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**Returning the Abducted Children:
The Positive Obligation of Member States to Cooperate with
Non-Ratifying States – Using Taiwan as An Example**

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Executive Summary

International child abduction is a serious issue that requires cross-border cooperation to ensure the best interests of the child. This thesis examines the current legal framework addressing international child abduction and the obligation of states to collaborate with non-ratifying states, using Taiwan as an example.

Taiwan has developed its specific way of adopting international instruments and has incorporated several international human rights treaties, including the CRC. The International Review Committee on the CRC has recommended that Taiwan adopt the Hague Abduction Convention, and Taiwan courts have also referenced it in their judgments. However, Taiwan is not a Contracting Party of the Hague Abduction Convention, which poses challenges to its jurisdiction in handling cases. Additionally, Taiwan has limited judicial assistance agreements with other countries, hindering its ability to effectively address the issue. Therefore, Taiwan needs to establish a stronger legal framework to address international child abduction and enhance formal cooperation with other countries.

As a result, this thesis aims to analyse the positive obligation of states to cooperate in addressing international child abduction cases under existing international legal instruments. It identifies the current international legal framework related to child abduction and investigates how ratifying and non-ratifying states can collaborate to handle international abduction cases.

The thesis identifies the positive obligation of ratifying states to cooperate in combating child abduction. While the Hague Abduction Convention requires both involved states to be parties for an application to be valid, this thesis tries to examine alternative approaches within the CRC provisions. States have a responsibility to cooperate with each other in implementing the CRC and protecting children's rights globally. States must cooperate with each other as outlined in Article 4 of the CRC, which emphasizes the cooperative nature of implementing the Convention and highlights the shared responsibility of states in upholding children's rights worldwide. This includes non-discriminatory protection for all children, regardless of their country of residence. States must actively combat child abduction and take prompt action to ensure the return of abducted children, in line with the principles of non-discrimination, development and the best interests of the child. These principles provide a solid foundation for evaluating the best interests of the child in international child abduction cases and ensuring their rights and well-being are upheld. By fulfilling their obligations under the CRC, states can establish a legal foundation for collaborating with Taiwan in addressing international child abduction cases, thereby ensuring the protection, well-being, and development of abducted children.

In conclusion, the thesis draws a list of recommendations, including enhancing international cooperation, strengthening legal frameworks, establishing a central authority, supporting research and data collection,

strengthening the CRC Committee oversight, and raising public awareness. This thesis suggests that the international community should strengthen international collaboration to address the issue of international child abduction. Member states, non-ratifying but willing states, and the CRC Committee need to engage in constructive dialogue to establish a better legal framework for international child abduction and share best practices. By working together, we can ensure the best interests of the child and prevent the harm caused by international child abduction.

Keywords

Child abduction – Non-ratifying states – Positive Obligations of Member States – Cooperation – United Nations Convention on the Rights of the Child (CRC) – Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (Hague Abduction Convention)

Main Findings

This thesis aimed to explore whether other countries have a positive obligation to collaborate with non-ratifying states like Taiwan under the Hague Abduction Convention or the CRC to address international child abduction cases. The study identified the present international legal framework relating to child abduction and examined Taiwan's status quo in regard to the child abduction legal framework, including its judicial practices, and further explored the alternative approaches for non-ratifying states to cooperate with member states.

This thesis found that Taiwan does face difficulty in handling international child abduction cases. This is due to the Hague Abduction Convention only being effective among contracting parties. At the national level, Taiwan has taken measures to tackle this issue. Taiwan has incorporated several international human rights treaties, including the CRC, into domestic law. Taiwan has established the "Procedures to Help Search for Missing Children or Youth Taken Away by Parents (or Relatives) without Permission," which includes a centralized contact point to receive reports, offer counselling services, track case progress, and coordinate resources and assistance. Additionally, Taiwan has signed MOU or judicial agreements with various countries. Courts in Taiwan have made reference to the Hague Abduction Convention in their judgements. However, it is important to emphasize that resolving intercountry child abduction cases requires cooperation between the state of the child's habitual residence and the state where the child is located. Therefore, it is crucial to examine whether member states have a positive obligation to cooperate with non-ratifying states in these cases.

It is important to recognize that member states are obligated to cooperate with Taiwan in addressing international child abduction cases under the CRC. The CRC establishes rights and principles for children's protection, including family reunification and prevention of abduction. States must cooperate with each other as outlined in Article 4 of the CRC, which emphasizes the cooperative nature of implementing the convention and highlights the shared responsibility of states in upholding children's rights worldwide. Article 2 emphasizes non-discriminatory protection for all children, even if their country of habitual residence is not a signatory to the conventions. States must actively combat illicit transfer and non-return of children under Article 11 and take prompt action to ensure the return of abducted children, in order to prevent any form of discrimination. The CRC also recognizes a child's right to life, survival, and development (Article 6) and the principle of the child's best interests (Article 3). These principles provide a solid foundation for evaluating the best interests of the child in intercountry child abduction cases and ensure that appropriate measures are taken to protect their rights and facilitate their well-being. By implementing these provisions and fulfilling these obligations, member states can establish a legal foundation for collaborating with Taiwan, recognizing the importance of alternative approaches within the CRC framework to effectively address international child abduction cases. Through open dialogue, cooperation, and a commitment to the rights of the child, member states can work together with Taiwan to ensure the protection, well-being, and development of abducted children.

1 Introduction

1.1 General background information

The Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (Hague Abduction Convention) aims to address international child abduction cases by emphasizing the prompt return of children following their wrongful removal or retention and highlighting the importance of State Parties' cooperation. However, child abduction can occur in any state or jurisdiction, especially as global mobility and cross-border movement continue to increase. Given the potential harm caused by the wrongful removal or retention of children,¹ it is crucial to consider how states address this issue.

Furthermore, not all states have ratified the Hague Abduction Convention, leading to questions about their obligation to return abducted children and the approaches they can adopt. Consequently, it becomes essential to understand how ratifying and non-ratifying states can collaborate effectively in addressing international child abduction cases.

Moreover, considering the wide ratification of the Convention on the Rights of the Child (CRC), it is worth exploring whether non-ratifying states can address international child abduction within the framework of the CRC. This examination will help identify potential solutions for states that have not ratified the Hague Abduction Convention but are willing to address international child abduction cases.

Taiwan is one example. Though Taiwan is not a member state of the United Nations and is unable to ratify most of the international conventions, it has developed its own specific approach to adopting the international instruments. In order to better protect human rights and to connect with the international community, Taiwan has incorporated several international human rights treaties into domestic law, including the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR),² and the CRC.³ Taiwan also decided to refer to the national report review procedures of the conventions, and actively invites international human rights experts to review its progress in implementing children's rights, which is named the 'International Review

¹ Regarding the impacts of abduction on children, see R. Schuz, *The Hague Child Abduction Convention: A Critical Analysis* 61-70 (2013).

² Taiwan, *Act to Implement the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights* (2009), available at <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=I0020028>, last visited 16/06/2023.

³ Taiwan, *Implementation Act of the Convention on the Rights of the Child* (2014), available at <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0050193>, last visited 16/06/2023.

Committee on CRC',⁴ to come to Taiwan to give concluding observations on a national report as an alternative to submitting to the Committee on the Rights of the Child for review, so as to build an international human rights dialogue platform and establish a national reporting system in the country. Taiwan is neither a Contracting Party to the Hague Abduction Convention nor has it been incorporated it into domestic law as yet, but the International Review Committee on CRC has recommended for Taiwan to adopt it and courts in Taiwan also reference it in their judgments. However, since the Hague Abduction Convention only takes effect between the Contracting Parties, it would still be challenging for Taiwan after incorporating it into domestic law as Taiwan is not able to ratify this Convention.

Therefore, this thesis aims to explore whether other countries have a positive obligation to collaborate with non-ratifying states, such as Taiwan, under the Hague Abduction Convention or the CRC.

1.2 Objectives of the Research

The main objective of this research is to analyse the positive obligation of states to cooperate in addressing international child abduction cases under the present international legal instruments. To this end, the thesis will:

- Identify the present international legal framework relating to child abduction. (Chapter 2)
- Identify the status quo of Taiwan in regards to the child abduction legal framework, including judicial practices. (Chapter 3)
- Identify how ratifying and non-ratifying countries cooperate to handle international abduction cases. (Chapter 4)
- Identify the positive obligation of ratifying states to cooperate to combat child abduction. (Chapter 5)
- Make recommendations to member states, non-ratifying but willing states, and the CRC Committee. (Chapter 6)

1.3 Research question

What measures can Taiwan, as a non-ratifying country to the Hague Abduction Convention, adopt to

⁴ The members of the International Review Committee for the state report of Taiwan are as follows: for the first state report in 2017, the members were Prof Jaap Doek, Mrs. Judith Karp, Prof Nigel Cantwell, Prof Laura Lundy, and Prof John Tobin; for the second state report in 2022, the members were Prof Jaap Doek, Prof Nigel Cantwell, Prof Nevena Vuckovic Sahovic, Prof Laura Lundy, and Prof John Tobin. See Taiwan's official website on CRC, <https://crc.sfaa.gov.tw/CRCEn>.

handle international child abduction cases, and do other member states have a positive obligation to cooperate with Taiwan under the Hague Abduction Convention or the CRC?

1.4 Limitations

The scope of this research is limited to exploring the measures that non-ratifying states of the Hague Abduction Convention can take to handle international child abduction cases, mainly focusing on the present measures conducted by states. Besides, the research will also examine whether other states have a positive obligation to collaborate with non-ratifying states, with a focus on Taiwan which is not able to formally ratify but might be willing to adopt the Hague Abduction Convention framework, under the CRC and the Hague Abduction Convention.

1.5 Methodology and Research Techniques

This thesis will employ a qualitative research methodology. The data will be gathered through a review of relevant literature, including academic articles, treaty body documents such as General Comments and Concluding Observations, as well as Taiwan's state report and relevant court judgments. The collected data will be analysed by using a thematic analysis technique.

2 Child abduction under the international legal framework

2.1 United Nations Convention on the Rights of the Child

Article 11 of the CRC obligates State Parties 'to take measures to combat the illicit transfer and non-return of children abroad,' and to this end, 'to promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.'

This provision primarily operates at the intersection of private international law and human rights law, with particular relevance to family life and the protection of children's rights, as other forms of cross-border child transfers for exploitative purposes can be addressed via Article 35 of the CRC and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC).⁵ The primary objective of Article 11 is to prevent cases of parental intercountry abduction,⁶ where a child is wrongfully removed or retained in violation of the law in the state from which the child is taken.⁷

When dealing with international child abduction, State Parties shall follow the general principles identified by the CRC Committee, which includes non-discrimination (Article 2), the best interests of the child (Article 3(1)), the child's right to life, survival and development (Article 6), the child's right to express his or her views freely (Article 12).⁸ The CRC Committee further indicates that in cases of the

⁵ W. Vandenhoe, G. Erdem Türkelli, & S. Lembrechts, Article 11: Illicit Transfer and Non-return of Children, *in* W. Vandenhoe, G. Erdem Türkelli, & S. Lembrechts (eds.), *Children's Rights: A Commentary on the CRC and its Protocols* 134 (2019).

⁶ *Id*; J. Tobin, N. Lowe & E. Luke, Art.11 Protection against the Illicit Transfer and Non-Return of Children Abroad, *in* J. Tobin (ed.), *The UN Convention on the Rights of the Child: A Commentary* 370 (2019).

⁷ J. Tobin et al., *supra* note 6, at 375.

⁸ Committee on the Rights of the Child, General comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child, CRC/GC/2003/5, para 12 (27 November 2003); Article 2 of the CRC: "1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members."; Article 3(1) of the CRC: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."; Article 6 of the CRC: "1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child."; Article 12 of the CRC: "1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

international return of children, where its role is to decide whether the interpretation or application of the national courts aligns with the obligations set forth by the CRC, national courts are required to effectively assess any factors that may justify an exception to the immediate return of the child and these factors should be evaluated in light of the child's best interests.⁹ This also echoes Articles 9 and 10 of the CRC, which provides that children have the right not to be separated from their parents against their will, except where such separation is necessary for the best interests of the child, and that children have the right to maintain on a regular basis personal relations and direct contacts with both parents.¹⁰

As Article 4 of the CRC requires State Parties to 'undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention,' State Parties shall take appropriate measures which are effective in dealing with intercountry parental abduction of children.¹¹ The treaty body of CRC, Committee on the Rights of the Child (CRC Committee), as a result, in its General Comment No. 5, encourages State Parties 'to consider ratifying other relevant international instruments,¹²' and especially encourages or urges State Parties to consider ratifying or acceding to the 1980 Hague Convention on the Civil Aspects of International Child Abduction¹³, which is also listed in the Annex 1 of the General Comment No. 5. The CRC Committee further recommends State Parties recognize all other states as parties to the Hague Abduction Convention to ensure immediate and effective protection for abducted children.¹⁴ Moreover, the CRC Committee recommends State Parties should apply the Hague Abduction Convention to all children abducted to their respective states, professionals handling such cases should receive sufficient and continuous training, and utmost assistance should be provided through diplomatic and consular channels to

⁹ Committee on the Rights of the Child, Communication No. 129/2020, J.M. v Chile, CRC/C/92/D/129/2020, para 6.5 (2023).

¹⁰ Hans van Loon, *Protecting Children across Borders: The Interaction between the CRC and the Hague Children's Conventions*, in T. Liefwaard, & J. Sloth-Nielsen (eds.), *The United Nations Convention on the Rights of the Child* 34 (2016).

¹¹ J. Tobin et al., *supra* note 6, at 375-376.

¹² *Supra* note 8, para 17.

¹³ See e.g.: CO Egypt (2011), CRC/C/EGY/CO/3-4, paras 55-56; CO Mozambique (2009), CRC/C/MOZ/CO/2, para 87; CO Algeria (2005), CRC/C/15/Add.26912, para 49; Communication No. 121/2020 J.M. v Chile, CRC/C/90/D/121/2020, para 8.3.

