laws

IMPACT FACTOR 1.2

CITESCORE 0.7

Article

Contemporary Nurturing of the 1980 Hague Convention

Marilyn Freeman and Nicola Taylor

Special Issue

Contemporary Issues Relating to International Child Abduction in Contemplation of the Eighth Special Commission into the Operation of the 1980 Hague Child Abduction Convention (2023)

Edited by
Prof. Dr. Marilyn Freeman and Prof. Dr. Nicola Taylor

MDPI

https://doi.org/10.3390/laws12040065

laws

MDPI

Article

Contemporary Nurturing of the 1980 Hague Convention

Marilyn Freeman [1,*] and Nicola Taylor [2,*]

[1] Westminster Law School, University of Westminster, London W1W 7BY, UK
[2] Faculty of Law, University of Otago, Dunedin 9016, New Zealand
* Correspondence: m.freeman@westminster.ac.uk (M.F.); nicola.taylor@otago.ac.nz (N.T.)

Abstract: A key impetus for the implementation of the 1980 Hague Convention on the Civil Aspects of International Child Abduction was the protection of children from the harmful effects of their wrongful removal or retention. This article considers how well the Convention is achieving this aim in light of the challenges it faces in a global society that has changed significantly since its introduction. Two key aspects of the Convention's operation are addressed in this regard: (i) The intersection between domestic violence and the exception to return in Article 13(1)(b); and (ii) the adoption of practices to enable abducted children to receive information about, and be given effective opportunities to express their views and be heard in, Convention cases. The article discusses why, how, and to what extent the Convention needs to be nurtured to best position it to meet current and future challenges and demands, including the current differences in interpretation and implementation globally. Suggestions are made to help future-proof the Convention so that children can be best protected in the way envisioned by the Convention.

Keywords: international child abduction; 1980 Hague Convention; Article 13(1)(b); grave risk; intolerable situation; domestic violence; UNCRC; child participation; children's views; hearing children in 1980 Hague Convention proceedings; nurturing the 1980 Hague Convention

Citation: Freeman, Marilyn, and Nicola Taylor. 2023. Contemporary Nurturing of the 1980 Hague Convention. *Laws* 12: 65. https://doi.org/10.3390/laws12040065

Academic Editor: Patricia Easteal

Received: 16 June 2023
Revised: 21 July 2023
Accepted: 21 July 2023
Published: 25 July 2023

1. Introduction

A key impetus for the implementation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereafter the Convention) was the desire "to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access" (Convention Preamble). The incidence of international child abduction has continued to increase, as has the overall number of applications made under the Convention "from 1062 applications in 1999, to 1610 in 2003, 2460 in 2008 and 2730 in 2015" (Lowe and Stephens 2023, p. 69). The detrimental impact of international child abduction on children's well-being and intrafamilial relationships is clearly documented in both the research literature and case law in this field (Freeman 2006, 2014; Taylor and Freeman 2018a). The role of the Convention in addressing this global phenomenon, by providing a mechanism for co-operation between its now 103 Contracting Parties, therefore remains as crucial today as it did when first promulgated in 1980 (Taylor and Freeman 2023a). However, in October 2023, the Convention will celebrate its 43rd anniversary, and this, inevitably, gives rise to legitimate debate about whether, and the extent to which, it remains fit for purpose in contemporary circumstances.

This article considers the Convention's continued efficacy. It examines why, how, and to what extent, in our view, the Convention needs to be nurtured to best position it to meet current and future challenges and demands. Two key aspects of the Convention's operation are addressed in particular—its responsiveness in the contexts of, firstly, domestic violence and, secondly, children's participation rights.

2. Why Is Nurturing of the Convention Required?

There is broad agreement that the Convention is an extremely successful international instrument and has done much to improve the situation for children and families involved in abduction events (Taylor and Freeman 2023b). However, there is also considerable valid concern about the need for it to respond adequately and appropriately to the ongoing challenges presented by new demographic and social trends (Bryant 2020; Kruger 2011; Schuz 2013, 2018; Trimmings and Momoh 2021; Weiner 2021). Many societal changes impact international child abduction and the operation of the Convention, including those relating to fiscal pressures in the provision of key services in global economies. For example, we have recently addressed the Convention's uneven playing field internationally, part of which arises due to the variability across Contracting Parties in the availability of public funding for legal representation in applications made under the Convention (Freeman and Taylor 2023a). This resourcing issue and other critical societal changes—including the growing awareness of domestic violence against women globally and the greater respect accorded to children's right to express their views in legal and judicial proceedings—impact materially on the field of international child abduction and the operation of the Convention. We should be clear, however. These changes, as significant as they are, do not mean that the Convention should be abandoned—far from it. A return to the chaos of pre-Convention days must be avoided at all costs. What we have in mind instead is the prescient observation of Adair Dyer, one of the "fathers" of the Convention, who highlighted the need for continuous nurturing of a law-making treaty so that its useful life may extend beyond at least 30 years (Dyer 2000, p. 16 at n. 60).

We find further support for the concept of nurturing the Convention in the emphasis placed by The Honourable Mr. Alistair MacDonald (2023) on the need for adjustments to be made from time to time in any dynamic system in order to maintain equilibrium. In relation to the Convention, this is required so that an instrument designed to secure the protection of children from the harmful effects of international child abduction should not itself be turned into an instrument of harm (MacDonald 2023, p. 312). This last point is extremely important. It cannot be imagined that the framers of the Convention meant for it to be anything other than a benefit to the children it was designed to protect (Pérez-Vera 1980). It must not, therefore, be allowed to work against their interests today, in a changed society, because the international family justice community shies away from the need to address those changes in a way that allows the Convention to honour its conviction that the interests of children are of paramount importance in matters relating to their custody, and that they should be protected internationally from the harmful effects of their wrongful removal or retention (Pérez-Vera 1980, p. 431 at para 23; Convention Preamble).

