

# THE VOICE OF THE CHILD IN INTERNATIONAL CHILD ABDUCTION PROCEEDINGS UNDER THE 1980 HAGUE CONVENTION

A PROJECT FUNDED BY THE UNIVERSITY OF WESTMINSTER

PROJECT REPORT  
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## EXECUTIVE SUMMARY

**With the thirtieth anniversary of the United Nations Convention on the Rights of the Child (hereafter the UNCRC) being celebrated in 2019, this timely project was undertaken to consider the practical application of the right of the child to participate set out in Article 12 in the context of proceedings under the 1980 Hague Convention on the Civil Aspects of International Child Abduction. This enabled the project leader's research on this issue to be brought to the attention of those working in the field in one of the jurisdictions where considerable differences of professional opinion exist about the scope of this right in Hague Convention proceedings.**

A round-table meeting with 20 invited specialists, funded by the University of Westminster, was held at the Academic Center for Law and Science, Hod Hasharon, Israel, on 12 July 2019, on *The Voice of the Child in International Child Abduction Proceedings under the 1980 Hague Convention*. Professor Marilyn Freeman (Principal Research Fellow, University of Westminster, London) and Associate Professor Nicola Taylor (Director, Children's Issues Centre, University of Otago, New Zealand) presented the findings from their recent international project, funded by the British Academy, on the use of the 1980 Hague Convention's child objections exception in 32 countries. Judge Zvi Weizmann (District Court Judge; Israeli Liaison Judge in the Hague Network of Judges) provided a view on the issues from the bench. Professor Rhona Schuz (Center for the Rights of the Child and the Family, Academic Center for Law and Science, Hod Hasharon) set out the Israeli approach to the voice of the child in 1980 Hague Convention proceedings and reviewed relevant caselaw developments in the Israeli courts. These showed that whilst children whose views might be relevant are usually heard by the judge in Hague cases, there are significant differences of opinion about the weight which should be given to these views. The differences of approach identified within the Israeli caselaw reflect inherent tensions between the 1980 Hague Convention and the UNCRC and are mirrored in divergent approaches in other jurisdictions.

The presentations were followed by a wide-ranging round-table discussion, which addressed issues relating to children's voices in abduction proceedings and in the contexts of domestic violence and parental alienation. In the light of this informative discussion, Professors Freeman, Taylor and Schuz make a number of recommendations in this Project Report, based on their research and lengthy experience in the international child abduction and child participation fields. These recommendations include a call for specialist training for family justice professionals involved in Hague child abduction cases, and the development of a child-friendly summary of the 1980 Hague Convention so that children are able to easily access and understand its content and scope.

The project leader, Professor Marilyn Freeman, has worked extensively over the past 25 years undertaking research on the voice of children in decisions which affect their lives, and specifically those made in international child abduction proceedings. In 2017–2018, she completed a British Academy funded project on the *Outcomes for Objecting Children under the 1980 Hague Convention* together with Associate Professor Nicola Taylor, University of Otago, New Zealand. This project, which involved an international survey of 97 family justice professionals from 32 countries, found significant global diversity in the interpretation and implementation of the child objections exception and how best to hear a child in the context of Hague Convention proceedings.<sup>1</sup> Israel is one of the few jurisdictions in the Middle East which is party to the 1980 Hague Convention. In view of the wide divergence of opinion and practice amongst family justice professionals in Israel concerning the weight to be afforded to the views of children involved in abduction cases, a round-table meeting for invited key stakeholders was held at the Academic Center for Law and Science, Hod Hasharon, Israel, on 12 July 2019. The project, which comprised the round-table meeting and this resultant project report, was funded by the Law School of The University of Westminster, London, where Marilyn Freeman holds her post as Principal Research Fellow. Leading children's rights' scholar and author of a seminal textbook on the 1980 Hague Convention, Professor Rhona Schuz, Co-Director of the Center for the Rights of the Child and the Family, was joined by Professor Freeman and Associate Professor Taylor as keynote speakers at this round-table meeting. The UNCRC, whose thirtieth anniversary is being celebrated in 2019, guarantees to children capable of forming their own views the right to express those views freely in all matters affecting them, to be provided the opportunity to be heard in any judicial and administrative proceedings affecting them and to have due weight attached to those views (Article 12). Given the significance of Article 12, this meeting was therefore extremely timely in considering the current application of this provision in the context of child abduction proceedings.

