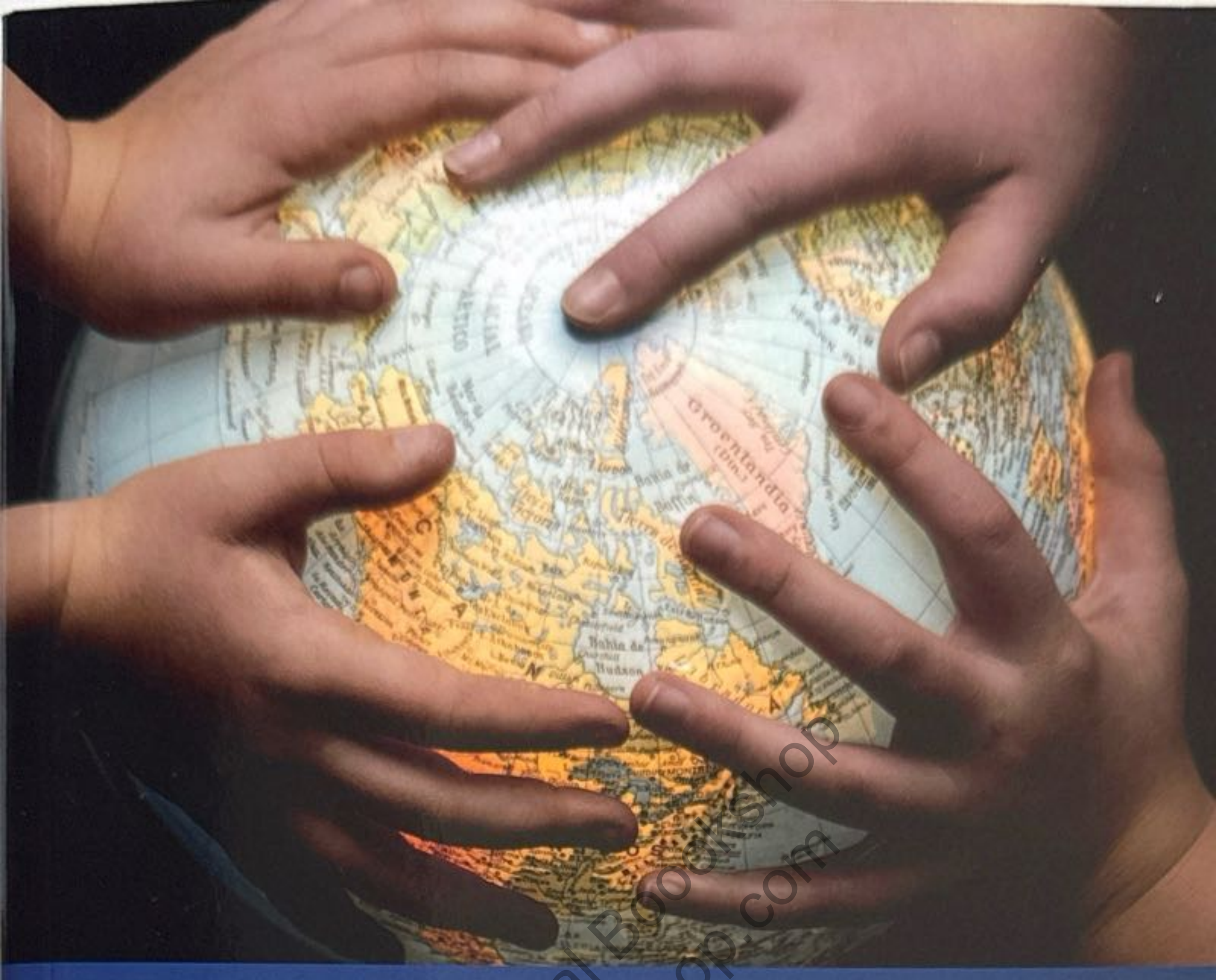

The 1996 Hague Convention on the Protection of Children

Second Edition

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LexisNexis

Family Law

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second conclusion of the Report of the second meeting of the Special Commission to review the operation of that Convention in 1993:[1]

> 'The key concepts which determine the scope of the Convention are not dependent for their meaning on any single legal system. Thus the expression "rights of custody", for example, does not coincide with any particular concept of custody in a domestic law, but draws its meaning from the definitive structure and purposes of the Convention.'