The Convention, of course, is now considerably past the 30-year threshold suggested by Dyer. Its longevity is a testament to its resilience and bodes well for its continued applicability in the years ahead. However, to protect its ongoing utility, we believe that it is both necessary and timely to consider how it may best be nurtured as we move towards, and beyond, the Eighth Special Commission taking place at The Hague in October 2023.

3. What Is the Nature of the Nurturing That Is Required?

For the purposes of this article, we have identified two specific areas of concern for which the marked changes in societal approach and understanding since the Convention's introduction require urgent consideration in the context of its operation: (i) The intersection between domestic/familial violence and the exception to return in cases of international child abduction in Article 13(1)(b); and (ii) the adoption of practices to enable abducted children and young people to receive information about, and be given effective opportunities to express their views and be heard in, Convention cases (Freeman and Taylor 2020). It is to these issues that we now turn.

3.1. Article 13(1)(b)

A contentious issue in the way the Convention is interpreted concerns Article 13(1)(b) which provides for the non-return of the child "if the person, institution or other body which opposes its return establishes that . . . there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation".

Some commentators are deeply concerned that this provision should not become a loophole through which the Convention's aim to restore the status quo is frustrated (see, for example, Sobal and Hilton 2001).[1] They advocate a narrow interpretation of Article 13(1)(b) to avoid such an outcome. Conversely, others strongly argue that children's safety and well-being are at risk when they are returned to their state of habitual residence despite their primary carer parent having fled with them to avoid continuing exposure to domestic/familial violence, and where further violence may occur on return. These commentators, in turn, advocate for a broader interpretation of Article 13(1)(b) (see, for example, Edleson et al. 2023).[2]

The trends that make this issue particularly pertinent to our discussion on nurturing the Convention have been well documented in the longitudinal data generated from the four statistical surveys to inform the 2001, 2006, 2011/2012, and 2017 Special Commissions held into the operation of the Convention (Lowe and Stephens 2023).[3] The first of these trends concerns the identity of the adoptive parent. While the Convention's drafters contemplated the identity of abductors as either mothers or fathers (Baruffi and Holliday 2022), it was nonetheless assumed that abductors would generally be non-custodial fathers. However, Lowe (2023) states:

> Statistical surveys have consistently found that the majority of abductions are by mothers who are normally the child's sole or joint primary carer and commonly return to their jurisdiction of nationality (i.e., "going home"). In other words, the abductions were generally not aimed, as another study (Greif and Hager 1993), termed it at "throwing off pursuers by escaping abroad", but of abductors "returning to a culturally familiar country where family and legal support may be available". (p. 395)

Lowe (2023, p. 396) acknowledged that one of the reasons that primary carer mothers may be returning "home" is because they are escaping violent or abusive relationships, and there are many commentators who recognise that this can be common in Hague Convention cases. In research by Lindhorst and Edlesen on 22 cases where return proceedings occurred due to children's wrongful removal, all the women reported their situation as involving domestic violence (Lindhorst and Edleson 2012). Shetty and Edleson (2005) had also earlier found adult domestic violence to be a significant issue in parental abductions (p. 117).

It is to be welcomed that the prevalence and impacts of domestic violence are now generally better understood than previously, but some of its various forms have taken longer to recognise. This is especially true of controlling or coercive behaviour (Home Office 2022).

---

[1] Sobal and Hilton (2001) state: "Once a court gives significant weight to the child's wishes or desires, especially a child whom the court opines has obtained an age and degree of maturity, article 13(b) becomes diluted, and a loophole for PAS is created" (p. 1025). However, King (2013) addresses concerns about weakening the Convention if domestic violence is used as a "defence" against returning an abducted child to the state of habitual residence by cautioning against favouring this policy over the perils of exposing children to domestic violence because of the severe impact this has on women and children who flee abuse (p. 103).

[2] Edleson et al. (2023) support the focus on domestic violence and its relationship to grave risk to children being added to existing or future implementing legislation for Contracting Parties, citing the example of Japan which did so in 2014. Nishitani (2023) considers that the Japanese Implementation Act has generally enabled the Convention to be implemented successfully in Japan as this has allowed for a flexible approach tailored to the domestic legal system and cultural norms (pp. 207–9). However, Morley (2023) considers that the Japanese approach is not working as well as Nishitani indicates and that Japan should comply fully with its obligations under the European Parliament Resolution 2020 (p. 256).

[3] A fifth statistical survey is currently being undertaken to help inform the Eighth Special Commission in October 2023.

Although now more readily acknowledged as an issue of concern for police and criminal justice institutions, its keen relevance in terms of Article 13(1)(b) may be less well recognised. Recently, Mr. Alistair MacDonald (2023) specifically addressed the way in which disputed allegations of coercive and/or controlling behaviour are handled by the courts in the context of the Article 13(1)(b) exception to return. He emphasised the importance of judicial training for those deciding applications under the Convention so they are able to identify the existence and impact of domestic abuse, including its specific form of coercive and/or controlling behaviour. Critically, Mr. Alistair MacDonald (2023) also considers the valid concern about delay in these cases:

> Once again, it would not be appropriate for me to express a conclusion on the questions raised in this chapter, and I do not do so. However, in the exceptional circumstances of a case in which disputed allegations of coercive and/or controlling behaviour have been levelled as the basis for the application of the exception under Article 13(1)(b), it might be argued that the need for a more involved examination of the facts constitutes a proper explanation for any consequential delay. That delay is caused, in short, by the need to establish, within a *particularly* challenging forensic context, that the child will not be subjected to a grave risk of physical or psychological harm or otherwise placed in an intolerable situation on return with a degree of rigour that ensures an instrument designed to secure the protection of children from the harmful effects of international child abduction is not itself turned into an instrument of harm (pp. 311–12).

