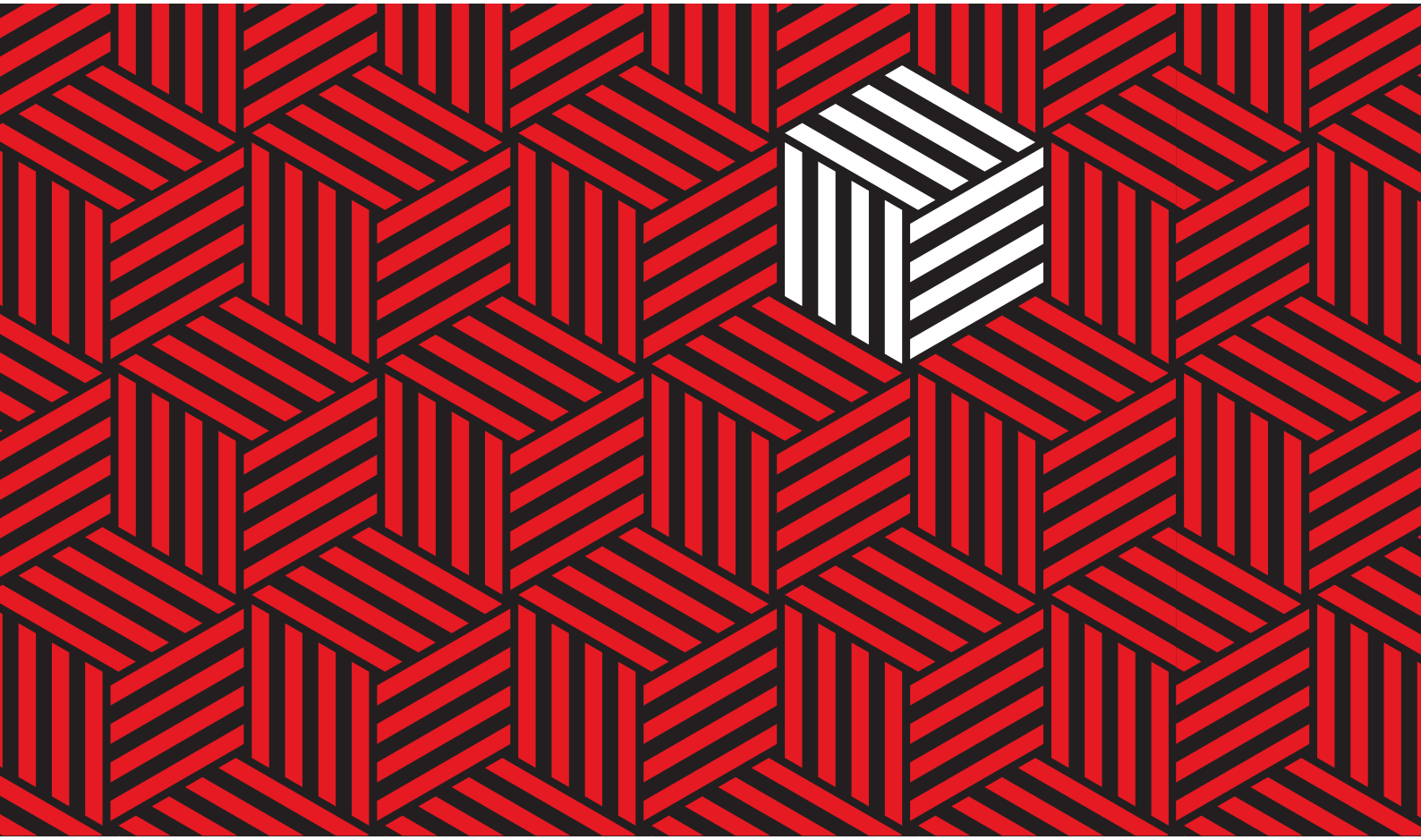

SAL SINGAPORE ACADEMY OF LAW

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The Committee would like to extend its appreciation to the Honourable Justice Victoria Jane Bennett of the Family Court of Australia and Professor Linda Silberman, Martin Lipton Professor of Law, New York University School of Law, for their helpful comments on an earlier version of the Report.

The Report was completed on 26 May 2017.

Secretariat

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2. District Judge Jonathan Lee
3. Assistant Registrar Shaun Pereira

ISBN 978-981-11-4316-8

About the Law Reform Committee

The Law Reform Committee ("LRC") of the Singapore Academy of Law makes recommendations to the authorities on the need for legislation in any particular area or subject of the law. In addition, the Committee reviews any legislation before Parliament and makes recommendations for amendments to legislation (if any) and for carrying out law reform.

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EXECUTIVE SUMMARY

1 Modern litigation between spouses regarding their children is often international. Such cross-border disputes are especially common in Singapore, as an international commercial centre with a diverse and cosmopolitan society. More importantly, Singaporeans are becoming an increasingly mobile labour force, working in international businesses. Orders made by Singapore courts involving local parties and local children will increasingly require recognition and enforcement overseas.

A. CHALLENGES ARISING IN SINGAPORE'S CURRENT PRIVATE INTERNATIONAL LAW FRAMEWORK

2 Cross-border family disputes raise multiple challenges under Singapore's current private international law framework:

(a) *Costly and complex disputes over which country's courts should hear the case, and which country's laws should apply*. Each parent may bring court proceedings in different countries. This leads to litigation in multiple jurisdictions over which court should hear the case, which may result in conflicting decisions between courts, confusion, lengthy litigation and intensified animosity between parents. Singapore's current *ad hoc* approach to the regulation of international disputes does not have any impact on how foreign concerned States will deal with the case at hand.

(b) *Enforceability of orders in foreign countries*. There no mechanism for the recognition or enforcement of Singapore orders pertaining to child matters abroad. Orders made by the court of the child's habitual residence may not be recognised or enforced by the country to which the child has been relocated, and this may result in the relocating parent ignoring the court orders in their entirety.

(c) *Information asymmetry post-relocation*. Once a child is relocated overseas, it may be difficult for the left-behind parent to obtain information about the child's welfare or whereabouts if the relocating parent becomes uncooperative, takes deliberate steps to conceal the whereabouts of the child, or withholds information relating to the child.

(d) *Lack of assistance across jurisdictions*. In cases involving multiple countries, the authorities in the affected countries may need to cooperate in order to ensure the issues are resolved effectively. The existing institutional mechanisms for administrative or judicial cooperation across national borders are basic.

3 Issues arising from international family disputes cannot be addressed by simple adjustments to domestic law: these legal problems which involve

an international element can only be resolved by reciprocal arrangements between States, or harmonisation of laws both locally and abroad.

B. HOW THE 1996 CONVENTION WILL CHANGE SINGAPORE'S PRIVATE INTERNATIONAL LAW FRAMEWORK

4 The Hague Convention 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children ("the 1996 Convention") seeks to resolve the challenges highlighted by addressing the law in four areas: jurisdiction, choice of law, recognition and enforcement, and cooperation between Contracting States.

(a) *Jurisdiction*. Under the 1996 Convention, the State of the child's habitual residence (if it is a Contracting State), will ordinarily have pre-eminent jurisdiction to deal with cases relating to the child's welfare. There are also other bases for jurisdiction for urgent measures or where another State may be better placed to deal with the child for defined reasons.

(b) *Choice of law*. A State applies its own domestic law when it exercises jurisdiction under the 1996 Convention. However, if the State has to address a specific issue relating to the determination or termination of the scope of parental responsibility, it will apply the law of the child's habitual residence.

(c) *Recognition and enforcement of orders*. Orders made by a State exercising jurisdiction under the 1996 Convention will be automatically recognised or enforceable in other Contracting States. Recognition and enforcement may only be refused in limited circumstances.

(d) *Cooperation*. The 1996 Convention provides means for Contracting States to work with each other to achieve its objectives. Requests for cooperation and information in respect of children in Contracting States will be channelled through the Central Authority appointed in each Contracting State. However, most of these obligations are voluntary and not compulsory. The 1996 Convention establishes a formal framework for such cooperation.

5 The 1996 Convention has at present 45 Contracting States. This includes the Member States of the European Union, almost all of which also apply Brussels IIA, an EU Regulation concerning conflict of laws in family matters that overlaps with the 1996 Convention.

C. RECOMMENDATIONS

6 The Committee recommends considering accession to the 1996 Hague Convention, which will be advantageous to Singapore for the following reasons:

(a) The 1996 Convention, by aligning bases of jurisdiction in all Contracting States, increases clarity and certainty as to the pre-eminent jurisdiction in a multi-jurisdictional dispute. This will obviate a race by parties to request multiple courts to exercise jurisdiction over the same child for technical advantages in litigation.

(b) Once jurisdiction is met, there is automatic enforcement and recognition in all Contracting States. This will mean that Singapore orders will be recognised and enforced in all Contracting States, even though Singapore courts will then have to recognise the orders of other Contracting States.

(c) The 1996 Convention furthers the best interests of the children, through its clear child centricity in its approach and range of reliefs.

(d) The 1980 Child Abduction Convention, which has been enacted into law in Singapore, will be better supported and work better, through preservation of the notion of habitual residence for a time period, safe harbour orders to assist with return, and a wider range of measures available to the court if a child is not returned.

(e) The 1996 Convention provides an exemplary institutional framework of Central Authorities which will enable cooperation and communication between Contracting States.

(f) Adopting the 1996 Convention at an early stage prepares Singapore for the future. It will permit Singapore to build up the hard and soft processes to deal with international issues that may arise, while the caseload is less burdensome. Early adoption also allows Singapore to shape international 1996 Convention jurisprudence in a manner more beneficial to Singapore as an international norm, although it will then lose the second-hand lessons it may learn from others through later adoption.

CHAPTER 1

INTRODUCTION AND OVERVIEW TO REPORT

A. CHALLENGES IN CROSS-BORDER CHILD DISPUTES

7 The modern family dispute is often international. Singapore, in particular, is an international commercial centre with a diverse and cosmopolitan society. The proportion of divorces in the local courts involving at least one party who is a foreigner increased from 31% in 2011 to 40% in 2016.[1] This statistic, which excludes custody and relocation cases filed outside of the divorce framework, is consistent with trends abroad.[2] More importantly, with more Singaporeans working in international businesses and becoming an increasingly mobile labour force, Singapore court orders involving local parties will also require reciprocal enforcement. At present, approximately 49% of the divorces filed in 2016 involved at least one child below 21 years old.[3]

8 Cross-border family disputes raise numerous challenges. They are often characterised by parallel proceedings in multiple fora. Each competing court may assume jurisdiction on its own terms, even if it may overlap with the jurisdiction of another. There are hurdles to recognising or enforcing a judgment made by the court of one country in the court of another. This encourages re-litigation and impedes finality. A party may flout a court order and forcibly remove a child to seek refuge in another jurisdiction which the party thinks is more favourable. This can be traumatic and have a negative long-term impact on the welfare and mental health of the affected child.[4]

1 Family Justice Courts' internal statistics. During the same period the number of divorces involving a foreign spouse rose from 1,930 to 2,498.

2 The number of cross-border family legal disputes in the UK courts has grown tenfold in a decade, rising from 65 cases in 2008 to 253 in 2012: Office of the Head of International Family Justice for England and Wales, *Annual Report* (2012), available at https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Reports/international_family_justice_2013.pdf (accessed on 18 May 2017).

3 Family Justice Courts' internal statistics. Of the 6,9301 divorce cases filed, 3,096 of the cases involved at least one child below the age of 21. Those cases involved a total number of 4,834 children below the age of 21.

4 See David A Alexander and Susan Klein, "Kidnapping and hostage-taking: a review of effects, coping and resilience", *Journal of the Royal Society of Medicine* (2009) 102(1):16–21.

B. INTERNATIONAL APPROACHES TO THE CROSS-BORDER CHALLENGES

9 Child abduction concerns have been met by Singapore's accession to the Convention on the Civil Aspects of International Child Abduction ("the 1980 Convention").[5] The other challenges alluded to above are the object of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children ("the 1996 Convention"),[6] which aims to address holistically matters concerning jurisdiction, applicable law, and the recognition and enforcement of measures that protect the person and property of a child in cross-border situations.[7]

10 This Report discusses the utility of the 1996 Convention in the Singapore context and the principal areas in which Singapore's existing laws will be affected, were the 1996 Convention obligations to be adopted into domestic law. Issues relating to implementation are also briefly dealt with.

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5 Incorporated into Singapore law through the International Child Abduction Act (Cap 143C, 2011 Rev Ed) which came into force on 1 March 2011.

6 The 1996 Convention which came into force on 1 January 2002. As at 24 June 2016, there were 44 Contracting States to the 1996 Convention, comprising all the European Union States (UK inclusive), Australia, Russia and the United States. The Hague Conference on Private International Law, founded as a permanent organization in 1955, has five "Children's Conventions", as they have come to be known, to provide "practical machinery to enable States which share a common interest in protecting children to cooperate together to do so": HCCH, *Outline of the Hague Convention of 1996 on the International Protection of Children* (September 2008) at p 1. Apart from the 1996 and 1980 Conventions, the other three, which are not the subject of this Report, are the 1961 Convention concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors, the 1993 Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, and the 2007 Convention on the International Recovery of Child Support and other forms of Family Maintenance. Many of the matters covered by the 1996 Convention were the subject of the earlier Convention concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors ("the 1961 Convention"). The 1996 Convention resolves many of the difficulties in the earlier Convention: Gloria Folger DeHart, "The Relationship Between the 1980 Child Abduction Convention and the 1996 Protection Convention" (2000-2001) 33 *New York University Journal of International Law and Policy* 83 at p 83. Thus, the 1996 Convention has rules designed to "avoid legal and administrative conflicts" and to provide a common platform for international cooperation in matters of child protection between different legal systems: HCCH, *Outline of the Hague Convention of 1996 on the International Protection of Children* (September 2008) at pp 2–3.