1 Cited by Ward LJ in *Re V-B (Abduction: Custody Right)* [1999] 2 FLR 192 at 196. See also the similar comments in the Explanatory Report on the 1980 Convention ('the Pérez-Vera Report') at para 85, and in relation to the interpretation of Art 13, see *Re H (Minors) (Abduction: Acquiescence)* [1998] AC 72, 87F, [1997] 1 FLR 872 at 881H, per Lord Browne-Wilkinson.

Additional aids to interpretation

Travaux préparatoires and the Explanatory Report

1.17 Article 31(2) of the Vienna Convention makes it clear that when interpreting a convention it is permissible to consult the *travaux préparatoires*.[1] Those relating to the 1996 Convention are to be found in Vol II of the Acts and Documents of the Eighteenth Session of the Hague Conference. Another important document is the Lagarde Report. Although this document was prepared after the Eighteenth Session of the Hague Conference and not therefore approved by it,[2] it has been held[3] that it may properly be considered 'preparatory work of the treaty' (the travaux préparatoires) within the meaning of Art 32 of the Vienna Convention and can therefore be referred to for the purposes of determining the meaning and scope of the Convention. The importance of this Report may be compared with the much used and cited Explanatory Report on the 1980 Convention prepared by Professor Elisa Pérez-Vera.

It is similarly appropriate to consider the *Practical Handbook* by the Permanent Bureau of the Hague Conference on Private International Law, described in 1.18, as being part of the travaux préparatoires.

1 Cf La Forest J's comment in the Canadian decision, *Thomson v Thomson* (1995) 119 DLR (4th) 253 at 272–273, in relation to the 1980 Convention.
2 In fact, the Report was translated into English by Adair Dyer, formerly Deputy Secretary General of the Hague Conference.
3 Per Moylan LJ in *Hackney London Borough Council v P (Jurisdiction: 1996 Hague Child Protection Convention)* [2023] EWCA Civ 1213, [2024] Fam 307, [2024] 2 WLR 1163, [2024] 1 FLR 1139, at [49]–[50].

Hague Conference publications and other guidance

1.18 The Hague Conference has produced some useful publications on the operation of the 1996 Convention. *A Practical Handbook on the Operation of the 1996 Hague Child Protection Convention* was published in 2014 ('the Handbook'),[1] and a 'Practitioner's Tool' in 2022 that explains how agreements made in the area of family law involving children ('family agreements') can be made enforceable in one State and then recognised and enforced in other States through the operation of mechanisms under Hague Conference conventions, specifically the 1980 Convention, the 1996 Convention and the 2007 Child Support Convention. In 2024 the Hague Conference updated its guidance by

publishing 'The Application of the 1996 Child Protection Convention to Unaccompanied and Separated Children'.[2]

Other important sources dealing with what was intended by the Convention and how it is being generally interpreted are the conclusions and recommendations of Special Commission meetings held to review the operation of the Convention, which can be found on the Hague Conference's website.

1 HccH, April 2014 and available on the Hague Conference's website.
2 The Hague, 2024. See the website of the Hague Conference HCCH publications relating to the 1996 Convention.

1.19 In the UK, the Department for Education published 'Cross-border child protection cases: the 1996 Hague Convention – Departmental advice for local authorities, social workers, service managers and children's services lawyers' in October 2012, and a 'Special Guide on the Convention for England and Wales', was prepared by the MOJ, which is available at https://www.justice.gov.uk. In January 2025 the President of the Family Division of the High Court of England and Wales published guidance on requests for co-operation in the collection and exchange of information in public law cases with an international element and on the transfer of proceedings.[1]

1 These replaced the President's guidance of 10 November 2014 on co-operation and April 2016 on transfer of proceedings and are available on the Courts and Tribunals Judiciary website https://www.judiciary.uk/wp-content/uploads/2025/01/PFD-ICACU-Guidance.pdf.

