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The 1996 Hague convention on international child protection in the UK post-Brexit: focus on jurisdiction and recognition and enforcement

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ABSTRACT

This article discusses the strength and weakness of the 1996 Hague Convention vis-à-vis the Brussels IIbis Regulation and its successor the Brussels IIter Regulation. It engages with relevant UK case-law to assess the application of the Convention in the UK, with the aim of encouraging uniformity in the application of the Convention across Contracting States. The focus of the article is on the topics of jurisdiction and recognition and enforcement. The article concludes that, overall, the Convention mechanism is fully capable of securing adequate cross-border child protection post-Brexit. Nevertheless, it might be too early to declare conclusively whether the disapplication of the Brussels regime in the area of parental responsibility and its replacement with the 1996 Hague Child Protection Convention in the UK has strengthened or weakened the protection of international families with links to the European Union post-Brexit, in particular with respect to recognition and enforcement. Regarding jurisdiction, the article expresses anticipation that the emerging UK case-law on Chapter II of the Convention will provide valuable guidance for the courts of other Contracting States, including UK's former EU partners, with the view of harmonizing the application of the Convention across Contracting States. To facilitate exchange of good practice in a systematic manner, the article proposes that the Hague Conference establishes a database of case-law on the 1996 Convention.

KEYWORDS: The 1996 Hague Convention, International child protection, Jurisdiction, Recognition and enforcement

I. INTRODUCTION

In the sphere of parental responsibility, Brexit has encompassed a shift back to the 1996 Hague Convention Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children ('1996 (Hague) Convention').[1] The post-Brexit regime has been praised in scholarly discussion for not creating a 'cliff edge' from the previous Brussels II*bis* Regulation.[2] However, in the long term, the precluding effects of Brexit have resulted in the UK not benefitting from the improved Brussels II*ter* Regulation,[3] which came into force on 1 August 2022. This is true in particular in the context of recognition and enforcement.[4]

The UK ratified the 1996 Hague Convention under the framework of the European Union (EU), in line with Article 1(2) of the European Communities Act 1972. This ratification allowed the UK's participation without the need for primary legislation. The Convention entered into force in the UK on the 1 November 2012. However, with the repeal of the European Communities Act 1972, the legal status of the 1996 Convention became uncertain. To address this, the UK Government integrated the 1996 Convention into domestic law through the enactment of the Private International Law (Implementation of Agreements) Act 2020, ensuring its legal efficacy in the UK.[5] Exiting the EU framework has elevated the 1996 Convention to the primary international instrument governing international child protection in the UK. This presents various opportunities for the UK to leverage the Convention in harmonizing multilateral processes. Notably, the UK is strategically positioned to lead in establishing best practices and interpreting the 1996 Convention through an expanding body of case law.[6] Moreover, it is anticipated that the increased prominence of the 1996 Convention in the UK will encourage other nations worldwide to ratify or accede to the Convention.

This article[7] discusses the strength and weakness of the 1996 Convention vis-à-vis the Brussels regime and engages with relevant UK case law to assess the application of the Convention in the UK, with the aim of encouraging uniformity in the application of the Convention across Contracting States. The focus of the article is on the topics of jurisdiction and recognition and enforcement (ie Chapters II and IV of the 1996 Convention, respectively). These are addressed in Sections II and III, respectively. The article ends with a brief concluding section (Section IV).

[1] Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children ('1996 (Hague) Convention').

[2] Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 [2003] OJ L338/1 ('Brussels II*bis* Regulation').

[3] Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition, and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction ST/8214/2019/INIT OJ L 178, 2.7.2019 ('Brussels II*ter* Regulation'/'Recast Regulation')

[4] See Section III.

[5] With effect from 1 January 2021, the Private International Law (Implementation of Agreements) Act 2020 inserted section 3C into the Civil Jurisdiction and Judgments Act 1982, granting the 1996 Hague Convention 'the force of law in the United Kingdom'.

[6] P. Beaumont, 'Some Reflections on the Way Ahead for UK Private International Law after Brexit' (2021) 17 *Journal of Private International Law* 1–17.

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II. ALLOCATION OF JURISDICTION[8]

As with the Brussels II*bis* Regulation, under the 1996 Convention, the primary ground to determine jurisdiction is habitual residence.[9] The rationale behind this jurisdictional rule is that, ordinarily, the court of the Contracting State with which the child has the closest connection (ie the State of the habitual residence of the child) should be the one to determine the child's best interests as due to its proximity to the child it should have better understanding of the child's social and family environment and be therefore better able to assess the child's situation and welfare needs when reaching a decision about the child's best interests.[10]

1. The meaning of habitual residence

There is a large and established body of UK case law interpreting the concept of habitual residence under the 1996 Convention, 1980 Convention, and the Brussels II*bis* Regulation.[11] The UK approach to habitual residence originated in EU law. Long before Brexit, in 2013, the UK Supreme Court accepted the correct approach to the interpretation of habitual residence that had been given to this concept by the Court of Justice of the European Union ('CJEU') the purposes of the Brussels II*bis* Regulation.[12] Specifically, in the case *In the Matter of A (Children)*,[13] the Supreme Court held that the test adopted by the CJEU for habitual residence (ie 'the place which reflects some degree of integration by the child in a social and family environment' in the country concerned) was preferable to that earlier adopted by the UK courts insofar as they had focused on the purposes and intentions of the parents rather than the situation of the child.[14] Accordingly, any test that preferred the purposes and intentions of the parents should be abandoned in deciding the habitual residence of a child.[15] Further, the social and family environment of an infant or young child is shared with those (whether parents or others) on whom he is dependent.[16] In any case in which habitual residence is at issue, it is necessary to assess the integration of that person or persons in the social and family environment of the country concerned.[17] The essentially factual and individual nature of the enquiry should not be glossed with legal concepts which would produce a different result from that which the factual enquiry would produce.[18]

[8] As a preliminary point, the English law concept of inherent jurisdiction is not readily accepted when the concerned states are parties to the 1996 Convention. See *Re J (A Child) (Reunite International Child Abduction Centre intervening)* [2015] EWCA Civ 329. Note: this case was reversed by the Supreme Court on unrelated points in *Re (J (A Child) (1996 Hague Convention: Morocco)* [2015] UKSC 70). The relevant dicta were endorsed also in later case-law: e.g., *Re IL (Children) (1996 Hague Child Protection Convention: Inherent Jurisdiction)* [2019] EWCA Civ 1956. A similar position was taken in relation to the Brussels II*bis* Regulation by the Supreme Court in *A v A and another (Children: Habitual Residence)* [2013] UKSC 60.