7 HCCH, *Outline of the Hague Convention of 1996 on the International Protection of Children* (September 2008) at p 2.

C. OVERVIEW OF THE 1996 CONVENTION

11 *Subject matter*. The 1996 Convention *does not deal with substantive family law issues*.[8] It seeks instead to regulate the *private international law issues* that arise in relation to children and families. These matters are at present determined in accordance with Singapore's *general* private international law framework, which has its sources in the common law as well as primary and secondary legislation such as the Supreme Court of Judicature Act[9] and the Rules of Court.[10]

12 *Scope*. The 1996 Convention applies to all "measures directed to the protection of the person or property of the child".[11] No definition of "measures of protection" is provided.[12] The (non-exhaustive) list of examples include measures relating to parental responsibility, custody, access, guardianship, determination of the child's place of residence and dealings in the child's property.[13]

13 *Exclusions*. The 1996 Convention contains *specific exclusions* from its scope.[14] The more prominent of this closed list of exclusions are matters pertaining to maintenance, the establishment or contesting of a parent-child relationship, adoption and trusts or succession.

14 *Age of child*. The 1996 Convention applies to children up to 18 years of age, and in implementation its scope will apply to children under 18 from other Contracting countries.[15]

15 *Organisation*. The provisions in the 1996 Convention are organised in four parts: jurisdiction, applicable law, recognition and enforcement, and cooperation.

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8 There can, however, be an indirect impact on the substantive rules to the extent that the choice of law rules supplied by the 1996 Convention displace the overwhelming preference for the *lex fori* under the extant choice of law rules.

9 Cap 322, 2007 Rev Ed.

10 Cap 322, R 5, 2014 Rev Ed.

11 Article 1(a), 1996 Convention.

12 This was left deliberately undefined to account for the diversity of measures that were adopted in various legal systems: Paul Lagarde, *Explanatory Report* (15 January 1997) at para 18.

13 Article 3, 1996 Convention.

14 Article 4, 1996 Convention.

15 For example, the 1980 Convention ceases to apply when a child attains the age of 16 years. The International Child Abduction Act (Cap 143C, 2011 Rev Ed) simply introduced a substantive domestic rule that mandates the return of a wrongfully removed child when the circumstances stipulated within the 1980 Convention are satisfied.

1. Jurisdiction

16 The essence of the 1996 Convention is contained in its opening part on jurisdiction. It aims to eliminate, in principle, all competition between the authorities of different States in relation to measures of protection for children.[16] This is achieved by centralising and consolidating jurisdiction to deal with measures of protection concerning a child within the State of the child's *habitual residence*.[17] In other words, under the 1996 Convention, the State of the child's habitual residence possesses pre-eminent jurisdiction in relation to all measures of protection concerning that child. There are limited exceptions and instances where concurrent jurisdiction is permitted.

2. Applicable law

17 The 1996 Convention consolidates the choice of law rules in two main areas. First, when the authorities of a Contracting State exercise jurisdiction in accordance with the grounds articulated in the 1996 Convention, the applicable law is ordinarily the *lex fori* of the Contracting State exercising such jurisdiction.[18] Second, when the authorities of a Contracting State are concerned with the exercise, extinction or attribution of parental responsibility, the applicable law is ordinarily the law of the child's habitual residence.[19] The practical effect is that, with the chapters on jurisdiction and applicable law working in unison, the court with pre-eminent jurisdiction would be the court of the child's habitual residence, and it would ordinarily apply the *lex fori*.[20] The *lex fori* is also general choice of law rule adopted under Singapore's present legal framework,[21] and so the choice of law rules in the 1996 Convention are substantially similar to those currently applied in Singapore. Therefore, the

16 Paul Lagarde, *Explanatory Report* (15 January 1997) at para 6.

17 Paul Lagarde, *Explanatory Report* (15 January 1997) at para 37. See Article 5(1), 1996 Convention, which reads:

> The judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child's person or property.

18 Article 15(1), 1996 Convention.

19 Article 16(1), 1996 Convention.

20 Paul Lagarde, *Explanatory Report* (15 January 1997) at para 6.

21 The welfare principle as part of the *lex fori* is applied regardless of the foreign elements in the case: see *J and another v C and others* [1970] AC 668 at 711. This was a decision under s 1 of the Guardianship of Infants Act 1925 (15 & 16 Geo 5 c 45), which is the predecessor to s 3 of the Guardianship of Infants Act (Cap 122, 1985 Rev Ed). There is no reason to expect that of the provisions in Women's Charter (Cap 353, 2009 Rev Ed) will be interpreted otherwise. Under ss 122–132 of the Women's Charter, the court is given a broad discretion in divorce proceedings to take measures that will promote of the welfare of the child. It seems to follow naturally from the court's observations in *TQ v TR* [2009] 2 SLR(R) 961 at [42], [87] and [93] that these provisions concerning children will be given mandatory effect.

part of the 1996 Convention on applicable law is not given substantial treatment in this Report.

3. Recognition and enforcement

18 This part, which is premised on reciprocity, aims to reduce the incidence of re-litigation by ensuring that primacy is given to the decisions taken by the authorities of the Contracting State in which the child has his or her habitual residence. [22] The general principle is that a measure of protection taken in one Contracting State shall automatically be recognised by operation of law in all other Contracting States.[23] If enforcement of that measure is sought in another Contracting State, the measure may be declared enforceable or registered for the purpose of enforcement,[24] and, if necessary, enforced in that State *as if it were a measure taken by the authorities of that State*.[25] There are exceptions justifying the non-recognition or non-enforcement of a measure of protection. These exceptions, which include lack of jurisdiction, violation of fundamental principles of procedure and the right to be heard, and offense to public policy, are set out exhaustively in the 1996 Convention.[26]

4. Cooperation

19 The provisions concerning cooperation in the 1996 Convention rest on the concept of a Central Authority, which has been successfully employed in other international conventions concerning children.[27] As the "fixed point" of contact, each Central Authority's general mission is to cooperate and promote cooperation,[28] by providing information and facilitating communication between Contracting States,[29] among other means.

22 The provisions in the part on recognition and enforcement are novel and were not present in the 1961 Convention: Paul Lagarde, *Explanatory Report* (15 January 1997) at para 6.
23 Articles 23, 24 and 25, 1996 Convention.
24 Articles 26 and 27, 1996 Convention.
25 Article 28, 1996 Convention.
26 Paul Lagarde, *Explanatory Report* (15 January 1997) at para 121.
27 The 1980 Convention is the leading example: Paul Lagarde, *Explanatory Report* (15 January 1997) at para 136.
28 Article 30, 1996 Convention.
29 Article 31, 1996 Convention.

CHAPTER 2

RATIONALISING THE BASIS FOR COOPERATION

20 The 1996 Convention prescribes the specific bases upon which the authorities of a Contracting State can assume jurisdiction. Once a court has jurisdiction, its orders will have immediate and automatic effect in all other Contracting States.

A. SINGAPORE'S CURRENT PRIVATE INTERNATIONAL LAW FRAMEWORK

21 Singapore's legal framework on jurisdiction observes the distinction between the *existence* of jurisdiction, the absence of which is an absolute bar to a Singapore court hearing a case, and the *exercise* of jurisdiction. Even if the existence of the Singapore court's jurisdiction is established, the Singapore court may nonetheless decline to exercise that jurisdiction, on the basis that there is another clearly more appropriate forum in which the matter ought to be heard.

B. *EXISTENCE* OF JURISDICTION: BROAD COMMON LAW GROUNDS OF JURISDICTION

22 The specific civil jurisdiction of the High Court to hear matters relating to the person or property of children is conferred on it by section 17(*d*) of the Supreme Court of Judicature Act. This jurisdiction may be exercised through either of two modes:[30]

(a) First, as an adjunct to the court's jurisdiction over divorce and matrimonial causes under the Women's Charter.[31] The court has jurisdiction over divorce and matrimonial causes, and with it, the power to make any order the court thinks fit with respect to the welfare of any child.[32] This basis of jurisdiction is centred on the *divorce* and appears to subsist independent of the child's connections (or lack thereof) to the forum.[33]

(b) Second, from the provisions of the Guardianship of Infants Act, which allows the court to make provision for infants, or regulate and

30 Debbie Ong, *International Issues in Family Law in Singapore* (Academy Publishing, 2015) at para 7.30.

31 Section 17(*a*), Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed).

32 Section 124, Women's Charter (Cap 353, 2009 Rev Ed).

33 Debbie Ong, *International Issues in Family Law in Singapore* (Academy Publishing, 2015) at para 7.35; *Sim Hong Boon v Sim Lois Joan* [1971–1973] SLR(R) 597 at [6]–[7].

control the affairs of guardians and their relation to the infants.[34] The Guardianship of Infants Act is silent as to the bases of jurisdiction on which these powers may be exercised.[35] The precise boundaries of the common law bases of jurisdiction are unclear,[36] but include the presence,[37] nationality[38] and ordinary residence[39] of the child.

1. Exercise of jurisdiction: the *Spiliada* test

23 These apparently broad grounds of jurisdiction are constrained in practice by the *Spiliada* test,[40] which the court applies to determine whether it should exercise its jurisdiction to hear a case containing foreign elements. The *Spiliada* test has been held applicable to matrimonial proceedings in general,[41] and applications concerning children in particular.[42] It is consistent with the welfare principle,[43] because it is ordinarily in the child's welfare for the proceedings concerning the child to be heard by the most appropriate forum, or the court best-placed to determine what the welfare of the child requires.[44]

24 The *Spiliada* test is applied in two stages.

(a) First, the identification of the most appropriate forum for the trial or hearing of the action. At this stage the onus is on the defendant to establish that there is a forum which is clearly more appropriate than Singapore. The court adopts a broad factorial approach and considers the nationality or domicile of the child,[45] the jurisdiction in which the child is present,[46] the habitual residence of the child,[47] the *previous* habitual residence(s) of the child,[48] whether

34 Section 3, Guardianship of Infants Act (Cap 122, 1985 Rev Ed).
35 See Tan Yock Lin, *Conflicts Issues in Family and Succession Law* (Butterworths, 1993) at pp 491–496, which states: "[t]he legislature was content to rely on the grounds of jurisdiction developed at common law".
36 See Law Reform Committee, *Report on Ancillary Orders After Foreign Divorce or Annulment* (July 2009) at paras 31–35. In *TGT v TGU* [2015] SGHCF 10, the court assumed jurisdiction despite the child who formed the subject of the application having no connection whatsoever to Singapore. The point on the existence of the court's jurisdiction was, however, not argued or decided; submissions were only made on whether the court should exercise its jurisdiction.
37 See Tan Yock Lin, *Conflicts Issues in Family and Succession Law* (Butterworths, 1993) at pp 491–496.
38 *Hope v Hope* (1854) 43 ER 534 at 542.
39 *Re P (GE) (an infant)* [1965] Ch 568 at 582.
40 *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460.
41 *Sanjeev Sharma s/o Shri Sarvjeet Sharma v Surbhi Ahuja d/o Sh Virendra Kumar Ahuja* [2015] 3 SLR 1056 at [12].
42 *TGT v TGU* [2015] SGHCF 10 at [19].
43 *Re F (A Minor) (Abduction: Custody Rights)* [1991] Fam 25 at 31.
44 *TDX v TDY* [2015] 4 SLR 982 at [20].
45 *BDA v BDB* [2013] 1 SLR 607 at [24].
46 *TDX v TDY* [2015] 4 SLR 982 at [52].
47 *TDX v TDY* [2015] 4 SLR 982 at [33].
48 *TDX v TDY* [2015] 4 SLR 982 at [51].

and if so where divorce proceedings are pending,[49] and the "seat" of the father and mother's relationship, among others.[50] If the defendant succeeds in showing that there is a clearly more appropriate forum than Singapore, then a stay will ordinarily be granted.

(b) At the second stage, the plaintiff may nonetheless persuade the court to refuse the stay of the Singapore court proceedings in favour of the more appropriate foreign court, if the plaintiff can establish that he will be denied of substantial justice should he pursue his claim in the foreign court. At this second stage, the court considers the question of potential delay or protraction in proceedings abroad,[51] or the potentially less generous measure of child protection under the law that the foreign court would apply.[52] There does not appear to be any local decision concerning children in which a stay was refused on the ground that to do so would occasion substantial injustice.

C. JURISDICTIONAL RULES UNDER THE 1996 CONVENTION

25 In contrast to Singapore's existing legal framework, the 1996 Convention does *not* maintain the conceptual distinction between the existence and the exercise of jurisdiction. The existence of jurisdiction under the 1996 Convention settles the question.[53]

1. The general rule: allocation of jurisdiction to the authorities of the child's habitual residence

26 The 1996 Convention intends to "centralise jurisdiction in the authorities of the child's *habitual residence* and avoid all competition of authorities having concurrent jurisdiction"[54] [emphasis added] by imposing "considerable limitations" [55] on the authorities of other Contracting States that are not the child's habitual residence. This primary jurisdiction-allocation rule is found in Article 5(1), which reads:

> The judicial or administrative authorities of *the Contracting State of the habitual residence of the child have jurisdiction* to take measures directed to the protection of the child's person or property. [Emphasis added.]

49 *AZS and another v AZR* [2013] 3 SLR 700 at [13].
50 *TDX v TDY* [2015] 4 SLR 982 at [55].
51 *Sanjeev Sharma s/o Shri Sarvjeet Sharma v Surbhi Ahuja d/o Sh Virendra Kumar Ahuja* [2015] SGHC 104 at [48]–[50]; *Mala Shukla v Jayant Amritanand Shukla (Danialle An, co-respondent)* [2002] 1 SLR(R) 920 at [60].
52 *TGT v TGU* [2015] SGHCF 10.
53 The authorities of the Contracting State still preserve some discretion under Articles 8 and 9 (see para 2.13(a) below) which may be considered analogous to that under the *forum non conveniens* principle.
54 Paul Lagarde, *Explanatory Report* (15 January 1997) at para 37.
55 Paul Lagarde, *Explanatory Report* (15 January 1997) at para 6.