¹⁴ Committee on the Rights of the Child, *Concluding Observations: Mauritius*, CRC/C/MUS/CO/2, paras 39-40 (March 17, 2006). (Cited by Z. Vaghri, & G. Kotze, *Article 11: The Right to Protection from Illicit Transfer and Non-return of Children Abroad*, in Z. Vaghri, J. Zermatten, & G. Lansdown, Roberta Ruggiero (eds.), *Monitoring State Compliance with the UN Convention on the Rights of the Child* 150 (2022).)

effectively resolve cases involving illicit transfer of children.¹⁵

2.2 Convention of 25 October 1980 on the Civil Aspects of International Child Abduction

2.2.1 Introduction

The main objectives of the Hague Abduction Convention are twofold. First, it aims to ensure the prompt return of children who have been wrongfully removed or retained in any country that is a party to the Hague Abduction Convention.¹⁶ Second, it seeks to guarantee that the rights of custody and access, as recognized by the laws of one country, are effectively respected and upheld by other countries involved.¹⁷ The primary goal of the Hague Abduction Convention is to protect children from the harmful effects of wrongful abduction or retention and establish procedures that facilitate their prompt return to their habitual residence, while also safeguarding their rights of access to both parents.¹⁸ This is grounded on the assumption that the prompt return is in child's best interests as the country of habitual residence is in the best position to make custody determinations and assess the child's best interests.¹⁹

The removal or retention of a child is considered wrongful under the Hague Abduction Convention if it violates the rights of custody attributed to a person, institution, or body under the law of the child's habitual residence before the removal or retention.²⁰ These rights of custody must have been actually exercised or would have been exercised if not for the removal or retention.²¹ The rights of custody, which encompass rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence, can be established through legal provisions, court or administrative decisions, or valid agreements recognized by the law of that particular State.²²

The Hague Abduction Convention applies when a child under the age of 16, who was habitually resident in one Contracting States, is wrongfully removed or retained in another Contracting State, provided that

¹⁵ Committee on the Rights of the Child, Concluding Observations: Croatia, CRC/C/15/Add.243, para 46 (November 3, 2004). (Cited by Z. Vaghri, & G. Kotze, *supra* note 14.)

¹⁶ Article 1(a) of the Hague Abduction Convention.

¹⁷ Article 1(b) of the Hague Abduction Convention; Hans van Loon, *Supra* note 10, at 37.

¹⁸ Preamble of the Hague Abduction Convention.

¹⁹ O.A. Khazova, International Children's Rights Law: Child and the Family, in U. Kilkelly, & T. Liefwaard (eds), *International Human Rights of Children* 179 (2019); J. Tobin et al., *supra* note 6, at 388.

²⁰ Article 3(1)(a) of the Hague Abduction Convention.

²¹ Article 3(1)(b) of the Hague Abduction Convention.

²² Articles 3(2) and 5(a) of the Hague Abduction Convention.

the Hague Abduction Convention was in force between the two states at the time of the wrongful act.²³

Every Contracting State is obligated to designate a Central Authority responsible for cooperating with each other and encouraging cooperation among the relevant authorities in their respective States to ensure the prompt return of children and achieve the other objectives of the Hague Abduction Convention.²⁴ These Central Authorities are required to undertake various appropriate measures, including locating wrongfully removed or retained children, implementing protective measures to prevent harm to the child and affected parties, facilitating voluntary returns or amicable resolutions, exchanging relevant social background information, providing general information about their State's laws related to the Hague Abduction Convention, initiating or assisting in legal proceedings for the child's return and access rights, facilitating legal aid and advice when necessary, arranging administrative measures for the safe return of the child, and maintaining communication to share information and address any obstacles to the application of the Hague Abduction Convention.²⁵ Besides, the Central Authority of the State where the child is located is responsible for taking all necessary actions to secure the voluntary return of the child.²⁶

The judicial or administrative authorities of Contracting States are required to handle proceedings for the return of children promptly.²⁷ If a child has been wrongfully removed or retained according to Article 3 of the Hague Abduction Convention, and less than one year has passed since the wrongful act at the start of the proceedings in the Contracting State where the child is located, the authority involved must order the immediate return of the child.²⁸ Even if the proceedings are initiated after the one-year period mentioned earlier, the judicial or administrative authority should still order the return of the child, unless it is proven that the child has become settled in their new environment.²⁹

A return order is an order that the child be returned to the jurisdiction which is appropriate to decide custody and access, rather than a decision on the merits of custody,³⁰ which jurisdiction should be in

²³ Articles 4 and 35(1) of the Hague Abduction Convention.

²⁴ Articles 6(1) and 7(1) of the Hague Abduction Convention.

²⁵ Article 7(2) of the Hague Abduction Convention.

²⁶ Article 10 of the Hague Abduction Convention.

²⁷ Article 11(1) of the Hague Abduction Convention.

²⁸ Article 12(1) of the Hague Abduction Convention.

²⁹ Article 12(2) of the Hague Abduction Convention.

³⁰ Article 16 & 19 of the Hague Abduction Convention.

the state of habitual residence.

The judicial or administrative authority of the requested State has the discretion to not order the return of the child if certain conditions are met. These conditions include the person or institution caring for the child was not actively exercising custody rights at the time of the removal or gave consent to or subsequently accepted the removal.³¹ Another condition is if there is a serious risk that returning the child would expose them to physical or psychological harm or place them in an intolerable situation.³² Additionally, the authority may refuse to order the return if it determines that the child, due to their age and maturity, objects to being returned and it is appropriate to consider their views.³³ In considering these circumstances, the judicial or administrative authorities should take into account the social background information provided by the Central Authority or competent authority of the child's habitual residence.³⁴ It is also possible for the return of the child under Article 12 to be refused if it would violate the fundamental principles of the requested State regarding the protection of human rights and freedoms.³⁵ One thing needs to be mentioned is that there has been a growing consensus among scholars and experts that, in order to fulfil the obligations of the Convention on the Rights of the Child, courts should broaden the limited exceptions to an order of return,³⁶ which is an application of the best interests principle.

An application for the return of a child under the Hague Abduction Convention can only be valid if the Hague Abduction Convention is in force between the two countries concerned. It is important to note that when a country accedes to the Hague Abduction Convention, it does not automatically establish a partnership with all other countries that have ratified or acceded to the Hague Abduction Convention. Acceptance of another country's accession to the Hague Abduction Convention is necessary, following the terms outlined in the Hague Abduction Convention, to establish a treaty partnership.³⁷ Since its entry into force on 1 December 1983, up until 7 June 2023, the Hague Abduction Convention has had

³¹ Article 13(1)(a) of the Hague Abduction Convention.

³² Article 13(1)(b) of the Hague Abduction Convention.

³³ Article 13(2) of the Hague Abduction Convention.

³⁴ Article 13(3) of the Hague Abduction Convention.

³⁵ Article 20 of the Hague Abduction Convention.

³⁶ For a detailed discussion on this see Eran Sthoeger, *International Child Abduction and Children's Rights: Two Means to the Same End*, 32 MICH. J. INT'L L. 511, at 514 (2010). However, the author does not agree with this opinion. See also J. Tobin et al., *supra* note 6, at 388-390.

³⁷ Article 38(4) of the Hague Abduction Convention.

103 Contracting States.³⁸

2.2.2 Challenges of co-operation between Contracting States

The Hague Conference on Private International Law (HCCH) conducts periodic questionnaires on the practical operation of the 1980 Child Abduction Convention. In the latest survey conducted in January 2023, the fifth question addressed the challenges faced by Contracting Parties in achieving successful cooperation with other Contracting Parties (Question 5: Has your State faced any particular challenges with other Contracting Parties to the 1980 Convention in achieving successful cooperation? Please specify the challenges that were encountered and, in particular, whether the problems appear to be systemic.).³⁹ A total of 50 countries and one NGO (International Social Service (ISS)) responded to the questionnaire on this issue [see *Annexure 1 - Responses to the HCCH Questionnaire of January 2023*].

One common challenge faced by Central Authorities in various countries is delays in communication with other Central Authorities and difficulties in obtaining information from them in a timely manner (mentioned by e.g., Argentina, Australia, South Africa). Some Central Authorities do not provide detailed answers to queries or do not respond at all (mentioned by e.g., Chile). Several countries reported that they received incomplete or inconclusive responses from certain Central Authorities (mentioned by e.g., Switzerland, Türkiye). Some central authorities have refused to communicate by phone or email, which makes collaboration less effective and direct (mentioned by e.g., Switzerland).

Central Authorities also face challenges related to court processes and procedures in some countries. These include slow, unclear, and complex court proceedings at both the first instance and appeal levels (mentioned by e.g., Canada). In some cases, a judge may set aside an application for return based on technical grounds, such as the left-behind parent not appearing in person, despite being represented by counsel at the hearing (mentioned by e.g., Canada). Enforcement of return orders can also be a challenge in some countries (mentioned by e.g., Spain, Canada, Estonia, Germany, Iceland, Italy, Israel, and ISS).

Another challenge reported by Central Authorities is difficulty in securing legal representation or legal

³⁸ The Hague Abduction Convention has entered into force in all 103 contracting states. See the STATUS TABLE of the Hague Abduction Convention, <https://www.hcch.net/en/instruments/conventions/status-table/?cid=24>, last visited 07/06/2023.

³⁹ HCCH website: QUESTIONNAIRES & RESPONSES, <https://www.hcch.net/en/instruments/conventions/publications1/?dtid=33&cid=24>, last visited 07/06/2023.

aid for left-behind parents in the requested state (mentioned by e.g., Canada, Argentina, Australia, Israel, Czech Republic, Latvia, Türkiye). Some countries face challenges related to the location of the child and the length of return proceedings (mentioned by e.g., Czech Republic). Lastly, some Central Authorities lack sufficient resources, or adopt a reactive rather than a proactive approach to handling files (mentioned by e.g., Canada).

Overall, these challenges emphasize the need for improved cooperation, communication, and allocation of resources among Central Authorities to effectively address the implementation challenges of private international law. It is evident that these obstacles vary across different Contracting States, making successful cooperation more challenging to achieve.

3 International child abduction cases in Taiwan

3.1 Taiwan's Implementation Act of the Convention on the Rights of the Child

Since Taiwan is not a UN member state and therefore cannot officially ratify the CRC, it has devised an alternative method to embrace the value of international standards for children's rights. After the United Nations' adoption of the CRC in 1989, NGOs in Taiwan continued to call for the incorporation of the CRC.⁴⁰ The 1993 Amendment of Child Welfare Act, which was originally enacted on 8 February 1973, realized the principles of the CRC.⁴¹ In 1995, the government issued a statement to reiterate the country's commitment and determination to adhere to the spirit of the CRC.⁴² The Child Welfare Act, and the Youth Welfare Act, which was enacted on 23 January 1989, were merged and amended to form the Children and Youth Welfare Act on 28 May 2003, followed by being amended to the Protection of Children and Youths Welfare and Rights Act on 30 November 2011, which has gradually become the fundamental legislation for safeguarding the rights and interests of children and youth.⁴³

On 20 May 2014, the Implementation Act of the Convention on the Rights of the Child (hereinafter referred to as IACRC) was finally passed in the Legislative Yuan, the Parliament of Taiwan. It was promulgated by the President on 4 June and officially enforced on November 20, coinciding with the International Children's Rights Day. According to Article 1 of IACRC, "this Act is made to implement the 1989 Convention on the Rights of the Child, to fulfil the physical and mental development of children and youths and to substantiate the protection and promotion of the rights of the child and youth." The Act further explicitly states that "provisions of the Convention regarding the protection and promotion of the rights of the child and youth shall have the effect of domestic law,⁴⁴" and "the laws and administrative measures to which the provisions of the Convention apply shall be in reference to the purpose of the Convention and the interpretation of the Convention by the United Nations Committee on the Rights of

⁴⁰ 簡慧娟, 吳慧君 (2017), 〈兒童權利公約推動歷程與未來挑戰〉, 《社區發展季刊》, 157 期, 頁 43。[H.-J. Chien, & H.-C. Wu, Implementation of the Convention on the Rights of the Child: Process and Future Challenges, 157 Community Development Journal Quarterly 42, at 43. (2017)]

⁴¹ 立法院 (1991), 〈立法院議案關係文書: 院總第 932 號/委員提案第 3993 號〉, 頁 124。[Legislative Yuan, Taiwan. (1991). Agenda Related Documents: Yuan General Directory No. 932 (Proposal No. 3993), at 124.]

⁴² *Supra* note 40.

⁴³ 全國法規資料庫, 兒童及少年福利與權益保障法沿革 [Laws & Regulations Database of Taiwan, Legislative History], available at <https://law.moj.gov.tw/LawClass/LawHistory.aspx?pcode=D0050001>, last visited 16/06/2023.

⁴⁴ Article 2 of the IACRC.

the Child,⁴⁵” domesticating the CRC and explicitly incorporating all the General Comments from the CRC Committee into policy considerations.

The Act stipulates the obligations of government authorities as well: all levels of government authorities shall exercise their authority in accordance with the provisions of the Convention in relation to the protection of the rights of the child and youth;⁴⁶ all levels of government authorities shall be responsible for planning, promoting and implementing the matters stipulated in the Convention;⁴⁷ the Executive Yuan shall invite representatives of children and youth, academics, experts, representatives of private organizations or institutions, and other relevant authorities to establish the Child and Youth Welfare and Rights Committee to work on domesticating the CRC into national law;⁴⁸ the government shall file national reports every five years, invite relevant academic experts and representatives from private organizations to review the reports, and review and study subsequent policies based on their opinions;⁴⁹ all levels of government authorities shall allocate the budget required for the protection of the rights of the child and youth in the implementation of the CRC as a priority and implement gradually;⁵⁰ each level of government authority shall complete the legislation (amendment), revision or cancellation of the laws and regulations which are inconsistent with the provisions of the CRC and improve administrative measures.⁵¹

In compliance with Article 44 of the CRC, which outlines reporting obligations for contracting states, Article 7 of the IACRC establishes an international review mechanism: “the government shall establish a reporting system regarding the rights of the child and youth and shall submit its first national report within two years from the implementation of this Act. Thereafter, national reports shall be filed every five years. Relevant academic experts and representatives from private organizations shall be invited to review the reports. The government shall review and study subsequent policies based on their opinions.” Taiwan government submitted the Initial Report on 17 November 2016 and invited 5 experts, Jaap Doek, Judith Karp, Nigel Cantwell, Laura Lundy, and John Tobin, as the International Review Committee to

⁴⁵ Article 3 of the IACRC.