[9] 1996 Hague Convention, Art 5: '(1) The judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child's person or property. (2) Subject to Art 7, in case of a change of the child's habitual residence to another Contracting State, the authorities of the State of the new habitual residence have jurisdiction'.

[10] *AM v KL* [2023] EWFC 15 [34].

[11] For further commentary on the concept of habitual residence from the UK perspective post-Brexit see K. Trimmings and K. Kalaitsoglou, 'International Family Law in the United Kingdom Beyond Brexit: Focus on Matrimonial Matters and Habitual Residence of the Child' (2020/2021) 22 *Yearbook of Private International Law* 217, 228–234.

[12] Case C-523/07 *Proceedings Brought by A* [2009] ECR I-02805; and C-497/10 PPU *Barbara Mercredi v Richard Chaffe* [2010] ECR I-14309.

[13] *In the Matter of A (Children)* [2013] UKSC 60.

[14] Ibid.

[15] Ibid.

[16] Ibid. See C-497/10 PPU *Barbara Mercredi v Richard Chaffe* [2010] ECR I-14309.

[17] Ibid.

[18] Ibid. The approach adopted by the Supreme Court in this case was later repeatedly confirmed and supplemented. In the case of *In the matter of LC (Children)* [2014] UKSC 1, the Court examined the question whether the state of mind of an adolescent child is relevant to whether or not the child has acquired a habitual residence in the place where he/she is living. In a

Importantly, the Supreme Court endorsed 'a uniform understanding' of the concept of habitual residence as it held that for the purposes of the 1996 Convention, the concept of habitual residence is to be interpreted in the same way as construed by the CJEU for the purposes of the Brussels II*bis* Regulation.[19]

The fact that the UK approach to habitual residence originated in EU law raises the question whether and, if so, to what extent the Supreme Court may depart from its previous case law that embedded the CJEU concept into UK domestic law. The EU (Withdrawal) Act 2018 states that when deciding whether to depart from retained EU case law, the Supreme Court 'must apply the same test as it would apply in deciding whether to depart from its own case law'.[20] To give an idea in what circumstances this may happen, in a 2020 case of *Peninsula Securities Ltd*, the Supreme Court held that it will only depart from earlier decisions 'rarely and sparingly' and 'with a high degree of caution' because a 'sudden change in the law is likely to destabilise it'.[21] Considering this dictum, it is expected that the Supreme Court will be setting a high threshold to depart from retained EU case law. Also, considering the extensive influence of the CJEU interpretation of habitual residence as well as the attention paid by the Supreme Court to international coherence, it seems unlikely that the Supreme Court will readily depart from its previous precedent. Indeed, post-Brexit child abduction case law thus far does not show any signs of deviation from the pre-Brexit approach to habitual residence of a child. Looking into the future, it is even possible that the Supreme Court will 'have regard' to future CJEU decisions on habitual residence, as authorized by section 6(2) of the Withdrawal Act.

2. 'Crystallisation' of habitual residence

A particular point of contention, which has been under judicial debate in the UK for some time now, is the determination of the appropriate timing for assessing habitual residence for the purposes of Article 5. In other words, when does habitual residence 'crystalise' for the purposes of this provision—at the date of the application or at the date of the hearing? The specific moment for evaluating habitual residence pursuant to Article 5 is not specified in either the Explanatory Report on the 1996 Hague Convention[22] ('Explanatory Report') or the Practical Handbook on the Operation of the 1996 Hague Convention[23] ('Practical Handbook'). The issue came under

Scottish case heard by the UK Supreme Court on this issue, known as *AR v RN* [2015] UKSC 35, Lord Reed emphasized that it was the stability of the residence that was important, not whether it is of a permanent character. In the subsequent case of *In the matter of B (A Child)* [2016] UKSC 4, Lord Wilson addressed the issue of the loss of one habitual residence and the acquisition of another. The Court concluded as follows: '[the] modern concept of a child's habitual residence operates in such a way as to make it highly unlikely, albeit conceivable, that a child will be in the limbo in which the courts below have placed B. The concept operates in the expectation that, when a child gains a new habitual residence, he loses his old one. Simple analogies are best: consider a see-saw. As, probably quite quickly, he puts down those first roots which represent the requisite degree of integration in the environment of the new state, up will probably come the child's roots in that of the old state to the point at which he achieves the requisite de-integration (or, better, disengagement) from it.' Ibid [45]. The Court the identified the following rules: '(a) the deeper the child's integration in the old state, probably the less fast his achievement of the requisite degree of integration in the new state; (b) the greater the amount of adult pre-planning of the move, including pre-arrangements for the child's day-to-day life in the new state, probably the faster his achievement of that requisite degree; and (c) were all the central members of the child's life in the old state to have moved with him, probably the faster his achievement of it and, conversely, were any of them to have remained behind and thus to represent for him a continuing link with the old state, probably the less fast his achievement of it.' Ibid [46].

[19] *In the Matter of A (Children)* [2013] UKSC 60; and In *Re KL (Abduction: Habitual Residence: Inherent Jurisdiction)* [2013] UKSC 75.

[20] European Union (Withdrawal) Act 2018, s 6(5).

[21] *Peninsula Securities Ltd v Dunnes Stores (Bangor) Ltd (Northern Ireland)* [2020] UKSC 36 [49], per Lord Wilson.

[22] P. Lagarde, 'Explanatory Report: Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children' (*Proceedings of the Eighteenth Session (1996), Tome II, Protection of children*) <https://assets.hcch.net/docs/5a56242c-ff06-42c4-8cf0-00e48da47ef0.pdf> ('Explanatory Report').