The only way in which the Convention is currently structured to enable such domestic violence or abuse against the taking parent to be taken into account is through the operation of the exception to return in Article 13(1)(b). There is no separate domestic violence "exception" or "defence" to return within the Convention's provisions. The difficulty with this, in terms of domestic violence against the taking parent, is that the requirement within Article 13(1)(b) for there to be a grave risk of being exposed to physical or psychological harm or being placed in an intolerable situation, as a result of being returned relates to the child, not the taking parent. It is, therefore, a matter of interpretation and application of the Convention's terms by the courts of the country of refuge as to whether such harm to the taking parent will be sufficient to trigger the Article 13(1)(b) exception to return. There is much variation on this matter across the legal systems of the 103 Contracting Parties (see, for example, the Best Practice Guide Executive Summary on the Protection of Abducting Mothers in Return Proceedings 2020).[4] Weiner (2002) notes that "the Convention was not drafted with this fact pattern in mind, and it often works unjustly in these cases" (p. 278).

When considering the best way forward, it is timely to remember the comments by Brenda Hale (2017) regarding the run-up to the Sixth Special Commission, held in two parts (June 2011 and January 2012), when many States had been pressing for a Protocol to the Convention that, amongst other things, would cater for the problems posed by domestic violence, while other States were completely opposed to such a Protocol. She stated that "without doing something, there was a very real risk that some countries would pull out of the Convention altogether" (Hale 2017, p. 11). Clearly, that was not an outcome that would have been in the best interests of the abducted children. In the event, the "something" that occurred was the publication of the HCCH (2020) Guide to Good Practice in Article 13(1)(b). This, however, is advisory only and took many years to complete—a possible

[4] The Best Practice Guide Executive Summary on the Protection of Abducting Mothers in Return Proceedings (2020) refers to English caselaw *In the Matter of E (Children)* [2011] UKSC 27 and *In the Matter of S (a Child)* [2012] UKSC 12 and states: "It has therefore been recognized that the circumstances of the abducting mother and the child may be intertwined to the extent that domestic violence perpetrated solely against the mother may justify the finding that the return would expose the child to a grave risk of "psychological harm or other intolerable situation" pursuant to Article 13(1)(b)" (p. 4). See also Trimmings and Momoh (2021) on the protective measures vs assessment of allegations approach taken by the UK courts. They favour the latter approach. Note also that the *Guide to Good Practice* HCCH (2020) states that "Evidence of the existence of a situation of domestic violence, in and of itself, is therefore not sufficient to establish the existence of a grave risk to the child" (para 58).

indication of the difficulty in achieving agreement internationally on the issues it addresses (Freeman and Taylor 2020).[5] More recently, calls have been made to strengthen the Guide to Good Practice because of its overreliance on protective measures (Hague Mothers 2023).

Other organisations and scholars have also examined the intersection between domestic violence and the exception to return in Article 13(1)(b) and expressed their anxieties about how the Convention works in this regard. For example, the European Union Rights, Equality, and Citizenship Programme funded a dedicated research project on the *Protection of Abducting Mothers in Return Proceedings: Intersection between Domestic Violence and Parental Child Abduction* (POAM) (Trimmings et al. 2022). In 2017, a specialist one-day Experts' Meeting on Issues of Domestic/Family Violence and the Operation of the 1980 Hague Child Abduction Convention was convened by Professor Marilyn Freeman at The University of Westminster (London) in collaboration with The Hague Conference on Private International Law (HCCH) to address these issues directly. Fifty-seven specialist abduction researchers from nineteen jurisdictions—judges, legal practitioners, policymakers and NGO staff—attended this high-level networking and information exchange event, either in an official or personal capacity.[6] The concluding session, co-chaired by Lady Justice Jill Black, as she then was, Head of International Family Justice for England and Wales, and a member of the Court of Appeal, London, and Philippe Lortie, First Secretary at the Permanent Bureau of the HCCH, focused on the challenge of striking the correct balance between resolving and properly investigating cases involving domestic and family violence (to the extent required by the grave risk exception under the Convention) whilst maintaining the expedition necessary to return abducted children without undue delay (Experts' Meeting 2017). This remains a challenge that still needs to be met today.

The possibility of differing regional approaches already exists. Henaghan et al. (2023) highlight the need to understand the true impact of returning a child to a grave risk or intolerable situation and caution against specific children being allowed to suffer from the application of Convention principles that relate to "the theoretical child" (p. 190). Addressing the situation in the Australasian region, they state that, as a general rule, abducted children at risk of harm on return are not, in fact, returned to their state of habitual residence as their individual interests take precedence over the more classic Convention position of returning children based on the belief that they will be protected appropriately in the state of habitual residence. This type of individual treatment is correct, in the view of these authors, where the child's primary caregiver has experienced domestic violence so that the particular child in these circumstances is not placed at risk of any further harm occurring following return. The authors highlight both the need for the Convention to remain fit for purpose and the need for practice to evolve in response to changing circumstances and the nature of abductions (Henaghan et al. 2023, p. 190).

All of this work has been useful, but the difficulties identified in the final session of the Experts' Meeting (2017) remain. The significant negative long-term effects of

[5] Freeman and Taylor (2022, pp. 51–52) outline the lengthy process: "The Sixth Special Commission, prompted by concerns about jurisdictional differences of approach, particularly where there were allegations of domestic violence, recommended the establishment of a Working Group to develop a Guide to Good Practice on the implementation and application of Article 13(1)(b). The Working Group commenced in 2013 and encountered many challenges during its seven-year role. For example, the 2017 draft of the Guide was criticised by prominent academics, domestic violence service providers and a taking (protective) parent for failing to give sufficient weight to domestic violence and for setting the threshold to successfully trigger Article 13(1)(b) too high. Similarly, a petition crafted in January 2020 by Professors Rhona Schuz and Merle Weiner, and signed by 150 law professors, family justice professionals and other concerned individuals, asked the Council on General Affairs of the Hague Conference and the Hague Permanent Bureau "to make a small but crucial change before the *Guide* is released, although the finalized version has been silently approved by the Member States. The amendment attempts to clarify language in the proposed *Guide* which, as it stands, undermines the scientifically supported proposition that domestic violence perpetrated against a parent can harm that parent's child, even when the child is not a direct target of the violence. The Guide to Good Practice was published, unchanged, shortly thereafter in March 2020 to provide practical guidance to judges, Central Authorities, lawyers and other practitioners faced with the application of Article 13(1)(b)".