THE CONTRACTING STATES

Ratifications and accessions

1.20 As is usual for Hague Conference conventions, the 1996 Convention makes a distinction between ratifications and accessions.[1] Whether a State ratifies or accedes to a Convention makes no difference to its obligations, which are the same, but the distinction is important with regard to the position of existing Contracting States.

1 A full list of ratifications and accessions can be found in the status table in the 'Child Protection' section of the website of the Hague Conference. The list at the time of going to press is contained in Appendix 2 in this work.

Ratifications

1.21 State Members of the Hague Conference at the time of the Hague Conference's Eighteenth Session, that is on or before 19 October 1996,[1] are entitled to *ratify*, regardless of whether they participated in the discussions about the Convention. All Contracting States are obliged to accept a ratification, regardless of whether they ratified or acceded to the Convention.[2] Ratifications come into force on the first day of the month following the expiration of three months after the deposit of instruments of ratification with the Dutch Ministry of Foreign Affairs (the depositary).[3]

1 Article 57(1). Note: a State must be a Member State of the Hague Conference to be able to ratify: a State's *participation* in the Eighteenth Session, for example as an observer, does not in itself confer the right to ratify, although such a State can accede to the Convention – see the Lagarde Report at para 183.
2 This is implicit from Art 58(3).

3 Article 61(2)(a).

Accessions

1.22 Any State not entitled to ratify can *accede* to the Convention. However, in line with the usual Hague practice, accessions do not have to be accepted by existing Contracting States nor, indeed, by any subsequently ratifying or acceding States (provided they notify the depositary at the time of ratification or accession).[1] But, unlike the 1980 Convention, under which accessions have to be positively accepted, under Art 58(3) of the 1996 Convention, Contracting States have positively to object.[2] Objections have formally to be notified to the depositary within six months after the receipt of notification by the depositary of the accession in question.[3]

1 Article 58(3).
2 Article 58(3) also allows States when ratifying or acceding to include specific objections to particular acceding States.
3 Articles 58(3) and 63(b).

1.23 The effect of an objection is that the Convention will not operate between the objecting State and the acceding State in respect of which the objection is raised.[1] In other words, an objection only operates as between the objecting State and the acceding State and not as a general veto against a would-be acceding State. Objections can subsequently be withdrawn,[2] but once the period for objections has passed, short of denouncing the whole Convention (discussed below), there is no means of subsequently objecting to an individual State's accession.

1 See Examples 3(C) and 3(D) on pp 24 and 25 of the Handbook.
2 Denmark withdrew its previous objections in 2017 (see further below). See also Examples 3(C) and 3(D) in the Handbook.

1.24 To facilitate the objection process, accessions take effect on the first day of the month following the expiry of nine months after the formal deposit of instruments of accession with the depositary.[1] The accession binds all Contracting States that have not notified their objection within the requisite six-month period.

1 Article 61(b).

1.25 Although positive objections to accessions are normally required in Hague Conventions,[1] the wisdom of not adopting the 1980 Convention precedent in the case of the 1996 Convention is perhaps questionable, since it is diplomatically more difficult to have to object expressly rather than doing so by silence. In fact, the provisions dealing with accessions and ratifications were not drafted by the Special Commission as all draft Conventions agreed upon during a session of the Conference are subject to uniform treatment by the Permanent Bureau with regard to the final clauses, with the result that there was little discussion about these provisions, which the Permanent Bureau had prepared.[2]

1 See eg Art 44(3) of the 1993 Hague Intercountry Adoption Convention.
2 See their Working Document No 112 and the comments in the Lagarde Report at para 183.