⁴⁶ Article 4 of the IACRC.

⁴⁷ Article 5 of the IACRC.

⁴⁸ Article 6 of the IACRC.

⁴⁹ Article 7 of the IACRC.

⁵⁰ Article 8 of the IACRC.

⁵¹ Article 9 of the IACRC.

have a Review Meeting from 20 to 24 November 2017.⁵² The International Review Committee made a total of 98 Concluding Observations.⁵³ The government submitted the “Concluding Observations on the Initial Report of the Taiwan- Administrative agency Follow-up response to the implementation” on 1 March 2019.⁵⁴ The government submitted the Second National Report under the CRC on 19 November 2021, and followed by 19 child and youth reports, 23 NGO alternative reports, 1 legislator report and independent evaluation opinions from the National Human Rights Commission; the Second International Review Conference was held from 14 to 16 November 2022.⁵⁵ The International Review Committee, which composed of Jaap Doek, Nigel Cantwell, Nevena Vučković Šahović, Laura Lundy, and John Tobin, made a total of 72 Concluding Observations.⁵⁶

3.2 The International Reviews and Concluding Observations regarding international child abduction

3.2.1 Taiwan’s first report for the 2017 International Review

In terms of dealing with the international illicit transfer and non-return issue, Taiwan government in its Initial Report stated that it has implemented specific measures to tackle this issue. One such measure is the establishment of the "Procedures to Help Search for Missing Children or Youth Taken Away by Parents (or Relatives) without Permission." This includes the creation of a centralized contact point to receive reports, offer counselling services, track case progress, and coordinate resources and assistance.⁵⁷

⁵² 衛生福利部社會及家庭署 (2017), 《中華民國兒童權利公約首次國家報告國際審查會議會議實錄》, 頁 7-11。 [Social and Family Affairs Administration of the Ministry of Health and Welfare, 2017 Documentary of the Review Meeting of Taiwan's Initial Report under the Convention on the Rights of the Child, at 7-11 (2017).]

⁵³ *Supra* note 52, at 526-564.

⁵⁴ 行政院 (2019), 〈中華民國 (臺灣) 兒童權利公約首次國家報告國際審查結論性意見各權責機關落實結論性意見後續行動回應表〉。 [Executive Yuan, Concluding Observations on the Initial Report of the Taiwan- Administrative agency Follow-up response to the implementation (2019).]

⁵⁵ 衛生福利部社會及家庭署, 第二次國家報告, <https://crc.sfaa.gov.tw/Document?folderid=117>。 [Social and Family Affairs Administration of the Ministry of Health and Welfare, Implementation of the Convention on the Rights of the Child-Second Report (Taiwan), <https://crc.sfaa.gov.tw/CRCEn/Document/Detail?documentId=03A7A4FB-B87A-4881-AAAB-4FDB9C5F9DFE> (English version), last visited 16/06/2023.]

⁵⁶ Regarding the states reports, NGOs’ reports, children’s reports and international reviews, see more on the official website, <https://crc.sfaa.gov.tw/CRCEn/Document?folderid=86>, last visited 05/06/2023.

⁵⁷ 行政院兒童及少年福利與權益推動小組 (2016), 《兒童權利公約首次國家報告條約專要文件》, 第 173 段。 [Child and Youth Welfare and Rights Promotion Group of Executive Yuan, Implementation of the Convention on the Rights of the Child - Initial Report (Taiwan), paragraph 173 (2016).]

When a case falls under the jurisdiction of a Taiwanese court and involves a country or region that has a mutual legal assistance agreement with Taiwan, investigations and evidence gathering are conducted in accordance with the provisions of that agreement. In cases where the involved country does not have a mutual legal assistance agreement, cooperation is based on the principle of reciprocity. For cases not under the jurisdiction of Taiwan, overseas representative offices will help with the search and make any visits necessary to understand the child or youth's situation.⁵⁸

Additionally, the Taiwan government has established guidelines for border control in such cases. Immigration agencies are mandated to enforce court preliminary injunctions that prohibit the departure of children or youth involved in these situations. Moreover, when a police agency receives a report of a child or youth being taken away without permission and confirms that they have not left the country, immigration agencies are promptly informed for record-keeping purposes.⁵⁹

3.2.2 NGOs' report⁶⁰ for the 2017 International Review

The NGOs in their report mention that due to the absence of mandatory reporting requirements for illicit transfer cases, it can be reasonably inferred that the actual number of such cases is higher than reported. Additionally, the lack of mutual judicial assistance agreements with most countries poses a challenge in establishing effective mechanisms to address illicit transfers of children abroad in Taiwan.

In response to the State's Initial Report, the NGOs indicated that requesting the government of the country where a child is located to search for and visit them proves challenging in gaining a comprehensive understanding of the child's actual situation, despite utilizing existing channels. For example, receiving oversimplified visit reports from the local government that lack the child's photographs or fail to accurately depict the child's circumstances. Furthermore, although courts possess the authority to restrict parents from taking children abroad under specific circumstances, the process of obtaining a preliminary injunction can be time-consuming, and there have been cases where children were taken abroad before the court preliminary injunction was issued. Even when the police have confirmed that the child has been taken but remains in Taiwan, and the immigration agency has been

⁵⁸ *Id.*

⁵⁹ *Supra* note 57, paragraph 174.

⁶⁰ Taiwan NGOs for CRC (2017), Alternative report on the implementation of the Convention on the Rights of the Child, English version pp 22-23 & Mandarin version pp 23-24. [note: There are some differences between both versions, this thesis combines both versions.]

notified of the case, this notification does not empower the agency to prevent the child from leaving the country. Additionally, if the child later returns to Taiwan, there is no obligation for the immigration agency to proactively inform the individual who filed the missing child report about the child's return.

The NGOs' report further gives recommendations. Firstly, in cases where children who have been illicitly transferred abroad return to Taiwan, it is crucial for the government to promptly notify the individual who filed the initial missing child report and provide assistance in locating the child's whereabouts. Secondly, the government should proactively establish effective and practical judicial assistance mechanisms with countries such as mainland China, Vietnam, and Indonesia, where such cases frequently occur. These mechanisms should encompass locating the children, producing comprehensive visitation reports, facilitating parental access to the children, and arranging for their safe return.

3.2.3 The 2017 Concluding Observations

In the 2017 Concluding Observations, the International Review Committee notes that the reporting of illicit child transfers is not mandatory, which results in an incomplete reflection of the actual number of cases,⁶¹ and recommends Taiwan to adopt the Hague Abduction Convention as a binding document for dealing with cases of illicit transfer and (non-) return of children.⁶²

3.2.4 Taiwan's follow-up response to the 2017 Concluding Observations

Regarding the above-mentioned 2017 Concluding Observations, the Social and Family Affairs Administration of the Ministry of Health and Welfare has established the following goals: assessing the feasibility and necessity of designating the illicit transfer of children by parents as a mandatory reporting event; enhancing public education on handling marital disputes and disputes over the custody of minors in a rational manner, providing guidance to the public on reporting missing persons, and making effective use of a court-issued preliminary injunction to prevent children from being illicitly taken away from their homes or jurisdiction; strengthening cooperation and communication with foreign countries, establishing cross-border mechanisms for judicial assistance or administrative cooperation, to facilitate the prompt return of children who have been illicitly transferred to their country of origin; and evaluating the feasibility

⁶¹ International Review Committee (2017), Concluding Observations on the Initial Report of Taiwan on the Implementation of the UN Convention on the Rights of the Child, paragraph 40.

⁶² *Supra* note 61, paragraph 41.

and necessity of acceding to the Hague Abduction Convention.⁶³

In the January 2020 tracking report, the Social and Family Affairs Administration addresses the mandatory report and the Hague Abduction Convention by stating that, given the current situation, it is not yet possible for Taiwan to join various conventions. The existing mechanism has incorporated the principles of the Hague Abduction Convention. Furthermore, as the Protection of Children and Youths Welfare and Rights Act has already regulated certain requirements for mandatory reporting, and it is difficult to take proactive administrative actions even with reporting, so there is currently no need to revise the legislation.⁶⁴

In the June 2020 tracking report, the Social and Family Affairs Administration refers to the "MOU between the AIT and the TECRO in the US on Cooperation on International Parental Child Abduction,"⁶⁵ which was signed on 12 April 2019. Additionally, it mentions the "Agreement on Mutual Legal Assistance in Criminal Matters between The Taipei Economic and Cultural Office in the Philippines And The Manila Economic and Cultural Office in Taiwan,"⁶⁶ the "Arrangement between the Taipei Liaison Office in the Republic of South Africa and the South African Liaison Office in Taipei on Mutual Legal Assistance in Criminal Matters,"⁶⁷ and the "Treaty on Mutual Legal Assistance in Criminal Matters between the

⁶³ *Supra* note 54, at 57-58.

⁶⁴ 行政院 (2020),〈中華民國 (臺灣) 兒童權利公約首次國家報告結論性意見各權責機關落實結論性意見後續行動回應表執行進度中程行動方案辦理情形追蹤表 (至 108 年 12 月止)〉, 頁 55。[Executive Yuan, Concluding Observations on the Initial Report of the Taiwan- Administrative agency Follow-up response to the implementation: Progress tracking table for intermediate action plan implementation (until December, 2019), at 55 (2020).]

⁶⁵ MOU between the AIT and the TECRO in the US on Cooperation on International Parental Child Abduction (2019), available at <https://uploads.mwp.mprod.getusinfo.com/uploads/sites/68/2022/03/20190412-IPCA-AIT-TECRO.pdf>, last visited 29/06/2023; Under the tag of 'International Parental Child Abduction,' it says "On April 12, 2019, the American Institute in Taiwan (AIT) and the Taipei Economic and Cultural Representative Office in the United States (TECRO) signed a Memorandum of Understanding (MOU) on Cooperation on International Parental Child Abduction (IPCA). The MOU provides that AIT and TECRO will facilitate communication on this critical issue, through and in coordination with their designated representative organizations, the U.S. Department of State's Bureau of Consular Affairs and the Taiwan Ministry of Health and Welfare (MOHW)." *see more* at American Institute in Taiwan, https://www.ait.org.tw/services/?_ga=2.246760194.740758100.1687989601-1892603837.1685938130, last visited 29/06/2023.

⁶⁶ Agreement on Mutual Legal Assistance in Criminal Matters between The Taipei Economic and Cultural Office in the Philippines and The Manila Economic and Cultural Office in Taiwan (2013), available at <https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=Y0030092>.

⁶⁷ Arrangement between the Taipei Liaison Office in the Republic of South Africa and the South African Liaison Office in Taipei on Mutual Legal Assistance in Criminal Matters (2013), available at <https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=Y0030155>.

Government of the Republic of China (Taiwan) and the Government of the Republic of Nauru.⁶⁸ Through the implementation of these criminal mutual legal assistance treaties or agreements, effective measures can be taken to address crimes related to wrongful removal of children from their homes by requesting mutual judicial assistance in criminal matters.⁶⁹

3.2.5 Taiwan's second report for the 2022 International Review

The government states that Taiwan's Procedures to Assist in Searching for Missing Children or Youth Due to Parental (or Familial) Child Abduction are in accordance with the principles of the Hague Abduction Convention. These procedures aim to prevent children from being taken overseas by facilitating the search for missing children and issuing preliminary injunctions. Furthermore, the status of children who have already been taken overseas can be better understood through diplomatic missions or mutual judicial assistance systems. Additionally, as part of their efforts to address international parental child abduction, Taiwan and the United States entered into a Memorandum of Understanding on Cooperation in 2019. A joint committee held meetings in May 2019 and November 2020 to enhance communication, coordination, and information sharing.⁷⁰

3.2.6 NGOs' report⁷¹ for the 2022 International Review

The NGOs' report describes the current situation, highlighting that the statistics fail to provide an accurate representation of the actual number of illicitly transferred children and youths. The government's policy lacks effectiveness in preventing such transfers, and there is insufficient public awareness and incentives to report these cases. Moreover, limited diplomatic resources result in unsupported family members who are searching for their missing children.

⁶⁸ Treaty on Mutual Legal Assistance in Criminal Matters between the Government of the Republic of China (Taiwan) and the Government of the Republic of Nauru (2019), available at <https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=Y0030186>.

⁶⁹ 行政院 (2020),〈中華民國 (臺灣) 兒童權利公約首次國家報告結論性意見各權責機關落實結論性意見後續行動回應表執行進度中程行動方案辦理情形追蹤表 (至 109 年 6 月止)〉, 頁 53。[Executive Yuan, Concluding Observations on the Initial Report of the Taiwan- Administrative agency Follow-up response to the implementation: Progress tracking table for intermediate action plan implementation (until June, 2020), at 53 (2020).]

⁷⁰ 行政院兒童及少年福利與權益推動小組 (2022),《兒童權利公約第二次國家報告條約專要文件》, 第 177、179 段。[Child and Youth Welfare and Rights Promotion Group of Executive Yuan, Implementation of the Convention on the Rights of the Child - Second Report (Taiwan), paragraphs 177&179 (2022).]

⁷¹ Taiwan NGOs for CRC, The Second Alternative Report on the Implementation of the Convention on the Rights of the Child, English version pp 38-41 & Mandarin version pp 29-31 (2022).