[6] Australia, Belgium, Brazil, Canada, England and Wales, Finland, France, Germany, India, Italy, Japan, New Zealand, Northern Ireland, Norway, Scotland, South Africa, Switzerland, the Netherlands and USA.

abduction identified in prior research mean it is critical that the effectiveness of the Convention is not undermined (Freeman 2006, 2014; Freeman and Taylor 2023a, 2023b; Van Hoorde et al. 2017). However, as we have argued previously, this is unlikely to be achieved without constructively addressing the issue of domestic violence (Freeman and Taylor 2020, p. 159). The question is, how best to do this?

While we work on possible solutions, continued awareness-raising about the risk posed by domestic violence for its adult victims, the children who witness or directly experience it, and the dangers they face if returned together or separately, can provide a helpful incentive for a supportive interpretation of Article 13(1)(b) and the Convention in appropriate cases (Freeman and Taylor 2020, p. 168).

3.2. The Provision of Information and Hearing the Child

The right of a child to express their views freely in all matters affecting them and for those views to be given due weight in accordance with the age and maturity of the child, enshrined in Article 12 of the United Nations Convention on the Rights of the Child (UNCRC) and supported by General Comment No. 12 (2009), is not limited to circumstances where the child only proffers an objection to return. However, the principal opportunity for child participation in the 1980 Hague Convention proceedings, set out in Article 13, states that:

> The judicial or administrative authority may also refuse to order the 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. In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence (emphasis added).

It is questionable whether, and how far, the child objection exception in Article 13 can be said to fulfil the requirement in Article 12 of the UNCRC relating to the child's right to participate in decisions concerning them (Schuz 2013). Practice surrounding even this limited form of hearing the child in international child abduction proceedings varies dramatically among the 103 Contracting Parties to the Convention (Freeman and Taylor 2020; Schuz 2023; Taylor and Freeman 2018b). Thus, the question of whether, and to what extent, the Convention is, in fact, compatible with the UNCRC remains unclear (Skelton 2023)[7] notwithstanding pronouncements to the contrary by some courts.[8] Even the VOICE research project, which analysed the reasoning of judges regarding the hearing of children in international child abduction proceedings in Europe, concluded that a tension exists between the exceptions on the right of the child to be heard provided for in their legal framework (which includes the UNCRC) and the arguments that judges rely on to decide not to hear a child in cases of international child abduction (Van Hof et al. 2020, p. 350).

In the US, the child's objection exception in Article 13 "is still very much a developing area of the law . . . and, in contrast to other recent developments, there is little to cheer" (Cullen and Powers 2023, p. 199). There has been no resolution on how the tribunal of fact is to determine the child's opinions, and there is no agreed-upon approach in US courts. Cullen and Powers (2023) consider there is an urgent need for this exception to return

[7] Skelton (2023) notes that there are clear differences of opinion regarding whether or not the Convention and the UNCRC are compatible or divergent. She considers that a constructive approach is required to discern the CRC perspective to this issue because there is no clear statement, such as a General Comment, that presents an official position.

[8] Stephens and Lowe (2012) discuss the Supreme Court's decision in *Re E (Children) (Abduction: Custody Appeal)* [2011] UKSC 27; [2011] 2 WLR 1326 and its analysis of the interrelationship between the Convention, the UNCRC, and the European Convention on Human Rights: "The importance of the case lies primarily in its discussion of the European Court of Human Rights (Grand Chamber) decision *Neulinger and Shuruk v. Switzerland* [2011] 1 FLR 122 but also as the first Supreme Court decision to consider the interpretation of Article 13(b) of the 1980 Convention and as a useful confirmation of the Convention's compatibility with Article 3.1 of the UNCRC" (p. 125).

in Article 13(1)(b) to be clarified by the courts of appeal as there continues to be no clear mechanism for children's voices to be heard in US Convention cases, and the US remains out of step with the rest of the world on this important exception to the obligation to return the child. However, the narrow application of the child objection exception by courts in the Australasian region perhaps indicates that, although this does not reflect current thinking on child participation, the US approach is not a complete outlier in this regard (Henaghan et al. 2023).

Other Convention jurisdictions have made greater progress in this matter. The Netherlands, for example, has introduced what is commonly known as the "pressure cooker model" or "the Dutch model" in Convention return proceedings (Olland 2018, p. 54). Their pilot in the District Court of The Hague has become common practice since 2018 (Bruning and Schrama 2021, p. 240). All children from the age of three are being heard (in two meetings) by a guardian ad litem, who subsequently informs the court about the child's views before the hearing. From the age of six, children are invited to be heard directly by the judge after the interview with the guardian ad litem. The guardian ad litem will also support children who wish to be heard in court and will explain the court's judgment to the child.