[23] Hague Conference on Private International Law ('Hague Conference'), 'Practical Handbook on the Operation of the 1996 Hague Child Protection Convention' (2014) <eca03d40-29c6-4cc4-ae52-edad337b6b86.pdf (hcch.net)> ('Practical Handbook').

scrutiny in the case of *Hackney LBC v P*.[24] The court ruled that the pertinent date for assessing habitual residence under Article 5 of the 1996 Convention was the date of the hearing. However, this finding cast doubt on the court's decision in *Derbyshire County Council v Mother*[25] where it was held that the relevant date on which the habitual residence of a child fell to be assessed was the date on which a court was seized with the matter, rather than the date of the hearing to determine habitual residence.[26] In *Derbyshire*, the court went in a lot of depth on why the approach in *Hackney* should be departed from.[27] It made comments on the status of the Explanatory Report as a source of law, specifically saying that the court in *Hackney* relied too heavily on the Explanatory Report, which cannot be classified as an agreement or instrument that makes it part of the context for the purpose of interpretation.[28] The court also considered the purpose of the Convention, which is the protection of children. In this context, the judge found that assessing habitual residence at the time of the hearing would provide an incentive to parties for a tactical delay in international abduction cases, could create practical difficulties and waste administrative sources.[29] This reasoning is convincing. Indeed, the approach taken in *Hackney* introduces uncertainty regarding jurisdiction, particularly in contexts where delays are pervasive within the legal system. Such uncertainty undermines the objective of the Convention to protect children caught up in cross-border disputes. Accordingly, a child's habitual residence for the purposes of Article 5 of the Convention should be determined when the court is seized of the matter.

3. Jurisdiction in child abduction cases under Article 7

The 1996 Convention reinforces the 1980 Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ('1980 (Hague) Convention') by highlighting the principal role of the authorities of the State of the child's habitual residence in determining the issues pertaining to the protection of the child. Under Article 7, in cases of international child abduction, the authorities of the State of the child's habitual residence immediately before the abduction retain jurisdiction to take measures for the protection of the child until several conditions have been met.[30] The Practical Handbook explains that this is 'to deter international child abduction by denying any jurisdictional benefit to the abducting parent'.[31] The UK courts have dealt with Article 7 in the case of *B v L*.[32] In this case, an unmarried father requested a declaration that the English court has jurisdiction to make substantive parental responsibility orders in respect of his child which had been wrongfully removed to Poland. The court found the child's removal was 'wrongful' within the meaning of Article 7 and considered the child's habitual residence 'immediately before the removal',[33]

[24] *Hackney LBC v P* [2022] EWHC 1981 (Fam).

[25] *Derbyshire County Council v Mother* [2022] EWHC 3405 (Fam).

[26] The same approach had been taken also in the case of *Warrington BC v. T* [2021 [EWFC 68, in which the court said that the point of consideration should be 'at the date on which that question comes before the court for determination, in this case, this hearing'. See [41–42]. In *Warrington*, however, the key question was whether it was open to the court to apply the 1996 Convention to determine jurisdiction even though the other State (in this case, Gabon) was not a Contracting Party to the Convention. The court answered this question in the affirmative; nevertheless, at the same time, it considered also the common law doctrine of *forum non conveniens*. See [34 and 44–46], respectively. The court also found that under the Convention jurisdiction can only be transferred between Contracting States. Para 62. See Section II.4.

[27] See *Derbyshire CC* (n 25) [11, 13, 18, and 20–26].

[28] Ibid [17].

[29] Ibid [21 and 24].

[30] Practical Handbook (n 23) [4.20].

[31] Ibid.

[32] *B v L* [2022] EWHC 2215 (Fam). Additionally, in the case of *Haringey LBC v N* [2024] EWFC 151 the court addressed the inter-relationship between Arts 7 and 8 in a situation where the court was the custody rights holder. See Section II.4.

[33] Ibid [50].

concluding that at that point the child was habitually resident in England.[34] Accordingly, the English court had jurisdiction per Article 5 of the 1996 Convention.

4. Transfer of jurisdiction under Articles 8 and 9

Articles 8 and 9 provide mechanisms for the transfer of jurisdiction from authorities of a Contracting State which has general jurisdiction under the Convention, to authorities of another Contracting State.[35] Under both Articles 8 and 9 jurisdiction may only be transferred when three conditions are met: first, there is a connection between the child and the Contracting State to whose authorities jurisdiction is to be transferred[36]; second, the transfer of jurisdiction is in the best interests of the child[37]; and third, both authorities agree to the transfer.[38] Importantly, jurisdiction under the Convention can only be transferred between authorities of Contracting States.[39] The transfer does not institute a permanent transfer of jurisdiction, only a transfer of jurisdiction in the particular matter.[40]

The UK courts are well-versed with the transfer of jurisdiction rules under both the 1996 Convention and the Brussels II*bis* Regulation. Prior to Brexit, applications to transfer jurisdiction between the UK and other EU Member States (except Denmark)[41] were made under Article 15 of the Regulation. In the seminal intra-EU case of *In the matter of N (Children)*,[42] the Supreme Court passed down judgment on the interpretation of various elements of Article 15. In particular, it provided:

> 'First it [the court] must determine whether the child has, within the meaning of Article 15(3), *'a particular connection'* [emphasis added] with the relevant other member state … Given the various matters set out in Article 15(3) as bearing on this question, this is, in essence, a simple question of fact. For example, is the other member of state the former habitual residence of the child … or the … child's nationality …
>
> Secondly, it must determine whether the court of that other member state *'would be better placed to hear the case, or a specific part thereof'* [emphasis added]. This involves an exercise in evaluation, to be undertaken in the light of all the circumstances of the particular case.
>
> Thirdly, it must determine if a transfer to the other court *'is in the best interests of the child'* [emphasis added]. This again involves an evaluation undertaken in the light of all the circumstances of the particular child'.[43]

[34] Notwithstanding this conclusion, the court found that even if the removal had not been wrongful and the habitual residence of the child had to be considered as on the date of the father's application (6 April 2022), the court would still have found that the child was still habitually resident in England. Ibid.

[35] Under Art 8, where an authority of a Contracting State which has general jurisdiction under the Convention considers that an authority of another Contracting State would be better placed to assess the best interests of the child, it can request to transfer jurisdiction to that authority. In contrast, under Art 9, an authority of a Contracting State which does not have general jurisdiction considers that it is better placed to assess the best interests of the child, it can request that it be permitted to exercise jurisdiction.

[36] The Contracting State must be: (1) a State of which the child is a national; (2) a State in which property of the child is located; (3) a State whose authorities are seized of an application for divorce or legal separation of the child's parents, or for an annulment of their marriage; or (4) a State with which the child has a substantial connection. 1996 Hague Convention, Art 8(2).