<sup>1</sup> See Schuz, R. (2013). *The Hague Child Abduction Convention: A Critical Analysis*, Hart, 375-388.

The 1980 Convention on the Civil Aspects of International Child Abduction was given force of law in Israel by the Hague Convention (Return of Abducted Children) Law 1991, to which is appended a Hebrew translation of the Convention. In addition, a chapter dealing with the procedural aspects of applications under the Hague Convention was added to the Civil Procedure Regulations. Regulation 295(9) of these Regulations provides that:

“Where a child is of sufficient age and level of maturity that it is appropriate to take into account his views, the Court shall not decide the case before it hears the child unless the Court does not see any need for this for special reasons which will be recorded.” (Rhona Schuz’s translation)

At first some courts relied on the exception in this regulation. However, following a Supreme Court decision in 2007<sup>2</sup> which explained the importance of hearing children directly, in practice judges do invariably meet with abducted children in cases where it is considered that their views may be relevant.

In contrast, the case-law shows that there is no uniform judicial approach in relation to the weight to be given to the child’s views, in cases where the child objection exception in Article 13(2) of the Convention is pleaded. This exception provides that the court may refuse to order return of the child if “it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.” Perusal of the developing case-law reveals two approaches to interpreting this exception: one a wider child-centred approach and the other a narrower approach.

The District and Family Court judges who espoused the former approach took the view that the child objection exception should not be interpreted narrowly like the other exceptions in the 1980 Hague Convention because it represents the additional value of respect for the child<sup>3</sup> and in order to ensure compliance with Article 12 of the UNCRC<sup>4</sup> and the Israeli Basic Law: Dignity of Man and his Freedom<sup>5</sup>.

However, in a 2006 decision *TAE v PR* (hereinafter “*the Italian saga*”),<sup>6</sup> the Israeli Supreme Court adopted the narrow approach and this has remained the leading case, cited by courts at all levels. The Supreme Court took the view that in order to achieve the objectives of the 1980 Hague Convention it was necessary to interpret all the exceptions extremely narrowly, such that “they will only apply in exceptional and extreme circumstances.”

The Supreme Court in the *Italian saga* set out the three cumulative conditions which have to be fulfilled in order for the child objection exception to be established: sufficient age and maturity, independent objection of the child and “a dominant view of special strength.”

<sup>2</sup> RFamA 5579/07 *Plonit v Ploni* (nevo, 7.8.07).

<sup>3</sup> Judge Ya'akov Shvili in FamA 128/99 *Shevach v Shevach* (nevo, 30.4.90).

<sup>4</sup> See, for example, Judge Rotlevi in FamA 3/98 *Biton v Biton* (nevo, 9.11.98).

<sup>5</sup> Judge Maimon in FamC 430/01 *Ploni v Almonit* (Unreported).

<sup>6</sup> RFamA 672/06 *Plonit v Ploni* 61(3) PD 247.

The latter requirement does not appear in the Convention itself. Some courts have adopted a stringent test of maturity. For example, in one case, the Supreme Court held that it was necessary to bring convincing proof of “the level of her ability to take into account the entirety of aspects in relation to the entirety of the considerations and balances.”<sup>7</sup> It may be doubted how many adults would satisfy this test. In addition, it will be noted that if the child demonstrates maturity by showing that he understands both sides of the equation, his views are unlikely to meet the special strength criteria.

