

# Treaties and international agreements relevant to family law proceedings in Australia

Jacky Campbell  
Forte Family Lawyers

## Introduction

In family law disputes, the parties often have a significant connection to Australia: they are born here or have become Australian citizens, they have all or most of their property here, and they live in Australia when they separate. But, there are also many cases where parties separate in circumstances where they were born overseas, have lived overseas, married overseas, invested overseas, or had a partner who was not an overseas citizen. Issues then arise as to the country in which the proceedings should be conducted.

This paper looks at the international treaties and agreements which may be relevant in an Australian family law dispute with international aspects. The treaties are first dealt with by subject matter, and then the more important treaties are dealt with individually. Copies of the treaties, agreements and cases cited in this article can be found in Austlii – [www.austlii.edu.au](http://www.austlii.edu.au). Treaties can also be found in the Australian Government's Australian Treaties database – [www.info.dfat.gov.au/TREATIES](http://www.info.dfat.gov.au/TREATIES). The question of jurisdiction is not covered here.

## So, why look at treaties Australian treaties and international agreements at all?

Many of the treaties relevant to Australian family law have been incorporated into Commonwealth legislation, wholly or in part. Australia ratifies treaties but, until they are incorporated into Australian legislation, they are not part of Australia's domestic law (*Kiowa v West* [1985] HCA 1; (1985) CLR 550). By contrast, treaties to which the United States is a party become part of that country's domestic law without any legislation being enacted. Whilst an unincorporated treaty cannot operate as a direct source of rights or duties, it may have other implications for Australian law. To the extent that they have not been, there are limited opportunities to rely on them.

In *Minogue v Human Rights & Equal Opportunity Commission* [1999] FCA 85, referring to the *International Covenant on Civil and Political Rights* (ICCPR), the Full Court of the Federal Court said (at [47]):

“The provisions of an international treaty do not form part of Australian law merely because Australian law is a party to a treaty and has ratified it. In consequence, the ICCPR does not of itself operate to give rights to or impose duties on members of the Australian community.”

This statement reflected a longstanding principle affirmed by the High Court in many cases, such as *Koowarta v Bjelke-Petersen* (1982) 153 CLR 168 and *Dietrich v The Queen* (1992) 177 CLR 292.

If there is a treaty behind Australian legislation, looking at the treaty itself means:

1. The words of the treaty may be helpful to gain a better understanding of the legislation;
2. The words of the treaty can be used to resolve ambiguities in legislation (*Chu Kheng Lim v Minister for Immigration Local Government and Ethnic Affairs* (1992) 176 CLR1);
3. Whether that country with which you are dealing is a party to the treaty and has been accepted by Australia as such, will not be obvious from the legislation, although it may be listed in the *Family Law Regulations 1984*, so you will need to investigate further.
4. Some treaties, such as *The Hague Convention on the Civil Aspects of International Child Abduction*, have websites with extra information: how the treaty is applied in other countries, links to the case law of other countries etc.
5. The case law of other countries which are also parties to that treaty, may be helpful.

The Australian Constitution gives the Commonwealth power under s 51(xxix), which is the “external affairs power”, to enact legislation which implements treaties and international agreements to which Australia is a party.

The external affairs power of the Constitution can also be used to uphold the legitimacy of Commonwealth legislation as occurred in the *Tasmanian Dams case* (*Commonwealth v Tasmania* [1983] HCA 21; (1983) 158 CLR 1). The Commonwealth’s *World Heritage Properties Conservation Act 1983* was designed to prevent the flooding of the Franklin River in Tasmania for the purpose of the construction of a hydro-electric dam. The Tasmanian Government argued that the Act was beyond the power of the Commonwealth. The Commonwealth argued that the Act was valid because Australia was a party to the *Convention concerning the Protection of the World Cultural and National Heritage*, and the Act was valid under the external affairs power. The High Court upheld part, but not all of the Act, and the dam was not able to be built.