[37] Ibid, Art 8(4).

[38] Ibid, Art 9(3).

[39] Practical Handbook (n 23) [5.2]. See also *Warrington BC v. T* [2021 [EWFC 68 [62].

[40] Practical Handbook (n 23) [5.7].

[41] Pursuant to the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not bound by the Brussels regime.

[42] *In the matter of N (Children)* [2016] UKSC 15. This case was marked as 'Guidance'. Precedents classed as 'Guidance' are landmark cases decided in the Supreme Court, which clarify a point of law and are used as a guide of application in lower courts.

[43] Ibid [13]. 'All other circumstances of the case' is a term of art broadly intended to emphasize that the matter in question is essentially one of discretion and exists as a safeguard in achieving a fair and practicable result in accordance with common sense.

Related to the third point, the Supreme Court rightly emphasized the difference between deciding whether the transfer is in the child's best interests and deciding what outcome would be in the child's best interests.[44]

There is no reason for this guidance not to inform transfer applications under Article 8 of the 1996 Convention. Indeed, in the case of *Child and Family Agency (Ireland) v Mother*[45] the High Court held that there is no material or significant difference between Article 8 of the Convention and Article 15 of the Regulation, and applied the principles and procedure used for effecting a transfer of proceedings under Article 15 of Brussels II*bis* as they had been developed in previous case law.[46] This is undoubtedly a positive development in terms of maintaining UK laws harmonized with the EU regime.

Additional guidance was provided by the High Court in the context of the Article 9 transfer provision, in the case of *D (Care Proceedings: 1996 Hague Convention: Article 9 Request)*.[47] The court found that for an Article 9 application to be successful, it was necessary to meet three criteria:

a) The requesting state must fall within the terms of Article 8(2)(a)–(c), and Article 8(2)(d)—that is, the child has a 'substantial connection' with the requesting state.
b) The transfer request must not cover a matter that falls outside the scope of the Convention as set out in Article 4 of the Convention.
c) The authorities of the requesting state must 'consider that they are better placed in the particular case to assess the child's best interests'.[48]

The UK courts have also engaged with the interface between Article 8 and Article 7 of the 1996 Convention. This was, however, in a rather narrow context, in which the custody rights were held by the court (as opposed to a left-parent) by virtue of pending care proceedings.[49] Specifically, in the case of *Haringey LBC v N*,[50] a mother had wrongfully removed her child to Poland during the course of UK care proceedings. The English courts retained jurisdiction by virtue of Article 7 of the Convention even though the child had become habitually resident in Poland. The court, however, considered that the Polish authorities were better placed to assess the child's best interests and any necessary protection measures. This raised the question of what the appropriate course of action to effect the

[44] Ibid [43]: 'The question is whether the transfer is in the child's best interests. The focus of the inquiry is different, but it is wrong to call it 'attenuated'. The factors relevant to deciding to question will vary according to the circumstances. It is impossible to be definitive. But there is no reason at all to exclude the impact upon the child's welfare, in the short or the longer term of the transfer itself. What will be its immediate consequences? What impact will it have on the choices available to the court deciding upon the eventual outcome? This is not the same as deciding what outcome will be in the child's best interests. It is deciding whether it is in the child's best interests for the court currently seized of the case to retain it or whether it is in the child's best interests for the case to be transferred to the requested court.'

[45] *Child and Family Agency (Ireland) v Mother* [2021] EWHC 1774 (Fam).

[46] Specifically, the Court applied the case of *Re HJ (A Child)* [2013] EWHC 1867 (Fam).

[47] *D (Care Proceedings: 1996 Hague Convention: Article 9 Request)* [2021] EWHC 1970 (Fam). In this case, the court permitted the local authority to withdraw its request under Art 9 for the transfer of jurisdiction from the Swiss to English courts. The case concerned the contact of two siblings, of which one was adopted in the UK, while the other was placed in foster care in Switzerland. The local authority initially requested the court to consider whether transfer of jurisdiction (to the English courts) was possible regarding the child in Swiss foster care, to decide contact between the siblings.

[48] Ibid [58]. In the circumstances of this case, the court was satisfied that the first two grounds were met. However, the court found it was not better placed to assess the child's best interests compared to the Swiss authorities. The court found so for various reasons. First, the Swiss authorities had already placed the child in a long-term arrangement for his welfare. Further, the Swiss courts were well-positioned and capable for promoting sibling contact and the courts at the place of the child's residence were better suited in making relevant orders. Further, the court noted, and placed weight on the fact that the Swiss authorities showed resistance to a potential transfer 'reduced the potential utility of any transfer request made by this court given the likelihood that it will be met with a further refusal.' Ibid, para 68.

[49] The wording of Art 7 makes it clear that the scope of potential custody rights holders is wide and includes a 'person, institution or other body [having rights of custody]'.

[50] *Haringey LBC v N* [2024] EWFC 151.

change of jurisdiction from England to Poland would be. Should the English court simply acquiesce in the wrongful removal, the result of which would be that jurisdiction to deal with the case would shift to Poland pursuant to Article 7; or should it engage Article 8 to formally transfer jurisdiction to Poland?[51] The court concluded that the appropriate course of action was to determine the case under Article 8. Unlike Article 7, Article 8 expressly provides a mechanism for the transfer of jurisdiction from one Contracting State to another, while it also provides 'an opportunity for the requested State to make a considered decision as to whether to accept jurisdiction'.[52] From the procedural perspective, there is a clear domestic legal framework that governs requests under Article 8.[53] In contrast, Article 7 contains no autonomous test for determining whether a body or other institution holding rights of custody should acquiesce to a wrongful removal.[54] In addition to the absence of such a test, there is also no domestic procedural framework underpinning Article 7.[55] It is suggested here that, in the circumstances of the case, the approach taken by the court was correct. After all, Article 7 is not a transfer provision. It concerns the issue of whether jurisdiction has moved as a result of acquiescence to a wrongful removal rather than whether jurisdiction should move.[56] Moreover, as the court rightly pointed out, if it had sought to confer jurisdiction on Poland by simply declaring that it acquiesces to the wrongful removal of the child under Article 7(1)(a), the 'transfer' of jurisdiction would have taken place 'in a procedural vacuum',[57] while undermining the underlying purpose of Article 7 which is to ensure that the abducting parent cannot take advantage of his/her unlawful action.[58]

The court's decision to make a request pursuant to Article 8 for Poland to assume jurisdiction implies that the general power to transfer jurisdiction under Article 8 applies also in cases of wrongful removal, where Article 7 is applicable, in circumstances where the custody rights are held by the court. For the reasons set out above, this is a reasonable approach. However, it should be noted that the relevance of this decision is limited to only those Article 7(1)(a) cases where custody rights are held by a court. It follows that it is inapplicable to the majority of Article 7(1)(a) cases where the custody rights holder is a person.