1.26 According to the Handbook[1] objections to accessions should be rare and this has been borne out by subsequent experience. Indeed, at the time of going to press, only Denmark has ever registered any objections and in each case the

objection has subsequently been withdrawn.[2] Given the practice of the UK, the EU, and Australia, for example, not to automatically accept accessions to the 1980 Convention, it is perhaps surprising that a similar approach has not been adopted under the 1996 Convention, particularly where States have acceded without proper preparation, for example, not having established a Central Authority or even having appropriate implementing legislation. This different practice has resulted in the 1996 Convention being in force at a time when the 1980 Convention is not.[3] At the time of writing, for example, the 1996 Convention, but *not* the 1980 Convention, is in force between the UK and Barbados, Cabo Verde, Cuba, Guyana, Lesotho, Nicaragua, Moldova, and Paraguay, and between Australia and Barbados, Cabo Verde, Cuba, Guyana, Lesotho, Morocco, and the Russian Federation.

1 See para 3.9.
2 Denmark initially registered objections to the accessions of Albania, Armenia, Dominican Republic, Ecuador, Georgia, and Ukraine but withdrew all the objections on 24 August 2017. It has not registered any objections since then.
3 In *Re J (A Child) (1996 Hague Convention) (Morocco)* [2015] UKSC 70, [2016] AC 1291, [2015] 3 WLR 1827, sub nom *Re J (Jurisdiction: Abduction)* [2016] 1 FLR 170, jurisdiction had to be determined solely under the 1996 Convention since at the time of the litigation while Morocco was a party to the 1996 Convention, its accession to the 1980 Convention had not then been accepted by the UK (this is still the position in Australia).

1.27 States with two or more territorial units in which different systems of law are applicable, can declare that the ratification or accession extends to all such units (so that they become a single entity for this purpose) or to only one or more of them.[1] Such declarations can subsequently be modified.[2] In the absence of a declaration, the Convention extends to all the territorial units of that State.[3]

1 Article 59(1). Denmark, for example, did not originally extend its ratification to Greenland but has done so by its 22 April 2016 declaration. Note: the UK has not extended its ratification beyond England and Wales, Scotland and Northern Ireland, see further 1.38 below.
2 Article 59(1).
3 Article 59(3).

Reservations

1.28 Article 60 permits States to make reservations concerning the language of communications and about the application of the Convention to the child's property. No other reservations are permitted. Reservations must be made no later than at the time of ratification, acceptance, approval, accession or making a declaration as to the territorial extent pursuant to Art 59. Reservations can subsequently be withdrawn and will cease to have effect on the first day of the third calendar month following due notification to the depositary.

1.29 As with the 1980 Convention, by Art 54(1) of the 1996 Convention communications sent to the Central Authority of a Contracting State shall be made in the original language and be accompanied by a translation into the official language (or one of the official languages) of the other State or, where that is not feasible, a translation into English or French. Article 54(2), however,

permits States to make a reservation against the utilisation of English or French (but not both) and a number of States have taken advantage of this provision.[1]

1 Namely, Armenia, Austria, Denmark, El Salvador, Germany, Latvia, Malta, Norway, the Russian Federation, Sweden, Türkiye, and the United Kingdom, each of which has objected to the use of French. The following States have specified or requested that applications are accompanied by English translations: Belize, Cyprus, Estonia, Georgia, Hungary and Lithuania. Nicaragua will accept communications, requests and documentation which are accompanied by translations into Spanish, or, when this is difficult to achieve, accompanied by translations into English. The Republic of Moldova will accept communications in English.

1.30 Under Art 55, Contracting States may reserve: (a) jurisdiction to its own authorities to take measures directed to protect a child's property[1] situated on its territory; and (b) the right not to recognise any parental responsibility or measure insofar as it is incompatible with any measure taken by its authorities in relation to that property. Although this power of reservation was included upon the UK's initiative, in the result it did not exercise that power, although a number of other States have done so.[2]

1 The reservation can be restricted just to certain types of property: Art 55(2).
2 Including Albania, Armenia, Belize, Bulgaria, Croatia, Cyprus, Hungary, Fiji, Latvia, Malta, Montenegro, Nicaragua, Poland, Republic of Moldova, Romania, the Russian Federation, Serbia, Slovakia, Switzerland, Türkiye and Ukraine.