The High Court in *Mabo (Mabo v Queensland (No 2))* [1992] HCA 23; (1992) 175 CLR 1), was prepared to look at a treaty which had not been ratified by Australia and was not part of Australian domestic law at all. The *International Covenant on Civil and Political Rights* (ICCPR) was relied upon to decide the first case granting land title to indigenous Australians. Justice Brennan said (at [42]):

“The common law does not necessarily conform with international law, but international law is a legitimate and important influence on the development of the common law, especially when international law declares the existence of universal human rights. A common law doctrine founded on unjust discrimination in the enjoyment of civil and political rights demands reconsideration. It is contrary both to international standards and to the fundamental values of our common law to entrench a discriminatory rule which, because of the supposed position on the scale of social organization of the indigenous inhabitants of a settled colony, denies them a right to occupy their traditional lands.”

Another way in which a treaty to which Australia is a party but is not incorporated into Australian law may be relevant arose in *Minister of State for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273. A Malaysian citizen was ordered to be deported because of his criminal record. A majority of the High Court upheld the stay of the deportation order as the Immigration Minister had not properly exercised his powers as he failed to take into account the rights of Teoh's 3 children.

The High Court majority said that there was a legitimate expectation that the executive of the Government consider the child's best interests as the *United Nations Convention on the Rights of the Child* had been ratified by the Australian Government although it had not been implemented. Chief Justice Mason and Deane J said (at [34]):

"Moreover, ratification by Australia of an international convention is not to be dismissed as a merely platitudinous or ineffectual act, particularly when the instrument evidences internationally accepted standards to be applied by courts and administrative authorities in dealing with basic human rights affecting the family and children. Rather, **ratification of a convention is a positive statement by the executive government of this country to the world and to the Australian people that the executive government and its agencies will act in accordance with the Convention. That positive statement is an adequate foundation for a legitimate expectation, absent statutory or executive indications to the contrary, that administrative decision-makers will act in conformity with the Convention and treat the best interests of the children as "a primary consideration"**. It is not necessary that a person seeking to set up such a legitimate expectation should be aware of the Convention or should personally entertain the expectation; it is enough that the expectation is reasonable in the sense that there are adequate materials to support it." [footnotes removed. Emphasis added]

Two attempts have been made by the Federal Government – in 1995 and 1999 – to legislate that legitimate expectations cannot arise because there is legislation to the contrary (which was a loophole identified by the High Court). On both occasions the legislation lapsed. Teoh's case has been criticised (e.g. *The Minister for Immigration, Multicultural and Indigenous Affairs; ex parte Lam* [2003] HCA 6; (2003) 214 CLR 1; *Minister for Immigration and Border Protection v WZARH* [2015] HCA 40; (2015) 326 ALR 1).

## Parenting

An international treaty is far more likely to be relevant in parenting proceedings than in property proceedings. The most important are:

- *United Nations Convention on the Rights of the Child* (1990)
- *Hague Convention on Jurisdiction Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* (1996) ("Child Protection Convention")
- *Hague Convention on the Civil Aspects of International Child Abduction* (1980)
- *Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption* (1993).

Australia also has international agreements with Egypt and Lebanon:

- Agreement between the Government of Australia and the Government of the Arab Republic regarding co-operation on protecting the welfare of children
- Agreement between Australia and the Republic of Lebanon regarding co-operation on protecting the welfare of children

See *Family Law Regulations 1984*, regs 23-24 and Sch 1 and *Family Law Act* ("FLA"), s70G-70N.

## **Marriage and Divorce**

The relevant treaties regarding marriage and divorce are:

- *Hague Convention on Celebration and Recognition of the Validity of Marriages (1970)*
- *Hague Convention on the Recognition of Divorce and Legal Separation (1978)*

## **Child support and maintenance**

The most important treaties in Australia dealing with child support and maintenance are:

- *United Nations Convention on the Recovery Abroad of Maintenance (1956)* (UNCRAM)
- *Hague Convention on Recognition and Enforcement of Decisions Relating to Maintenance Obligations (1973)*

Also relevant are inter-country agreements, such as with the United States and New Zealand:

- *Agreement between the Government of Australia and the Government of New Zealand on Child and Spousal Maintenance (2000)*
- *Agreement between the Government of Australia and the Government of the United States of America for the Enforcement of Maintenance (Support) Obligations (2004)*

An important point to note is that despite the wording of the inter-country agreements and conventions, DHHS-Child Support does not enforce the exact obligation under the overseas order or assessment, but the figure which DHHS-Child Support calculates as being payable in Australian dollars when the order or assessment is registered in Australia (see, for example, regs 37 and 38 *Child Support (Registration and Collection) Regulations 2018*). This ignores future currency fluctuations so the figure enforced will almost always differ from the actual amount payable in the other country.