Last but not least, on several occasions, the UK courts have reiterated that in applying Articles 8 and 9 of the Convention, courts should avoid making value judgments about the other state's system of child protection. In particular, it was noted that it is inappropriate 'to engage in comparisons between the respective laws and legal systems of the two jurisdictions in question',[59] as 'comparisons are odious'.[60] This guidance, which reflects the UK courts'

[51] Ibid [84–92].

[52] Ibid [85].

[53] Ibid. See Family Procedure Rules 2010, ch 6, s 2.

[54] *Haringey LBC v N* [2024] EWFC 151 [87]. Neither is there any guidance which would assist in construing such an autonomous test available in the Explanatory Report or the Practical Handbook. Ibid.

[55] Ibid.

[56] Ibid [86].

[57] Ibid [90].

[58] 'It would in my judgement be undesirable for a court to choose to acquiescence to the wrongful removal of a child from the jurisdiction during the course of care proceedings with which it is seized without any principled consideration, by reference to the terms of the Convention, of whether the jurisdiction the court retains should be transferred. Such a course would be tantamount to stating that a parent can, without more, successfully effect the transfer of jurisdiction from one Contracting State to another by wrongfully removing the child during proceedings.' Ibid [91].

[59] *AM and another v KL and another* [2023] EWFC 15 [28]. In this case, the maternal grandparents, who had become estranged from the children's mother, applied to the Greek court for a contact order concerning their grandchildren who were habitually resident in the UK. The Greek court purported to exercise jurisdiction in respect of the children, notwithstanding that they were not habitually resident in Greece. The maternal grandparents then applied for a transfer of jurisdiction to the Greek court under Art 8 of the Convention. The application was dismissed; however, the court granted the grandparents permission, pursuant to the s 10(1)(a)(ii) of the Children Act 1989, to apply for a child arrangements order in England.

[60] *JA v TH (1996 Hague Convention: Request to Exercise Jurisdiction)* [2016] EWHC 2535 (Fam) [33]. In this case, the court considered whether it should submit a request under Art 9 to the Norwegian court for authorisation to exercise

approach to Article 15 of the Brussels II*bis* Regulation,[61] should be applauded as it demonstrates commitment to mutual respect and comity as the basic principle underlying many rules of private international law.[62]

5. Emergency jurisdiction under Article 11

Article 11 of the 1996 Convention permits the courts of a Contracting State on the territory of which the child is present (but not habitually resident) to assume jurisdiction in cases of urgency, until the courts of a State with jurisdiction under Articles 5–0 have taken measures to address the urgent situation.

UK courts have utilized or at least considered the utility of Article 11 in a number of child abduction cases for the purpose of making protective measures in return proceedings under the 1980 Hague Abduction Convention to facilitate a safe return of the child to the State of his/her habitual residence.[63] For context, Article 11(4) of the Brussels II*bis* Regulation (now Article 27(3) of Brussels II*ter*) instructed courts not to refuse the return of a child on the basis of the grave risk of harm defence if it is established that adequate arrangements have been made to secure the protection of the child after his or her return. This approach is deeply entrenched in the UK courts' child abduction jurisprudence but not only as a consequence of Article 11(4) of the Brussels II*bis* Regulation but also as a result of earlier case law that had seen UK courts inquiring into the existence of effective protective measures as a prerequisite for making a return order.[64] Consequently, as in the UK the 'Article 11(4) approach' effectively pre-dated the Regulation, no changes in the application of the grave risk of harm defence have occurred post-Brexit in this respect.[65] Nevertheless, when it comes to enforceability of such protective measures, unlike under the Brussels II*bis* Regulation, under Brussels II*ter* such protective measures are enforceable in the requesting State upon the child's return.[66] It is argued here that this is an area where the UK would have benefitted from the revised Brussels II*bis* Regulation. In the absence of Brussels II*ter*, the UK relies on the 1996 Convention as a basis for enforcing protective measures issued in return proceedings under Article 11.[67] This enforcement mechanism, however, is rather cumbersome and certainly more complex than the enforcement procedure under Brussels II*ter*.[68]

jurisdiction in relation to contact arrangements in respect of two brothers, one of whom lived with their father in England and the other who lived in Norway with their mother.

[61] The same approach had been taken in the context of Art 15 of the Brussels II*bis* Regulation. In *In Re N (Children)* [2016] UKSC 15, the Supreme Court observed that 'it is not for the courts of this or any other country to question the competence, diligence, resources, or efficacy of either the child protection services or the courts of another state' [4].

[62] See e.g. A. Briggs, 'The Principle of Comity in Private International Law' (2012) 354 *Recueil des Cours* 65.

[63] See e.g. *Re Y (A Child) (Abduction: Undertakings Given for Return of Child)* [2013] EWCA Civ 129; *RD v DB* [2015] EWHC 1817 (Fam); *In the Matter of A (A Child) (Hague Abduction; Art 13(b): Protective Measures)* [2019] EWHC 649 (Fam); *In the Matter of S O D*, High Court, 31 January 2019 (unreported); and *AO v LA* [2023] EWHC 83 Fam.

[64] *TB v JB (Abduction: Grave Risk of Harm)* [2001] 2 FLR 515; and *Q Petitioner* 2001 SLT 243.

[65] K Trimmings, 'International Family Law in the UK Beyond Brexit: Focus on Parental Child Abduction' [2021] IFL 121–124, 121.

[66] Brussels II*ter* Regulation, Art 15.