A 2015 decision by the Supreme Court appears to signify a softening of the narrow approach.<sup>8</sup> Justice Hendel explained that narrow interpretation does not mean absolute negation of the exception and that the Court should consider, as well as the general objectives of the Convention, also the rights of the child. However, in a 2018 case, involving a 14-year-old girl, the Family Court judge did not refer to Justice Hendel’s decision and continued to rely on the narrow approach in the *Italian saga*.<sup>9</sup>

Judicial support for the narrow approach seems to be backed up by the paternalistic views expressed by mental health experts who are appointed by the courts to give opinions about the maturity of the child and the genuineness of his or her views in cases where the child objection exception is pleaded. For example, in the *Italian saga* itself, the expert expressed the view that children under the age of 15 are not able to make decisions about where they live and that children are not able to form independent views when they are showered with affection and presents. As the first instance judge in this case noted, this approach makes the exception virtually redundant.<sup>10</sup>

Similarly, some experts continue to be influenced by the Parental Alienation Syndrome (PAS) theory of Gardner,<sup>11</sup> which holds that refusal to have contact or, in the abduction context, to return to the left-behind parent is evidence of alienation, although this theory has been discredited scientifically.<sup>12</sup> Sometimes, experts appear to pay insufficient attention to the fact that there are rational and objective reasons for the child’s objections to return.<sup>13</sup>

Finally, there is evidence that some experts go beyond their brief and usurp the role of the judge. For example, in one opinion, the expert refers to the policy of the Convention of not rewarding abductors.<sup>14</sup> Similarly, in some cases, the expert bases his opinion in relation to lack of maturity or lack of independence of the child’s objection on the fact that these are

not in accordance with his best interests.<sup>15</sup> Yet, the expert is not called upon to determine the child’s best interests in a Hague Convention case and is unlikely to have the information required to do so.

The evidence of experts’ paternalistic approach to the ability of children to form independent views is particularly problematic given the heavy weight which is attached to expert opinions by most Israeli judges. There is clearly a need to provide training for experts and judges in relation to the significance of children’s right to have appropriate weight attached to their views and to expose them to research which supports the UNCRC approach of the evolving capacities of children. There is also a need for judges to clarify the limited mandate given to experts in Hague cases when they appoint them.

It is important to point out that the diverging approaches identified in Israel are mirrored in caselaw over the years from other jurisdictions. Thus, whilst there are examples of experts and courts taking a paternalistic approach to questions of maturity,<sup>16</sup> examples can also be found of courts taking a less stringent approach.<sup>17</sup> Similarly, whilst some courts readily attribute children’s views to incitement,<sup>18</sup> others are prepared to regard children’s views as genuine even where there is some evidence of influence.<sup>19</sup> Moreover, whilst some see the policy of the Convention as simply to ensure the return of abducted children,<sup>20</sup> others regard the principle of giving due weight to children’s views, as expressed in the child objection exception, as part of the philosophy of the Convention.<sup>21</sup>

<sup>7</sup> RFamA 902/07 *Plonit v Plonim* (nevo, 26.4.07).

<sup>8</sup> RFam A 2808/15 *Ploni v Plonit* (nevo, 20.5.15).

<sup>9</sup> FamC 9923-01-18 *Plonit v Ploni* (unreported 8.2.18).

<sup>10</sup> FamC 14830/05 *Tak-mish 05(04)* 266.

<sup>11</sup> See, for example, opinion in RFamA 1855/08 *Plonit v Ploni* (nevo, 8.4.08) [on file with Rhona Schuz].

<sup>12</sup> Bruch, C. (2001, Fall). Parental Alienation Syndrome and Alienated Children – Getting it Wrong in Child Custody Cases. *Family Law Quarterly*, 35(3), 527.

<sup>13</sup> For example, opinion of expert in RFamA 2808/15 that teenagers had been influenced by their mother, even though there was evidence that the father was violent and had threatened the children with a gun.

<sup>14</sup> See above n. 11.

<sup>15</sup> For example, in *Italian saga*, above n. 6 and FamC 9923-01-18 above n. 9.

<sup>16</sup> See, for example, decision in *RCB v Forest* [2012] HCA, where the High Court of Australia accepted the family consultant’s view that “ability for abstract thought and future forecasting” of 12- and 14-year-old children were not yet fully formed.