Denunciations

1.31 Article 62 governs denunciations, that is, the unilateral withdrawal by a State from a treaty. By Art 62(1) State Parties may denounce the Convention either entirely or, as in the case of the 1980 Convention, on behalf of certain territorial units. Denunciations have to be notified in writing addressed to the depositary[1] and take effect 12 months after the notification has been received by the depositary.[2] To date, there have been no denunciations.

1 Article 62(1).
2 Article 62(2).

Convention not retrospective

1.32 As Art 53 makes clear, the 1996 Convention has *no* retrospective effect. Article 53(1) provides that the Convention applies only to measures of protection taken in a State *after* the Convention has entered into force for that State, while Art 53(2) provides that the recognition and enforcement provisions only apply to measures taken after the Convention has come into force as between the two States concerned. As the Handbook says,[1] as a result of these provisions, it is necessary to ascertain first whether the Convention has entered into force in a particular State and, if so, when and secondly, whether it is in force between the two States and, if so, when. However, as the Lagarde Report observes,[2] there is nothing in these so-called transitional provisions to prevent a State recognising decisions taken previously, although that would be a matter of national law rather than Convention law. It may be a nice point, however, to determine whether or not the Convention applies to *ongoing* protective measures if they were first put in place before the Convention came into force.

1 At para 3.3.
2 See para 178.

THE CONVENTION AND THE EU

1.33 The application of the 1996 Convention within EU Member States is discussed in detail in CHAPTER 8. Suffice to say here that all such States, except Denmark, are bound by Council Regulation (EU) No 2019/1111 (variously known as 'Brussels II recast', 'Brussels II-ter' or 'Brussels IIb').[1] Brussels IIb takes precedence over Member States' national law and other international instruments insofar as they concern matters that it governs. This means that where the child is habitually resident in an EU Member State (other than Denmark), the Regulation takes general precedence over the 1996 Convention.[2] However, while this means that with regard to jurisdiction, recognition and enforcement it is incumbent upon courts of Member States (other than Denmark), to apply the Regulation rather than the 1996 Convention[3] (as is discussed in CHAPTER 8), this obligation is subject to a number of exceptions as provided by the Regulation itself, and case law.

1 For guidance on the application of this Regulation see *Practice Guide for the Application of the Brussels IIb Regulation* (European Union, 2022), and, for extensive discussion, see eg N. Lowe, C. Honorati and M. Hellner *Brussels II-ter: Cross-border Marriage Dissolution, Parental Responsibility Disputes and Child Abduction in the EU* (Intersentia, 2024) and M. Wilderspin *European Private International Family Law: The Brussels IIb Regulation* (OUP, 2023).
2 Article 97(1)(a).
3 Note: Art 97(1)(b) applies the Regulation to the recognition and enforcement of a decision made in a Member State, even where the child is habitually resident in a State that is a Contracting Party to the 1996 Convention but is not bound by Brussels IIb, ie Denmark or a non-EU Hague State.

Bringing the Convention into force in the EU

1.34 A complication that arose from EU Member States (including the UK, which was then a Member State), becoming subject to what was then the directly-effective Brussels II Regulation in 2001[1] was that they were regarded as having lost their individual competence to ratify the 1996 Convention, to which they were not then State Parties. This loss of competence was said to result from the 'ERTA case-law'[2] under which the European Court of Justice ruled that each time the Community exercises its *internal* competence by adopting provisions laying down common rules, it requires *exclusive external* competence to undertake obligations with third countries that affect those rules or alter their scope.[3] Although it was accepted that the Convention (only applying as it did to children habitually resident outside the EU)[4] would not clash directly with the Brussels II Regulation, the ERTA ruling was said to apply because it would nevertheless alter its scope.

1 Council Regulation (EC) 1347/2000.
2 See Case 22/70, *Commission v Council (Re European Road Transport Agreement)* [1971] ECR 263 at para 17; Opinion 2/91 'ILO Convention No 170 Concerning Safety in the use of Chemicals at Work', [1993] ECR 1-1061 at para 26; Opinion 1/94, 'WTO' [1994] ECR1-5267 at para 77, and Opinion 2/92 'Third Revised Decision of the OECD on National Treatment' [1995] ECR 1-521 at para 31. See also C. Kotuby 'External Competence of the European Community in the Hague Conference on Private International Law: Community Harmonization of Worldwide Unification' (2001) XLVIIII Neth ILR at 1–30.
3 Although the UK did not formally concede that the ERTA ruling did apply, it nevertheless made no unilateral attempt to ratify the 1996 Convention.
4 Except for those in Denmark.