[67] Where protective measures are taken under Art 11, then by virtue of Art 23 they shall be recognized by operation of law in all other Contracting States. Nevertheless, there is an indication that this view is not shared by the UK Supreme Court. Cf *Re E (Children)* [2011] UKSC 27, where the Supreme Court called on the Hague Conference 'to consider whether machinery can be put in place whereby, when the courts of the requested state identify specific protective measures as necessary if the article 13b exception is to be rejected, then those measures can become enforceable in the requesting state, for a temporary period at least, before the child is returned'. Ibid [37].

[68] For example, *Re Y (A Child) (Abduction: Undertakings Given for Return of Child)* [2013] EWCA Civ 129; *RD v DB* [2015] EWHC 1817 (Fam); *In the Matter of A (A Child) (Hague Abduction; Art 13(b): Protective Measures)* [2019] EWHC 649 (Fam); *In the Matter of S O D*, High Court, 31 January 2019 (unreported); and *AO v LA* [2023] EWHC 83 Fam. For detailed explanation, see K. Trimmings & O. Momoh, 'Intersection between Domestic Violence and International Parental Child Abduction: Protection of Abducting Mothers in Return Proceedings' (2021) 35 (1) *International Journal of Law, Policy and the Family*, 13–14. For more detail on recognition and enforcement, see Section III.

Outside the child abduction context, only one case where Article 11 was considered was identified. In that case, the court touched on the intersection between Article 11 and Article 9 (transfer of jurisdiction), highlighting the restrictive nature of the Article 11 jurisdiction. It commented that beyond the limited powers available under Article 11, jurisdiction to make welfare decisions about the child remains with the authorities of the State with general jurisdiction unless a request under Article 9 has been granted.[69]

6. Parallel proceedings (lis pendens) under Article 13

Article 13 provides that the authorities of a Contracting State which have jurisdiction under Articles 5–10 to take measures for the protection of the person or property of a child must abstain from exercising this jurisdiction if, at the time of the commencement of the proceedings, 'corresponding measures' have been requested from the authorities of another Contracting State having jurisdiction under Articles 5 to 10 at the time of the request and those measures are still under consideration. The term 'corresponding measures' is not defined in the Convention but it appears that, for Article 13 to apply, the requests before both Contracting States must be the same or similar in substance.[70] Article 13 applies for as long as the proceedings in respect of the 'corresponding measures' in the other Contracting State are still under consideration.[71] The UK courts have specified that the case must be under *active* [emphasis added] consideration as otherwise Article 13 might result in a situation where 'no action is being taken at all, yet the contracting state, despite its own inaction, retains jurisdiction indefinitely'.[72]

Additionally, Article 13 has arisen in the UK in the context of the interplay between the 1996 Convention and the Brussels regime. In particular, in *Re X (Children) (Article 61 BIIa)*,[73] Moylan LJ gave guidance about the meaning and effect of Article 61 of the Brussels II*bis* Regulation which governs the relationship between the Regulation and other international Conventions, including the 1996 Convention. His Lordship held that the Regulation prevailed over the 1996 Convention in respect of matters within the scope of the Regulation in cases where the child concerned had their habitual residence in an EU Member State. He observed that Article 61(a) explicitly provided that the Regulation 'shall apply' if the child the subject of the proceedings had his or her habitual residence in a Member State. This was 'a straightforward provision which was clear and simple to apply'.[74] Pursuant to Article 61, therefore, if the children concerned were habitually resident in England and Wales when the proceedings commenced, the Regulation applied to them, including the jurisdiction provisions, and Article 13 of the 1996 Hague Convention did not apply.[75]

This is an important decision in that it addresses the relationship between the Brussels II*bis* Regulation and third countries. Nevertheless, its significance has diminished with the recast of the Brussels II*bis* Regulation. In the Brussels II*ter* Regulation, the structure of the provisions dealing with the relationship between the Regulation and the Convention had been changed. In particular, the recast Regulation makes express provision for Article 13 of

[69] *Re Y (Children) (1996 Hague Convention: Article 11)* [2023] EWCA Civ 817.
[70] Lagarde (n 22) [79].
[71] Practical Handbook (n 23) [4.32].
[72] *S (A Child)* [2022] EWHC 2053 (Fam) [28 and 31]. This case initially presented as a child abduction matter but the focus then shifted to focused on parental responsibility rights. The mother sought an order that the child is placed in her care permanently, allowing the father and his family contact. There were previous legal proceedings in Portugal regarding the matter, but their history and status were not clear. Ibid, para 21. In addition to the above finding, the court distinguished Art 13 of the 1996 Convention from Art 19 of Brussels II*bis*. Ibid [29].
[73] *Re X (Children) (Article 61 BIIa)* [2021] EWCA Civ 1305.
[74] Ibid [80].
[75] Ibid [92].

the Convention to apply when proceedings were pending in a Convention country.[76] This clearly supports Moylan LJ's interpretation of Article 61 of Brussels II*bis* in the above case as if the original Regulation had the meaning that even where the child is habitual residence in an EU Member State, Article 13 of the Convention applies when proceedings are pending in a Convention country, there would have been no need to change the wording in the recast Regulation.[77]

III. RECOGNITION AND ENFORCEMENT

In the run-up to the Brexit transition end date, academic commentators in the UK passionately discussed the differences between the Brussels II*bis* Regulation and the 1996 Convention as they sought to assess whether the same level of protection provided by the Regulation would remain available to children in cross-border situations post-Brexit.[78] This debate led to a conclusion that the Brussels regime was very similar to the Convention regime. However, it was noted that there was a difference between the two instruments in their respective recognition and enforcement mechanisms, which in the case of the 1996 Convention is discretionary.[79] Specifically, Article 23(2) of the 1996 Convention provides that a measure 'may (...) be refused' upon the existence of an enlisted condition,[80] while Article 23 of Brussels II*bis* sets out that a judgment 'shall not' be recognized in an equivalent situation.[81] The difference is often overlooked, however, it broadens the range of measures UK courts are capable of recognizing now in the post-Brexit period, and reflects to an extent the 'reclamation of sovereignty' objective of Brexit.[82] The grounds of non-recognition are provided in both instruments in exhaustive lists,[83] albeit under the 1996 Convention recognition may be refused if the measure in question was issued in proceedings 'whose jurisdiction was not based on one of the grounds provided for in Chapter II [of the Convention]'.[84] This additional ground allows the re-examination of the jurisdictional issue, a process that may have more complications than immediately evident. According to Beaumont, 'this has the advantage that the enforcing authority can prevent the circulation of measures based on a clearly erroneous exercise of jurisdiction'.[85] Indeed, the provision allows flexibility to the

[76] Brussels II*ter* Regulation, Art 97. As noted by the court, this change seems to reflect the fact that all Member States are now Contracting Parties to the 1996 Hague Convention. *Re X (Children) (Article 61 BIIa)* [2021] EWCA Civ 1305 [54].