The report also highlights that although the MOU signed between the AIT and the TECRO in the US aims to address international parental child abduction, the primary destinations for illicitly transferred Taiwanese children and youths are China, Hong Kong, and Southeast Asia, and political factors hinder the establishment of effective search and visitation mechanisms. Although Taiwan and Vietnam have signed an agreement on judicial assistance in civil matters⁷², it does not specifically address the issue of illicit child and youth transfers. Even if a Taiwanese court grants custody, the mutual assistance agreement only supports investigation and lacks the necessary legal basis to enforce the return of children and youths to Taiwan.

The NGOs' report suggests that the Taiwan government should take proactive measures to pursue the signing of the Hague Abduction Convention. This would enable formal cooperation with other countries and enhance efforts to address the issue of international child abduction.

3.2.7 The 2022 Concluding Observations

Unfortunately, this issue is not mentioned in the 2022 Concluding Observations.⁷³

3.2.8 Brief summary and reflection

Taiwan has incorporated the CRC into domestic law. In regard to international child abduction, Taiwan has established procedures to search for missing children, cooperates with some countries through legal assistance agreements, and has guidelines for border control.

Challenges include the absence of mandatory reporting, which makes it impossible to accurately know the number and current situation of wrongful removal children, and the limited judicial assistance agreements (in numbers and contents), meaning that they cannot effectively deal with this issue.

The International Review Committee has indeed recommended that Taiwan adopt the Hague Abduction Convention. However, even if Taiwan were to incorporate the Hague Abduction Convention into its domestic law, there could still be challenges. This is because the Hague Abduction Convention only takes effect between states that have ratified it. As Taiwan is unable to ratify the Hague Abduction

⁷² Agreement between the Taipei Economic and Cultural Office in Vietnam and the Vietnam Economic and Cultural Office in Taipei on Judicial Assistance in Civil Matters (2010), available at <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=Y0030067>.

⁷³ International Review Committee, Concluding Observations on the Second Report of Taiwan (2022).

Convention due to its unique political status, it can be difficult to expect other countries to fully cooperate in handling international child abduction cases with Taiwan.

3.3 Judicial decisions and implementations

3.3.1 Introduction to Taiwan's legal system for family matters and preliminary injunction

The Family Act in Taiwan was indeed enacted on 11 January 2012, and it addresses a wide range of family matters that arise among individuals who share familial relationships based on cohabitation, blood ties, affection, and inheritance. It consolidates existing procedures for personal litigation, family non-contentious matters, and family mediation, while incorporating provisions for securing performance and enforcement. The primary objective is to effectively resolve family disputes, prioritize the best interests of children, and promote family harmony.⁷⁴

Family matters are typically handled by the juvenile and family courts or the family division of district courts. Judges, guardians ad litem, and mediators involved in these cases are required to possess professional competence in various areas, including gender equality awareness, understanding power dynamics, respect for multiculturalism, and knowledge related to family matters.⁷⁵

The Family Act introduces several key features to achieve its objectives, such as private hearings,⁷⁶ the ex officio principle (where the court can initiate proceedings or investigate the evidence without a formal request from a party),⁷⁷ the involvement of social worker,⁷⁸ guardian ad litem,⁷⁹ and investigation officer,⁸⁰ as well as preceding procedures of and joining for mediation.⁸¹ With regard to a family non-litigation matter that has already been admitted, when considering it necessary and urgent, the court may issue preliminary injunctions. These orders may include prohibiting the removal of a child from the country.⁸²

⁷⁴ Judicial Yuan, Family Affairs, <https://www.judicial.gov.tw/en/cp-1598-81529-29c1a-2.html>, last visited 05/06/2023.

⁷⁵ Article 2, Article 8, Article 16 and Article 32 of the Family Act.

⁷⁶ Article 9 of the Family Act.

⁷⁷ Article 10 of the Family Act.

⁷⁸ Article 11 of the Family Act.

⁷⁹ Article 15 and Article 16 of the Family Act.

⁸⁰ Article 18 of the Family Act.

⁸¹ Article 23, Article 26, Article 29, of the Family Act.

⁸² Articles 85 to 91 of the Family Act (2012, latest revision in 2019); Articles 91 to 93 of the Trial Rules for Family

Moreover, the Family Act includes specific provisions for the compulsory enforcement of child handover or visitation, with a focus on safeguarding the best interests of the child. In situations requiring direct compulsory enforcement, an implementation plan must be developed, assistance sought from relevant entities and personnel, and careful attention given to ensuring the safety, personal freedom, and dignity of the child (Article 194 and Article 195 of the Family Act).

3.3.2 Taipei District Court Civil Order 108-Chia-Chan-46 (2019)⁸³

In this case,⁸⁴ the child (born in 2014) has an Italian father and a Taiwanese mother, and the parents are not married. After the child's birth, the parents agreed to jointly exercise parental rights. At the end of 2017, the mother agreed to let the father take the child to Italy to visit the grandmother and celebrate Christmas for 20 days. However, without the mother's consent, the father took the child to Italy 9 days earlier than agreed and did not return the child to Taiwan as scheduled. At the end of 2017, the mother applied to the Taipei District Court to change custody to herself. In early 2019, the mother visited Italy to see the child, and during that time, the child lived well with the father and adapted to life in Italy. However, in January of the same year, the mother falsely claimed that the child's passport was lost, applied for a replacement at the Taiwan representative office in Italy, and took the child back to Taiwan without the father's consent, causing the child to leave Italy, where she had been living for over a year. In March, the father applied for a preliminary injunction, stating that he could only have brief video calls with the child and expressing his desire for the child to visit Italy to see his grandfather, who had been involved in a serious car accident. The father requested that the child be allowed to temporarily reside in Italy with him.

The court acknowledged that both parents had engaged in wrongful removal of the child from the habitual residence, but considered the mother's actions to be more severe than the father's actions: 1) employing methods that involve the risk of committing criminal acts; 2) filing the case in Taiwan but not

Matters (2012, latest revision in 2020); and the Rules Governing the Types and Methods of Injunctions in Family Non-contentious Matters (2012).

⁸³ Due to the non-disclosure of their family court judgments/orders by many courts, this thesis primarily relies on this specific publicly available and media-reported order from the Taipei District Court to illustrate the points.

⁸⁴ 臺灣臺北地方法院 108 年度家暫字第 46 號民事裁定 [Taipei District Court Civil Order 108-Chia-Chan-46 (2019)], available at <https://judgment.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TPDV,108%2c%e5%ae%b6%e6%9a%ab%2c46%2c20191031%2c2>, last visited 16/06/2023; 臺灣臺北地方法院 (2022), 本院 107 年度家親聲字第 212 號等家事事件新聞稿 [Taipei District Court, Press release on 107-Chia-Chin-Sheng-212 and related family matters cases of this Court. (2022)], <https://tpd.judicial.gov.tw/tw/cp-2850-921325-1e1fb-151.html>, last visited 16/06/2023.

waiting for the result and requesting the Italian court to recognize Taiwan's order to execute. Although the child has adapted well to life and schooling in Taiwan, this is a matter for the court to consider in the custody judgment of this case. Considering the handling of international child abduction cases under the Hague Abduction Convention, the principle of immediately returning the child to the habitual residence should be followed. Therefore, the court ordered that before the custody case is determined in the first instance ruling, the child should immediately return to Italy, the habitual residence, and live with the father. The child can stay with the mother in Taiwan for two weeks every six months.

Although an appeal does not suspend the enforcement of the preliminary injunction, as of June 2023, the mother has not handed over the child, and the child is still living in Taiwan. However, it should be noted that although the preliminary injunction in this case was appealed to the Supreme Court, and in February 2022, the appeal was rejected and the initial order was confirmed (Supreme Court Civil Order 111-Tai-Chien-Kang-13⁸⁵), the mother subsequently filed a constitutional petition, and in May 2022, the Taiwan Constitutional Court declared the Supreme Court Civil Order 111-Tai-Chien-Kang-13 (2022) as unconstitutional (Taiwan Constitutional Court Judgment 111-Hsien-Pan-8⁸⁶). Subsequently, in October 2022, the Supreme Court revoked the original ruling and remanded it to the Taipei District Court for further proceedings.

The second-instance court in the custody case considered that the original preliminary injunction had expired (the original preliminary injunction was made "before the custody case are determined in the first instance ruling," the custody case has been pending in the second instance), the mother is now the primary caregiver in practice, and that during the three years of separation between the father and the child, the actual meeting time did not exceed 10 hours. During the child's stay in Taiwan for several years, not only did she lose her ability to speak Italian, but she also denied the identity of Italian relatives as her family. In order to maintain the child's private relationship and direct contact with the separated father and protect the child's right to Italian nationality identity, the court ordered the father and the child to meet and interact regularly, in order to protect the child's rights under the CRC, including the right to identity, not to be separated from parents, and the right to enter and leave the country for family

⁸⁵ 最高法院 111 年度台簡抗字第 13 號民事裁定 [Supreme Court, Civil Order 111-Tai-Chien-Kang-13 (2022)], available at <https://judgment.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TPSV,111%2c%e5%8f%b0%e7%b0%a1%e6%8a%97%2c13%2c20220223%2c1>, last visited 16/06/2023.

⁸⁶ See Summary of Taiwan Constitutional Court Judgment 111-Hsien-Pan-8 (2022), <https://cons.judicial.gov.tw/en/docdata.aspx?fid=5248&id=347500>, last visited 05/06/2023.

reunification.⁸⁷

3.3.3 Issues in the 108-Chia-Chan-46 Order

This case actually involved a lot of issues, for example, how to implement the child's right to be heard, which is the main reason it triggered a public debate, and what is in the child's best interest. But one thing needs to be pointed out here is the debate about the international cooperation.

Before ruling the 111-Hsien-Pan-8 order, the Taiwan Constitutional Court ruled a preliminary injunction, 111-hsien-cha-tsai-1, suspended the execution of the Supreme Court Civil Order 111-Tai-Chien-Kang-13, which refers to the Taipei District Court Civil Order 108-Chia-Chan-46. Though the Constitutional Court did not explicitly mention this, one of the mother's reasons for applying the preliminary injunction was that Taiwan is neither a member state of the Hague Abduction Convention, nor has an agreement on mutual legal assistance with Italy. As a result, the mother did not consider it possible to enforce the Taiwan's court judgment/order in Italy, the court's imputation in the 108-Chia-Chan-46 Order was unfair to her. In addition, after the case became public, some people expressed concerns that it might be challenging to bring the child back to Taiwan after she was handed over because of the lack of mutual legal assistance.⁸⁸

This case highlights the complex issue of international cooperation in cases of immediate return. Taiwan is not a signatory to the Hague Abduction Convention, and it also lacks mutual legal assistance agreements with many countries. As a result, there are challenges in seeking assistance from other countries to promptly return abducted children. Furthermore, while Taiwan's courts have incorporated the principles of the Hague Abduction Convention into relevant cases, the concerns raised by the public regarding the difficulty of bringing the child back to Taiwan after her handover further compound the challenges involved in enforcing the preliminary order for the child's transfer abroad.

⁸⁷ 臺灣臺北地方法院 111 年度家親聲抗字第 20 號民事裁定 [Taipei District Court Civil Order 111-Chia-Chin-Sheng-Kang-20 (2022)], <https://judgment.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TPDV.111%2c%e5%ae%b6%e8%a6%aa%e8%81%b2%e6%8a%97%2c20%2c20221130%2c2>, last visited 16/06/2023.

⁸⁸ 王欽彥 (2022), 〈台義爭女監護權大戰! 法院引海牙公約命媽媽交出女兒 學者: 有 3 大問題〉, 蘋果新聞網 2022 年 3 月 16 日。[C.-Y. Wang, Taiwan-Italy Custody Battle! The Court invokes the Hague Convention to order the mother to hand over the daughter – the Scholar points out 3 major issues, Apple Online (16 March 2022).]

4 International child abduction when non-ratifying states are involved

4.1 Different forms of the involvement of non-ratifying states

There might be different kinds of composition between abducted child's habitual residence and current location, which is shown in the following table.

		State of habitual residence	
		Non-ratifying	Ratifying
State of current location	Non-ratifying	(A)	(B)
	Ratifying	(C)	(D)

In category D, where both the child's habitual residence and current location states are ratifying states, the situation aligns most closely with the framework provided by the Hague Abduction Convention. Both states have ratified the Convention, demonstrating their commitment to adhering to its principles and procedures. This alignment facilitates cooperation and enhances the potential for the swift resolution of international child abduction cases. Within this category, the legal remedies and mechanisms established under the Hague Abduction Convention can be effectively utilized to secure the return of the abducted child to their habitual residence state. The well-defined procedures and guidelines outlined in the Hague Abduction Convention provide a clear framework for the requesting state to pursue legal action and seek the child's return. The central authorities designated by each ratifying state play a crucial role in facilitating communication and cooperation between the involved parties. However, it is important to acknowledge that challenges may still arise in category D cases. Despite both states being ratifying parties, implementation issues and complex jurisdictional matters can complicate the enforcement of return orders. The effectiveness of the return process may be influenced by factors such as the efficiency of the legal system and the level of compliance from the current location state. However, further exploration of these challenges falls outside the scope of this particular chapter (see further discussion in chapter 2.2.), as the primary objective is to provide an in-depth analysis of the situations where non-ratifying states are involved (categories A, B, and C).

In category A, where both the state of the abducted child's habitual residence and the state of their current location are non-ratifying states, a complex legal landscape arises. The absence of ratification by both states implies that the Hague Abduction Convention does not apply directly to the case. Consequently, the resolution of international child abduction becomes significantly more challenging, as there is no established legal framework for cooperation and enforcement between the involved countries.

The legal remedies available to parents or guardians seeking the return of their abducted child may vary widely depending on the domestic laws and bilateral agreements, if any, between the involved countries. The absence of a formal mechanism for the return of the abducted child could potentially hinder the efforts of the left-behind parent in seeking their child's return. Moreover, the lack of uniformity in legal standards and procedures between the non-ratifying states may lead to further complications, making it difficult to navigate through jurisdictional issues and determine the appropriate legal recourse for the resolution of the abduction case.

Category B and C present two sides of the same coin in terms of the involvement of non-ratifying states in international child abduction cases.