1.35 In the event, to avoid what undoubtedly would have been a formidable obstacle to widespread ratification of the 1996 Convention within the EU, and the adverse effects that would have on relations between the Member States and third States, the Council of the European Union, mindful of the 'valuable contribution to the protection of children' that the Convention would make to 'institutions that transcend the boundaries of the Community'[1] authorised Member States to sign it.[2] However, despite that green light, EU-wide ratification was further delayed because of a dispute between the UK and Spain over Gibraltar.[3] When that dispute was resolved, an EU procedure for ratification was authorised by a Council Decision in 2008[4] under which those Member States that had not already done so were required simultaneously to deposit their instruments of ratification or accession 'if possible by 5 June 2010'. In the event, many Member States failed to meet that deadline, and in consequence individual Member States were permitted to ratify as and when they were ready to do so.[5] Although this may have been a sensible, pragmatic solution, it nevertheless made a mockery of EU policy and called into question the sense in delaying individual ratification by individual Member States in the first place.[6]

1 See Proposal for a Council Decision authorising the Member States to sign in the interest of the European Community the 1996 Hague Convention (Com 2001) 680 final of 20.11.2001. See also E. Clive 'The 1996 Hague Convention – A Proposal For Simplification' [2002] Fam Law 131. When signing, Member States are required to make a declaration stating, inter alia, that they have been authorised to accept that the Convention will take precedence over Community rules in respect of children who are not habitually resident in a Member State but who are so resident in another Contracting State. It should also state that necessary steps will be taken as soon as possible to open negotiations for a protocol to be added for the accession of the Community. It has been observed (see M. Wilderspin *European Private International Family Law: The Brussels IIb Regulation* (OUP, 2023 at 12-38) that the European Community would itself have concluded the 1996 Convention, as it had done with the Lugano II Convention, but was prevented from doing so, as the Hague Conference Statutes only permitted States to do so.

2 A formal signing ceremony took place at The Hague on 1 April 2003 involving all the then EU Member States (except the Netherlands, which had already signed).

3 See 'The Hague Family Law Conventions' [2005] IFL 105 at 106 and note the Spanish declaration with respect to Gibraltar. Gibraltar was ceded to Great Britain 'in perpetuity' by the Treaty of Utrecht in 1713 at the end of the War of Spanish Succession.

4 2008/431/EC of 5 June 2008.

5 In fact, this process was only fully achieved on 1 January 2016, when Italy's ratification came into force.

6 Denmark, which was not subject to the ERTA case-law on this issue because it had not opted into Brussels II, ratified the Convention with effect from 1 October 2011.

1.36 Although still to be authoritatively resolved, it must be the case that if Member States bound by Brussels IIb have no individual competence to ratify or accede to the 1996 Convention, neither do they have individual competence to object to new accessions by other States or to denounce the Convention.

THE UNITED KINGDOM'S RATIFICATION AND INCORPORATION INTO DOMESTIC LAW

1.37 Following a favourable reaction to a consultation exercise conducted in 2000–2001, the UK government announced its readiness in principle to ratify the 1996 Convention[1] and (together with a number of other EU Member States) formally signed it on 1 April 2003. However, because of its lack of competence according to EU rules just explained, the UK's ratification was delayed. But even

after the EU gave the go-ahead for ratification in 2008, the process proved protracted and the UK only formally ratified the Convention on 27 July 2012 with its ratification coming into force on 1 November 2012. It was one of the last of the then EU Member State to ratify.