The underlying premise is that it is ordinarily in the child's best interest for the authorities of his habitual residence to determine issues concerning the child and his or her property.[56] The 1996 Convention does not generally make provision for situations where the child's habitual residence changes. The question of which authorities possess jurisdiction when a child's habitual residence changes depends on where the child is habitually resident at any particular point in time.

2. The concept of habitual residence

27 "Habitual residence", despite being the focal point of jurisdiction-allocation in the 1996 Convention, [57] is left undefined by the Convention. The intention was to keep the concept of habitual residence fact-specific, to permit each authority to deal with cases on the basis of their own peculiar facts. In relation to the 1980 Convention which also utilises the concept, courts across jurisdictions have interpreted "habitual residence" differently.[58]

28 Examples from various countries from various jurisdictions are set out below:[59]

(a) In Austria, the Supreme Court held that a period of residence of more than six months in a State will ordinarily be characterized as habitual residence, even if it took place against the will of the custodian of the child.[60]

(b) In Quebec, the Cour d'appel de Montréal held that the determination of the habitual residence of a child was a purely factual issue to be decided in the light of the circumstances of the case with regard to the reality of the child's life, rather than that of his parents. The actual period of residence must have endured for a continuous and not insignificant period of time; the child must have a real and active link to the place, but there is no minimum period of residence which is specified.[61]

56 The Honourable Justice Victoria Bennett, "Complementarity Between the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention: How the Conventions Support Each Other", paper presented at The Well-Being of the Child through the Hague Child Abduction Convention and Protection of Children Convention: An Asia-Pacific Symposium (25 and 26 June 2015), at p 2.

57 See Linda Silberman, "Interpreting the Hague Abduction Convention: In Search of a Global Jurisprudence" (2005) 38 *University of California Davis Law Review* 1049 at p 1064.

58 *In re J (a child)* [2005] UKHL 40 at [31].

59 Taken from the database on the 1980 Convention, available at http://www.incadat.com/index.cfm?act=search.detail&cid=800&1ng=1&s1=2 (accessed 18 May 2017).

60 *8Ob121/03g* (Oberster Gerichtshof).

61 *Droit de la famille 3713*, No 500-09-010031-003.

(c) In Germany, habitual residence is also assessed by reference to the circumstances of the child. Thus, it was held by the Constitutional Court that the children in question had acquired a habitual residence in France, the place they were removed to, because the children had become integrated into the local environment in the nine months that they were there.[62]

(d) In Israel, different approaches centring on the child's objective circumstances[63] and the parental intentions as to the permanency of a change in residency[64] have been applied.

(e) In England[65] and Canada,[66] parental intentions as to the permanency of a change in residency are at least a relevant, and in some cases, even a decisive, factor.[67] This emphasis on parental intention has, however, relaxed in England of late, with the court opting instead for a more holistic and objective inquiry in line with European jurisprudence.[68]

(f) In Australia[69] and New Zealand,[70] a wide variety of circumstances that bear upon the child's habitual residence, including the past and present intentions of a child's parents. There has, like in England, been a shift towards a holistic and objective inquiry that places less weight on the intentions of the parents.

(g) In the United States, there has been no Supreme Court ruling as to the definition of habitual residence. The result has been that the various Courts of Appeals take slightly different approaches to the issue. The leading case in the Ninth Circuit emphasises the role of the settled parental intent to reside in a particular country, but takes into account objective facts pointing to the child's acclimatisation.[71] A different emphasis is reflected in an earlier decision of the Third Circuit,[72] where the acclimatisation of the child to a particular place is the primary focus, with shared parental intent having a more limited role. In the first Court of Appeals decision to

62 *Bundesverfassungsgericht*, 2 BvR 1206/98 (29 October 1998).
63 *GK v YK*, Family Application 042721/06.
64 *Gabai v Gabai*, P.D. 51(2)241, C.A. 7206/03.
65 *C v S (Minor: Abduction: Illegitimate Child)* [1990] 2 FLR 442; *B v H (Habitual Residence: Wardship)* [2002] 1 FLR 388.
66 *DeHaan v Gracia* [2004] AJ No 94 (QL).
67 The Honourable Justice Kay, "The Hague Convention – Order or Chaos?", paper presented at the Canadian National Judicial Institute International Judicial Conference on The Hague Convention on the Civil Aspects of International Child Abduction, La Malbaie, Québec (July 2004), at para 31.
68 *A v A (Children: Habitual Residence)* [2014] AC 1 at [54(v)] *per* Lady Hale, with whom the rest of the court (including Lord Hughes at [81]) agreed.
69 *LK & Director-General, Department of Community Services* (2009) 237 CLR 582 at [32]–[35].
70 *P v Secretary for Justice* [2007] NZLR 40 at [88].
71 *Mozes v Mozes* 239 F.3d 1067 (9th Cir. 2001).
72 *Feder v Evans-Feder* 63 F.3d 217 (3d Cir. 1995).

address the question of habitual residence, the Court of Appeals of the Sixth Circuit adopted a completely child-centric focus with the objective factual circumstances of the child to its environment being the only relevant concern.[73] The selected approach has however sometimes been influenced by the particular circumstances of the case and often the age of the child.[74]

29 Despite these nuances in the case law, the international trend is towards a holistic and objective inquiry, one that does not place undue emphasis on the subjective intentions of the parents, which was an approach that seemed to have some popularity in the past. This international trend is consistent with Singapore's own jurisprudence on habitual residence.

30 The Singapore court, in determining habitual residence for the purposes of the 1980 Convention, will consider: [75]

(a) where the child has been living;

(b) how settled the child is in that country, including how integrated the child is to the country in terms of the environment, education system, culture, language and people around the child in that country;

(c) where the child's parents are habitually resident;

(d) whether both parents had the joint intention that the child should reside there; and

(e) the child's age (this will also have a bearing on the emphasis placed on the subjective factors (the child's and parents' intentions) and objective factors (quality of residence)).

31 At the Second Reading of the International Child Abduction Bill, the then-Minister for Community Development, Youth and Sports explained that habitual residence is determined by the child's "personal ties to a place", and while the list of relevant factors is not closed or exhaustive, the age and maturity of the child, the child's own views, the child's cultural affiliations, for instance, the language spoken or the country where the child has been in school the longest, are all relevant.[76]

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73 *Friedrich v Friedrich* 983 F.2d 1396 (6th Cir. 1993).

74 For a more extensive discussion of these cases and others, see Erin Gallagher, "A House is Not (Necessarily) A Home: A Discussion of the Common Law Approach to Habitual Residence", (2015) 47 *New York University Journal of International Law and Policy* 463.

75 *TUC v TUD* [2017] SGHCF 12 at [55], endorsing *TDX v TDY* [2015] 4 SLR 982 at [43]–[44] save for (d) (see [61]).

76 Minister for Community Development, Youth and Sports to Parliament (*Singapore Parliamentary Debates, Official Report* (16 September 2010) vol 87 at cols 1269–1270, cited with approval in *TUC v TUD* [2017] SGHCF 12 at [52].

3. Other bases of jurisdiction: concurrent jurisdiction exercised by the authorities of a Contracting State other than that of the child's habitual residence

32 *Transferred jurisdiction*. States may transfer cases in two situations:

(a) Where the authorities of the child's habitual residence are of the view that the authorities of another Contracting State are better placed to deal with the matter. The authorities of the Contracting State can either make a request directly to the authorities of that Contracting State to assume jurisdiction, or it can suspend consideration of the case and invite parties themselves to introduce a request before the authorities of that Contracting State. [77] The authorities of the more appropriate forum, and those of the child's habitual residence, must consent to the former exercising jurisdiction on behalf of the latter.[78] This provides for exceptions where the factual situation does not accord with the assumption of the Convention that the authorities of the child's habitual residence are ordinarily the best-placed to make decisions in the best interests of the child.[79]

(b) *Where the authorities of another Contracting State are exercising divorce jurisdiction*. In such situations, the authorities of the divorce jurisdiction may, concurrent with the authorities of the child's habitual residence, take measures of protection if two conditions are satisfied:[80]

(i) one of the child's parents having parental responsibility habitually resides in the Contracting State whose authorities are exercising divorce jurisdiction; and

(ii) the parents and any other third person with parental responsibility over the child accept that the Contracting State whose authorities are exercising divorce jurisdiction should be permitted take measures of protection, and that that is in the best interests of the child.

If these conditions are satisfied, both the authorities of the State in which divorce proceedings are afoot and the State of the child's habitual residence possess *concurrent* jurisdiction.[81] This ground of

77 Articles 8 and 9, 1996 Convention. The other Contracting State must be a State (a) of which the child is a national; (b) in which the child's property is located; (c) which is exercising divorce jurisdiction over the child's parents; or (d) with which the child has a substantial connection: Article 8(2).

78 Articles 8(4) and 9(3), 1996 Convention.

79 See para 2.7 above.

80 Article 10(1), 1996 Convention; Paul Lagarde, *Explanatory Report* (15 January 1997) at paras 64–65.

81 Paul Lagarde, *Explanatory Report* (15 January 1997) at para 63.

concurrent jurisdiction ceases the moment the divorce becomes final or the divorce proceedings terminate for any other reason.[82]

33 *Practical exigencies*. For refugee, internationally-displaced children, or children whose habitual residence cannot be ascertained, the State in which the child is *present* have jurisdiction.[83]

34 *Measures of interim nature or in cases of urgency*. The State where the child is present may, pending return to the habitual residence jurisdiction, deal with:

(a) *Situations of urgency.* The authorities of a Contracting State in whose territory the child (or the child's property) is *present* shall have jurisdiction to take such necessary measures of protection.[84] These measures are temporary and will lapse as soon as the authorities in the child's habitual residence have addressed the same situation with corresponding measures.[85]

(b) *Interim measures concerning the child (or the child's property) are sought.* The authorities of the Contracting State on which the child or his or her property is *present* shall have jurisdiction to take such provisional measures for the protection of the person or property of the child.[86] These measures have limited territorial effect. Again, they lapse when the authorities of the child's habitual residence have addressed the same situation with corresponding measures.[87]

35 Since the 1996 Convention contemplates situations of concurrent jurisdiction, this raises the question of how conflicts of jurisdiction in such cases are resolved. In cases where authorities assume jurisdiction on the basis of urgency or to grant interim measures (*ie*, at paras 30(a) and (b) above), there is a self-regulating mechanism; the orders lapse when the authorities of the child's habitual residence assume jurisdiction and address the "same situation with corresponding measures".

36 In all other cases, when the authorities of more than one Contracting State are seized of jurisdiction under the 1996 Convention,[88] the 1996 Convention applies a first-seized rule. No other court shall exercise jurisdiction if, at the time of the commencement of proceedings before that

82 Article 10(2), 1996 Convention.
83 Articles 6(1) and 6(2), 1996 Convention.
84 An order for the return of the child to the country of his or her habitual residence is a "measure of protection" for the purposes of Article 11: see *In re the matter of J (a child)* [2015] UKSC 70 at [23].
85 Article 11(2), 1996 Convention.
86 Article 12(1), 1996 Convention.
87 Article 12(2), 1996 Convention.
88 Articles 5–10, 1996 Convention.

court, corresponding measures have been requested from the court of another Contracting State with jurisdiction under the 1996 Convention.[89]

D. HOW THE 1996 CONVENTION WILL CHANGE SINGAPORE'S PRIVATE INTERNATIONAL LAW FRAMEWORK

37 The 1996 Convention will replace the broad *Spiliada* analysis with a focus on (a) the habitual residence of the child in most cases; (b) transfer jurisdiction where exceptions apply; and (c) urgent and interim measures where a child habitually resident elsewhere is present.