Category B refers to cases where the state of the child's habitual residence has ratified the Hague Abduction Convention, while the state of the child's current location has not yet ratified it. This situation presents a unique set of challenges. While the state of habitual residence may have legal mechanisms and procedures in place to handle international child abduction cases, the non-ratifying state may not have similar structures or obligations. Consequently, the enforcing state might not be legally bound to cooperate or assist in the return of the child. This disparity in legal frameworks between the two states can lead to delays, legal uncertainties, and difficulties in ensuring the prompt and safe return of the abducted child. Typically, non-ratifying countries tend to disregard requests for the repatriation of an abducted child. The government of the child's home country, in such cases, often has limited ability to assist parents in ensuring the child's safe return, apart from offering guidance and information on how to navigate the situation effectively.⁸⁹ In search of a resolution, parents in dire situations may consider resorting to "self-help" measures or re-abduction.⁹⁰ However, it is crucial to recognize that such actions can potentially exacerbate the trauma experienced by the child and should be avoided.

In category C, the state of the child's current location is a ratifying state, whereas the child's habitual residence is a non-ratifying state. This situation introduces its own set of complexities and implications. While the ratifying state is bound by the provisions of the Hague Abduction Convention, the non-ratifying state might not have the necessary legal mechanisms to handle or resolve international child abduction cases. This imbalance in legal obligations and procedures can hinder the effective resolution of these

⁸⁹ L. Cardin, *The Hague Convention on the Civil Aspects of International Child Abduction as Applied to Non-Signatory Nations: Getting to Square One*, 20 *Hous. INT'L L.* 141, at 158 (1997); K. Haugevik, *Parental Child Abduction and the State: Identity, Diplomacy and the Duty of Care*, *The Hague Journal of Diplomacy*, 13(2), at 177 (2018).

⁹⁰ L. Cardin, *supra* note 89, at 162.

cases, as the non-ratifying state may lack the necessary legal framework to facilitate the child's return. Some courts may hesitate to apply the principles of the Hague Abduction Convention based on notions of reciprocity, comity, and the child's best interests, while others may choose to prioritize the child's overall best interests and apply the Convention's principles to ensure their return to their habitual residence.⁹¹ As a result, category C cases often require extensive cooperation and coordination between the ratifying state, non-ratifying state, and other relevant stakeholders to navigate the legal complexities and ensure that the best interests of the child are safeguarded.

4.2 Possible resolution (I): bilateral agreements

International child abduction cases between ratifying and non-ratifying states often present complex legal challenges due to the absence of a direct application of the Hague Abduction Convention. However, in certain situations, bilateral agreements between the involved countries can offer a framework for addressing and resolving these cases.

Bilateral agreements, such as the ones mentioned in the previous paragraph, can establish specific procedures, mechanisms, and cooperative measures to prevent and resolve international child abduction. These agreements may cover aspects such as information sharing, legal assistance, and the promotion of the best interests of the child. By entering into bilateral agreements, countries can create a legal framework that complements or supplements the Hague Abduction Convention, even in the absence of direct ratification by one of the states. These agreements enable the ratifying and non-ratifying states to collaborate on issues related to international child abduction and work towards ensuring the prompt and safe return of the abducted child.

The HCCH website provides a list of 15 bilateral agreements (refer to *Annexure 2 - List of bilateral agreements between ratifying and non-ratifying states*), showcasing the diverse range of agreements established between countries in relation to international child abduction cases. These bilateral agreements, jointly signed by ratifying and non-ratifying states of the Hague Abduction Convention, include various types such as bilateral cooperation agreements on civil/family law matters, agreements on protecting the welfare of children, mutual legal assistance treaties (MLATs), and Memoranda of Understanding (MOUs). It is worth noting that two non-ratifying states, Morocco and Tunisia, later became Contracting Parties to the Hague Abduction Convention, indicating their recognition of the

⁹¹ L. Cardin, *supra* note 89, at 163.

importance of international cooperation in resolving child abduction cases.

These bilateral agreements serve as formal frameworks to facilitate collaboration and address the complexities associated with international child abduction cases involving non-ratifying states, aiming to provide practical solutions and support for parents and children navigating the challenges of cross-border child abduction. In the case of Australia, bilateral agreements were signed with Lebanon and Egypt. These agreements aim to establish a framework for resolving international disputes involving children by facilitating communication and cooperation between the governments of the respective countries. The agreements enable the exchange of information and documents related to applications, promote dialogue between parents to find mutually agreeable solutions, and include mechanisms for monitoring and reporting on individual cases. However, despite the perceived benefits of these agreements, the Australian Government's Information for Parents Brochure takes a candid approach, acknowledging the challenging realities associated with the resolution process. It emphasizes that the process can be slow and frustrating, potentially stretching over months or even years to reach a resolution. Additionally, the brochure advises that frequent and regular updates to the applicant parent may not be feasible, and cautions that the final outcome may not align with the parent's initial expectations or desires.⁹²

Despite the potential challenges and limitations associated with bilateral agreements, they play a crucial role in facilitating the resolution of international child abduction cases involving non-ratifying states. These agreements offer a practical alternative when the direct application of the Hague Abduction Convention is not available.

One of the key advantages of bilateral agreements is that they provide a platform for direct communication and collaboration between the governments of ratifying and non-ratifying states. This allows for the exchange of vital information, coordination of efforts, and the implementation of cooperative measures to address the specific complexities of each case. By establishing clear procedures and mechanisms, these agreements can help streamline the resolution process and

⁹² Attorney-General's Department of Australian Government, Australia-Lebanon Agreement information for parents, <https://www.ag.gov.au/families-and-marriage/publications/australia-lebanon-agreement-information-parents>, last visited 05/06/2023; Attorney-General's Department of Australian Government, Australia-Egypt Agreement information for parents, <https://www.ag.gov.au/families-and-marriage/publications/australia-egypt-agreement-information-parents>, last visited 05/06/2023. See also J. OLSSON, Child abductions and international custody disputes in Lebanon and other non Hague Convention countries. *Bulletin (Law Society of South Australia)*, 38(7), at 29 (2016).

enhance the chances of achieving a favorable outcome.

Furthermore, bilateral agreements often emphasize the best interests of the child as a guiding principle.⁹³ They recognize the importance of protecting the well-being and rights of the child involved in an abduction case, and they strive to ensure that decisions made are in their best interests. This focus on the child's welfare serves as a fundamental aspect of these agreements, promoting a child-centric approach to resolving international child abduction disputes.

In conclusion, bilateral agreements serve as valuable tools for addressing international child abduction cases involving non-ratifying states. These agreements establish a framework for communication, cooperation, and the protection of the child's best interests. While they may not eliminate all challenges, they provide a means to facilitate dialogue and collaboration between governments, aiming to ensure the prompt and safe return of abducted children and promote international cooperation in resolving these complex and sensitive cases. It is important to note that the existence and content of bilateral agreements can vary significantly depending on the countries involved. Each agreement is tailored to the specific legal frameworks and diplomatic relations between the ratifying and non-ratifying states. As such, the provisions and effectiveness of these agreements may differ from case to case.

4.3 Possible resolution (II): mirror order

In general, mirror orders serve the purpose of ensuring the recognition and enforceability of contact arrangements. The Fourth Meeting of the Special Commission has recommended that Contracting States consider implementing procedures for obtaining necessary provisional protective measures in the jurisdiction to which the child is to be returned.⁹⁴ When uncertainties arise regarding the validity and enforceability of a contact order in a foreign jurisdiction, obtaining a mirror order in the country of the child's intended travel becomes a viable solution. The purpose of this mirror order is to achieve the same desired outcome and enhance security by increasing the custodial parent's willingness to allow contact abroad, potentially obviating the need for enforcement measures. It may be appropriate for the court to

⁹³ For example, Article 1 of the Agreement Between the Government of Australia and The Government of The Arab Republic of Egypt Regarding Cooperation on Protecting the Welfare of Children; Article 2(b) of the Agreement between the Government of Canada and the Government of the Arab Republic of Egypt regarding Cooperation on Consular Elements of Family Matters.

⁹⁴ HCCH, Conclusions and Recommendations of the Fourth Meeting of the Special Commission to Review the Operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (22-28 March), rec. 5.1 (2001).

impose a condition that an order with identical terms and conditions is obtained in the destination country. In such situations, direct judicial communication between the courts of the child's habitual residence and the destination country proves highly beneficial as it promotes cooperation and facilitates the resolution of the case.⁹⁵ The use of mirror orders can help prevent the occurrence or recurrence of child abduction and facilitate the legal procedures in case an abduction occurs.

However, the primary concern revolves around whether the state will take action and can be relied upon to assess the situation fairly and competently, with the ultimate aim of safeguarding the child.⁹⁶ One of the challenges with mirror orders lies in the fact that these types of orders are not commonly utilized in civil law jurisdictions, as judges in civil law systems typically do not perceive themselves as having the authority to issue such orders.⁹⁷ Additionally, the effectiveness of mirror orders may also be influenced by diplomatic relations between the ratifying and non-ratifying states, as well as any bilateral agreements or treaties that exist between them.

To summarize, mirror orders can provide a potential solution for resolving international child abduction cases, but their effectiveness depends on the cooperation and willingness of the involved countries. Close collaboration, clear communication, and mutual trust between judicial authorities are crucial for their successful application. Factors such as legal frameworks, diplomatic relations, and existing bilateral agreements also impact the overall effectiveness of mirror orders.

4.4 Difficulties for Taiwan

In Taiwan, the use of bilateral agreements and mirror orders in the context of international child abduction cases may present certain difficulties.

While Taiwan has made efforts to address international parental child abduction through agreements such as the MOU between the AIT and the TECRO in the US and other mutual legal assistance treaties with countries like the Philippines, South Africa, and Nauru, there are still significant obstacles to overcome. The primary destinations for illicitly transferred Taiwanese children and youths are China,

⁹⁵ HCCH, *General Principles and Guide to Good Practice*, Hague Conference on Private International Law: Transfrontier Contact Concerning Children, at 17, 32 & 39 (2008).

⁹⁶ L. Silberman, *The Hague Child Abduction Convention Turns Twenty: Gender Politics and Other Issues*, *New York University Journal of International Law and Politics*, 33(1), at 236 (2000).

⁹⁷ K. Trimmings, & O. Momoh, *Intersection between Domestic Violence and International Parental Child Abduction: Protection of Abducting Mothers in Return Proceedings*, *International Journal of Law, Policy and the Family*, 35(1), at 18 (2021).

Hong Kong, and Southeast Asia. Political factors and the lack of effective search and visitation mechanisms hinder the resolution of these cases. Even with a judicial assistance agreement with Vietnam in civil matters, it does not specifically address the issue of illicit child and youth transfers, making enforcement challenging, even if custody is granted by a Taiwanese court.⁹⁸

Secondly, the recognition and enforceability of mirror orders in Taiwan's civil law jurisdiction may pose challenges. Family court judges in Taiwan may not perceive themselves as authorized to issue such orders, which could impede their implementation and effectiveness.

Additionally, the effectiveness of bilateral agreements and mirror orders may be influenced by diplomatic relations between Taiwan and the countries involved. The existence of diplomatic ties and formal agreements can facilitate cooperation and enhance the chances of successful resolution. However, the absence of such agreements could hamper the implementation and enforcement of mirror orders. The slow progress in developing bilateral agreements with other countries further complicates the handling of international child abduction cases.

Given these challenges, if compelling reasons can be identified to convince states to cooperate with Taiwan, it would facilitate the establishment of bilateral treaties between Taiwan and other states. Therefore, the upcoming chapter will examine whether State Parties have a positive obligation under the framework of the CRC to cooperate with Taiwan in addressing international child abduction cases.

⁹⁸ See detailed information in chapters 3.2.4 and 3.2.6.

5 Positive obligation of states to cooperate with Taiwan

5.1 Introduction

For the Hague Abduction Convention to be operational and effective, both states involved in a child abduction dispute must be parties to the Hague Abduction Convention.⁹⁹ In other words, the Hague Abduction Convention must be in force between the two countries for an application for the return of a child under the Hague Abduction Convention to be considered valid. Therefore, due to the high threshold for Taiwan to utilize the Hague Abduction Convention, it is necessary to explore alternative approaches to address international child abduction cases. Consequently, the following discussion will focus on the framework of the CRC.

The CRC establishes a set of rights and principles for the protection and well-being of children, including provisions related to family reunification and the prevention of child abduction. By examining the positive obligations of contracting states under the CRC, it can shed light on whether there is a legal basis for countries to cooperate with Taiwan in handling international child abduction cases.

When a state ratifies the CRC, it becomes obligated to implement this Convention by taking all appropriate legislative, administrative, and other measures to fulfil the rights outlined in the Convention for all children within its jurisdiction. This obligation is emphasized in Article 4 of the CRC.¹⁰⁰ Article 2 further emphasizes that states must respect and ensure the rights enshrined in the Convention for every child within their jurisdiction without any form of discrimination. Additionally, Article 3(2) states that states parties undertake to ensure the necessary protection and care for the well-being of the child, taking into account the rights and duties of parents or legal guardians, and must take appropriate legislative and administrative measures to fulfil this responsibility.

While states have a certain degree of discretion in determining the appropriate measures within their jurisdiction, they are also responsible for justifying the suitability of these measures. The CRC Committee plays a vital role in the final determination of whether states have taken all appropriate measures, ensuring that they are relevant to the advancement of children's rights and aligned with the broader framework of international human rights law. States are expected to ground their measures in available evidence, avoiding speculation or bias, and establish systems for monitoring, reviewing, and

⁹⁹ Article 38(4) of the Hague Abduction Convention.