1 See N. Lowe 'The 1996 Convention on the protection of children – a fresh appraisal' (2002) 2 CFLQ 191 at 192.

1.38 One unusual result of the EU's involvement in the implementation of the 1996 Convention was that the UK felt it appropriate[1] to import it into its national law[2] by using the machinery provided by the European Communities Act 1972, s 2(2). This route was formally invoked by specifying[3] that the Convention was to be regarded as one of the EU treaties as defined by s 1(2) of the European Communities Act 1972. The remarkable outcome of treating this *Hague* instrument as if it were an *EU* regulation is that it became directly effective. Consequently, there was no need formally to incorporate it into the UK's national law (in contrast to the 1980 Convention, for example). Instead all the necessary changes, including amendments to primary legislation,[4] were achieved through secondary legislation.[5] One unfortunate result was that the text of the 1996 Convention was not available in UK legislation. Instead an official version was laid before Parliament in the form of a Command Paper.[6]

1 Principally upon the basis that it was only through the 2008 EU Council Decision that UK was able to ratify at all.

2 There are a number of terms for the law of a country that does not include its laws relating to conflicts of laws (ie its international law), including 'internal law', 'municipal law', 'domestic law', 'local law' and 'national law'. The Vienna Convention on the Law of Treaties refers to 'internal law' (see Arts 27 and 46). We have decided to use 'national law' because it makes a clear distinction between national and international law. In the UK (and Australia) treaties are not self-executing and need to be imported into national law.

3 See the European Communities (Definition of Treaties) (1996 Hague Convention on Protection of Children etc) Order 2010 (SI 2010/232).

4 Principally the Family Law Act 1986.

5 Namely, the Parental Responsibility and Measures for the Protection of Children (International Obligations) (England and Wales and Northern Ireland) Regulations 2010 (SI 2010/1898), in the case of England and Wales, and the Parental Responsibility and Measures for the Protection of Children (International Obligations) (Scotland) Regulations 2010 (SSI 2010/213), in the case of Scotland.

6 (2009) Cm 7727. On the other hand, at the end of the Explanatory Note to the implementing statutory instrument for England and Wales and Northern Ireland, but not Scotland, there was a helpful implementation table.

1.39 Although the UK ratified the Convention on its own behalf and not as a Member State as such, which meant its ratification was unaffected by its withdrawal from the EU, the initial method of implementation meant that provision had to be made to ensure that the Convention continued to apply within the UK notwithstanding the repeal of the European Communities Act 1972 by the European Union (Withdrawal) Act 2018. The 1996 Convention had to be, in effect, re-incorporated into UK national law. At first, it was thought sufficient simply to provide for the continuance of the direct effect of the 1996 Convention, which is what s 4 of the 2018 Act initially did. However, the Government subsequently considered that it would be clearer for users of the Convention if legal effect were given to its provisions by expressly providing for that in primary legislation. Moreover, by incorporating that Convention in the standard way, the UK does not have to continue to rely on the EU concept of direct effect.[1] Consequently, the Private International Law (Implementation

of Agreements) Act 2020, which amends the Civil Jurisdiction and Judgments Act 1982, directly incorporates the Convention into domestic law.[2] As observed elsewhere,[3] for those coming fresh to this area it is not immediately obvious that one must look to the Civil Jurisdiction and Judgments Act 1982, as amended by the Private International Law (Implementation of Agreements) Act 2020, to find the provisions of the 1996 Convention as incorporated into UK domestic law.

1 See the Explanatory Notes to the Private International Law (Implementation of Agreements) Act 2020, para 19.
2 See s 1(2) and Sch 1, inserting, respectively, s 3C and Sch 3D (which contains the full text of the Convention) into the 1982 Act.
3 N. Lowe 'Living without the Jurisdictional Rules of Brussels IIa' in S. Gilmore and J. Scherpe (eds) *Family Matters (Essays in Honour of John Eekelaar)* (Intersentia, 2022) 1075 at 1090.

1.40 In accordance with Art 59 of the Convention, the UK's ratification specifies that it extends to England and Wales, Scotland and Northern Ireland. It does not (as yet) extend (as the 1980 Convention does) to the Isle of Man, Jersey, or to territorial units outside the British Isles,[1] and nor does it extend to Guernsey, Alderney or Sark.