1. Focus on habitual residence; relinquishing *Spiliada*

38 The greater focus on habitual residence would mean that, under the 1996 Convention, there will be greater certainty which State has and will exercise jurisdiction to deal with measures of protection concerning the child. But there are two trade-offs for certainty. First, it will narrow the scope of considerations the court can take into account when deciding whether or not to hear a case. Under the present regime, assuming at least one of the broad bases of jurisdiction is satisfied, the Singapore court considers a host of factors when deciding whether there is another clearly more appropriate forum to hear a case. Under the 1996 Convention, the court must give its undivided attention to the child's habitual residence. Second, the 1996 Convention does not have a ready equivalent to the substantial injustice proviso under the *Spiliada* test, which permits the court to hear the case notwithstanding a conclusion that it is *forum non conveniens*. The philosophy of the 1996 Convention is that substantial justice is done when the matter is heard by the most appropriate forum, namely, the authorities of the child's habitual residence. Indeed, courts have remarked that, both as a matter of logic and principle, once a foreign court is found to be a more appropriate forum to hear a dispute, factors such as the reasonableness of each party's actions should not be relevant to whether the forum court should nonetheless hear the case.[90]

39 However, the 1996 Convention's strong focus on the child's habitual residence still permits the court to take into account a wide range of factors, to the extent that a determination as to the child's habitual residence entails the court examining varied considerations touching on the child's upbringing and well-being, and the parents intentions; it

89 Article 13(1), 1996 Convention.

90 See, for example, *Lewis v King* [2004] EWCA Civ 1329 at [38]–[39]:

> … But we are not sure that we have grasped the idea of a principle which first enjoins ascertainment of the appropriate forum, but then allows the claimant to proceed in an inappropriate forum because he has acted reasonably in relation (for instance) to differential time bars applicable in the candidate jurisdictions. … However, *Spiliada* and [*Metall und Rohstoff AG* [1990] 1 QB 391] undoubtedly state the present law on this part of the case. …

permits—if not enjoins—the court to take a holistic view of the child's welfare.[91]

2. The transfer exceptions

40 Traditionally, courts in the past have given primacy to the divorce court's jurisdiction and matters concerning children are regarded as only *ancillary* to the divorce. Thus, in relation to the existence of jurisdiction, a court exercising its divorce jurisdiction does not require any other connection to a child of the marriage in order to be able to make orders in relation to the child's welfare.[92] Where the exercise of jurisdiction is concerned, common law courts place tremendous emphasis on the desirability of having a divorce court hear all matters arising out of the divorce, including matters relating to a child of the marriage.[93] The introduction of the 1996 Convention will shift the philosophical approach from one centred on the court's divorce jurisdiction to one that emphasises the interests of the *child*. Article 10 is engaged only "under rather strict conditions".[94] Article 10 can only be invoked if one of the parents is also habitually resident in that other Contracting State,[95] and both parents *agree* that that court should have concurrent jurisdiction.[96]

Case example: *Re A (an infant)*[97]

A French father and Moroccan mother married in Paris where they had a daughter. The family moved to Singapore when the daughter was 4 years of age. The relationship between the father and mother began to fray when the daughter was 6 years of age. The mother brought an application under the Guardianship of Infants Act for custody, care and control of the daughter. The following day, the father commenced a similar action in Singapore, also under the same Act, and simultaneously filed for divorce in Paris. *Three months after the commencement of legal proceedings, the mother brought the daughter from Singapore to London, where they resided thereafter.*

The question before the Singapore court was whether the issue of interim custody ought to be heard in Singapore or in Paris. The High Court held that that the French court emerged as "pre-eminently more appropriate" and thus stayed the father's application for interim custody in Singapore.[98] The court took into account the fact that there were proceedings afoot in France that the

91 See para 2.11 above.
92 See para 2.3(a) above.
93 Law Reform Committee, *Report on Ancillary Orders After Foreign Divorce or Annulment* (July 2009) at para 38.
94 Paul Lagarde, *Explanatory Report* (15 January 1997) at para 37.
95 Article 10(1)(a), 1996 Convention.
96 Article 10(1)(b), 1996 Convention.
97 [2002] 1 SLR(R) 570.
98 *Re A (an infant)* [2002] SLR(R) 570 at [16].

husband himself had commenced, that the French court had made orders in relation to the custody of the daughter, and that it would have been more convenient for evidence relevant to the determination of the matter to be produced in France.[99]

If the 1996 Convention had applied, on the hypothesis that Singapore, France and the UK were Contracting States to the 1996 Convention, the foremost consideration would have been the habitual residence of the child. The court in *Re A* held that Singapore was the habitual residence of the daughter prior to her removal to London. After her removal and at the time of the proceedings, her habitual residence had switched to London.[100] Article 10 conditions would not have been met in any event for the case to continue in Singapore: the mother was no longer habitually resident in Singapore.

41 A focus on the child, however, will mean that courts will recognise, in any event, that it is not necessarily ideal to have the divorce court hear all matters arising out of the divorce. Parties may seek to elect a jurisdiction for the distribution of assets in a divorce (for example, in pre-nuptial agreements). Whilst the chosen jurisdiction may be selected because it is ideally placed to deal with the assets of the parties in the divorce, it may have little or no connection to the *children* of the marriage. Further, if the children are not habitually resident in that jurisdiction, orders made by the divorce court may have little or no useful effect.

42 The second category of transfer jurisdiction permits authorities of the child's habitual residence to request to transfer jurisdiction to the authorities of another Contracting State which would be "better placed in the particular case to assess the best interests of the child".[101] This gives the courts of habitual residence a greater leeway to deal with a child, where the other Contracting State is one of which the child is a national, is one in which the property of the child is located, is one which is seized of divorce proceedings, or is a State with which the child has a substantial connection.[102] The requested Contracting State must also agree to assume jurisdiction on the basis that it considers the transfer of jurisdiction is in the child's best interest.[103]

3. Urgent and interim measures

43 The State in which a child is *present* is given jurisdiction to make urgent and interim measures, even if it is not the jurisdiction of the child's habitual residence. This form of jurisdiction could have great practical significance. When a child is sought to be returned to another jurisdiction,

99 *Re A (an infant)* [2002] SLR(R) 570 at [17]–[19].
100 *Re A (an infant)* [2002] SLR(R) 570 at [5].
101 Article 8(1), 1996 Convention.
102 Article 8(2), 1996 Convention.
103 Article 8(4), 1996 Convention.

the authorities of the Contracting State in which the child is present may take measures of protection in cases of urgency. These protective measures are themselves eligible for recognition and enforcement under the 1996 Convention. These can be declared enforceable or registered abroad, and will remain effective until such time that corresponding orders are made by the court exercising pre-eminent jurisdiction.[104]

44 Such measures, which has been described as a "very helpful" tool to secure a "soft landing" for children who are ordered to return,[105] are best made by the State which the child is in.[106] For example, that court can take steps to locate the child, and it is also likely to be better placed to understand and learn about the child's current circumstances. That court can also exert its coercive powers directly on the parent located in its jurisdiction, or even on the child if necessary. These are undoubtedly more efficaciously undertaken by the court of the State where the child is present, rather than the court or authorities of the child's habitual residence, whose orders may then have to be enforced in the court of the State where the child is present. In some cases, these delays or inability to take effective timely action may comprise the protection of the child's interest to be returned to his or her habitual residence.

45 The concept of urgency is not defined.[107] This has led to some ambiguity in Article 11's application.[108] It has been suggested that a situation of urgency is present when there is the risk of "irreparable harm for the child" if remedial measures were sought through the normal channels prescribed by Articles 5 to 10 of the 1996 Convention.[109] The basis of this concurrent jurisdiction is "protection or interests of the child" which may be compromised if measures were only permitted to be obtained from the authorities of the child's habitual residence.[110] English courts, however, adopt a broader approach, as seen in the case example below.

104 Hans van Loon (former Secretary General of the Hague Conference on Private International Law), "The Brussels IIa Regulations: Towards a Review?", cited in *In re J (a child)* [2005] UKHL 40 at [31].

105 *In the matter of J (a child)* [2015] UKSC 70 at [31].

106 *In the matter of J (a child)* [2015] UKSC 70 at [39].

107 Paul Lagarde, *Explanatory Report* (15 January 1997) at para 68.

108 See Rhona Schuz, "Habitual Residence of Children under the Hague Child Abduction Convention – Theory and Practice" (2001) 13 *Child and Family Law Quarterly* 1.

109 Paul Lagarde, *Explanatory Report* (15 January 1997) at para 68.

110 Paul Lagarde, *Explanatory Report* (15 January 1997) at para 68. The example given is of a child who has to undergo an urgent surgical operation, or a matter concerning the child's property in the form of perishable goods.

Case example: *In re the matter of J (a child)*[111]

The proceedings concerned a child who was born in January 2008, to parents from Morocco who held dual Moroccan-British citizenships. They lived in England when the child was born. They then moved to Saudi Arabia in 2009 and then back to Morocco in 2011.

The marriage broke down in December 2011, whereupon the child lived with the mother; the father was given access to the child. The mother returned to London in January 2013, but the child remained in Morocco under the care of the maternal grandparents for some months after. The child was then brought back to the UK by the mother. Shortly after, the father applied to the Family Court in Morocco for residential custody of the child. The father then brought proceedings in the English High Court, seeking an order that the child be made a ward of court and returned summarily to Morocco.

The judge found that the child was habitually resident in Morocco. He also found that the father had not consented to the child's removal and so the mother's bringing the child to the UK was wrongful. The judge ordered the child's immediate return. The return order was, however, not made under the 1980 Convention because, while Morocco had acceded to the 1980 Convention, the European Union, and thus, the UK, had not accepted Morocco's accession. The 1980 Convention was thus inapplicable. The 1996 Convention, however, applied because both the UK and Morocco were States parties to that Convention.

The judge was reversed by the Court of Appeal, which held that the judge did not have a jurisdictional basis upon which he was entitled to make the orders he made. The Court of Appeal held that Article 11 was inapplicable because a return order was neither urgent nor necessary. There was delay in the father's bringing proceedings in both Morocco and the UK, and so this could not be a case of urgency.

The Court of Appeal was reversed by the UK Supreme Court. A unanimous court noted that Article 11 of the 1996 Convention contained neither the words "irreparable harm" nor "compromising the protection or interest of the child". Rather, the 1996 Convention "merely asks" whether the measure sought is "necessary and the case urgent".[112]

111 [2015] UKSC 70 at [1].
112 *In re the matter of J (a child)* [2015] UKSC 70 at [38].

The UK Supreme Court also clarified that it was not a precondition of urgency that the applicant for the measure of protection could not make the same request before the authorities of the child's habitual residence. In the court's opinion, if a child required protection immediately, the courts of the country where the child was located ought not to refrain from granting the protection while inquiries were made into the possibility of bringing proceedings in the home country.[113] The court reasoned that such jurisdiction could and ought to be exercised, for example, in a case involving a child caught up in a situation of domestic violence, even if it had not been shown to be impossible for the authorities of the habitual residence to take measures of protection.[114]

113 *In re the matter of J (a child)* [2015] UKSC 70 at [29].
114 *In re the matter of J (a child)* [2015] UKSC 70 at [30].

CHAPTER 3

EXTENDING RECOGNITION AND ENFORCEMENT

46 The 1996 Convention allows the recognition and enforcement of local orders in other Convention countries, and *vice versa*.

A. SINGAPORE'S CURRENT PRIVATE INTERNATIONAL LAW FRAMEWORK

47 At present, there is no reciprocal recognition or enforcement framework in place. A Singapore court's orders are not automatically recognised or enforced overseas. Nor is a Singapore court bound to recognise, enforce or give effect to a foreign measure of protection, although it can do so if it chooses to.

48 As with many other jurisdictions, a Singapore court may make a "mirror" order, but the guiding principle is that "the benefit of the infant, which is the foundation of the jurisdiction, must be the test of its right exercise".[115] Foreign measures "at best are treated with respect but not as binding".[116] The court is not bound to recognise the status of any foreign guardian.[117] The court is entitled to disregard a foreign guardian and appoint another.[118] Although there appears to be some limited scope for recognising the validity of the *appointment* of the foreign guardian under the *lex domicilii* of the child,[119] that foreign guardian is nonetheless still "[subject to] and [limited] according to the *lex fori*".[120] A foreign custody order in relation to the child made by a judicial authority abroad also does not bind the Singapore court.[121] If the court does not enter into the merits of the question afresh and form an independent judgment of where the infant's welfare lies, it would be a "negation of the proposition … that the infant's welfare is the paramount consideration".[122]

115 *Stuart v Bute* (1861) 9 HLC 440 at 463.
116 The Honourable Peter Nygh, "The New Hague Child Protection Convention", (1997) 11 *International Journal of Law, Policy and the Family* 344 at p 358, commenting on the largely similar common law position in England & Wales.
117 *Johnstone v Beattie* (1843) 10 Cl & F 42.
118 *Stuart v Bute* (1861) 9 HLC 440 at 464–465.
119 *Re Chatard's Settlement* [1899] 1 Ch 712.
120 Tan Yock Lin, *Conflict Issues in Family and Succession Law* (Butterworths, 1993) at p 502.
121 *McKee v McKee* [1951] AC 352; *ZP v PS* (1994) 181 CLR 639.
122 *McKee v McKee* [1951] AC 352 at 364.

B. RECOGNITION AND ENFORCEMENT UNDER THE 1996 CONVENTION

49 In contrast, under the 1996 Convention, where the Singapore court exercises jurisdiction under the Convention, Singapore court orders will automatically gain recognition and bite in all other Contracting States. The widespread recognition and enforceability of the orders made by the Singapore court, when it has jurisdiction under the 1996 Convention, will be an important advantage that will place the Singapore court well to deal with cases involving international elements.

1. Recognition

50 The general rule is that measures of protection taken in one Contracting State are automatically recognised in every other Contracting State.[123] This is useful in situations where the party in whose favour a measure is made is empowered to take unilateral steps in another Contracting State. For example, a legal representative who has been conferred powers to act on the child's behalf may enter into transactions on behalf of the child in the foreign State *without needing to enforce in the foreign State the measure conferred on him or her*.[124]

51 *Exceptions*. The rapid and automatic nature of the enforcement provisions is nonetheless attenuated by the presence of exceptions to enforcement, which is characteristic of most reciprocal enforcement regimes. The 1996 Convention enumerates exhaustive grounds on which the recognition of measures of protection may be refused.[125] These are where:

> (a) *The measure was made by an authority which did not have the requisite jurisdiction to do so*. A measure may be refused recognition if the authority that granted the measure *did not have jurisdiction* on the grounds prescribed by the 1996 Convention. The width of this exception will depend on whether a finding of habitual residence—the pre-eminent basis for assuming jurisdiction under the 1996 Convention—is characterised as a determination of fact, of law, or of mixed fact and law.[126]

123 Paul Lagarde, *Explanatory Report* (15 January 1997) at para 119.

124 Paul Lagarde, *Explanatory Report* (15 January 1997) at para 132.

125 Article 32(2), 1996 Convention.

126 Based on the general approach of the Hague Conventions, it may be that what amounts to "habitual residence" is a *legal* determination and not a finding of fact for purposes of Article 25 of the 1996 Convention. The Explanatory Report to the 1996 Convention, when discussing Article 25, makes a distinction between an assessment of habitual residence, and the facts on which such assessment is based (at para. 131). Further, the following explanation is provided in Peter Nygh &Fausto Pocar *Report on the Preliminary Draft Hague Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters* (August 2000) at p 107 provides the following explanation on a provision similar to Article 25: "Similar questions may arise in relation to habitual

(*cont'd on the next page*)

(b) *The measure was granted without the child having been given an opportunity to be heard*. This denial must amount to a violation of the fundamental principles of procedure of the Contracting State in which recognition is sought. While the Explanatory Report clarifies that this exception does not "imply that the child ought to be heard in every case",[127] and the Handbook states that 1996 Convention "does not seek to amend national procedural rules regarding hearing children",[128] the breadth of this exception has a potentially wide variance across Contracting States depending on the degree of consultation with the child that is required by the particular Contracting States.[129] In Germany, for example, extensive provision is made for listening to children before measures concerning them are taken. In the *Tiemann* case,[130] the German Constitutional Court held that for applications under the 1980 Convention, even in situations of a re-abduction, it was incumbent on the court to first listen to the child either directly or through its representative. In Singapore, child participation is generally a matter of the court's discretion.[131] Singapore courts will need to bear in mind, in 1996 Convention cases, a consideration of the child's views, whether through a Child Representative or judicial or counsellor interview or report.