¹⁰⁰ *Supra* note 8, para 1.

evaluating the impact and outcomes of these measures in implementing children's rights. Mere claims of taking measures are insufficient; tangible evidence demonstrating the achieved outcomes for children is necessary.¹⁰¹

The CRC Committee explicitly highlights that State Parties must adopt a children's rights perspective for effective implementation of the CRC, with due regard to the four general principles: non-discrimination (Article 2), the best interests of the child (Article 3(1)), the child's right to life, survival and development (Article 6), the child's right to express his or her views freely (Article 12).¹⁰²

Article 4 of the CRC further emphasizes that the implementation of the Convention is a cooperative exercise among the states of the world,¹⁰³ underscoring the obligation of states parties to cooperate with other countries. In this context, the general principles related to cooperation, such as non-discrimination (Article 2), the best interests of the child (Article 3(1)), and the child's right to life, survival, and development (Article 6), are of particular importance.

5.2 Cooperating with other states

Article 4 and Article 11(1) of the CRC impose obligations on State Parties to enact effective measures to tackle intercountry child abduction.¹⁰⁴ Moreover, Article 11(2) of the CRC requires State Parties to promote the conclusion of bilateral or multilateral agreements. It is worth noting that the latter portion of Article 4 stipulates that "[...],¹⁰⁵ States Parties shall undertake such measures [...] within the framework of international co-operation." Upon examining these articles collectively, the CRC emphasizes the imperative for States Parties to collaborate within the international community, fostering concerted efforts in order to develop and implement robust frameworks and mechanisms aimed at effectively addressing the complex issue of intercountry child abduction. It highlights the inherent interconnectedness of efforts and the necessity for collaborative action among states in effectively addressing intercountry child abduction cases, and agreements serve as instrumental tools for establishing formal structures and legal frameworks that facilitate information sharing, joint

¹⁰¹ J. Tobin, Art.4 A State's General Obligation of Implementation *in* J. Tobin (ed.), *The UN Convention on the Rights of the Child: A Commentary*, 112-113 (2019).

¹⁰² *Supra* note 8, para 12.

¹⁰³ *Supra* note 8, para 60.

¹⁰⁴ J. Tobin et al., *supra* note 6, at 375-376.

¹⁰⁵ Regarding "Does the Obligation of Cooperation Extend to Civil and Political Rights?", please refer to *supra* note 101, at 145-147.

investigations, and prompt action in cases involving intercountry child abduction.

This collaborative approach within the international community is vital for several reasons. Firstly, intercountry child abduction cases always transcend national borders, irrespective of whether the involved states have ratified relevant agreements or not. Thus, establishing cooperative mechanisms becomes crucial to enable swift and coordinated action across jurisdictions. Secondly, through collective efforts, states can pool their resources, expertise, and experiences, leading to more effective and comprehensive solutions to combat international child abduction. Additionally, international cooperation enhances information sharing, allowing for the timely exchange of critical data and intelligence related to abducted children and their whereabouts. This exchange of information not only facilitates the prompt location and recovery of abducted children but also strengthens preventive measures to deter potential abductions. Furthermore, cooperation among states fosters a unified approach in raising awareness about intercountry child abduction, promoting education and training programs, and facilitating mutual support for affected families. By emphasizing the imperative for international collaboration, the CRC reinforces the shared responsibility of all states in safeguarding the rights and well-being of children, regardless of their nationality or geographic location.

5.3 Ensuring non-discrimination

Article 2 of the CRC requires States Parties to respect and ensure the rights enshrined in the Convention for every child within their jurisdiction, without any form of discrimination. This obligation becomes particularly crucial when dealing with cases of abducted children falling under the jurisdiction of States Parties. Regardless of whether the country of habitual residence is a signatory to the Hague Abduction Convention or the CRC, States Parties are obligated, as per Article 11, to take measures to combat the illicit transfer and non-return of children. Promptly returning the child in such cases is essential to avoid discrimination based on the child's national origin or citizenship, thus fulfilling the positive obligations outlined in the CRC.

5.4 Promoting the child's right to life, survival, and development

Article 6 of the CRC recognizes that every child possesses an inherent right to life, survival, and development, which includes the opportunity to reach their full potential. The CRC Committee emphasizes that the concept of "development" should be interpreted comprehensively, taking into account various aspects such as physical, intellectual, moral, psychological, and social development.

States Parties are responsible for creating a favourable environment that supports the survival and healthy development of children.¹⁰⁶ This includes providing access to vital services such as healthcare, education, and nutrition. In cases of international abduction, where the child's well-being may be at risk, the country where the child is located has a positive obligation to ensure the child's prompt return to their familiar environment. By doing so, the child can continue their previous life and have the opportunity to achieve the best possible development.

5.5 Upholding the best interests of the child

Article 3(1) of the CRC highlights the principle of the best interests of the child. The CRC Committee emphasizes that every State party is obligated to uphold and enforce the child's right to have their best interests evaluated and given paramount importance.¹⁰⁷ They are required to undertake all essential, intentional, and tangible actions to fully implement this right.¹⁰⁸ When the child's best interests links to the right to non-discrimination, the right to non-discrimination not only prohibits all forms of discrimination in enjoying the CRC's rights but also requires proactive measures by the State to ensure equal opportunities for all children to enjoy their rights under the CRC.¹⁰⁹ When the child's best interests links to the right to life, survival and development, States are responsible for creating an environment that respects the dignity of every child and promotes their overall development.¹¹⁰ Besides, both Article 9, separation from parents, and Article 10, family reunification, also explicitly refer to the child's best interests. As a result, in an international child abduction case, States Parties are obliged to carefully evaluate the best interests of the children involved and take appropriate measures to protect their rights and facilitate their reunification with their families, ensuring their well-being and development. Moreover, the principle of the best interests of the child encompasses procedural rights, including the timely resolution of child abduction cases.¹¹¹

5.6 Exploring alternative approaches within the CRC framework

¹⁰⁶ *Supra* note 8, para 12.

¹⁰⁷ Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14, para 13 (29 May 2013).

¹⁰⁸ *Supra* note 107, para 13.

¹⁰⁹ *Supra* note 107, para 41.

¹¹⁰ *Supra* note 107, para 42.

¹¹¹ Z. Vaghri, & G. Kotze, *supra* note 14, at 147.

The CRC offers a comprehensive framework to safeguard and advance the rights of children. While the Hague Abduction Convention plays a significant role in addressing international child abduction cases, it is important to recognize that not all countries have ratified this Convention. Therefore, it becomes crucial to explore alternative approaches within the framework of the CRC, which is one of the most widely ratified international conventions, when dealing with non-ratifying states like Taiwan.

Under the CRC, states have a positive obligation to cooperate with each other to safeguard and promote children's rights. Article 4 of the CRC emphasizes the cooperative nature of implementing the convention, highlighting the shared responsibility of states in upholding children's rights worldwide. This obligation should extend to cooperating with non-ratifying states as well.

Furthermore, states can leverage the general principles of the CRC, such as non-discrimination (Article 2), the best interests of the child (Article 3(1)), and the child's right to life, survival, and development (Article 6), to guide their actions. These principles provide a foundation for evaluating the best interests of the child in intercountry child abduction cases and ensuring that appropriate measures are taken to protect their rights and facilitate family reunification.

In the context of international child abduction, cooperation can take different forms. It may involve exchanging information about the child's situation, conducting joint investigations, facilitating legal proceedings, and ensuring the enforcement of court orders for the return of abducted children. Additionally, cooperation can extend to providing support services to the child and their family during the reunification process, such as counselling, psychological support, and social integration assistance. Cooperating with other states also entails addressing any potential challenges or barriers that may arise during the process. This may include overcoming cultural and language differences, reconciling different legal systems, and navigating complex diplomatic relations. Open dialogue and a spirit of collaboration are essential in overcoming these challenges and finding mutually beneficial solutions.

By examining the positive obligations, general principles, and cooperative nature of the CRC, countries can find a legal foundation for cooperation and develop effective strategies or agreements to address the complexities of international child abduction, thereby ensuring the protection, well-being, and development of abducted children.

6 Conclusion

This thesis aimed to explore whether other countries have a positive obligation to collaborate with non-ratifying states like Taiwan under the Hague Abduction Convention or the CRC to address international child abduction cases. The study identified the present international legal framework relating to child abduction and examined Taiwan's status quo in regard to the child abduction legal framework, including its judicial practices, and further explored the alternative approaches for non-ratifying states to cooperate with member states.

6.1 Answers to the Research Question

Regarding the question of what measures Taiwan, as a non-ratifying country to the Hague Abduction Convention, can adopt to handle international child abduction cases, this thesis found that Taiwan, as a non-ratifying state to the Hague Abduction Convention, does face difficulty in handling international child abduction cases. This is due to the Hague Abduction Convention only being effective among contracting parties. At the national level, Taiwan has taken measures to tackle this issue. Taiwan has developed its own specific approach to adopting international instruments to better protect human rights and to connect with the international community by incorporating several international human rights treaties, including the CRC, into domestic law. Taiwan has established the "Procedures to Help Search for Missing Children or Youth Taken Away by Parents (or Relatives) without Permission," which includes a centralized contact point to receive reports, offer counselling services, track case progress, and coordinate resources and assistance. Additionally, Taiwan has signed MOU or judicial agreements with various countries, such as United States, Philippines, South Africa, Nauru, and Vietnam. Courts in Taiwan have made reference to the Hague Abduction Convention in their judgements, despite Taiwan not being a Contracting Party. However, it is important to emphasize that resolving intercountry child abduction cases requires cooperation between the state of the child's habitual residence and the state where the child is located. Therefore, it is crucial to examine whether member states have a positive obligation to cooperate with non-ratifying states in these cases.

Regarding the question of whether member states have a positive obligation to cooperate with Taiwan under the Hague Abduction Convention or the CRC, it is important to recognize that member states are obligated to cooperate with Taiwan in addressing international child abduction cases under the CRC. While the Hague Abduction Convention requires both involved states to be parties for an application to be valid, alternative approaches within the CRC can be considered due to challenges faced by Taiwan.

The CRC establishes rights and principles for children's protection, including family reunification and prevention of abduction. States must cooperate with each other as outlined in Article 4 of the CRC, which emphasizes the cooperative nature of implementing the convention and highlights the shared responsibility of states in upholding children's rights worldwide. Article 2 emphasizes non-discriminatory protection for all children, even if their country of habitual residence is not a signatory to the conventions. States must actively combat illicit transfer and non-return of children under Article 11 and take prompt action to ensure the return of abducted children, in order to prevent any form of discrimination. The CRC also recognizes a child's right to life, survival, and development (Article 6) and the principle of the child's best interests (Article 3). These principles provide a solid foundation for evaluating the best interests of the child in intercountry child abduction cases and ensure that appropriate measures are taken to protect their rights and facilitate their well-being. By implementing these provisions and fulfilling these obligations, member states can establish a legal foundation for collaborating with Taiwan, recognizing the importance of alternative approaches within the CRC framework to effectively address international child abduction cases. Through open dialogue, cooperation, and a commitment to the rights of the child, member states can work together with Taiwan to ensure the protection, well-being, and development of abducted children.

6.2 Recommendations

Based on the findings of this study, the following recommendations are proposed:

1. Enhance international cooperation:

Taiwan should actively engage with other countries to establish cooperative mechanisms and bilateral agreements that facilitate information sharing, joint investigations, and prompt action in cases involving international child abduction. This could be achieved through diplomatic channels, mutual legal assistance, and unofficial ties, such as international conferences and multilateral forums focused on child rights. Furthermore, Taiwan can explore partnerships and collaboration with international organizations that specialize in child rights and child abduction. These organizations can provide valuable expertise, resources, and support in addressing international child abduction cases, such as experience sharing and setting up training programmes.

On the other hand, State Parties to the CRC have the positive obligations to mutually deal with intercountry child abduction cases. In accordance with these obligations, State Parties should take

proactive actions to cooperate with Taiwan and other non-ratifying states. This could be achieved by concluding bilateral agreements and building communication platforms that facilitate effective collaboration and information exchange.

Furthermore, better international cooperation could also facilitate direct judicial communication, which can then improve the application and implementation of mirror orders. By mirroring or replicating a decision made in the child's habitual residence, this might help prevent child abduction and facilitate the legal processes in the event of an abduction, reducing the likelihood of its occurrence or recurrence.

2. Strengthen legal frameworks:

Taiwan should consider joining the Hague Abduction Convention, even if formal ratification is not possible. This can be achieved by incorporating its provisions into domestic law and establishing mechanisms for its implementation. This would make Taiwan a more reliable partner for other contracting states, as the Hague Abduction Convention already provides a framework for cooperation among countries. This could also facilitate the signing of bilateral agreements and promote collaboration between Taiwan and other countries in international child abduction cases.

3. Establish a central authority:

Taiwan should establish a central authority for child abduction cases. This central authority would coordinate domestic efforts among relevant government agencies, such as law enforcement, judiciary, and social services. It would ensure that these agencies are well-informed about their roles, responsibilities, and the established protocols for handling such cases. Additionally, the central authority would serve as the main point of contact for liaising with other countries, facilitating communication, information exchange, and collaboration in international child abduction cases. By actively engaging with other states, the central authority can foster partnerships and build collaborative relationships. Moreover, the central authority can integrate related information and experience, which can help Taiwan to contribute in international conference and forums, so as to further facilitate and strengthen international cooperation with other countries.

4. Support research and data collection:

Taiwan should effectively carry out data collection and conduct relevant research to enhance its understanding of the scope and nature of international child abduction cases, as well as their impact on children and families. This knowledge is crucial for effective policy-making as it allows policymakers to develop targeted and informed strategies to address the issue. Additionally, it can help Taiwan determine the order in which it establishes bilateral agreements with other countries.

Correspondingly, once State Parties to the CRC conduct related research and data collection, they might identify the importance and urgency to conclude bilateral agreements with other states, which might not be limited to ratifying states but also non-ratifying states.

5. Strengthen the CRC Committee oversight:

The CRC Committee should strengthen its review and oversight of how State Parties handle international child abduction cases. This can involve providing guidance, conducting regular assessments, and issuing recommendations to ensure compliance with the principles and obligations of the CRC, particularly regarding the best interests of the child. This would encourage State Parties to take proactive measures in dealing with international child abduction cases, including international cooperation, and promote compliance with the principle of the best interests of the child.