The Brussels II-bis Recast (now known as Brussels II-ter)[9] which came into operation on 1 August 2022 is another key development providing significantly greater opportunities for children to be heard in courts within the European Union:

> Article 21 of Brussels 11 bis Recast introduces an obligation for Member States to provide a subject child, who is capable of forming their own views, with **a genuine and effective opportunity to express their views**, either directly or through a representative or an appropriate body and this obligation extends to all proceedings concerned with matters of parental responsibility. Further, the courts in the Member States are required to give due weight to the views of the child in accordance with their age and maturity. (Blackburn and Michaelides 2019, p. 2) (emphasis added)

Importantly, this obligation is extended specifically to the sphere of child abduction proceedings in Article 26. However, Member States are left to implement these provisions in line with their domestic practices:

> . . . recital 39 specifies that to whom and how the child's voice will be heard will be left to Member States to determine in accordance with national law and procedure. Therefore, it is open to individual Member States to determine whether a child's views are obtained by a judge or by a specially trained expert (such as a Children and Family Court Advisory and Support Services officer or a child psychologist). It is also not an absolute obligation and it is an issue that will still have to be assessed by the court considering the best interests of the child (Blackburn and Michaelides 2019, p. 2).

Of course, these provisions only apply to intra-EU abductions (except for Denmark). Hence, abductions between countries not bound by the Brussels Regulation will continue to apply the traditional approach of the Convention in respect of abductions between their jurisdictions, and this will impact the degree of uniformity in Convention practice between Contracting Parties.

Hearing children in Convention proceedings is, however, only one critical part of child participatory practice in this field. We have long argued that without appropriate information being made available to children and young people involved in international child abduction cases, their right to express their views remains largely illusory:

[9] 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 (recast). This replaced the Brussels 11-bis Council Regulation (2019) (EC) No 2201/2003.

> 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 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 (Freeman et al. 2019, p. 11).

Children and young people need to know what their rights are in the context of Convention proceedings and how to exercise them. This is fully acknowledged in General Comment No. 12 (2009) on the right of the child to be heard, as participation involves not only being permitted to express views on any decision that will affect the child but also entails providing the child with information that is necessary for the choices that need to be made. We have previously commented on this issue as follows:

> Decisions made in the 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 well-being. 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. (Freeman et al. 2019, p. 10)

Furthermore, we have recently worked with other international specialist researchers and practitioners to address a key gap in children's access to justice and legal literacy by developing a website in a child-friendly format to provide information about international child abduction and the Convention. The FindingHome website—https://findinghome.world/ (accessed on 20 July 2023)—was launched in December 2022 following extensive consultation with a Young People's Advisory Group. It is set within the context of Article 12 of the UNCRC, and key content has already been translated from English into French and Spanish. It is hoped that further translations into additional languages will enable many more children and young people globally to be able to access and utilise the information on the website for their own benefit and that of their families, friends, and peers. The project team is currently disseminating information about the website and is appreciative of the many practitioners and organisations featuring it on their websites and resources.

We are aware of the necessity for Convention proceedings to be speedy to avoid abducted children languishing in the refuge State for longer than necessary. Uncertainty militates against the ability to settle, which is usually not in a child's best interests. However, what is right should not be sacrificed on the altar of expediency. Children should be able to have their views taken into account if they choose to do so in Convention proceedings, and this should not be limited to just those children expressing an objection to return. This does, without doubt, involve a more extensive enquiry in international child abduction proceedings than is currently the case in many Contracting Parties. While this would likely lengthen, if not delay, proceedings, the apparent straightforward and streamlined mechanism of the Convention has already had to take into account the increasing complexity of abduction subject matter, and the process may, as a result, be fairer to children (Setright and Gration 2023). We agree that this observation is both persuasive and realistic.

4. How Much Nurturing Is Required?

Over the decades since the Convention's introduction, various initiatives have been undertaken to enable it to remain fit for purpose in our changing world. The "soft law" options currently in use, for example, the Guides to Good Practice, provide guidance to Contracting Parties on key issues, but their lack of enforcement mechanisms weakens their ability to make the kind of practical differences required. Other types of "soft law" are possible, such as guidelines and declarations, but their effectiveness in achieving the necessary degree of global "buy-in" is doubtful.

The creation of a Protocol to the Convention has long been mooted (McEleavy 2010). Momentum had built towards this in advance of the Sixth Special Commission in 2011/2012 when the HCCH Council on General Affairs and Policy (31 March–2 April 2009) authorised the Permanent Bureau to engage in preliminary consultations concerning the desirability and feasibility of a Protocol to the Convention. However, McEleavy (2010) correctly anticipated that "a review of its history to date makes clear that it would be wrong to presume the realisation of the initiative to be inevitable" (McEleavy 2010, p. 59). In fact, as Brenda Hale (2017) noted, "discussion of a Protocol was abandoned at the last minute" (Hale 2017, p. 9). While many states had been pressing for a Protocol to the Convention that, among other things, might do more to protect children and cater for the problems posed by domestic violence, other states were adamantly opposed to such a Protocol (Hale 2017; HCCH 2011). Given this background, it seems extremely unlikely that the development of a Protocol will now come about.

The Convention's operation currently evolves through the ways that the many jurisdictions interpret, apply, or operationalise it based on their own needs, requirements, and resources. This does, however, lead to differences emerging between Contracting Parties globally (Freeman and Taylor 2023b). To some extent, differing interpretations and implementations of the Convention's provisions are inevitable given the level of diversity between the social and economic demographics of the countries involved (Henaghan et al. 2023). Differences will occur due to jurisdictional practice and regional obligations, as well as the inclusion of terms that are not part of the Convention in the implementing legislation of newly Contracting Parties. However, what this means in terms of the Convention's future remains uncertain—does, for example, the extent of this diversity undermine the efficacy of the Convention in its global operation? In relation to the Brussels 11-ter Regulation, Lowe (2023) certainly sounds a cautionary, but realistic, warning about the imbalances that may result in the Convention's operation from non-uniform approaches to its provisions:

> Laudable though its attempts to "improve" the Convention may be, Brussels II-ter puts a serious dent in the uniformity of approach under the Convention. In that sense it is a real challenge to the Convention (p. 402).

The question therefore arises as to how fit for purpose the Convention remains, and whether, if it requires support to do so, there are other effective ways in which this may be achieved. We are very conscious of the challenges that further nurturing of the Convention will entail. It may well be difficult to achieve consensus across the Contracting Parties as the various other options attempted to date have yet to yield effective global outcomes.