(c) *The measure concerns a person's parental responsibility and that person was not given an opportunity to be heard*. This is related to the exception in the preceding sub-paragraph, and a specific manifestation of the fundamental requirement of natural justice.

(d) *The measure is manifestly contrary to public policy, taking into account the best interests of the child*. The "manifestly contrary to public policy" formulation is ubiquitous in international instruments. But the 1996 Convention requires this question to be considered with specific reference to the best interests of the child. This formulation was adopted from the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.[132] The 1993 Convention does not prescribe how the exception is to be applied, but it is "understood that the notion of public policy shall be

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residence. A finding that a person has physically stayed at a particular place will be binding, *but the deduction therefrom that this constitutes habitual residence will not* (emphasis added)." In any case, Article 25 is still a departure from the common law, whereby the requested court must ascertain for itself the underlying facts for the purpose of determining international jurisdiction.

127 Paul Lagarde, *Explanatory Report* (15 January 1997) at para 123.

128 Hague Conference on Private International Law, *Practice Handbook on the Operation of the 1996 Hague Child Protection Convention* at para 10.6.

129 Nigel Lowe, "The 1996 Hague Convention on the protection of children – a fresh appraisal", (2002) 14(2) *Child and Family Law Quarterly* 191 at p 202.

130 *Bundesverfassungsgericht*, 28 October 1998, JZ 1999 at 459.

131 Thus in *AZB v AZC* [2016] SGHCF 1, the High Court said at [24] that while judicial interviews of children were "an important option", "[i]nterviewing children may not always be the best way to proceed".

132 Article 24.

interpreted very restrictively".[133] The exact same formulation is also adopted as an exception to the recognition of a judgment by the Brussels II *bis* regulation,[134] which regulates private international law rules between EU Member States in relation to family law matters. The Fourth Chamber of the European Court of Justice in what appears to be the only reported decision on this provision held that it "must be interpreted strictly".[135] The exception would only be engaged "where, taking into account the best interests of the child, recognition of the judgment given in another Member State would be at variance to an unacceptable degree with the legal order of the State in which recognition is sought, in that it would infringe a fundamental principle".[136] In that case, the Fourth Chamber decided on the reference that an error of law was insufficient to trigger the operation of the exception.[137]

(e) *The measure is incompatible with a later measure taken in a non-Contracting State of the child's habitual residence*. This is contingent on the later measure of the non-Contracting State being recognisable under the Contracting State's rules for recognition (independent of the grounds in the 1996 Convention). This is a limited exception needed only for situations involving non-Contracting States, because the 1996 Convention addresses the situation of later incompatible measures as between Contracting States.

(f) *The measure does not comply with the requirements in Article 33 of the 1996 Convention*. This is a specific procedural requirement that applies to measures ordering that a child be moved to foster care, or *kafala*.

52 A Contracting State is also precluded from examining the *merits* of the measure in question when deciding whether to refuse recognition.[138] It should be noted, however, that even if a ground for refusing recognition is established, the authorities of the Contracting State nonetheless have the power to still recognise the measure if it is in the interests of the welfare of the child.[139]

53 Since measures of protection are recognised automatically, it is incumbent on the party challenging recognition to commence legal

133 G Parra-Aranguren, *Explanatory Report on the Convention on Protection of Children and Cooperation in respect of Intercountry Adoption* (31 December 1993) at para 426

134 Article 23(a), Council Regulation (EC) No 2201/2003 (27 November 2003).

135 *P v Q*, Case C-455/15 PPU (19 November 2015) at para 36.

136 *P v Q*, Case C-455/15 PPU (19 November 2015) at para 39.

137 The alleged error was that a Lithuanian court had wrongfully exercised jurisdiction over a Swedish child that had been removed to Lithuania.

138 Article 27, 1996 Convetion.

139 Art 23(2), 1996 Convention; Paul Lagarde, *Explanatory Report* (15 January 1997) at para 121.

proceedings before a court refuses to recognise a measure made by the court of another Contracting State. Such proceedings may be brought by "any interested person", in accordance with the procedural rules of the Contracting State.[140]

2. Declaration of enforceability and registration

54 When recognition of a measure in the foreign Contracting State is insufficient, and enforcement is required, or anticipated to be so, an "interested party" may request the foreign Contracting State to declare the measure enforceable or registered for the purpose of enforcement.[141] The procedure for processing this request is entirely up to the Contracting State to determine, so long as it is "simple and rapid".[142] A declaration of enforceability or registration of the measure may only be refused if one of the grounds for refusing recognition is established.[143] It follows from this that the foreign Contracting State retains the power to declare enforceable or register a measure notwithstanding that a ground for refusing recognition is made out.

55 The mechanism to obtain a declaration of enforceability in another Contracting State will be useful in situations of relocation. It will permit a parent to pre-emptively obtain recognition of a measure by the Contracting State to which relocation is sought. For example, a mother with three children may wish to relocate to another Contracting State. The father may not object, on condition that he is able to maintain access to the children on the terms ordered by the court of the Contracting State in which they currently reside. The father may seek recognition of the measure in the other Contracting State before agreeing to the mother and children's move to that jurisdiction.[144] In practical terms, the court seized of the relocation application would take measures (or make orders) for relocation but with recognition under Article 24 being a condition precedent to the child leaving the jurisdiction. The court determining the relocation issue could also reserve liberty to the parties to re-open the case in the event that recognition is not granted, and either or both seek alternative orders.

140 Article 24, 1996 Convention.
141 Article 26(1), 1996 Convention.
142 Articles 26(1) and 26(2), 1996 Convention; see also Paul Lagarde, *Explanatory Report* (15 January 1997) at para 132.
143 Article 26(3), 1996 Convention.
144 HCCH, *Practical Handbook on the Operation of the 1996 Hague Child Protection Convention*, Example 10(1).

Case example: *Cape v Cape*[145]

The proceedings concerned an application by a mother to relocate a child to Germany from Australia. The Australian Full Court heard the case, and permitted the mother to relocate the child to Germany pending the determination of an appeal against orders permitting the relocation. One of the conditions to such relocation was the mother executing an undertaking as a protective measure pursuant to the 1996 Convention that she would return the child to Australia in the event that the father's appeal was successful. The mother could remove the child providing she first obtained, from a court of competent jurisdiction in Germany, either recognition of orders pursuant to Article 24 or a declaration of enforceability or registration pursuant to Article 26 of the 1996 Convention.

3. Enforcement

56 Once a measure is declared enforceable or is registered in the foreign Contracting State, it shall be enforced in that State as if it were a measure that had been taken by the authorities of that Contracting State.[146]

57 The 1996 Convention is nevertheless alive to the possibility that the enforcement of a foreign measure may not always be in the best interest of the child.[147] For example, suppose the authorities of the child's habitual residence have kept, as a measure, the child with his family while placing the family under the supervision of the local social authorities. The family later settles in another Contracting State, and the measure is to be enforced there. No issues arise if the relevant authorities in the second Contracting State are similarly authorised under their law to carry out the task of supervising the child's family. However, practice difficulties will arise if the laws of the foreign State do not provide the local social authorities with such authorisation. In such situations, the suggestion is that the authorities of the second Contracting State should adapt the measure after consultation with the authorities of the original Contracting State, if possible, or alternatively, exercise its jurisdiction to modify the measure accordingly.[148]

145 [2013] FamCAFC 114.
146 Article 28, 1996 Convention.
147 Paul Lagarde, *Explanatory Report* (15 January 1997) at para 135.
148 Under Art 5(2), 1996 Convention; see also Paul Lagarde, *Explanatory Report* (15 January 1997) at para 135.

C. HOW THE 1996 CONVENTION WILL CHANGE SINGAPORE'S PRIVATE INTERNATIONAL LAW FRAMEWORK

58 The ratification of the 1996 Convention will help orders made by the Singapore court gain increased efficacy in other Contracting States. The trade-off is the reciprocity Singapore courts must give to Contracting State orders. The court will only be able to do so if one of the specified grounds for non-recognition is established. These grounds under the 1996 Convention were deliberately narrowed and tightened from the grounds for a refusal of return under the 1980 Convention.[149]

59 Curbing the court's power to disregard in its entirety foreign orders concerning children is a progressive rather than regressive step. The recognition and enforcement rules flow from antiquated choice of law rules which require courts to apply without exception the *lex fori* in the form of the welfare principle. This rule originates in 19th century legislation when, presumably, international family law issues were not at the forefront of the drafters' minds.[150] The historical reason for why the court adopted a parochial approach to foreign laws and orders made by courts abroad lies in the theory of the sovereign as *parens patriae*.[151] The sovereign is "bound to look to the maintenance and proper education of all its subjects".[152] Yet the court's modern guardianship and wardship jurisdiction extends far beyond its subjects (*ie*, nationals).[153] It is questionable whether the *parens patriae* justification continues to be a convincing one.

60 It is therefore desirable as a matter of principle for the Singapore court to give presumptive weight to an order made by a court of the child's habitual residence, providing that all parties were accorded procedural fairness.[154] This must be a necessary consequence of acknowledging that the authorities of the child's habitual residence are ordinarily the best placed to decide what the welfare of the child entails. This will also prevent parents from attempting to re-litigate matters by bringing a matter concerning a child before the Singapore court, despite it having been already determined by a foreign court.

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149 Nigel Lowe and Michael Nicholls, "The 1996 Hague Convention on the Protection of Children", (2002) *Family Law* 102 at p 105; the breadth of the exceptions to return under the 1980 Convention is seen as one of its major shortcomings.

150 Guardianship of Infants Act 1886 (c 27).

151 Tan Yock Lin, *Conflicts Issues in Family and Succession Law* (Butterworths, 1993) remarks at p 496.

152 *Hope v Hope* (1854) 4 De GM & G 328 at 345.

153 Tan Yock Lin, *Conflicts Issues in Family and Succession Law* (Butterworths, 1993) remarks at p 494 that:

> An enlightened jurisprudence would baulk at any suggestion that the jurisdiction is restricted to subjects. Can the sovereign in all good conscience stand by while a child, not a subject, is being ill-treated within its jurisdiction? The answer is obvious.

154 What procedural fairness requires, however, may vary from country to country, that may create difficulties, which are alluded to at para 3.6(a) above.

61 Another point that arises is the extent to which the court will be required to defer to the findings of the prior court on the question of the child's habitual residence, when the enforcing court is deciding whether or not the prior court had jurisdiction under the 1996 Convention. This is especially important in relation to the prior court's determination on the question of the child's habitual residence, since that is the pre-eminent basis for assuming jurisdiction under the 1996 Convention.

62 The extent to which the enforcing court will have to defer to the findings of the prior court will depend on whether a determination on habitual residence is characterised as a factual determination, as opposed to a legal determination. Article 25 of the 1996 Convention states that "[t]he authority of the requested State *is bound by the findings of fact on which the authority of the State where the measure was taken based its jurisdiction*" [emphasis added]. If a determination on habitual residence is characterised as a finding of fact then Article 25 will preclude that determination from being re-opened at the enforcement or recognition stage.

63 Some jurisdictions take the view that a determination of habitual residence is a pure question of fact. For example, the Australian Attorney-General's Department observed:[155]

> Habitual residence is a question of fact to be determined by reference to all the circumstances of a particular case. In relation to a child, relevant considerations include the intention of the parents and the length of time the child has resided in the country. The concept must remain capable of application to a wide variety of factual situations and it is unlikely that any exhaustive definition could usefully be devised.

64 But this may be an overly simplistic characterisation of the matter, and it is unlikely that a common law court will construe the determination of habitual residence as a determination of fact. It is crucial to distinguish between the *factual incidents* which form the basis of the assessment of habitual residence, and the inference or judgment in reaching the *legal conclusion* of the child's habitual residence. The former is certainly a question of fact. But the latter is a question of law and legal judgment.

65 The nature of a determination of habitual residence is what appears to have divided the United Kingdom Supreme Court in *In the matter of B (A Child)*.[156] Lord Wilson, who delivered the majority opinion, appears to have assumed that a child's habitual residence was a question of fact to be determined by a fact-finder; but that in doing so, the fact-finder may have regard to certain "expectations", or rules of thumb as to when habitual

155 See also Elisa Pérez-Vera, *Explanatory Report*, *Convention on the Civil Aspects of International Child Abduction, Hague Conference on Private International Law* (1980) III Actes et Documents de la Quartorzième Session 426 at p 445.

156 [2016] UKSC 4.

residence will or will not be satisfied.[157] The concurring joint opinion of Lady Hale and Lord Toulson stated explicitly that "[a]t the risk of appearing pedantic, we would prefer to describe it as a mixed question of fact and law, because the concept is a matter of law but its application is a matter of fact".[158] (This does not sit easily with Lady Hale's own pronouncement three years earlier that "All are agreed that habitual residence is a question of fact and not a legal concept such as domicile."[159]) in Lord Sumption's dissent (with which Lord Clarke agreed) viewed it as an "essentially factual enquiry" but decried the majority for introducing a "classic legal construct" that had no place in a factual determination.[160]

157 *In the matter of B (A Child)* [2016] UKSC 4 at [46].
158 *In the matter of B (A Child)* [2016] UKSC 4 at [57].
159 *In the matter of A (Children) (AP)* [2013] UKSC 60 at [54(i)].
160 *In the matter of B (A Child)* [2016] UKSC 4 at [75].