6. Raise public awareness:

Every state has an obligation to conduct awareness campaigns to educate the public, particularly parents, about the issue of international child abduction and the legal frameworks in place to address this problem. This would prevent the occurrence of international child abduction cases and be beneficial for protecting the best interests of children.

In conclusion, the issue of international child abduction is a serious problem that requires cooperation from all countries. While non-ratifying countries like Taiwan face challenges in effectively addressing this issue, measures can be taken to improve the legal framework and cooperative mechanisms available for resolving international child abduction cases. The principle of the best interests of the child must be taken into consideration in any action taken to address international child abduction cases, and the international community must work together to promote respect for and protection of this principle.

Annexure 1 - Responses to the HCCH Questionnaire of January 2023

Resource: excerpt from HCCH QUESTIONNAIRES, <https://www.hcch.net/en/publications-and-studies/details4/?pid=8520&dtid=33>, last visited 08/06/2023. (Translation by the Author.)

	Contracting States	Question 5: Has your State faced any particular challenges with other Contracting Parties to the 1980 Convention in achieving successful cooperation? Please specify the challenges that were encountered and, in particular, whether the problems appear to be systemic.
1.	Argentina	<p>Some countries make a restrictive interpretation of both international restitution and cross-border contact applications. It has become very common that in allegations of gender violence pending of final resolution, the cases are refused by the Central Authority without being analysed. Other Central Authorities interpret the Convention in a way which is not in harmony with its object and purpose. Besides this, they do not make any effort to locate the children. Furthermore, unilaterally they decide whether to appeal or not the resolutions when they are not favourable to the return of the child even though they legally represent the left behind parent. The contact details of some Central Authorities are not updated which makes it very difficult to communicate with them. For countries that had made reservations over article 26, it is very difficult to find attorneys to provide legal counselling.</p>
2.	Australia	<p>Australia has experienced a range of issues with other states who are a party to the 1980 Convention. These have included the lack of assessment of a case against the principles of the Convention. In some cases, the only assessment has appeared to have been a best interest style consideration, without reference at all to the requirements of the Convention. We have also experienced difficulty with the level of communication and responsiveness of some Central Authorities on the progress of matters, and in some instances the ACA has needed to communicate directly with overseas applicants in order to secure a response. There can be difficulty receiving information from overseas CAs about dates for court hearings and/or adjournments, no communication to acknowledge receipt of an application, limited or no response from some overseas CAs regarding the process for Hague matters in their country (such as mediation, legal assistance and filing an application with the court).</p> <p>There has been an increase in highly resourced taking parents instituting or actively participating in parenting (relocation) proceedings in the requesting state of habitual residence while at the same time opposing the Hague application being heard in the requested state. In such cases the ACA and the Australian courts need to be accurately apprised of overseas domestic proceedings in a</p>

	<p>timely manner.</p> <p>In some countries the court structure, for example for appeals, does not accord with the relevant country profile.</p> <p>In one matter an overseas authority refused to file an application with their court. The overseas Central Authority indicated that this was because the respondent mother produced a letter signed by the applicant father providing his consent to the mother taking the children from Australia to a third country. The applicant provided an explanation, stating that although he had signed the letter he withdrew his consent a week later. The ACA respectfully requested the overseas Central Authority to reconsider its position. However, despite withdrawing his consent, together with the fact that the consent was in relation to taking the children to a third country (and not the requested country), the authority in the requested country was unwilling to reconsider the matter. The applicant then felt he had no option but to pursue access orders in the requested jurisdiction. In this, and other cases, some overseas CAs have refused the application based on questions that ought to have been determined by the overseas court.</p> <p>There have been applications for return that remain open for several years due to delays in judicial proceedings. Some cases have been open for more than four years. In one case a return order was upheld on appeal to the overseas court, however the matter remains ongoing as the child cannot be located. The ACA's attempts to communicate with the relevant overseas CA have been unsuccessful to date, despite attempts to seek assistance through the International Hague Network of Judges.</p> <p>In some countries it is not possible to obtain orders preventing a child from being removed from an overseas country while the 1980 proceedings are considered. Many jurisdictions do not have the equivalent of airport watchlist orders and/or travel injunctions and/or orders requiring the surrendering of passports. In some cases this has led to the child being removed from the country prior to the return order being enforced. In some instances, the overseas CA is not involved with the enforcement process and the taking parent has been able to abscond with the child before the return was able to be enforced. In some cases the ACA has received large volumes of documents that have not been accompanied by a certified English translations and some documents that are irrelevant to 1980 proceedings. In other cases relevant material has not been provided. For example in one matter, during a discussion with the applicant's lawyers, it became apparent to the ACA that there was highly relevant evidentiary material that had not been referred to the ACA by the overseas CA. The applicant's</p>
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		<p>lawyers provided the ACA with those documents but they had not been translated into English and were provided very late to the ACA. The overseas CA did not assist in translating the documents. This impacts the potential success of a request and can place overseas applicants at a significant disadvantage.</p> <p>In some cases we have been unable to obtain the correct contact details to refer an application to an overseas CA. In some jurisdictions parents receive very limited assistance to engage an overseas lawyer. In this respect we note that of course some countries have made a reservation against costs under Articles 26 and 42.</p>
3.	Belgium	<ul style="list-style-type: none"> - Procédures très longues et parfois coûteuses. - Absence de communication avec l'Autorité requise (pas de réponse aux e-mails, impossibilité de communiquer par téléphone en raison de problème de langue, etc). - Manque d'information sur le déroulement de la procédure (le requérant n'est pas informé des audiences, il ne reçoit pas d'information sur les éléments déposés par l'autre partie, etc). - Non exécution de décision ordonnant le retour. <p>【 - Very long and sometimes costly procedures.</p> <ul style="list-style-type: none"> - Lack of communication with the requested Authority (no response to e-mails, impossibility to communicate by telephone due to language problem, etc.). - Lack of information on the progress of the procedure (the applicant is not informed of the hearings, he does not receive information on the elements submitted by the other party, etc.). - Non-execution of the decision ordering the return.】
4.	Brazil	<p>Unfortunately, the Brazilian Central Authority has been facing several difficulties in its bilateral cooperation with certain States Parties of the 1980 Hague Convention since 2017. These difficulties primarily revolve around communication, including:</p> <ul style="list-style-type: none"> a) Some countries interpreting the period of validity of travel authorization strictly, and considering that the retention of a minor in the country after the expiry of the period does not constitute illicit subtraction. b) The lack of information regarding the status of outgoing cases. Despite the Brazilian Central Authority sending recurring requests for updates, there has been no response in a timely manner. c) Delayed responses to requests for information related to the social background of the child, as requested under Article 13, Paragraph 3 of the 1980 Hague Convention. d) Delayed responses to judicial subpoenas issued by Brazilian Federal judges

		for information held by the Central Authorities of the country of habitual residence of the children, relating to the social backgrounds of the child as requested under Article 13, Paragraph 3 of the 1980 Hague Convention.
5.	Bulgaria	X
6.	Canada	<p>Achieving successful cooperation is difficult with some Contracting Parties. For outgoing cases specifically, the main challenges are:</p> <ul style="list-style-type: none"> - a lack of updated contact information for the CAs; - unexplained delays in obtaining an acknowledgement of receipt for an application and/or in obtaining responses to queries regarding its status; - passivity on the part of requested CA not proactively taking steps to advance the case; - requested CA not accepting application and supporting documents translated into French or English; - delays in locating a child; - difficulties or delays in securing legal representation or legal aid for the left-behind parent in the requested State; - court processes slow, unclear and complex in first instance and at the appeal level; - in one case, a judge set aside the application for return on the basis that the left behind parent did not appear in person in the requested State and despite the fact that the left-behind parent was represented by counsel at the hearing; - delays in enforcement of a return order or inability to enforce a return order; <p>For incoming cases specifically, the main challenges are:</p> <ul style="list-style-type: none"> - documents that are not accompanied by a proper translation as required under article 24 of the 1980 Convention; - difficulties in obtaining information on the applicable law in the requesting State. <p>These difficulties and challenges mostly appear to be systemic, due to the lack of sufficient resources or because some CAs take a “hands off” approach resulting in a reactive rather than proactive approach in relation to files. However, in some states, CAs also appear to have a limited or inaccurate understanding of their duties under the Convention.</p>
7.	Chile	The main issue is communication: some Central Authorities do not provide detailed answers to the questions we send them (if they reply at all).
8.	China (Hong Kong SAR)	X

9.	China (Macao SAR)	X
10.	Colombia	As Colombian Central Authority we have faced challenges with the Peruvian Central Authority and the Spanish Central Authority. With the Peruvian Central Authority, we have experienced issues regarding the location of the abducted children when they are not Peruvian. The Peruvian Central Authority states that they can not search for non-peruvian children, this in opposition of the a) of the Article 7 of the 1980 Hague Convention. On the other hand, the Spanish Central Authority rejects the outgoing Hague Access cases that we send.
11.	Costa Rica	Communication and explaining how our legal system works and what are the competencies of the Central Authority in the hearing.
12.	Cyprus	X
13.	Czech Republic	Problems with location of the child, with the length of the return proceedings (the 6-week deadline for issuing a decision is often not respected), even in countries that did not raise a reservation according to Article 26 and are not willing to ensure legal aid for applicants.
14.	Denmark	X
15.	Dominican Republic	One of the main places as a destination country for our migration is Spain, this indicates that we constantly have requests for cases that we work on reciprocally between the two (Requested State or Requesting State). However, Spanish legislation or regulations for the application of the 1980 Hague Convention do not establish the procedure for requests that have as their object the application of article 21 of this Agreement; this means that the Spanish Central Authority does not accept requests for access or visits between both states. This has consequences for us because we do not have their cooperation to guarantee the right of children and adolescents to share visits with their parents.
16.	Ecuador	X
17.	El Salvador	La falta de contestación a requerimientos realizados a otras autoridades centrales relacionados a completar documentación pertinente previo a presentar el caso en sede judicial. 【The lack of response to requests made to other central authorities related to completing relevant documentation prior to presenting the case in court.】
18.	Estonia	There have been issues regarding the enforcement of return decisions in Russian Federation.
19.	Finland	With some states, we have encountered problems in receiving necessary information for the applicants in their case. The information regarding the laws

		<p>and procedures in the requested state and regarding the initiation of the return proceedings has sometimes been insufficient. Also, it has been unclear whether the return application is pending in the court and whether the requested Central Authority is assisting in the proceedings. Also the length of the proceedings in some states is considered a problem.</p> <p>Additionally, it has been sometimes challenging to receive responses from some States. We have not received receipt of request, updates about the status of the case and sometimes the information received has been outdated.</p>
20.	France	<p>Certains Etats signataires n'ont pas désigné d'autorité centrale, rendant de facto impossible la mise en œuvre de la Convention de 1980. Les coordonnées de certaines autorités centrales ne sont pas à jour sur leur profil de pays sur le site de la HCCH. Cela pose particulièrement problème lorsqu'il ne s'agit pas d'interlocuteurs réguliers. De la même manière, il conviendrait de privilégier la mise en place d'une adresse mail structurelle permanente pour les autorités centrales, plutôt que d'indiquer sur la fiche pays les adresses mail personnelles des membres du service, qui sont amenés à changer. Certaines autorités centrales ont des délais longs de réponse (plusieurs semaines, voire parfois mois).</p> <p>Enfin, certaines autorités centrales considèrent que lorsque le parent requérant introduit directement la procédure sur le fondement de l'article 29, elles ne sont plus tenues de suivre l'affaire. Ainsi, elles refusent d'intervenir lorsqu'elles sont saisies de difficultés telles que la longueur anormale de la procédure de retour, ou lorsque leur sont adressées des demandes d'explication sur leur droit national ou sur le déroulement de la procédure.</p> <p>De même, lorsque le parent requérant se rend dans le pays de déplacement pour essayer de voir l'enfant ou de dialoguer avec le parent ravisseur, certaines autorités centrales estiment ne plus devoir intervenir dans la procédure de retour, alors qu'elles ont agi au titre de la demande de retour qui leur a été adressée.</p> <p>【Some signatory States have not designated a central authority, making it de facto impossible to implement the 1980 Convention. The contact details of some central authorities are not up to date on their country profile on the HCCH website. This poses a particular problem when it is not a question of regular interlocutors. Similarly, preference should be given to setting up a permanent structural e-mail address for the central authorities, rather than indicating on the country sheet the personal e-mail addresses of the members of the service, who are bound to change. Some central authorities have long response times (several weeks, sometimes even months).</p>

		<p>Finally, some central authorities consider that when the applicant parent initiates the procedure directly on the basis of Article 29, they are no longer required to monitor the case. Thus, they refuse to intervene when they are seized of difficulties such as the abnormal length of the return procedure, or when they are addressed to requests for explanation on their national law or on the progress of the procedure.</p> <p>Similarly, when the requesting parent goes to the country of displacement to try to see the child or to talk to the abducting parent, some central authorities consider that they no longer have to intervene in the return procedure, even though they previously acted on behalf of the requesting parent's return application.】</p>
21.	Georgia	X
22.	Germany	<p>In some Contracting States the duration of the return proceedings is not in conformity with the 1980 Convention as the proceedings take too much time, sometimes years. The delays occur both at an early stage concerning the filing of the application before the competent court as well as later concerning the duration of the actual court proceedings. The fact that in some states various stages of appeal with numerous possibilities of cassation and/or of referral to a lower instance by a higher court are possible enhance this problem.</p> <p>Furthermore, there is no swift enforcement procedure in some states. Most of these problems seem to be systemic and allegedly mainly originate from a lack of coherent implementing legislation and a lack of understanding and/or acceptance of the ideas and aims of the 1980 Convention among judges and other institutions in those countries.</p>
23.	Honduras	X
24.	Iceland	Occasional challenges regarding enforcement of court decisions and also regarding locating the child and the abducting parent.
25.	Israel	<p>1) Significant communication difficulties with some requested Central Authorities (see paragraph 13), which result in significant and harmful delays in the case.</p> <p>2) Difficulties in securing legal representation in the requested State (see paragraph 15)</p> <p>3) Difficulties in locating abducted children (see paragraph 17).</p> <p>4) Difficulties in obtaining information about the operation of the Convention in some States, especially States that have not provided a Country Profile to the HCCH website</p> <p>5) Extremely lengthy legal proceedings in some Contracting States. Proceedings continue for months if not years.</p> <p>5) Lack of effective and/or efficient mechanisms/procedures for enforcement of</p>