<sup>17</sup> See, for example, *M S v A R* [2019] IESC 10 (Irish SC) upholding objections of a 7-year-old whose “level of maturity appeared to be that of a typical seven year old”; *Clarke v Carson* [1995] NZFLR 926 “The position at which it is right to take into account the views of children seems to me in the normal course to be the time when they are able to reason. That is a position supported by the Convention on the Rights of the Child.”; In relation to the US, see contrasting examples in Elrod, L. (2010-2011). Please Let Me Stay: Hearing the Voice of Children in Hague Cases, *Oklahoma Law Review*, 63, 678-683.

<sup>18</sup> See, for example, *RB v DB* [2015] EWHC - Children’s views not authentic “as is so often the case. They have been .... inculcated in them by their carer.”; *Giampolo v Erneta* 390 F Supp 2d 1269 (2004) - inevitable influence of abductor on 11-year-old’s views due to time which had elapsed since the abduction.

<sup>19</sup> See, for example, *Re X and Y* [2012] EWHC 2838 “As views have to some extent been influenced by things said by both parents at various times. This factor has undoubtedly had some impact on A’s thinking. Ultimately, however, this factor does not lead me to conclude that the views expressed by A are not genuinely A’s own.”; *Robinson* 983 F Supp 1339, 1343 [D Colo 1997] “It is likely that the abducting parent desperately desires to keep his or her child from leaving the country. It is unrealistic, indeed inhuman, to expect a caring parent not to influence the child’s preference. Accepting that there will be some influence, the question really becomes when is it undue.”

<sup>20</sup> See, for example, *JPC v SMW* [2007] EWHC 1349 (Fam) The 14-year-old girl should be returned to Ireland “in accordance with the plain intention of the Hague Convention despite her age and maturity, the clarity of her objections and the fact that ordinary welfare considerations might well militate in favour of allowing her to stay with her father in England”; *RM v KM* “Substantial weight should, in the court’s view, be afforded to what may be described as the policy in favour of return which is of great importance to the operation of the Hague Convention. In particular, there is a need for the court to be robust in ensuring a prompt return when this is appropriate in the interests of children in general and to prevent abductors from obtaining an unfair advantage.”

<sup>21</sup> See, for example, *Rodriguez v Yanez*, 5th Cir., 28.3.16 “The [child objection] exception is rooted in the autonomy of the wrongfully removed child. The drafters of the Convention sought to deter wrongful removals, but they also recognized that wrongfully removed children are not inanimate objects - they are people with agency of their own.”; *Vujicevic* US Dist 2013 “The purpose of the mature child exception is to give a voice to a child who has attained a certain age and maturity, even if those wishes run counter to the lofty public purposes for which the Convention was adopted.”; *Hollins v Crozier* [2000] NZLR 775 “To do other than respect his ardently expressed views at this time would be Draconian in the extreme. ... It would result in treating Joshua as an ‘object of concern’ and not the person he is in his own right.”

## APPROACHES AND RESULTS

On 12 July 2019, 20 invited specialists met at The Academic Center for Law and Science in Hod Hasharon for a round-table meeting on *The Voices of Children in Abduction Proceedings under the 1980 Hague Convention*. The participants included members of the judiciary, lawyers, senior academics and researchers in the field of family law, a psychologist, and a lawyer at the Israeli Central Authority.

The meeting began with a joint presentation by Professor Freeman and Associate Professor Taylor of their British Academy funded research on *Children Who Object to Return under the 1980 Convention*.<sup>22</sup> This was followed by a presentation, A View From the Bench, delivered by Judge Zvi Weizmann (District Court Judge and the Liaison Judge for Israel in the Hague Network of Judges) and by Professor Schuz's presentation on the *Child Objection Exception in the Scheme of the Hague Abduction Convention and the Role of the Expert Opinion*. These presentations set the context for the round-table discussion which followed and which was chaired by Professor Ayelet Blecher-Prigat, Dean of the Law School at the Academic Center for Law and Science. The following issues emerged from the discussion:

1. Concern regarding the impact that hearing children in abduction proceedings regarding the post-separation care of children may have on them, both positive and negative. On the one hand, hearing makes children feel valued and respected by the opportunity to express their views and have these taken into account by the court. On the other hand, they may be placed in the middle of intense conflict between their parents and have their personal thoughts and feelings shared with professionals who are relatively unfamiliar to them.
2. The need to recognise children's lived experiences and to comply with the UNCRC, whilst not undermining the importance and efficacy of the 1980 Hague Child Abduction Convention. It was also asserted by one participant that children need to be directed by an adult and are not capable of forming an independent view until they are 16 or 17 years of age.
3. The risk that parental alienation may lead to children in family justice proceedings asserting views that are not their own, but those of one of the parents, in the abduction context the taking parent. Israeli research was cited<sup>23</sup> as indicating that in 80% of the cases surveyed the views that children expressed to judges and court social workers were their own, while in 20% of cases there was evidence of some degree of parental influence (but in only 14% of cases in respect of children aged over 9 years).

4. The utility of a guardian ad litem being appointed in all Hague abduction cases, in which the child is old enough to express an opinion, was commended as a means of guiding the child regarding their decision about whether to speak directly to the judge in the case, and to act as a trustworthy intermediary between the child and the judge.
5. Concern about the need to uphold the aims of the 1980 Convention so that abducted children are returned promptly to their state of habitual residence and the exceptions in the Convention are narrowly interpreted, and whether interpreting the child objection exception more widely would, in fact, undermine the Convention.
6. Where the child should be heard. The view was expressed that the abducted child should be heard in the State of habitual residence after return, rather than the country to which the child has been taken or in which they have been retained, thereby discouraging forum shopping. However, it was pointed out that this approach did not allow the child's voice to be heard in relation to the question of his or her return. It was also noted that, in some cases, the Hague return decision is outcome determinative, as there may be no further litigation regarding the child's future care arrangements or relocation in the State of habitual residence once the child has been returned.
7. The relevance of the empirical and anecdotal evidence of harm caused to children by abduction, including following return against their wishes or where protective measures are ineffective in cases of domestic violence. This evidence underscores the importance of hearing children in decisions which have the potential to impact so significantly on their lives.<sup>24</sup>
8. How far the returning court should look beyond return and the extent to which it is legitimate to consider what will happen to the child after return when deciding whether an exception is made out.
9. The need for training for all family justice professionals.

<sup>22</sup> Taylor, N.J., & Freeman, M. (2018). Outcomes for objecting children under the 1980 Hague Convention on the Civil Aspects of International Child Abduction. *The Judges' Newsletter*, Vol. XXII, Summer-Fall (Special Focus: The Child's Voice – 16 Years Later). The Hague: Permanent Bureau of the Hague Conference on Private International Law, pp. 8-12.

<sup>23</sup> Morag, T., Rivkin, D., & Sorek, Y. (2012). Child Participation in the Family Courts - Lessons from the Israeli Pilot Project. *International Journal on Law Policy and the Family*, 26, 1-30.

<sup>24</sup> Freeman, M. (1998). The Effects and Consequences of International Child Abduction. *Family Law Quarterly*, 32, 603; Freeman, M. (2014, December). *Parental Child Abduction: The Long-Term Effects*. [https://www.icflpp.com/wp-content/uploads/2017/01/ICFLPP\\_Longtermeffects.pdf](https://www.icflpp.com/wp-content/uploads/2017/01/ICFLPP_Longtermeffects.pdf)

## CONCLUSIONS AND KEY MESSAGES

The presentation of the Israeli position and the views expressed in the round-table discussion illustrate the differences of opinion which exist among family justice professionals in relation to the hearing of children in abduction cases. It seems likely that these differences of opinion are one of the explanations for the diversity of approaches found in the *Outcomes for Objecting Children* project.<sup>25</sup>

Some of these differences of opinion reflect attitudes about the lack of capacity of children to form legitimate views concerning their lives. However, these attitudes are inconsistent with the UNCRC's recognition of children's right to be heard and their evolving capacities. In addition, some of them reflect an uni-dimensional approach to the 1980 Hague Convention as a forum selecting instrument, designed to prevent forum-shopping, without taking into account that the drafters of this Convention expressed their desire to promote the interests of children, by protecting them from the harmful effects of international child abduction,<sup>26</sup> and that the exceptions in the Convention reflect this policy.