CHAPTER 4

ENHANCING THE EFFECTIVENESS OF THE 1980 CONVENTION

66 The 1980 Child Abduction Convention was incorporated into Singapore law[161] by the International Child Abduction Act.[162] The 1996 Convention complements and supports its operation.

A. BACKGROUND ON THE 1980 CONVENTION

67 The 1980 Convention has a single object: the return of children who are removed or retained from their country of "habitual residence". A Court is bound to order the return of a child to their "habitual residence" if a parent retains or removes a child away from their "habitual residence" in breach of their custody rights.[163]

68 This obligation to return the child is subject to the following exceptions:

(a) Where the proceedings for return are commenced more than a year after the date of this wrongful removal or retention and the child is settled in its new environment.[164]

(b) Where the wrongful removal or retention was consented to or subsequently acquiesced in by the other parent.[165]

(c) Where the other parent was not exercising custody rights at the time of the removal or retention.[166]

(d) Where there is a grave risk that the return to the habitual residence would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.[167]

(e) Where the child objects to being returned and has attained an age or maturity at which it is appropriate to take account of its views.[168]

161 Singapore acceded to the 1980 Convention on 28 December 2010.
162 Cap 143, 2011 Rev Ed.
163 Article 3, 1980 Convention.
164 Article 12, 1980 Convention.
165 Article 13(a), 1980 Convention.
166 Article 13(a), 1980 Convention.
167 Article 13(b), 1980 Convention.
168 Article 13, 1980 Convention.

B. COMPLEMENTARITY BETWEEN THE 1980 AND 1996 CONVENTIONS

69 The 1996 Convention complements and supports the working of the 1980 Convention in the following ways.

1. Preservation of "habitual residence"

70 Wrongful removal and retention bears the same meaning in this context as it does under the 1980 Convention.[169] In situations of wrongful removal or retention, the authorities of the Contracting State in which the child has been wrongfully removed to or retained in only obtain jurisdiction under the 1996 Convention upon satisfaction of the following requirements: (a) the child has acquired habitual residence in the latter Contracting State; and (b) all relevant persons have acquiesced in the child's wrongful removal or retention, or at least one year has elapsed since all relevant persons first had knowledge of the removal or retention.[170]

2. Safe harbour orders when return order has been made under the 1980 Convention

71 Under the 1980 Convention, the court making the return order does not have any powers to make orders for the interim protection of the child pending the making of orders by the courts of the habitual residence. The question arises as to what happens in a scenario where: (a) a child has been ordered to be returned to the habitual residence under the 1980 Convention; but (b) the courts of the habitual residence have yet to be seized of custody issues as no proceedings have been commenced there. In these situations, the 1996 Convention would allow the Contracting State to take concurrent jurisdiction of the matter to order urgent measures that would complement the return order made under the 1980 Convention.[171] These orders, also known as "safe harbour" orders, would normally impose conditions for the protection of the child which would have effect immediately upon the return of the child to the habitual residence and pending the courts of the habitual residence ordering measures of their own.

169 See *Explanatory Report* at para 50. See also Elisa Pérez-Vera, *Explanatory Report, Convention on the Civil Aspects of International Child Abduction, Hague Conference on Private International Law* (1980) III Actes et Documents de la Quartorzième Session 426 at paras 64–74.

170 Article 7(1), 1996 Convention.

171 Article 11, 1996 Convention.

3. Wider solutions when a return order is not made under the 1980 Convention

72 The 1980 Convention presents a straightforward solution for return where a child is wrongly removed to or retained in another Contracting State. However, once a court orders that the child should not be returned, there nothing to prevent that court from assuming jurisdiction and making orders in relation to the welfare of the child, notwithstanding that it may not be from the State of the child's habitual residence.

73 The 1996 Convention ameliorates this problem, firstly, by preventing the State from assuming "default jurisdiction" to determine custody matters once they have decided that the Child does not need to be returned under the 1980 Convention.[172] The 1996 Convention tackles this problem directly by giving pre-eminent jurisdiction to the child's habitual residence.[173]

74 Secondly, the 1996 Convention provides parties with a wider range of solutions, including the means to communicate through the respective judicial and administrative authorities, to ensure that orders relating to the welfare of the child can be made.

Case example: *State Central Authority v Thomas*[174]

The mother was alleged to have wrongfully removed two young children from Austria to Australia in November 2012. Her position was that the parties had reached an agreement allowing her to do so at a settlement conference in Austria. The father disputed that any such agreement was reached. There was litigation in Austria which both the father and mother vigorously contested. The father also applied to the court in Australia for a return of the child.

In the Austrian proceedings, the Austrian courts appeared to agree with the mother, and as such, the decisions of the Austrian courts countenanced, and were even predicated on, the fact that the children would remain in Australia. Yet, there were no exceptions to a return under the 1980 Convention, which may have justified the Australian court refusing to grant a return order, despite the position that the Austrian courts had taken.

The Austrian and Australian courts went on to exchange information and communicate through the channels made available by the 1996 Convention. The Australian court eventually took jurisdiction under Article 7 of the 1996 Convention, and was able to make orders relating to the child's welfare.

172 Gloria Folger DeHart, "Relationship between the 1980 Child Abduction Convention and the 1996 Protection Convention" (2000) *New York University Journal of International Law and Politics* 83, at p 85.

173 Article 5, 1996 Convention.

174 *State Central Authority & Thomas (No 1)* [2014] FamCA 195; *State Central Authority & Thomas (No 2)* [2014] FamCA 196.

4. Alternative mechanisms for return orders to be made

75 While more states have signed up to the 1980 Convention (93 states) than the 1996 Convention (45 states), the 1980 Convention is not enforceable between all the 1980 Convention States. This is due to a difference in the procedure for international accession under both Conventions:

(a) The 1980 Convention utilises an "opt-in" approach where a Contracting State must agree to another Contracting States' accession in order for the 1980 Convention to apply between those states.[175]

(b) The 1996 Convention, by contrast, utilises an "opt-out" approach where it will apply to all member states unless one Contracting State explicitly raises an objection to the accession of another state.[176]

76 The "gap" in acceptance of Singapore's accession to the 1980 Convention is not small. Only 58 out of the 97 other member states of the 1980 Convention have accepted Singapore's accession. Some of the remaining states that have not accepted Singapore's accession are also parties to the 1996 Convention such as Albania, Armenia, Denmark, Ecuador, Georgia, Monaco, Montenegro, Morocco, Russia, and Turkey. If a member state under the 1980 Convention has not yet accepted Singapore's accession to the 1980 Convention, the 1996 Convention may also provide an alternative mechanism to secure the return of the child, because the recognition and enforcement provisions would compel other Contracting States to the 1996 Convention to recognise a return order made by the Singapore court (independent of the 1980 Convention).

5. Robust enforcement of access rights

77 The 1980 Convention permits a parent to file an application to make arrangements for organising or securing the effective exercise of rights of access. These provisions in respect of access, however, are not as prescriptive as those relating to the return of a child. Secondly, while the 1980 Convention states that the Central Authorities of a Contracting State may initiate or assist in proceedings aimed at securing access rights,[177] it is not clear if this imposes an obligation for mutual recognition of access orders between Courts of Contracting States. These issues are more robustly addressed by the recognition and enforcement provisions of the 1996 Convention which provide for automatic recognition and enforcement of (access) orders made by the habitual residence of the child.

175 Article 38, 1980 Convention.
176 Article 58(3), 1996 Convention.
177 Article 21, 1980 Convention.

CHAPTER 5

CENTRAL AUTHORITIES AND BETTER COOPERATION

78 This Chapter deals with the additional mechanisms for cooperation and communication between Contracting States. These provisions have *no* existing counterpart under Singapore law save in the context of the 1980 Convention.

79 The 1996 Convention envisions Contracting States working with each other to fulfil the objectives of the Convention, on two broad levels:

(a) The provision of information and facilitating communications. This is done mainly through the Central Authorities of each Contracting State.

(b) The provision of assistance for the implementation of measures of protection that have been issued by one Contracting States. This is done mainly through the competent authorities of each Contracting State.

There is no definition of "competent authority" under the 1996 Convention. It is clear, however, that the competent authority is that which would have the power to take the action required by the 1996 Convention under the law of the Contracting State.[178]

80 Contracting States may also buttress the requirements for cooperation by entering into bilateral agreements with each other. Copies of such agreements shall then be transmitted to the depositary of the 1996 Convention.[179]

Case Example: *Australia and Hungary*[180]

The role of the central authorities is illustrated by a case in Australia in September 2016. In that case, the applicant father made a request through the State Central Authority for the return of the child following allegations that the mother had retained the child in Australia.

The matter came for hearing before the Australian courts. There were concerns raised as to the potential psychological damage which might be suffered by the child if he was sent back to Hungary. The hearing was

178 HCCH, *Practical Handbook on the Operation of the 1996 Hague Child Protection Convention*, para 11.10, footnote 358.

179 Article 39, 1996 Convention.

180 This case example was provided by the Family Court of Australia.

adjourned by the Australian court for the Australian Central Authority to send a request for information as to what services would be available for the child in the event of return including the location of such services. The court received a letter from the relevant Hungarian body providing an extremely detailed response as to the institutions and persons who would be able to provide psychological assistance and education guidance for the child.

A. ROLE OF THE CENTRAL AUTHORITY

81 A Central Authority operates as a point of contact between the authorities of the Contracting States.[181] In cases where a Contracting State has already designated an entity as Central Authority under the 1980 Convention,[182] there may be benefits to designating that same entity as Central Authority under the 1996 Convention. Both may find themselves being involved in the same case because parallel approaches may be sought under both the 1980 and 1996 Conventions simultaneously.

82 The Central Authority of each Contracting State has two main duties under the 1996 Convention that cannot be delegated to other bodies. First, Central Authorities are under a general obligation to cooperate with each other and promote cooperation amongst the competent authorities in their states to achieve the purposes of the 1996 Convention.[183] Second, Central Authorities are required to take appropriate steps to provide information on the laws of, and services available in, their States relating to the protection of children.[184]

83 *Delegable duties*. There are other roles which the Central Authority can perform, or alternatively, can delegate to other "*public authorities or other bodies*".[185] These include:

(a) Facilitating communications between authorities when references are made to an authority for assistance under Articles 8 and 9 of the 1996 Convention.[186] When facilitating such communications, the Central Authority may also "offer assistance" by transmitting any elements of information that may be helpful.[187]

(b) Facilitating agreement upon solutions for the protection of the person or property of the child in situations where the 1996

181 Article 29, 1996 Convention.
182 Singapore has designated the Ministry of Social and Family Development ("MSF") as its Central Authority under the 1980 Convention.
183 Article 30(1), 1996 Convention.
184 Article 30(2), 1996 Convention.
185 Articles 31 and 32, 1996 Convention.
186 Article 31(a), 1996 Convention.
187 Paul Lagarde, *Explanatory Report* (15 January 1997) at para141.

Convention applies. This would include modes such as mediation, conciliation or other similar means.[188]

(c) Providing assistance to discover the whereabouts of a child in its State when it appears that a child may be present and in need of protection within its territory. This assistance is to be provided pursuant to the request of another Contracting State.[189]

(d) Providing a report on the situation of a child that is habitually resident in its State and/or requesting the competent authority of its State to consider the need to take measures for the protection of the person or property of the child. This report may be provided pursuant to the request of the Central Authority or other competent authority of another Contracting State which has a substantial connection with the child.[190]

These measures are permissive and authorise the Central Authority to facilitate the transfer and provision of information or reports. They do not impose obligations on the Central Authority to take an initiative or provide such information.[191] On the other hand, no Central Authority shall request or transmit any information pursuant to the cooperation provisions within the 1996 Convention if its opinion is that to do so will be likely to place the child's person or property in danger, or constitute a serious threat to the liberty or life of a member of the child's family.[192]

B. ROLE OF THE COMPETENT AUTHORITIES

84 The competent authorities in each Contracting State may cooperate with each other through two means:

(a) communicating information or providing input in respect of cases where measures of protection are contemplated in relation to the child;[193] or

(b) assisting with the implementation of such measures of protection.[194]

As mentioned above, the 1996 Convention permits the law of the Contracting State to determine the "*competent authority*" to take the action required by the Convention in these provisions.[195] It is possible, though not

188 Article 31(b), 1996 Convention.
189 Article 31(c), 1996 Convention.
190 Article 32, 1996 Convention.
191 Paul Lagarde, *Explanatory Report* (15 January 1997) at paras 137 and 144.
192 Article 37, 1996 Convention.
193 Articles 33, 34, 35(2) and 36, 1996 Convention.
194 Articles 35(1) and 40, 1996 Convention.
195 HCCH, *Practical Handbook on the Operation of the 1996 Hague Child Protection Convention* at para 11.10, footnote 358.

necessary, for a Central Authority to be appointed as the "*competent authority*" in all scenarios.