		<p>orders for return, such that orders are not enforced and the children do not return.</p> <p>In all of these examples, the problems are systemic in the particular states and appear to be a result of insufficient implementing legislation, lack of familiarity/understanding of the Convention by Central Authorities, courts and/or other authorities involved in the operation of Convention, and/or lack of cooperation/coordination between the relevant authorities in the state.</p>
26.	Italy	Delays in discovering the whereabouts of children abducted; serious difficulties to enforce return decisions; neglecting requests, filed during the proceedings, for provisional contacts between applicants and children; lack of prompt information on the pending proceedings.
27.	Jamaica	X
28.	Japan	In some Contracting States, the judicial process for the return of the child takes excessively long period of time and, as a result, does not satisfy the requirement of expeditious processing of the case under the 1980 Hague Convention. Also due to the lack of concentration of jurisdiction over the Hague child return cases in certain Contracting States, some cases took more than a few months to set the date of the initial hearing.
29.	Latvia	Cooperation with the Central Authority of Russian Federation. None of the submitted applications has been processed to the Court, either no information was available on child's place of residence, or it was difficult to initiate the proceedings due to lack of any assistance with the legal aid.
30.	Lithuania	X
31.	Montenegro	X
32.	New Zealand	<p>There have been instances where requested States have been slow to respond to communications which has caused delay and uncertainty in what are already uncertain times.</p> <p>With the increased focus on the situation for the child and taking parent on return, and desire to provide some level of certainty, requests for assistance to obtain information in circumstance beyond the power and function of the Central Authority have increased. The desire to obtain this information needs to be tempered to the extent appropriate under the legal framework of the requested State.</p> <p>Difference in the interpretation of what constitutes a protective measure and the extent to which measures may be imposed to facilitate a safe return is a growing concern. Some States have adopted a very broad interpretation of what constitutes a protective measure and others a very narrow interpretation. The difference in interpretation has the potential to undermine the primary purpose of</p>

		<p>the Convention and that the law of the contracting States relating to such rights be respected.</p> <p>This raises the question whether some of the conditions imposed are in effect creating self-executing orders where the conditions imposed cannot be properly met and undermine the principles of the Convention.</p>
33.	Panama	The location of the minor sometimes is challenging and also not taking into account article 11.
34.	Peru	X
35.	Poland	X
36.	Portugal	The execution of return Orders (return to Portugal).
37.	Singapore	X
38.	Slovakia	X
39.	South Africa	<p>As stated previously Central Authorities take too long to respond especially when they are dealing with applicants via attorneys, a Central Authority has not responded at all, Central Authorities have limited capacity to cooperate when they are dependent on other sectors for assistance for e.g., when a Central authority is not legally qualified then they wait on the AG attorney to respond; some Central Authorities will question why they need to give a report on social welfare circumstances despite Article 7 making provision for this. When a matter is before court the court will often want information or evidence related to a particular issue raised during the trial and Central Authorities are not able to respond promptly. The child is not legally represented.</p>
40.	Spain	<p>Lack of enforcement of return orders</p> <p>Lack of information and extreme delays to obtain a decision</p>
41.	Sweden	There are a few countries where we have repeatedly experienced challenges of similar kind, e.g. the length of the court proceedings.
42.	Switzerland	<p>D'après notre expérience, la collaboration avec les autres Autorités centrales et avec les autorités compétentes des autres Etats varie énormément. Il y a notamment des Autorités centrales qui ont des délais de réponse très longs et qui refusent de communiquer par téléphone (voire même par courriel). Cela rend la collaboration moins efficace et directe. En outre, la quantité d'informations reçues après ce laps de temps n'est pas toujours suffisante à un traitement approprié des dossiers.</p> <p>【In our experience, collaboration with other Central Authorities and with the competent authorities of other States varies enormously. In particular, there are Central Authorities which have very long response times and which refuse to communicate by telephone (or even by e-mail). This makes collaboration less efficient and direct. Furthermore, the quantity of information received after this</p>

		period of time is not always sufficient for the appropriate processing of files.]
43.	Türkiye	<p>As the Central Authority of Türkiye, we continue to have problems with some central authorities in our applications under the 1980 Convention.</p> <p>Firstly; our requests for information about the application and litigation process from the central authorities are either inconclusive or are answered very late. In some cases, we have to send information requests through diplomatic channels. Another difficulty is that in some contracting states, litigation regarding the application of the Convention is left to the sole discretion of the applicant. Applicants lose time in the process of finding a lawyer and agreeing on fees in contracting states. Expected cooperation in the processes of benefiting from legal assistance is not made.</p> <p>In some countries, it was determined that the application form and the attached documents were not submitted to the judicial authorities by the central authority. In this case, the applicant had to re-submit the application form and its annexes to the court, and the proceedings were prolonged.</p>
44.	Ukraine	<p>As the CA we faced challenges with Spain in achieving successful cooperation. In several return cases the State Legal Service closed the cases considering that the case had no chance of success due to the war situation in Ukraine. The position of the Ukrainian CA is taking into account the practice of applying the 1980 Convention in relations between Ukraine and the Kingdom of Spain and basing on the provisions of Article 11-13 of the Convention, is that the consideration of a case on the return of a child from the Kingdom of Spain to Ukraine and delivering a decision on the return of the child or the refusal to return the child falls within the competence of the court of the Kingdom of Spain. At the same time, the practice of issuing decisions in the return cases in foreign Contracting States during this year is varied. There are already decisions of foreign courts delivered in 2022 after February 24, 2022, which satisfied the return claims and ordered the return of a child to Ukraine. The decisions have been enforced and the children were returned to Ukraine to the safe regions. In regard of all abovementioned and being guided by Article 7 “e” and “i” of the 1980 Conventions, the Ukrainian CA applied to provide information on the competence of the Ministry of Justice of the Kingdom of Spain as well as the State Legal Service regarding taking decisions not to initiate the return court proceedings; and asked not to close the return cases, to accept the return applications and to take all necessary measures, foreseen by Article 7 of the 1980 Convention, including paragraphs “f” and “g”, in order to avoid violation of provisions of the 1980 Convention and parental rights of the applicants and children’s rights, prescribed by the international treaties and internal legislation</p>

		of two States. At the moment of preparation of responses on the Questionnaire we have not received response of Spanish CA concerning the matter.
45.	United Kingdom (England and Wales)	ICACU continues to encounter communication issues with some Central Authorities – where enquiries/communications remain unanswered or there are lengthy delays before a response is received. The problems appear to be systemic e.g., inadequate channels of communication; or infrastructure challenges or changes in personnel within the Central Authority.
46.	United Kingdom (Northern Ireland)	I had difficulties obtaining updates in relation to the case, ie had papers been lodged, court hearings etc. CA unable to provide updates apart from case was with Public Prosecutor. I obtained update once case was dealt with.
47.	United Kingdom (Scotland)	X
48.	United States of America	We look forward to discussing the challenges of implementation of the Convention at the 2023 Special Commission meetings. Typically, the challenges we observe include delays in the judicial process, difficulties in enforcing return orders, an overly broad interpretation of the exceptions to the obligation to return a child pursuant to the Convention, difficulties in locating abducted children, and some problems with communication between central authorities. For example, we have seen courts find that the well-settled defence is available even when the petition was filed within one year of the alleged wrongful removal date. We look forward to continuing to collaborate on these issues both in the Special Commission meetings and through bilateral communications.
49.	Uruguay	It has been some problem with the localization of the child, which takes too long. Some AC doesn't answer back our emails in a prompt way and doesn't provide information during the procedure. Also, some AC does not provide the contact information of the applicant's defender, so there is no contact between them
50.	Venezuela	Debido a la situación país que atraviesa el Estado Venezolano, en los ultimo 5 años aproximadamente, la mayoría de las solicitudes de restitución requeridas por Venezuela, fueron negadas bajo la excepción establecida en el 13,b) del Convenio de 1980, convirtiéndose así una excepción, en una regla generalizada invocada por las autoridades de los países partes requeridos. Este hecho, aún persiste sistemáticamente, en gran medida, en países como Perú, y menor grado, por Ecuador, Chile y otros países de América Latina, obviando inclusive las cuestiones más simples exigidas en el Convenio de 1980 como países contratantes, en el sentido de adoptar las medidas necesarias para la ubicación del NNA, cerrando los casos al cabo de un año, si el solicitante no

		<p>proporcionaba la dirección completa donde se encuentra el niño. Por ejemplo, específicamente con la República del Perú como país requerido, no se ha obtenido información sobre alguna solicitud que haya sido remitido a la vía judicial, esto, por la ausencia de aplicación de medidas para la ubicación del NNA. De manera que, todas las solicitudes han sido cerradas en vía administrativa, por la AC Peruana.</p> <p>【Due to the country situation that the Venezuelan State is going through in the last 5 years approximately, most of the restitution requests requested by Venezuela, were denied under the exception established in 13,b) of the 1980 Agreement, thus becoming an exception, in a generalized rule invoked by the authorities of the requested party countries. This fact still persists systematically, to a great extent, in countries like Peru, and to a lesser degree, by Ecuador, Chile and other Latin American countries, ignoring even the simplest issues required in the 1980 Agreement as contracting countries, in the sense to adopt the necessary measures for the location of the NNA, closing the cases after one year, if the applicant did not provide the complete address where the child is located. For example, specifically with the Republic of Peru as the requested country, no information has been obtained on any request that has been sent to the courts, this, due to the lack of application of measures for the location of the NNA. So, all the requests have been closed administratively, by the Peruvian AC.】</p>
NGOs		
51.	International Social Service (ISS)	<p>ISS notes that there have been practical challenges around effective enforcement of 1980 Hague Convention decisions. It has been brought to our attention by some parents that return decisions could not be enforced due to a lack of judicial enforcement measures. Other return orders could not be enforced because of practical reasons, normally in connection with at least a perceived lack of assistance or support by authorities, particularly in the case of resistance by the child.</p>

Annexure 2 - List of bilateral agreements between ratifying and non-ratifying states

Resource: excerpt from HCCH Non-Hague Convention child abductions - bilateral agreements, <https://www.hcch.net/en/publications-and-studies/details4/?pid=5215&dtid=28>, last visited 08/06/2023.

	Signing date	State 1 (Date of entry into force of the Hague Abduction Convention)	State 2 (Date of entry into force of the Hague Abduction Convention)	Name of Agreement
1.	29 April 1981	Belgium (1-V-1999)	Morocco (1-VI-2010)	Protocole d'accord Instituant une Commission Consultative Belgo-Marocaine en Matière Civile
2.	15 March 1982	France (1-XII-1983)	Egypt (non-ratifying)	Convention entre la République Française et la République Arabe d'Egypte sur la Coopération Judiciaire en Matière Civile, y compris le Statut Personnel, et en Matière Sociale, Commerciale et Administrative
3.	18 March 1982	France (1-XII-1983)	Tunisia (1-X-2017)	Convention entre le Gouvernement de la République Française et le Gouvernement de la République Tunisienne Relative à l'Entraide Judiciaire en Matière de Droit de Garde des Enfants, de Droit de Visite et d'Obligations Alimentaires
4.	27 May 1983	France (1-XII-1983)	Morocco (1-VI-2010)	Convention entre la République Française et le Royaume du Maroc Relative au Statut des Personnes et de la Famille et à la Coopération Judiciaire
5.	21 June 1988	France (1-XII-1983)	Algeria (non-ratifying)	Convention entre le Gouvernement de la République Française et le Gouvernement de la République Algérienne Démocratique et Populaire Relatives aux Enfants issues de Couples Mixtes Séparés Franco-Algérienne
6.	27 April 1989	Belgium (1-V-1999)	Tunisia (1-X-2017)	Protocole d'accord Instituant une Commission Consultative Tuniso-Belge en Matière Civile
7.	16 September 1994	Sweden (1-VI-1989)	Tunisia (1-X-2017)	Protocole d'Accord Instituant une Commission Consultative Suédoise-Tuniso en Matière Civile
8.	23 August 1996	Sweden (1-VI-1989)	Egypt (non-ratifying)	Judicial Agreement between the Kingdom of Sweden and the Arab Republic of Egypt regarding co-operation in civil and personal and status matters
9.	23 July 1997	Canada (1-XII-1983)	Egypt (non-ratifying)	Agreement between the Government of Canada and the Government of the Arab Republic of Egypt regarding Cooperation on Consular Elements of Family Matters

10.	13 April 2000	Canada (1-XII-1983)	Lebanon (non-ratifying)	Agreement between the Government of Canada and the Government of the Lebanese Republic regarding Cooperation on Consular Matters of a Humanitarian Nature
11.	26 August 2000	France (1-XII-1983)	Lebanon (non-ratifying)	Accord entre le Gouvernement de la République Française et le Gouvernement de la République Libanaise concernant la Coopération en Certaines Matières Familiales
12.	22 October 2000	Australia (1-I-1987)	Egypt (non-ratifying)	Agreement Between the Government of Australia and The Government of The Arab Republic of Egypt Regarding Cooperation on Protecting the Welfare of Children
13.	22 October 2003	USA (1-VII-1988)	Egypt (non-ratifying)	Memorandum of Understanding Between the United States and Egypt concerning Parental Access to Children
14.	31 October 2005	Switzerland (1-I-1984)	Lebanon (non-ratifying)	Agreement between the Swiss Confederation and the Lebanese Republic on co-operation in some family matters
15.	18 March 2009	Australia (1-I-1987)	Lebanon (non-ratifying)	Agreement Between Australia and The Republic of Lebanon Regarding Cooperation on Protecting the Welfare of Children

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