On the eve of the 30th anniversary of the UNCRC, to which all Hague Convention signatories are parties other than the United States, the authors reason that the approach to children's participation in Hague Convention cases has to be considered within a children's-rights framework underpinned by the UNCRC. As Lady Hale, President of the Supreme Court of the United Kingdom, observed, "[t]he relevant reality is that of the child, not the parents. This approach accords with our increasing recognition of children as people with a part to play in their own lives, rather than as passive recipients of their parents' decisions."<sup>27</sup>

The *Outcomes for Objecting Children* project<sup>28</sup> and the Israeli round-table meeting provide support for the view expressed by Hollingsworth and Stalford,<sup>29</sup> on the basis of an analysis of English caselaw, that there is much more scope within the abduction framework to adopt an approach which is more closely informed by children's rights principles. The Recast of the Brussels Regulation 2019/1111 (the re-cast B11a) which enters into force on 1 August 2022 also reflects recognition that the current provision has not, in fact, ensured realisation of children's participatory rights. Accordingly, the new Article 21 provides that children need to be given an **effective opportunity to be heard** and that **due weight** has to be given to their views in accordance with their age and maturity (emphasis added).

The authors believe that there needs to be a more child-centric approach to Hague Convention cases, one element of which concerns child participation in the process. Decisions made in 1980 Hague Convention return proceedings are not infrequently definitive in that further proceedings in the State of habitual residence do not always take

place following a child's return. It is, therefore, imperative that children have an opportunity to be properly heard and involved in these decision-making processes, whether or not what they had to say amounts to an objection to return. They must not be side-lined from their own lives and wellbeing.<sup>30</sup> If the 1980 Convention is to apply in a truly child-centric way it is fundamental that children are aware of the Convention, how it applies to them, and the opportunities it provides for their participation. For this reason, the authors have initiated the drafting and production of a child-friendly summary of the Convention by the International Association of Child Law Researchers (IACLaR) of which, in addition to other leading global child law researchers, they are all members. IACLaR was honoured to be granted observer status at the Seventh Special Commission into the Operation of the 1980 and 1996 Conventions held in The Hague in 2017, and was the only child law researchers' organisation to be represented at this event. The project will be undertaken in consultation with children and young people to ensure that the summary is child-friendly and disseminated in ways that children and young people can easily access.

Family justice professionals should consider the reasons why it is important to give sufficiently mature children an opportunity to be heard in all Hague cases, irrespective of whether the taking parent has pleaded the child objection exception. The child's participation is not simply instrumental, but has an independent value.<sup>31</sup> Moreover, until the child is heard it is not possible to know whether he or she objects to return and whether his or her views and perspectives might be relevant in some other way<sup>32</sup>. Family justice professionals should also ensure that the method by which the child is heard does actually provide an effective opportunity for the child to express their views,<sup>33</sup> within the limitations of national laws. This will include providing the child with age-appropriate information about the nature and scope of the proceedings and their participation in them.

The second related element of a more child-centric approach to Hague Convention cases is therefore the provision of training for all family justice professionals involved in these cases, particularly those with responsibility for determining the maturity of children, the genuineness of their views, or the weight to be given to those views. This training should include the following topics: (i) children's right to participate and the obligations on States parties to give proper effect to this under the UNCRC; ii) the implications of the child's right to participate within the framework of the 1980 Hague Convention, both in relation to hearing children in abduction proceedings and in relation to the weight to be given to

<sup>25</sup> See above n. 22.

<sup>26</sup> Preamble to the 1980 Hague Convention.

<sup>27</sup> *In re LC* (Children) (Reunite International Child Abduction Centre Intervening) [2014] UKSC 1 [87].

<sup>28</sup> See above n. 22.

<sup>29</sup> Hollingsworth, K., & Stalford, H. (2018). Judging Parental Child Abduction: What Does it Mean to Adopt a Children's Rights-Based Approach. In Gillian Douglas et al., (Eds.), *International and National Perspectives on Child and Family Law*, Intersentia, 125 at 130.