1. Consent to trans-border placements

85 An authority with jurisdiction under Articles 5 to 10 of the 1996 Convention contemplating the placement of a child in another Contracting State may only make that decision with the consent of the Central Authority or other competent authority of that State.[196] These placements considered refer to trans-border placements of the child into foster family or institutional care or provision of care under *kafala* or an analogous institution. Where these placements are concerned, a failure to follow the applicable procedure[197] gives rise to a ground of non-recognition for the measure of protection in question.[198] When the requesting authority is seeking the consent of the other Contracting State to the trans-border placement, it must transmit a report on the child and the reasons for the placement to the Central Authority or other competent authority of the requested State[199]. Each Contracting State must designate the authority to which such requests should be addressed.[200]

2. Communication of information relevant to protection of the child

86 Where a competent authority is contemplating a measure of protection under the 1996 Convention, it may make a request to another Contracting State which has information relevant to the protection of the child to communicate such information.[201] A Contracting State may declare that these requests be communicated to its authorities only through its Central Authority.[202]

3. Mutual assistance to implement measures of protection

87 The competent authorities of a Contracting State may request the authorities of another Contracting State to assist in the implementation of measures of protection taken under the 1996 Convention.[203] This mutual assistance may especially be sought to ensure the effective exercise of rights of access, as well as the right to maintain direct contacts on a regular basis.[204]

196 Article 33(2), 1996 Convention.
197 Under Article 33, 1996 Convention.
198 HCCH, *Practical Handbook on the Operation of the 1996 Hague Child Protection Convention* at para 11.17.
199 Article 33(1), 1996 Convention.
200 HCCH, *Practical Handbook on the Operation of the 1996 Hague Child Protection Convention* at para 11.15.
201 Article 34(1), 1996 Convention.
202 Article 34(2), 1996 Convention.
203 Article 35(1), 1996 Convention
204 Article 35(1), 1996 Convention.

4. Assisting with requests for information and findings on access

88 In the case where the competent authority of a Contracting State is exercising its jurisdiction under Articles 5 to 10 of the 1996 Convention to determine an application concerning access to a child (the "Deciding Authority"):

> (a) The parent residing in a Contracting State that is not the habitual residence of the child can make a request to the competent authorities in that state to gather information or evidence and make a finding on the suitability of the requesting parent to exercise access and on the conditions under which access is to be exercised.[205]
>
> (b) The findings and information provided in the preceding paragraph shall be admitted and considered by the Deciding Authority before it reaches its decision on access to the child.[206]
>
> (c) The Deciding Authority is not prevented from taking provisional measures pending the outcome of the request made under Article 35(2).[207]

5. Notifying a competent authority of known danger to the child

89 Where the competent authorities of a Contracting State have taken or are going to take a measure of protection for a child exposed to serious danger, they may be informed of the child's change or residence to, or of the child's presence in, another State.[208] These authorities then have the obligation to inform the other State of this danger and of the measure taken or under consideration.[209]

90 While the 1996 Convention does not provide a definition for "serious danger", this may include illness requiring constant treatment or drugs, unhealthy influence of a sect,[210] where the child's carer is under the supervision of the authorities due to allegations of neglect or abuse, or where the child is an unaccompanied minor.[211]

91 Should the competent authority suspect, but not know, whether the child has become resident or present in another Contracting State, it may also utilise Article 31(c) to ascertain the whereabouts of the child.

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205 Article 35(2), 1996 Convention
206 Article 35(2), 1996 Convention.
207 Article 35(4), 1996 Convention.
208 This is irrespective of whether the child is in a contracting or non-contracting state. Paul Lagarde, *Explanatory Report* (15 January 1997) at para 150.
209 Article 36, 1996 Convention.
210 Paul Lagarde, *Explanatory Report* (15 January 1997) at para 150.
211 HCCH, *Practical Handbook on the Operation of the 1996 Hague Child Protection Convention* at para 11.20.

6. Provision of certificate concerning parental responsibility

92 Once a measure of protection has been taken in relation to a child, the authorities of the Contracting State of the child's habitual residence, or of the Contracting State where the measures have been taken, may issue a certificate to the person who has parental responsibility or who has been entrusted with protection of the child's person or property.[212] This certificate should be issued at the person's request. It will indicate the capacity in which that person is entitled to act and the powers conferred upon him or her.[213] Some of such powers indicated in the certificate can include:[214]

(a) A statement as to the identity of the person who holds parental responsibility.

(b) Whether this parental responsibility results by operation of law, or from a measure of protection taken by a competent authority under the 1996 Convention.

(c) The scope and extent of the powers of the person having parental responsibility.

The capacity and powers set out in the certificate are given presumptive effect in the absence of proof to the contrary.[215]

93 There is, however, no obligation for a Contracting State to provide such certificates.[216] It is only in the event that the Contracting State decides to do so that it must designate authorities competent to draw up these certificates.[217]

C. CAVEATS: RISK TO THE CHILD; DATA PRIVACY

94 Notwithstanding anything above, an authority of a Contracting State is not permitted to request or transmit any information under Chapter IV of the 1996 Convention if to do so would, in its opinion, be likely to place the child's person or property in danger, or constitute a serious threat to the liberty or life of a member of the child's family.

95 Personal data gathered or transmitted under the 1996 Convention shall be used only for the purposes for which they were gathered or

212 Article 40(1), 1996 Convention.
213 Article 40(1), 1996 Convention.
214 HCCH, *Practical Handbook on the Operation of the 1996 Hague Child Protection Convention* at para 11.31.
215 Article 40(2), 1996 Convention.
216 HCCH, *Practical Handbook on the Operation of the 1996 Hague Child Protection Convention* at para 11.31.
217 Article 40(3), 1996 Convention.

transmitted.[218] In this regard, the authorities to whom information is transmitted to, shall be responsible for ensuring its confidentiality in accordance with the laws of their respective States.[219]

D. COST FOR CENTRAL AUTHORITIES AND COMPETENT AUTHORITIES

96 Central Authorities and other public authorities of Contracting States shall bear their own costs in applying the provisions of Chapter IV of the 1996 Convention.[220] This includes the fixed costs of the functioning of the authorities, the costs of correspondence and transmissions, of seeking out diverse information and of localising a child, the organisation of mediation or settlement agreements, as well as the costs of implementation of the measures taken in another State, in particular placement measures.[221]

97 With a view to limiting costs, many of the provisions were made discretionary rather than obligatory,[222] and crafted with a concern not to make them unduly onerous. States also retain the right to impose reasonable charges for the provision of services.[223] Any Contracting State may enter into agreements with one or more other Contracting States concerning the allocation of charges.[224] Court costs and the costs of proceedings and lawyers are excluded from the scope of the 1996 Convention, because "public authorities" refer to the administrative authorities of the Contracting States and not the courts.[225]

98 The additional costs of implementation were considered in a National Interest Analysis conducted by the Australian Attorney-General's Department prior to Australia's accession to the Hague 1996 Convention.[226] The analysis concluded that there are "not expected to be any significant additional financial implications arising from the ratification of the Convention". This was because there was no need to establish any new agencies; the role of the Central Authority under the 1996 Convention could be played by the already established Central Authority for the purposes of the 1980 Convention. Ratification was also not contemplated to result in a

218 Article 41, 1996 Convention.
219 Article 42, 1996 Convention.
220 Article 38(1), 1996 Convention.
221 Paul Lagarde, *Explanatory Report* (15 January 1997) at para 152.
222 Eric Clive, "The New Hague Convention on Children" (1998) 3 *Juridical Review* 169 at p 183.
223 Article 38, 1996 Convention.
224 Article 38(2), 1996 Convention.
225 Paul Lagarde, *Explanatory Report* (15 January 1997) at para 152.
226 Australia Attorney-General's Department (Civil Justice Division), *Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, done at The Hague on 19 October 1996: National Interest Analysis* (Document tabled on 12 March 2002) at paras 18–21.

significant increase in the number of international cases being dealt with by the Australian child protection authorities. The Attorney-General's Department also pointed out, to the contrary, that there may be cost savings from the introduction of the 1996 Convention, as Australia would be able to reap the benefits of cooperation.

CHAPTER 6

SOME PRACTICAL ASPECTS CONCERNING IMPLEMENTATION

99 In the event a decision is made that the 1996 Convention should be acceded to, implementation will require further study and investigation. This is a matter more appropriate for a larger inter-Ministry discussion. This Report nonetheless raises some suggestions from the perspective of the legal profession, in the event that they may be of assistance.

A. DOMESTIC LEGISLATION

100 The 1996 Convention would require domestic legislation for implementation. One possibility could be to create an omnibus piece of legislation that would incorporate provisions of a modernised Guardianship of Infants Act[227], the International Child Abduction Act and the 1996 Convention, as issues such as relocation are related. This would create a holistic private law scheme for addressing issues relating to children. An example is the New Zealand Care of Children Act 2004.[228] A rule-making power for the Family Justice Courts should be contained within the new Act to set out the procedure for proceedings under the new Act.

B. APPOINTMENT OF A CENTRAL AUTHORITY

101 A designated Central Authority is required to facilitate communication between Contracting States. A list of Central Authorities for States that have acceded to the 1996 Convention is found at Annex A.

C. CONSULTATION AND RAISING AWARENESS OF BENCH AND BAR

102 Training and education of the Family Bench and the Family Bar are important in two respects. First, the 1996 Convention is potentially wide-ranging in its reach, and may alter established private international law doctrine when the proceedings in question concern another Contracting State. Thus it is important that both counsel and the court alike are aware of the applicability of the 1996 Convention, and they must be conversant in the rules and procedures when it does. Second, the 1996 Convention provides a tremendous resource that will facilitate the cooperation of

227 The Family Law Review Working Group recommended changes to modernise the Guardianship of Infants Act (Cap 122, 1985 Rev Ed), to be implemented in a "Care of Children Act". The incorporation of the 1996 Convention could be included in the same Act.

228 Act No 90 of 2004 (NZ).

authorities and exchange of information between Contracting States. The efficacy of these provisions ultimately rests on the ability of authorities to utilise the tools and reach given them by the 1996 Convention.

103 Towards this end, a thorough consultation with stakeholders, such as the designated Central Authority, the courts, lawyers, and other stakeholders, will be necessary.

CHAPTER 7

SUMMARY AND RECOMMENDATIONS

104 In conclusion, Singapore's accession to the 1996 Convention will bring the following advantages and disadvantages.

A. ADVANTAGES

105 First, the 1996 Convention increases clarity and certainty in the application of jurisdictional and enforcement and recognition rules in all Contracting States. This does not mean that the rules in the 1996 Convention will be applied uniformly across the globe as various concepts within the Convention are subject to interpretation. But it does at least give Contracting States a common language according to which the authorities, parents, and other interested persons may structure their affairs.

106 Second, the 1996 Convention promotes the best interests of the children through its clear child centricity. The 1996 Convention focuses on and gives pre-eminence to the State of the child's habitual residence, which ought to be the best-placed to make orders in relation to the welfare of the child. Yet, there is sufficient flexibility to permit the transfer of cases to other jurisdictions in appropriate circumstances. There is also a range of protective measures for urgent situations.

107 Third, the 1996 Convention will permit automatic recognition and rapid enforcement of Singapore court orders in Contracting States. This will increase the efficacy of Singapore court orders and give them wide-reaching effect in other jurisdictions.

108 Fourth, the 1996 Convention will complement and considerably reinforce the 1980 Convention which has been enacted into law in Singapore. This will make for a robust and holistic regime for the protection of children in cross-border cases.

109 Fifth, the 1996 Convention provides an exemplary institutional framework of Central Authorities which will enable cooperation and communication between Contracting States. Contracting States can make requests for information that will greatly enhance the court or the relevant authority's ability to deal with matters relating to children.

110 Sixth, adopting the 1996 Convention at an early stage will permit Singapore to build up the hard and soft processes to deal with international issues that may arise, while the caseload is less burdensome. Singapore will be placed in the position of a first-mover. This is both an advantage and a

disadvantage: Singapore will be able to have a hand in shaping the jurisprudence for the 1996 Convention and forming international norms at an earlier stage; at the same time it will lose the benefit of learning second-hand lessons from later adoption.

B. DISADVANTAGES

111 The primary disadvantage is that Singapore will have to cede jurisdiction to the Contracting State of the child's habitual residence, if Singapore is not the habitual residence.

112 Associated with this is the necessity that, as part of other Contracting States recognising and enforcing Singapore orders, Singapore will similarly have to recognise and enforce the orders of other Contracting States although the 1996 Convention has a safeguard mechanism that permits States to refuse recognition of foreign orders if they are manifestly inconsistent with the State's public policy.

C. RECOMMENDATION

113 The Committee's view is that the advantages of accession to the 1996 Convention outweigh the disadvantages. The Committee therefore recommends that the relevant Ministries consider accession to the 1996 Convention.