We do not believe that the Convention is not fit for purpose, but we do consider that it requires some degree of realistic nurturing to enable it to respond more appropriately to contemporary circumstances. We agree with Lowe (2023) that the Convention does not require a radical overhaul and is fortified by his comment that this "does not mean it should be immune to some change" (p. 402). Domestic violence and child participation, as we have argued in this article, are two such issues on which change is urgently needed in the approach of the Convention's Contracting Parties to help ensure the Convention's operation evolves appropriately in response to identified global trends. There are, of course, several other important concerns regarding the Convention's operation that also need to be addressed in a similarly purposive way (Freeman and Taylor 2023b).

These are issues that must be addressed by the international child abduction community working together to support and nurture the Convention. We have already argued elsewhere that, in furtherance of the aim of working collectively to support and nurture the Convention, and in light of the Eighth Special Commission being held in October 2023, we consider it timely to suggest that the themes and issues identified in this article, together with others who represent specialist current thinking about international child abduction and the operation of the Convention, should form the basis of further work to be undertaken, or commissioned, by the HCCH in one of the various ways available to them (Freeman and Taylor 2023a). This would be a pragmatic and progressive means of facilitating the much-needed deliberation by the international community on the gaps

and challenges in the Convention's operation and how best to address them. In our view, thought should also be given, perhaps following the further work undertaken in the first instance by the HCCH, to the establishment of an international, interdisciplinary experts' or working group to discuss, develop, and take forward the identified themes and issues. We recognise such initiatives must be achieved by working within the Hague Conference on Private International Law (HCCH) and Permanent Bureau mandate and are delighted that immediately following the 2023 Special Commission in The Hague, an international, interdisciplinary Experts' Meeting will take place at the University of Westminster in London, England. This is an independent initiative that is not within the administration or under the auspices of the HCCH; however, the interest and support demonstrated by the chairmanship of the Experts' Meeting by Philippe Lortie, First Secretary at the Permanent Bureau of the HCCH, are acknowledged and greatly appreciated. The following three topics will be discussed at the Experts' Meeting: (i) Abduction and asylum issues; (ii) abduction and domestic violence issues; and (iii) abduction and child participation issues. Two of those topics correspond with the specific themes in this article, but all three should be seen as part of the broad category of issues that require the nurturing of the Convention for which we are advocating.

5. Conclusions

There are now key opportunities to nurture and future-proof the Convention, and they must not be squandered. The suggestions made above regarding further work by the HCCH, and the possible appointment of an experts' group/working group within its auspices, may provide a route to progress. We cannot close our eyes to the obstacles that the Convention faces, nor must we undermine the advances for abducted children that the Convention has achieved. These are undeniable challenges that we must meet together, as a community. We can preserve the integrity of the Convention while addressing these issues. We can nurture the Convention so that it is able to continue in contemporary society to fulfil its desire to protect children internationally from the harmful effects of abduction. We accept that this is, in common parlance, "a big ask", but this challenge to the Convention can, and must, be met, as with the other identified challenges, by the combined efforts of the international child abduction community, which is dedicated to doing its best for abducted children in contemporary society.

Author Contributions: Conceptualization; methodology; software; validation; formal analysis; investigation; resources; data curation; writing—original draft preparation; writing—review and editing; visualization; supervision; project administration—M.F. and N.T. All authors have read and agreed to the published version of the manuscript.

Funding: This research received no external funding.

Data Availability Statement: No new data were created.

Conflicts of Interest: The authors declare no conflict of interest.

References

Baruffi, Maria Cristina, and Jayne Holliday. 2022. Child Abduction. In *A Guide to Global Private International Law*. Edited by Paul Beaumont and Jayne Holliday. Oxford: Hart Publishing Studies in Private International Law, chp. 34.

Best Practice Guide Executive Summary on the Protection of Abducting Mothers in Return Proceedings. 2020. Available online: https://research.abdn.ac.uk/wp-content/uploads/sites/15/2020/11/POAM-Executive-Summary.pdf (accessed on 14 June 2023).

Blackburn, Helen, and Marianna Michaelides. 2019. *The Advent of Brussels II bis Recast*. England and Wales: LexisPSL News—News Analysis.

Bruning, Mariëlle, and Wendy Schrama. 2021. The Netherlands. In *International Handbook on Child Participation in Family Law*. Edited by Wendy Schrama, Marilyn Freeman, Nicola Taylor and Mariëlle Bruning. Cambridge: Intersentia Ltd., pp. 231–44.

Bryant, Diana. 2020. The 1980 Child Abduction Convention—The status quo and future challenges. In *The Elgar Companion to the Hague Conference on Private International Law*. Edited by Thomas John, Rishi Gulati and Ben Köhler. Cheltenham: Edward Elgar, pp. 181–95.