Australia is not a party to:

- *Hague Convention on International Recovery of Child Support and Other Forms of Family Maintenance (2007)* (HCIRS)

- *Hague Protocol on the Law Applicable to Maintenance Obligations (2007)*

### **Evidence and Service**

The treaties relevant to the taking of evidence and the service of subpoenas are:

- *Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (1970)*
- *Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965)*
- Various bilateral treaties listed in Schedule A to this article.

### **Property**

- *Hague Convention on the Law Applicable to Trusts and their Recognition (1992)*

### **Enforcement of Property Orders**

Usually, the only alternative for enforcement of overseas property orders in Australia is to look at enforcement under the common law.

Australia is a party to:

- *Reciprocal Recognition & Enforcement of Judgments in Civil and Commercial Matters (1994)*
- *Agreement between the Government of Australia and the Government of New Zealand on Trans-Tasman Court Proceedings and Regulatory Enforcement (2008)*
- *Agreement between Australia and the United Kingdom of Great Britain & Northern Ireland providing for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters (1994)*

Australia is not a party to:

- *Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (1971)*
- *Hague Convention on Choice of Court Agreements (2005)*

### **Potentially relevant legislation**

There is Australian legislation other than the FLA (and the accompanying Rules and Regulations under the FLA) which may be relevant:

- *Foreign Judgments Act 1991 (Cth)*
- *Trans-Tasman Proceedings Act 2010 (Cth) which implements the Agreement between the Government of Australia and the Government of New Zealand on Trans-Tasman Court Proceedings and Regulatory Enforcement (2008)*

- *Foreign Evidence Act 1994 (Cth)*

Legislation of overseas countries which is potentially relevant is too extensive to research and list, which is one reason why consulting with an experienced lawyer in the relevant jurisdiction is important.

### **United Nations Convention on the Rights of the Child (UNCRC)**

The United Nations Convention on the Rights of the Child (UNCRC) has been in force in Australia since 2 September 1990, so its effects are largely entrenched in the FLA and, indeed, the general law of Australia. The UNCRC is only 15 pages, consisting of 54 articles, and covers matters such as rights with respect to education, health care, children with disabilities, discrimination, standard of living, torture, neglect, and criminal charges. Some of the more useful Articles are:

#### **Article 2**

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status...

#### **Article 5**

1. States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention

#### **Article 7**

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents...

#### **Article 9**

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence...

#### **Article 12**

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child...

#### **Article 18**

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as

the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern...

### **Article 19**

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

### **Article 22**

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties...

The UNCRC is rarely referred to in family law cases, but examples of where its relevance was considered include:

- *Re Jamie* [2013] FamCAFC 110 - gender identity treatment case;
- *Langmeil & Grange* [2012] FamCAFC 39 - mother alleged the UNCRC had been breached. Finding of trial judge that it had not been breached was upheld by appeal court;
- *In the Matter of Z* [1996] FamCA 89 - change in terminology to "in the best interests of the child" was found to be in conformity with the UNCRC;
- *Bateman & Kavan* [2014] FCCA 2521 - rights of child under the UNCRC relevant to child support where father is a donor;
- *Karamalis & Karamalis* [2018] FamCA 312 - refers to Articles 12 and 13 of the UNCRC in support of decision to refuse to make final orders until child informed of the agreement, and taking into consideration the views of the child;
- *Duffy & Gomes (No 2)* [2015] FCCA 1757 and *Duffy & Gomes (No 1)* [2015] FCCA 1121 - found that Article 12 of the UNCRC gave the child a right to participate in the proceedings;
- *Zanda & Zanda* [2014] FCCA 1326 - refers to Art 9 of the UNCRC which ensures that children not be separated from parents against their will unless it is in their best interests. The judge rejected the reference to the UNCRC, and made orders to the effect that the children be returned to Australia to reunite with their parents, including the father, who were both in Australia. This case is also later discussed in this paper.

Immigration cases that are useful for guidance as to the application of the UNCRC include *Minister of State for Immigration & Ethnic Affairs v Ah Hin Teoh* (1995) 183 CLR 273 ("Teoh's case") and *G v Minister for Immigration and Border Protection* [2018] FCA 1229.