ANNEX A

1996 CONVENTION STATUS TABLE

No.	Country	Status	Central Authority
Member States of the Hague Organisation			
1.	Albania	Accession	Ministry of Justice
2.	Argentina	Signed	—
3.	Armenia	Accession	Ministry of Justice of the Republic of Armenia
4.	Australia	Ratification	Commonwealth Attorney-General's Department[229]
5.	Austria	Ratification	Federal Ministry of Justice
6.	Belgium	Ratification	Service Publice Federale Justice
7.	Bulgaria	Accession	The Ministry of Justice
8.	Croatia	Ratification	Ministry for Demography, Family, Youth, and Social Policy
9.	Cyprus	Ratification	Ministry of Justice and Public Order
10.	Czech Republic	Ratification	Urad pro mezinarodne pravni ochranu deti
11.	Denmark	Ratification	The Ministry for Children and Social Affairs
12.	Ecuador	Accession	Subsecretaria de proteccion especial
13.	Estonia	Accession	Ministry of Justice
14.	Finland	Ratification	Ministry of Justice
15.	France	Ratification	Ministere de la Justice
16.	Georgia	Accession	Ministry of Justice of Georgia
17.	Germany	Ratification	Budesamt fur Justiz
18.	Greece	Ratification	Helleneic Ministry of Justice, Transparency and Human Rights
19.	Hungary	Accession	Ministry of Natural Resources
20.	Ireland	Ratification	Department of Justice and Equality
21.	Italy	Ratification	—
22.	Latvia	Ratification	Ministry of Justice
23.	Lithuania	Accession	Ministry of Social Security and Labour

229 Please note that the various states within Australia also each have their own Central Authorities.

No.	Country	Status	Central Authority
24.	Luxembourg	Ratification	Le Procureur General d'Etat
25.	Malta	Accession	Director of Social Welfare Standards, Ministry for the Family and Social Solidarity
26.	Monaco	Ratification	Direction des Services Judiciares
27.	Montenegro	Accession	Ministry of Labour and Social Welfare
28.	Morocco	Ratification	Ministere de la justice et des libertes
29.	Netherlands	Ratification	Dutch Central Authority Ministry of Security and Justice
30.	Norway	Ratification	Royal Ministry of Justice and Public Security, Department of Civil Affairs
31.	Poland	Ratification	Ministry of Justice
32.	Portugal	Ratification	Direcao-Geral de Reinsercao e Servicos Prisionais
33.	Romania	Ratification	Ministry of Labour, Family, and Social Protection
34.	Russian Federation	Accession	The Ministry of Education and Science of the Russian Federation
35.	Serbia	Accession	Ministry of Labour, Employment, Veteran and Social Affairs
36.	Slovakia	Ratification	Ministerstvo spravodlivosti Slovenskel republiky
37.	Slovenia	Ratification	Ministry of Labour, Family, Social Affairs and Equal Opportunities of the Republic of Slovenia
38.	Spain	Ratification	Direction Generale de Cooperation juridique internationale, Ministere de la Justice
39.	Sweden	Ratification	Ministry for Foreign Affairs
40.	Switzerland	Ratification	Office federal de la Justice
41.	Turkey	Ratification	—
42.	Ukraine	Accession	Ministry of Justice for Ukraine
43.	United Kingdom of Great Britain and Northern Ireland	Ratification	The International Child Abduction and Contact Unit, Office of the Official Solicitor (for England and Wales)[230]
44.	United States of America	Signed	
45.	Uruguay	Accession	Ministerio de Educacion y Cultura

230 Please note that other UK territories also each have their own Central Authorities.

No.	Country	Status	Central Authority
Non-Member States of the Hague Organisation			
46.	Cuba	Accession	Ministry of Justice
47.	Dominican Republic	Accession	Consejo Nacional Para la Ninez y la Adolescencia
48.	Lesotho	Accession	Ministry of Justice, Human Rights and the Correctional Services

ANNEX B

1980 CONVENTION STATUS TABLE

No.	Country	Status	Central Authority
Member States of the Hague Organisation			
1.	Albania	Accession	Ministry of Justice
2.	Andorra	Accession	Ministry of Social Affairs, Justice and Interior
3.	Argentina	Ratification	Ministry of Foreign Affairs and Worship
4.	Armenia	Accession	Ministry of Justice of the Republic of Armenia
5.	Australia	Ratification	Commonwealth Attorney-General's Department[231]
6.	Austria	Ratification	Federal Ministry of Justice
7.	Belarus	Accession	Ministry of Justice of the Republic of Belarus
8.	Belgium	Ratification	Service Publice Federale Justice
9.	Bosnia and Herzegovina	Succession	Ministry of Justice of Bosnia and Herzegovina
10.	Brazil	Accession	Brazilian Central Authority
11.	Bulgaria	Accession	The Ministry of Justice
12.	Burkina Faso	Accession	Ministere de la Femme de la Solidarite Nationale et de la Famille
13.	Canada	Ratification	Justice Legal Services[232]
14.	Chile	Accession	Corporacion de Asistencia Judicial de la Region Metropolitana
15.	China, People's Republic of	Continuation	Secretary for Justice of the Hong Kong Special Administrative Region (Hong Kong) Instituto de Accao Social (for Macau)
16.	Costa Rica	Accession	Patronato Nacional de la Infancia
17.	Croatia	Succession	Ministry for Demography, Family, Youth, and Social Policy

231 Please note that the various states within Australia also each have their own Central Authorities.

232 Please note that the various states within Canada also each have their own Central Authorities.

No.	Country	Status	Central Authority
18.	Cyprus	Accession	Ministry of Justice and Public Order
19.	Czech Republic	Ratification	Urad pro mezinarodne pravni ochranu deti
20.	Denmark	Ratification	The Ministry for Children and Social Affairs
21.	Ecuador	Accession	Subsecretaria de proteccion especial
22.	Estonia	Accession	Ministry of Justice
23.	Finland	Ratification	Ministry of Justice
24.	Former Yugoslav Republic of Macedonia	Succession	Ministry of Labour and Social Policy
25.	France	Ratification	Ministere de la Justice
26.	Georgia	Accession	Ministry of Justice of Georgia
27.	Germany	Ratification	Budesamt fur Justiz
28.	Greece	Ratification	Helleneic Ministry of Justice, Transparency and Human Rights
29.	Hungary	Accession	Ministry of Public Administration and Justice
30.	Iceland	Accession	Ministry of the Interior
31.	Ireland	Ratification	Department of Justice and Equality
32.	Israel	Ratification	Ministry of Justice
33.	Italy	Ratification	Ministero della Giustizia
34.	Japan	Ratification	Hague Convention Bureau, Ministry of Foreign Affairs
35.	Korea, Republic of	Accession	Ministry of Justice
36.	Latvia	Accession	Ministry of Justice
37.	Lithuania	Accession	Ministry of Social Security and Labour
38.	Luxembourg	Ratification	Le Procureur General d'Etat
39.	Malta	Accession	Director of Social Welfare Standards, Ministry for the Family and Social Solidarity
40.	Mauritius	Accession	The Permanent Secretary, Ministry of Gender Equality, Child Development and Family Welfare
41.	Mexico	Accession	Direccion General de Proteccion a Mexicanos en el Exterior[233]
42.	Monaco	Accession	Direction des Services Judiciares

233 Please note that the various states within Mexico also each have their own Central Authorities.

No.	Country	Status	Central Authority
43.	Montenegro	Succession	Ministry of Justice of Montenegro
44.	Morocco	Accession	Ministere de la justice et des libertes
45.	Netherlands	Ratification	Dutch Central Authority Ministry of Security and Justice
46.	New Zealand	Accession	Ministry of Justice
47.	Norway	Ratification	Royal Ministry of Justice and Public Security, Department of Civil Affairs
48.	Panama	Accession	Direccion General de Asuntos Juridicos y Tratados
49.	Paraguay	Accession	Direcction de Restitucion Internacional
50.	Peru	Accession	Ministero de la Mujer y Poblaciones vulnerables
51.	Philippines	Accession	Department of Justice Ministry of Justice
52.	Poland	Accession	Ministry of Justice
53.	Portugal	Ratification	Direcao-Geral de Reinsercao e Servicos Prisionais
54.	Republic of Moldova	Accession	Ministry of Labour, Social Protection and Family
55.	Romania	Accession	Ministry of Justice
56.	Russian Federation	Accession	The Ministry of Education and Science of the Russian Federation
57.	Serbia	Succession	Ministry of Justice of the Republic of Serbia
58.	Singapore	Accession	Singapore Central Authority Ministry of Social and Family Development
59.	Slovakia	Ratification	Centrum per medzinaraodnopravnu ochranu deti a mladeze
60.	Slovenia	Accession	Ministry of Labour, Family, Social Affairs and Equal Opportunities of the Republic of Slovenia
61.	South Africa	Accession	Office of the Chief Family Advocate, Department of Justice and Constitutional Development
62.	Spain	Ratification	Ministerio de Justicia
63.	Sri Lanka	Accession	Ministry of Justice
64.	Sweden	Ratification	Ministry for Foreign Affairs
65.	Switzerland	Ratification	Office federal de la Justice
66.	Turkey	Ratification	Ministry of Justice
67.	Ukraine	Accession	Ministry of Justice for Ukraine

No.	Country	Status	Central Authority
68.	United Kingdom of Great Britain and Northern Ireland	Ratification	The International Child Abduction and Contact Unit, Office of the Official Solicitor (for England and Wales)[234]
69.	United States of America	Ratification	US Department of State – Office of Children's Issues
70.	Uruguay	Accession	Ministerio de Educacion y Cultura
71.	Venezuela	Ratification	Ministerio del Poder Popular para Relaciones Exteriores
72.	Zambia	Accession	The Permanent Secretary, Ministry of Community Development, Mother and Child Health
Non-Member States of the Hague Organisation			
73.	Bahamas	Accession	Ministry of Foreign Affairs & Immigration
74.	Belize	Accession	Ministry of Human Development and Social Transformation
75.	Bolivia	Accession	—
76.	Colombia	Accession	Instituto Colombiano de Bienestar Familiar
77.	Dominican Republic	Accession	Consejo Nacional Para la Ninez y la Adolescencia
78.	El Salvador	Accession	Procuradoria General de la Republica
79.	Fiji	Accession	The Permanent Secretary for Justice
80.	Gabon	Accession	—
81.	Guatemala	Accession	Procuradoria General de la Nacion
82.	Guinea	Accession	Ministere de l'Action Sociale, de la Promotion Feminine et de l'Enfance
83.	Honduras	Accession	Direccion de Ninez, Adolescencia y Familia
84.	Iraq	Accession	—
85.	Jamaica	Accession	—
86.	Kazakhstan	Accession	The Ministry of Education and Science of the Republic of Kazakhstan
87.	Lesotho	Accession	Ministry of Justice, Human Rights and the Correctional Services
88.	Nicaragua	Accession	Ministerio de la Familia Adolescencia y Ninez
89.	Pakistan	Accession	Solicitor-General, Ministry of Law and Justice

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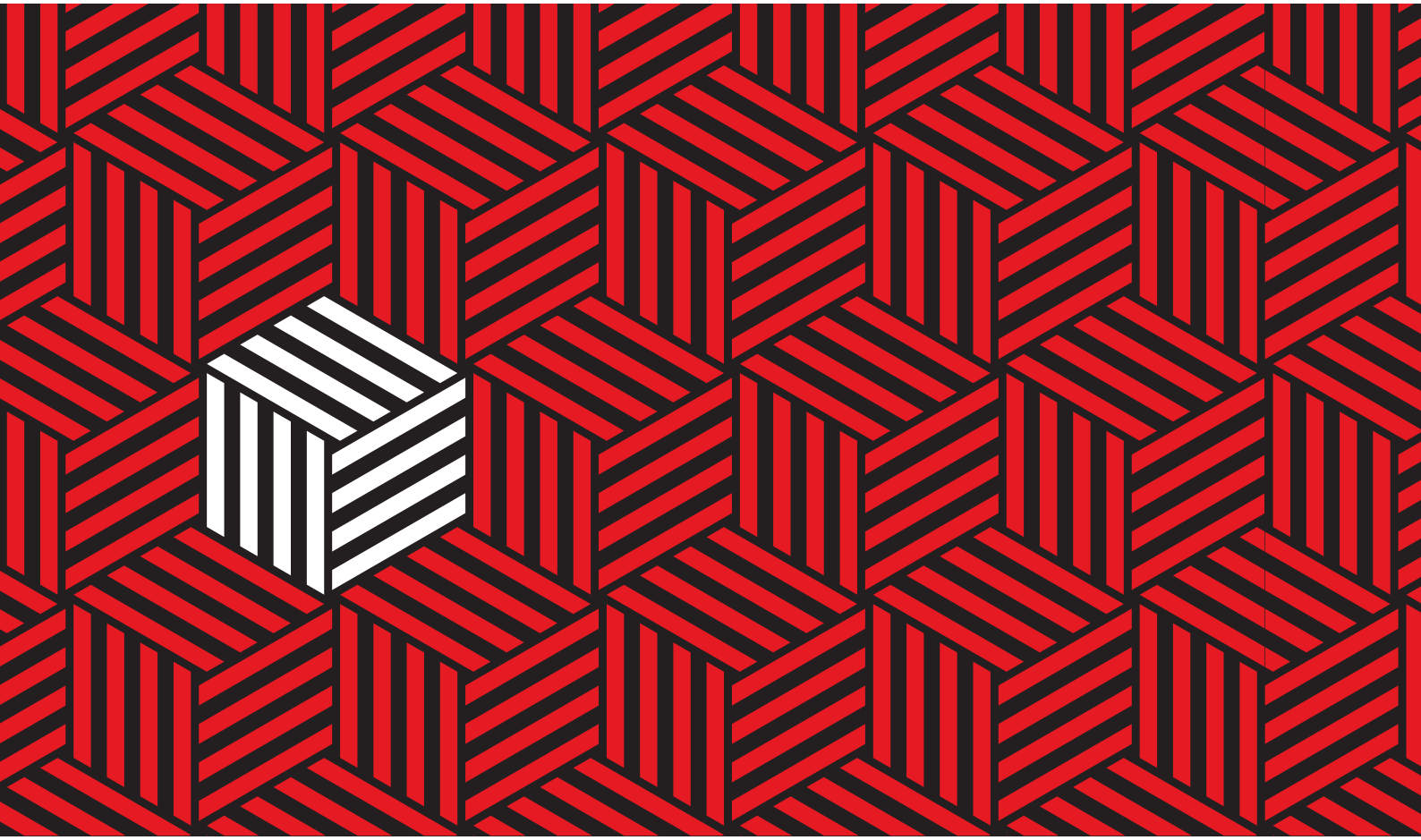
No.	Country	Status	Central Authority
90.	Saint Kitts and Nevis	Accession	Ministry of the Attorney General, Justice and Legal Affairs
91.	San Marino	Accession	Tribunale Unico
92.	Seychelles	Accession	Director of Social Services Ministry of Health and Social Development
93.	Thailand	Accession	Office of the Attorney-General
94.	Trinidad & Tobago	Accession	International Office of Child Rights and Civil Child Abduction Authority
95.	Turkmenistan	Accession	Turkmen National Institute of Democracy and Human Rights under the President of Turkmenistan
96.	Uzbekistan	Accession	Ministry of Justice of the Republic of Uzbekistan
97.	Zimbabwe	Accession	Permanent Secretary for Justice and Legal Affairs



ISBN 978-981-11-4316-8