[77] Ibid.

[78] For example, P. Beaumont, 'Private International Law Concerning Children in the UK After Brexit: Comparing Hague Treaty Law with EU Regulations' [2017] CFLQ 213, 217; N. Lowe QC and D. Hodson OBE, 'The UK's Family Law Prospective Position on Fully Leaving the EU' [2018] Fam Law 1391, 1397; A. Dutta, 'Brexit and International Family Law From a Continental Perspective' [2017] CFLQ 199, 202; M. Wright, Brexit and the 1996 Hague Convention—the Good News and the Bad News for Child Protection Practice in England and Wales [2021] IFL 116; and Beaumont (n 6).

[79] Lagarde (n 22) [121].

[80] The conditions are: 'a) if the measure was taken by an authority whose jurisdiction was not based on one of the grounds provided for in Chapter II; b) if the measure was taken, except in a case of urgency, in the context of a judicial or administrative proceeding, without the child having been provided the opportunity to be heard, in violation of fundamental principles of procedure of the requested State; c) on the request of any person claiming that the measure infringes his or her parental responsibility, if such measure was taken, except in a case of urgency, without such person having been given an opportunity to be heard; d) if such recognition is manifestly contrary to public policy of the requested State, taking into account the best interests of the child; e) if the measure is incompatible with a later measure taken in the non-Contracting State of the habitual residence of the child, where this later measure fulfils the requirements for recognition in the requested State; f) if the procedure provided in Article 33 has not been complied with'.

[81] A. Borrás, 'Explanatory Report on the Convention', drawn up on the basis of Art K.3 of the Treaty on European Union, on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters OJ C 221 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A51998XG0716> [67] and [89].

[82] UK in a Changing Europe, 'Comfortable Leavers: The Expectations and Hopes of the Overlooked Brexit Voters' (2020) <https://ukandeu.ac.uk/reports/comfortable-leavers-the-expectations-and-hopes-of-the-overlooked-brexit-voters/>.

[83] See 1996 Hague Convention, Art 23(2); and Brussels II*bis* Regulation, Art 23/Brussels II*ter* Regulation, Art 68(2).

[84] 1996 Hague Convention, Art 23(2)(a).

[85] Beaumont (n 78).

recognizing court to 'correct' misapplications of the jurisdictional grounds of the 1996 Convention. The challenge lies in the elusive nature of habitual residence as a term of art and law.[86] Accordingly, it is not immediately clear if the determination of the habitual residence of the child is protected by Article 25, which restricts review at the enforcement stage by binding the enforcing court to the 'findings of fact on which the authority of the state where the measure was taken based its jurisdiction'.[87] In this regard, the Lagarde Report states that 'the authority of the requested State will not be able to review the facts on which the authority of origin based its assessment of habitual residence'.[88] The requested court might not be able to review the factual bases; however, the finding of the child's habitual residence 'is not a finding of fact for this purpose'.[89] Consequently, it is possible that the first ground for non-recognition invites the re-opening of a laborious process at the enforcement stage: the examination of the child's habitual residence. Although the 1996 Convention is still relatively 'untested', it is probable the issue will be tested in courts in a not distant future.[90]

Turning to the changes of the Recast Regulation, two fundamental modifications concern the voice of the child and the abolition of *exequatur*. Under Article 38 of the Recast Regulation, it is no longer possible to refuse recognition on the ground that the child has not been given the opportunity to be heard.[91] The abolition of Article 23(b) of the Brussels II*bis* Regulation must be read in conjunction with Article 20 of the Recast Regulation, which introduces an express obligation on states to 'ensure that a child who is capable of forming his or her own views is given the genuine and adequate opportunity to express those views freely during the proceedings'.[92] The courts of the Member States are further be obliged to consider the child's views in accordance with his/her age and maturity and document the process in the decision.[93]

Article 20 is the first of its kind and a welcome change to the Brussels system.[94] Notwithstanding, the nexus of the Recast Articles might be displacing the protection of the child as the highest priority by relying excessively on mutual trust.[95] While Article 20 is apt to improve the position of the child in parental responsibility proceedings, eliminating it as a base for non-recognition under Article 38 removes a safety valve that was praised and utilized by British courts. For instance, in *In the Matter of D (A Child) (International Recognition)*, Lord Justice Briggs referred explicitly to Article 23(b) of the Brussels II*bis* Regulation as an 'exception to the core principle of mutual recognition' designed to remedy cases where none or an inadequate opportunity to be heard was given to the child, 'a violation of a fundamental principle of the procedure of [the] courts [of England and Wales]'.[96]

An added strain to the effective operation of Article 20 might be that it is not 'harmonis [ing] the way in which children's views [are] ascertained across the EU' and allows for each Member State to determine an appropriate procedure according to its domestic law

[86] For a full analysis of habitual residence, see J. Carruthers, 'Discerning the Meaning of "Habitual Residence of the Child" in UK Courts; a Case of the Oracle of Delphi' (2020) 21 *Yearbook of Private International Law* 1.

[87] 1996 Hague Convention, Art 25.

[88] Lagarde (n 22) [136].

[89] Beaumont (n 78).

[90] Lowe and Hodson (n 78).

[91] Brussels II*ter* Regulation, Art 38.

[92] Ibid, Art 20.

[93] Ibid.

[94] Beaumont (n 78).

[95] Ibid.

[96] *In the Matter of D (A Child) (International Recognition)* [2016] EWCA Civ 12, per Lord Justice Briggs at [108]. Similarly, in *Casey v Cervi* [2017] EWHC 1669 (Fam) Mrs Justice Roberts noted that the child's opportunity to be heard is 'a fundamental principle of procedure under English law' that is 'emphasised in Brussels II Revised (…) as a stand-alone ground of non-recognition and enforcement [47]'.

individually.[97] In practice, the disparity of what constitutes an adequate opportunity is bound to be great, as has been previously proved by case law and research.[98] By leaving the standard undefined, the Recast Regulation fuels the debate and creates uncertainty.[99] Consequently, shifting to the 1996 Convention and the exclusion from the Recast Regulation results in UK courts preserving the ability to safeguard at the stage of recognition and enforcement what is considered a fundamental right under English[100] and Scottish[101] law, the child's opportunity to be heard.