The UK has made no objections but has made a reservation under Art 54 objecting to the use of French in applications.[2]

1 *Sed quaere?*
2 See the UK's declaration of 19 February 2021, which supersedes its earlier declaration of 27 July 2012 made when it was an EU Member State and the Civil Jurisdiction and Judgments Act 1982, Sch 3E Part 3.

The United Kingdom's rules of international jurisdiction, recognition and enforcement

1.41 Whilst the UK was an EU Member State, then as from 1 November 2012 when the 1996 Convention came into force in the UK, it was well understood that its rules relating to jurisdiction, recognition and enforcement in matrimonial and children's cases were to be found in four international instruments or, in the event that none of those were applicable, in its national law.

Those four international instruments were:

- Council Regulation (EC) 2201/2003 (Brussels IIa), which came into operative force on 1 March 2005 and which applied as between the UK and the other EU Member States (except Denmark);
- the 1996 Convention, which applied from 1 November 2012 as between the UK and Denmark and such other non-EU Member States as were State Parties to that Convention;
- the 1980 European Custody Convention,[1] which provided for the recognition and enforcement of decisions relating to custody and access, and which had been in force since 1 August 1986 but which, in practice, is seldom used;[2] and
- the 1980 Convention,[3] which had been in force since 1 August 1986 and which took precedence over the 1980 European Custody Convention

and provided for the return of children wrongfully removed or retained away from their Contracting State of habitual residence.

1 Ie the Luxemburg Convention. Long title: Council of Europe Convention of 25 May 1980 the Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children. Imported into UK law by Part II of the Child Abduction and Custody Act 1985.
2 Possibly because it is subservient to the 1980 Convention and is based on recognition and enforcement of a custody order, so cannot be used when custody rights are conferred by operation of law. However, the grounds for refusing to recognise and enforce a custody order are more stringent than those for refusing to make a return order under the 1980 Convention.
3 Long title: Hague Convention on the Civil Aspects of International Child Abduction, 25 October 1980.

1.42 The UK's national law relating to jurisdiction – in effect, its 'residual' rules to be applied in the event that none of the above instruments were to be applicable – was to be found in the Domicile and Matrimonial Proceedings Act 1973, the Family Law Act 1986 and in the common law.[1]

1 Jurisdiction to entertain public law proceedings is, for example, a matter of common law, not statute, and is based on the presence of the child within the jurisdiction of England and Wales – see *Hackney London Borough Council v P (Jurisdiction: 1996 Hague Child Protection Convention)* [2023] EWCA Civ 1213, [2024] Fam 307, [2024] 2 WLR 1163, [2024] 1 FLR 1139, discussed in detail at 3.130 and 3.192.

1.43 The operative statute in respect of most private law children's cases was the Family Law Act 1986 which, as at 1 November 2012, provided that, for example with respect to England and Wales,[1] a court could not make a range of orders with respect to a child unless it had jurisdiction under the Council Regulation[2] or the 1996 Convention,[3] or, if neither the Council Regulation nor the 1996 Convention applied, unless certain specified conditions were met.[4]

1 Section 2.
2 That is, Brussels II (Council Regulation (EC) 1347/2000) and its successors for which see CHAPTER 8 at 8.1.
3 Referred to as 'the Hague Convention'.
4 The current jurisdictional rules in the UK are discussed in more detail in CHAPTER 3. The specified conditions represented the 'national law' referred to in 1.38, n 2.

The effect of Brexit

1.44 The UK, having been a Member State of the EU and its predecessors, the European Economic Community and the European Community[1] since 1 January 1973, decided to leave the EU on 23 June 2016 after a referendum. Implementing that decision meant that the UK would no longer be subject to EU law, including Brussels IIa (Council Regulation (EC) No 2201/2003).[2]

The day that the UK was to leave the EU was to have been 29 March 2019,[3] but that was extended to 11:00 pm on 31 January 2020,[4] on which day the European Communities Act 1972 was repealed. On the same day, 31 January 2020, the Civil Jurisdiction and Judgments Act 1982 was amended to provide that the 1996 Convention had the force of law in the UK.[5]