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 (Recast). 2019. New York: LexisNexis PSL Family.
Cullen, Stephen, and Kelly Powers. 2023. The 1980 Convention comes of age in the United States. In *Research Handbook on International Child Abduction: The 1980 Hague Convention*. Edited by Marilyn Freeman and Nicola Taylor. Research Handbooks in Family Law Series. Cheltenham: Edward Elgar, pp. 191–99.
Dyer, Adair. 2000. To Celebrate a Score of Years! *NYU Journal of International Law and Policy* 33: 1.
Edleson, Jeffrey, Sudha Shetty, and Mary Fata. 2023. Fleeing for safety: Helping battered mothers and their children using Article 13(1)(b). In *Research Handbook on International Child Abduction: The 1980 Hague Convention*. Edited by Marilyn Freeman and Nicola Taylor. Research Handbooks in Family Law Series. Cheltenham: Edward Elgar, pp. 96–114.
Experts' Meeting Report on Issues of Domestic/Family Violence and the 1980 Hague Child Abduction Convention. 2017. *Co-Hosted by the Permanent Bureau of the HCCH and University of Westminster, London, England and published as Information Document No. 6 for the Seventh Special Commission*. The Hague: HCCH.
Freeman, Marilyn, and Nicola Taylor. 2020. Domestic Violence and child participation: Contemporary challenges for the 1980 Hague Child Abduction Convention. *Journal of Social Welfare and Family Law* 42: 154–75. [CrossRef]
Freeman, Marilyn, and Nicola Taylor. 2022. Domestic violence as an aspect of 1980 Hague Child Abduction Convention return proceedings. In *Domestic Violence and Parental Child Abduction: The Protection of Abducting Mothers in Return Proceedings*. Edited by Katarina Trimmings, Anatol Dutta, Costanza Honorati and Mirela Župan. Cambridge: Intersentia Ltd., pp. 39–65.
Freeman, Marilyn, and Nicola Taylor. 2023a. Nurturing the 1980 Hague Convention. In *Research Handbook on International Child Abduction: The 1980 Hague Convention*. Edited by Marilyn Freeman and Nicola Taylor. Research Handbooks in Family Law Series. Cheltenham: Edward Elgar, pp. 403–29.
Freeman, Marilyn, and Nicola Taylor, eds. 2023b. *Research Handbook on International Child Abduction: The 1980 Hague Convention*. Research Handbooks in Family Law Series. Cheltenham: Edward Elgar.
Freeman, Marilyn, Nicola Taylor, and Rhona Schuz. 2019. *The Voice of the Child in International Child Abduction Proceedings under the 1980 Hague Convention: Project Report*. London: University of Westminster.
Freeman, Marilyn. 2006. *International Child Abduction: The Effects*. Leicester: Reunite International Child Abduction Centre Research Report.
Freeman, Marilyn. 2014. *Parental Child Abduction: The Long-Term Effects*. London: International Centre for Family Law, Policy and Practice.
General Comment No. 12. 2009. *The Right of the Child to Be Heard*. (CRC/C/GC/12). Geneva: UN Committee on the Rights of the Child.
Greif, Geoffrey, and Rebecca Hager. 1993. *When Parents Kidnap*. New York: Free Press.
Hague Mothers. 2023. *The Hague Abduction Convention: What Needs to Change?* Available online: https://www.hague-mothers.org.uk/wp-content/uploads/2023/02/HM-What-needs-to-change-02-23-1.pdf (accessed on 14 June 2023).
Hale, Brenda. 2017. Taking flight—Domestic violence and child abduction. *Current Legal Problems* 70: 3–16. [CrossRef]
HCCH. 2011. *Guide to Part II of the Sixth Meeting of the Special Commission and Consideration of the Desirability and Feasibility of Further Work in Connection with the 1980 and 1996 Conventions*. HCCH Permanent Bureau Preliminary Document No 13. Available online: https://assets.hcch.net/upload/wop/abduct2012pd13_e.pdf (accessed on 14 June 2023).
HCCH. 2020. *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part VI, Article 13(1)(b)*. The Hague: HCCH Permanent Bureau.
Henaghan, Mark, Christian Poland, and Clement Kong. 2023. International child abduction in Aotearoa New Zealand, Australia and the Pacific: Similarities and differences. In *Research Handbook on International Child Abduction: The 1980 Hague Convention*. Edited by Marilyn Freeman and Nicola Taylor. Research Handbooks in Family Law Series. Cheltenham: Edward Elgar, pp. 179–90.
Home Office. 2022. *Controlling or Coercive Behaviour: Statutory Guidance—What the Police and Organisations Should Do to Keep Victims Safe*. Available online: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1071211/ContCoerBehavStatGuid_V3-_10-04-22_.pdf (accessed on 14 June 2023).
King, Shani. 2013. The Hague Convention and domestic violence: Proposals for balancing the policies of discouraging child abduction and protecting children from domestic violence. *Family Law Quarterly* 47: 299–310.
Kruger, Thalia. 2011. *International Child Abduction: The Inadequacies of the Law*. Oxford: Hart Publishing.
Lindhorst, Taryn, and Jeffrey Edleson. 2012. *Battered Women, Their Children, and International Law: The Unintended Consequences of the Hague Child Abduction Convention*. Boston: Northeastern University Press.
Lowe, Nigel. 2023. Whither the 1980 Hague Convention? In *Research Handbook on International Child Abduction: The 1980 Hague Convention*. Edited by Marilyn Freeman and Nicola Taylor. Research Handbooks in Family Law Series. Cheltenham: Edward Elgar, pp. 387–402.
Lowe, Nigel, and Victoria Stephens. 2023. The value and challenges of statistical studies looking at the operation of the 1980 Hague Convention on the Civil Aspects of International Child Abduction. In *Research Handbook on International Child Abduction: The 1980 Hague Convention*. Edited by Marilyn Freeman and Nicola Taylor. Research Handbooks in Family Law Series. Cheltenham: Edward Elgar, pp. 63–77.
MacDonald, Alistair. 2023. The Continuing Challenge of the 1980 Hague Convention—A Judicial Perspective. In *Research Handbook on International Child Abduction: The 1980 Hague Convention*. Edited by Marilyn Freeman and Nicola Taylor. Research Handbooks in Family Law Series. Cheltenham: Edward Elgar, pp. 298–312.
McEleavy, Peter. 2010. A protocol for the 1980 Hague Convention? *International Family Law* 59–65.

Morley, Jeremy. 2023. International child abduction and non-Hague Convention countries. In *Research Handbook on International Child Abduction: The 1980 Hague Convention*. Edited by Marilyn Freeman and Nicola Taylor. Research Handbooks in Family Law Series. Cheltenham: Edward Elgar, pp. 244–63.