<sup>30</sup> Current initiatives on this issue include Minor's Right to Information in EU Civil Actions (MiRI) – Improving Children's Right to Information in Cross-Border Civil Cases. This is a project led by Università Degli Studi de Genova Unige, Italy, together with Universitat de Valencia Uveg, Spain, Universiteit Utrecht UU Netherlands, SIA Biznesa Augstskola Turība, Latvia, The Institute of Private International Law, Bulgaria, and the European Association for Family Law and Succession Law. The project is aimed at improving the situation of children involved in civil cases having cross-border implications with particular reference to children's right to receive adequate information concerning those proceedings, in order to develop common best practices for the child-friendly application of EU law (thanks to Professor Wendy Schrama, Utrecht University, for this information). Additionally, INCLUDE (co-funded by the European Commission and co-ordinated by Missing Children Europe) will gather the views of young people in Cyprus and Hungary on how best to deal with international child abduction cases (thanks to Professor Thalia Kruger, University of Antwerp, for this information).

<sup>31</sup> See Schuz, R. (2013). *The Hague Child Abduction Convention: A Critical Analysis*, Hart, 373-374.

<sup>32</sup> *Ibid.* For example, the child may have perspectives relevant to determination of his/her habitual residence as in *Re LC*, above n. 27.

<sup>33</sup> Hollingsworth & Stalford, above n. 29, raise doubts about the reliability of Cafcass (court welfare) officers as a proxy for direct testimony from children, at 133-135.

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their objections to return or other views; and (iii) contemporary child development research regarding the cognitive, physical, emotional and language abilities of children of different ages and vulnerabilities.<sup>34</sup>

The authors are aware of the potentially serious, negative effects of child abduction, and fully support the 1980 Hague Convention's objective of combating international child abduction. The authors recognise that the best forum for decision-making is usually the State of the child's habitual residence and that in most cases prompt return to that State best promotes the child's interests. However, the reach and implications of children's rights under the UNCRC must be fully recognised in the context of 1980 Hague Convention proceedings in order that this Convention continues to work in the best interests of children and that Member States comply with their international obligations. Children should be properly heard, whether or not an objection is raised. What amounts to an objection, and the weight to be attached to it by the court/tribunal in the requested State, must be assessed in the light of contemporary understanding both of these rights and child development knowledge.<sup>35</sup> Whilst age and degree of maturity are the main criteria for determining the extent to which it is appropriate to take account of a child's views, as recognised by Article 12 of the UNCRC, these criteria have to be properly addressed through the lens of children's rights and evolving capacities because evaluations as to maturity and independence of children's views form the basis for decisions, which often have a critical impact on the child's life. This is powerfully described by a previously abducted child:

"Courts need to understand that they are not deciding a parking ticket. ... They need to look at the individual circumstances because this is a defining moment in a kid's life."<sup>36</sup>

Professor Marilyn Freeman, University of Westminster, London; Professor Rhona Schuz, Academic Center for Law and Science, Israel; and Associate Professor Nicola Taylor, University of Otago, New Zealand. We express our thanks to The Law School of the University of Westminster for its financial support for this project, to the New Zealand Children's Issues Centre Trust for enabling Associate Professor Taylor's participation, and to the Academic Center for Law and Science for its administrative and collegial support of the project.

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<sup>34</sup> See, for example: Lawrence, J. (2008). The Developing Child and the Law. In G. Monahan & L. Young (Eds.), *Children and the Law in Australia* (pp. 83-104). Chatsworth, NSW, Australia: LexisNexis Butterworths; Smith, A.B. (2013). *Understanding Children and Childhood* (5th ed.). Wellington, New Zealand: Bridget Williams Books; Smith, A.B. (2002). Interpreting and Supporting Participation Rights: Contributions from Sociocultural Theory. *The International Journal of Children's Rights*, 10, 73-88.

<sup>35</sup> See n. 30 above.

<sup>36</sup> Quotation from a child participant in Freeman and Taylor's *Outcomes for Objecting Children* research [above n. 22]. The child had been abducted by his mother and had objected to being returned to his State of habitual residence in proceedings under the 1980 Hague Convention.