A welcome change in the Recast Regulation is the abolition of *exequatur* for parental responsibility matters, which grants automatic recognition of measures and simplifies the enforcement procedure for Member States.[102] According to Beaumont, the abolition of *exequatur* does not have far-reaching effects as it only eliminates 'a stage in the process rather than the grounds for refusal of enforcement', in analogous fashion to the Brussels I Recast Regulation.[103] The abolition of *exequatur* might not be revolutionizing and parties will continue to apply for enforcement of parental responsibility measures; however, the Brussels II*ter* Regulation contains one hurdle less than the 1996 Convention. Reducing hurdles, no matter their legal novelty, also reduces the cost and time involved in international litigation for families, which cannot be discounted.

Due to Brexit, the UK does not benefit from the swift system of the Brussels II*ter* Regulation, and parties must rely on Articles 26–28 of the 1996 Convention for the recognition and enforcement of parental responsibility measures. This is not ideal as the Convention recognition and enforcement procedure[104] is rather cumbersome. In particular, before a measure taken in one Contracting State can be enforced in another Contracting State, it has to be declared enforceable or registered for the purpose of enforcement in that other State.[105] The procedure is governed by national law, although the Convention stipulates that it should be 'simple and rapid'.[106] The lack of uniformity in this respect is recognized as *lex imperfecta* by Lagarde.[107] Moreover, the

[97] Brussels II*ter* Regulation, Recital 39; H. Blackburn and M. Michaelides, 'The Advent of Brussels II bis Recast' [2019] IFL 252, 253; S. Aras Kramar, 'The Voice of the Child: Are the Procedural Rights of the Child Better Protected in the New Brussels II Regulation?' (2020) 3 *Open J Legal Stud* 87, 92.

[98] See Case C-491/10 PPU *Aguirre Zarraga v Pelz* [2010] ECR I-14247; and P. Beaumont, L. Walker and J. Holliday, 'Conflicts of EU Courts on Child Abduction: Country Reports 2016' (University of Aberdeen Centre for Private International Law Working Paper No. 2016/1) <https://www.abdn.ac.uk/law/research/centre-for-private-international-law/working-papers-455.php#panel1398>.

[99] Aras Kramar (n 97).

[100] *In the Matter of D (A Child) (International Recognition)* [2016] EWCA Civ 12 [44], per Lord Justice Ryder; and *Casey v Cervi* [2017] EWHC 1669 (Fam) [47], per Mrs Justice Roberts.

[101] Children (Scotland) Act 2020, s 3.

[102] Arts 27, 28, and 29 of the Brussels II*bis* Regulation were not transferred to the Recast Regulation. See Blackburn and Michaelides (n 97) 254.

[103] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters OJ L 351, 20 December 2012, pp. 1–32. See P. Beaumont and L. Walker, 'Recognition and Enforcement of Judgments in Civil and Commercial Matters in the Brussels I Recast and Some Lessons From It and the Recent Hague Conventions for the Hague Judgments Project' (2015) 11 *Journal of Private International* Law 31, 34.

[104] 1996 Hague Convention, ch IV.

[105] Ibid, Art 26(1).

[106] Ibid, Art 26(2). See *Re P (Recognition and Registration of an Order under the Hague Protection of Children Convention)* [2014] EWHC 2845. In this case, a consent order issued by the Family Court of Australia allowed the mother to relocate to England along with a mutual agreement between the parents post-relocation. Notably, the order explicitly mandated the parents to pursue recognition in England and Wales. Despite intending to resolve the matter swiftly, Moylan J encountered difficulties aligning the issuance of the consent order with the procedural requirements outlined in Part 31 and Practice Directive 31A. The comprehensive array of documents and information mandated to be submitted by the applicant posed challenges in meeting the expectation of 'simplicity' as envisioned by the 1996 Convention. These documents included the original birth certificate, a written statement, an assessment of the child's views during the Australian proceedings, and an address for service of documents in England and Wales. Moylan J, invoking powers of case management under the Family Procedure Regulations 2010, rule 31.5 (c), elected to waive several requirements deemed excessively stringent and incompatible with the imperative for simplicity.

[107] Lagarde (n 22) [132].

declaration of enforceability or registration may be refused, for the same reasons as recognition (set out in Article 23(2)).[108] According to at least one author, while the shifting back to the 1996 Convention has not encompassed severe consequences, it has resulted in a 'downgrading' of UK decisions on parental responsibility.[109]

IV. CONCLUSION

There is no doubt that, overall, the Convention mechanism is fully capable of securing adequate cross-border child protection post-Brexit. However, it might be too early to declare conclusively; nevertheless, there was no 'cliff-edge' post-Brexit and the disapplication of the Brussels II*bis* Regulation. The UK courts are experienced in applying both instruments and were successful in noting their differentiations. In terms of jurisdiction, it is hoped that the UK courts' interpretation of the relevant provisions of the Convention as analysed above will provide valuable guidance for the courts of other Contracting States, including the UK's former EU partners, with the view to harmonizing the application of the Convention across Contracting States. Nevertheless, to facilitate such exchange of good practice in a systematic manner, it would be useful if a database on the 1996 Convention case law, akin to INCADAT,[110] was established by the Hague Conference under the umbrella of post-Convention services. Regarding recognition and enforcement, it remains to be seen whether the abolition of exequatur by the Brussels II*ter* Regulation will translate into any significant advantages in terms of the timing of applications for recognition and enforcement under the Regulation and the 1996 Convention, respectively. This is particularly important in respect of protective measures issued in return proceedings under the 1980 Hague Child Abduction Convention. Further research in the UK and in the EU will be needed in due course to reliably carry out such an evaluation.

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[108] 1996 Hague Convention, Art 26(3).

[109] Dutta (n 78) 202. This includes protective measures issued in return proceedings under the 1980 Convention, where these are to be enforced in the EU Member States. See Section II.5.

[110] INCADAT is a leading legal database on international child abduction law compiled and maintained under the auspices of the Hague Conference. See https://www.incadat.com/en.

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