Nishitani, Yuko. 2023. International child abduction in Asia. In *Research Handbook on International Child Abduction: The 1980 Hague Convention*. Edited by Marilyn Freeman and Nicola Taylor. Research Handbooks in Family Law Series. Cheltenham: Edward Elgar, pp. 200–17.

Olland, Annette. 2018. The voice of the child in 1980 Hague return procedures in the Netherlands. In *The Judges' Newsletter on International Child Protection*. Summer-Fall, Special Focus: The Child's Voice—15 Years Later. The Hague: HCCH Permanent Bureau, vol. XXII, pp. 54–55.

Pérez-Vera, Elisa. 1980. *Explanatory Report on the 1980 HCCH Child Abduction Convention*. HCCH Acts and Documents of the Fourteenth Session, Child Abduction, 431. The Hague: HCCH.

Schuz, Rhona. 2013. *The Hague Child Abduction Convention: A Critical Analysis*. Oxford: Hart Publishing.

Schuz, Rhona. 2018. The Hague Child Abduction Convention in a changing world. In *International and National Perspectives on Child and Family Law: Essays in Honour of Nigel Lowe*. Edited by Gillian Douglas, Mervyn Murch and Victoria Stephens. Cambridge: Intersentia Ltd., pp. 315–28.

Schuz, Rhona. 2023. Child participation and the child objection exception. In *Research Handbook on International Child Abduction: The 1980 Hague Convention*. Edited by Marilyn Freeman and Nicola Taylor. Research Handbooks in Family Law Series. Cheltenham: Edward Elgar, pp. 115–30.

Setright, Henry, and Michael Gration. 2023. Legal Perspective: Remedying International Child Abduction—The Impact of International Developments Upon the English Legal Approach. In *Research Handbook on International Child Abduction: The 1980 Hague Convention*. Edited by Marilyn Freeman and Nicola Taylor. Research Handbooks in Family Law Series. Cheltenham: Edward Elgar, pp. 313–30.

Shetty, Sudha, and Jeffrey Edleson. 2005. Adult domestic violence in cases of international parental child abduction. *Violence Against Women* 11: 115–38. [CrossRef] [PubMed]

Skelton, Ann. 2023. The CRC perspective in the context of international child abduction and the 1980 Hague Convention. In *Research Handbook on International Child Abduction: The 1980 Hague Convention*. Edited by Marilyn Freeman and Nicola Taylor. Research Handbooks in Family Law Series. Cheltenham: Edward Elgar, pp. 279–97.

Sobal, Barbara, and William Hilton. 2001. Article 13(b) of the Hague Convention Treaty: Does It Create a Loophole for Parental Alienation Syndrome—An Insidious Abduction? *The International Lawyer* 35: 997–1025.

Stephens, Victoria, and Nigel Lowe. 2012. Children's welfare and human rights under the 1980 Hague Abduction Convention—The ruling in Re E. *Journal of Social Welfare and Family Law* 34: 125–35. [CrossRef]

Taylor, Nicola, and Marilyn Freeman. 2018a. Using research to improve outcomes for abducted children. In *International and National Perspectives on Child and Family Law: Essays in Honour of Nigel Lowe*. Edited by Gillian Douglas, Mervyn Murch and Victoria Stephens. Cambridge: Intersentia Ltd., pp. 329–42.

Taylor, Nicola, and Marilyn Freeman. 2018b. Outcomes for objecting children under the 1980 Hague Convention on the Civil Aspects of International Child Abduction. In *The Judges' Newsletter on International Child Protection*. Summer-Fall, Special Focus: The Child's Voice—15 Years Later. The Hague: HCCH Permanent Bureau, vol. XXII, pp. 8–12.

Taylor, Nicola, and Marilyn Freeman. 2023a. International child abduction. In *Handbook on Family Justice Systems*. Edited by Mavis Maclean and Rachel Treloar. Research Handbooks in Law and Society Series. Cheltenham: Edward Elgar, pp. 64–83.

Taylor, Nicola, and Marilyn Freeman. 2023b. Introduction and key research, policy and practice themes on international child abduction. In *Research Handbook on International Child Abduction: The 1980 Hague Convention*. Edited by Marilyn Freeman and Nicola Taylor. Research Handbooks in Family Law Series. Cheltenham: Edward Elgar, pp. 2–17.

Trimmings, Katarina, Anatol Dutta, Costanza Honorati, and Mirela Župan, eds. 2022. *Domestic Violence and Parental Child Abduction: The Protection of Abducting Mothers in Return Proceedings*. Cambridge: Intersentia Ltd.

Trimmings, Katarina, and Onyoja Momoh. 2021. Intersection between domestic violence and international parental child abduction: Protection of abducting mothers in return proceedings. *International Journal of Law, Policy and the Family* 35: 1–19.

Van Hof, Tine, Sara Lembrechts, Francesca Maoli, Giovanni Sciaccaluga, Thalia Kruger Wouter Vandenhole, and Laura Carpaneto. 2020. To hear or not to hear: Reasoning of judges regarding the hearing of the child in international child abduction proceedings. *Family Law Quarterly* 53: 327–51.

Van Hoorde, Kim, Marieke Putters, Gwenaelle Buser, Sara Lembrechts, Koen Ponnet, Thalia Kruger, Wouter Vandenhole, Hilde Demarré, Nel Broothaerts, Coskun Coruz, and et al. 2017. *Bouncing Back: The Wellbeing of Children in International Child Abduction Cases*. EWELL, with the support of the European Union. Antwerp: University of Antwerp.

Weiner, Merle. 2002. Navigating the road between uniformity and progress: The need for purposive analysis of the Hague Convention on the civil aspects of international child abduction. *Columbia Human Rights Law Review XXXIII* 33: 275.

Weiner, Merle. 2021. You Can and You Should: How Judges Can Apply the Hague Abduction Convention to Protect Victims of Domestic Violence. *UCLA Women's Law Journal* 28: 223–332. [CrossRef]