

Where are we now?: Some current issues of the Hague Child Abduction Convention (Summary)

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Whereas the 1980 Hague Child Abduction is designed to reverse an unlawful removal of child, a relocation application may legalise a removal of child. If the abduction is the reverse side of a coin, the relocation application is the head of the same one. The Hague Convention apparently envisages the reverse side only. It seems that the delegations who participated in making the Convention in the 1970s did not need to be worried much about the design of the head side. Under the internal laws of the Member States, the idea of joint parental authority was almost unknown for post-divorce arrangements. It could be assumed in 1980 that, when a marriage broke up, rights of custody would be granted to a single parent, normally, a mother, and that the mother was free in choosing where she would exercise her rights.

If most of Contracting States had kept their internal laws as they stood in the 1970s, it would have been unnecessary to consider seriously under what conditions a primary caregiver mother may lawfully remove to a foreign country with her children. However, it was not long after the Convention was put in force that the idea according to which no divorce affected parental relationships became prevalent among the principal Contracting States. Under such idea underlying their internal laws, the distance created by a primary caregiver's removal would be regarded as capable of disrupting the child's on-going relationships with the other parent. Then, one has to answer the question as to what circumstances may allow a primary caregiver to remove their children lawfully. Conditions of relocation seem to drive the Contracting States to reconsider the aims of the Convention, namely, preventing abduction by discouraging potential abductors and securing the interests of abducted children in general. The change of idea might also cast some doubt on the jurisdictional supremacy of the State of habitual residence to be secured by the Convention. The author tries to explore what impacts such change of idea has had on those aims.