***Field v Human Rights & Equal Opportunity Commission* [1999] FCA 1711 (Federal Court)**

There were proceedings in the Family Court between the mother and father over custody of and access to the child, in which the grandmother intervened. The grandmother was the applicant in the Federal Court proceedings. In the course of the Family Court proceedings, it was ordered that the child be apprehended by the Australian Federal Police, and the mother arrested for breach of orders requiring her to make the child available for access and restraining her from taking the child to a doctor. At trial, Brown J ordered that the father have sole parental responsibility, and that the mother and grandmother have no contact with the child. This was upheld by the Full Court of the Family Court, which found no evidence that Brown J had violated any international conventions (as alleged by the grandmother). The High Court refused to grant special leave to appeal.

There had also been proceedings in the Children's Court, the Administrative Appeals Tribunal and the Supreme Court of Victoria.

The grandmother made a complaint to the Human Rights and Equal Opportunity Commission (HREOC), but the HREOC declined to consider the issue. The grandmother sought to review the decision of the HREOC in the Federal Court, and also sought orders against the Commonwealth of Australia, alleging failure to protect the child. She alleged that the father was a sexual abuser, and that the orders allowing the father to have access to the child, among other things, breached the UNCRC (as well as the UN International Covenant on Civil and Political Rights (ICCPR)). The Family Court found that there was no evidence of sexual abuse.

Citing *Teoh and Dietrich v The Queen* (1992) 177 CLR 292, North J found that neither the ICCPR nor the UNCRC could be relied upon by the grandmother as they were not specifically incorporated into domestic law. Justice North said (at [83]):

“[the grandmother’s] disappointment over the result of [the Family Court] proceedings does not make a complex and difficult family law issue into an international human rights issue”.

Justice North said that the Federal Court proceedings were simply yet another attempt to appeal the issue of child custody and access.

**Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of Parental Responsibility and Measures for the Protection of Children (Child Protection Convention)**

The Child Protection Convention came into force in Australia on 1 August 2003. The objects are set out in Article 1(1):

"a) to determine the State whose authorities have jurisdiction to take measures directed to the protection of the person or property of the child;

- b) to determine which law is to be applied by such authorities in exercising their jurisdiction;
- c) to determine the law applicable to parental responsibility;
- d) to provide for the recognition and enforcement of such measures of protection in all Contracting States;
- e) to establish such co-operation between the authorities of the Contracting States as may be necessary in order to achieve the purposes of this Convention."

Exceptions to the breadth of the Child Protection Convention are set out in Article 4 and include the establishment or contesting of a parent-child relationship, maintenance obligations and decisions on the right of asylum and on immigration.

Section 111C2(1) FLA provides that Regulations may make provision for the implementation of the UNCRC in Australia. Schedule 1 of the *Family Law (Child Protection Convention) Regulations 2003* lists countries which are parties to the *Child Protection Convention*, although the list is incomplete:

- Czech Republic
- Ecuador
- Estonia
- Monaco
- Morocco
- Slovakia

A full list of countries which are parties to the Convention is at:  
[www.hcch.net/en/instruments/conventions/status-table/?cid=70](http://www.hcch.net/en/instruments/conventions/status-table/?cid=70)

Articles of particular interest to family lawyers include:

#### **Article 5**

- (1) The judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child's person or property.
- (2) Subject to Article 7, in case of a change of the child's habitual residence to another Contracting State, the authorities of the State of the new habitual residence have jurisdiction.

#### **Article 7**

- (1) In case of wrongful removal or retention of the child, the authorities of the Contracting State in which the child was habitually resident immediately before the removal or retention keep their jurisdiction until the child has acquired a habitual residence in another State, and
  - a) each person, institution or other body having rights of custody has acquiesced in the removal or retention; or
  - b) the child has resided in that other State for a period of at least one year after the person, institution or other body having rights of custody has or should have had knowledge of the whereabouts of the child, no request for return lodged within that period is still pending, and the child is settled in his or her new environment.
- (2) The removal or the retention of a child is to be considered wrongful where -
  - a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention...

### **Article 8**

- (1) By way of exception, the authority of a Contracting State having jurisdiction under Article 5 or 6, if it considers that the authority of another Contracting State would be better placed in the particular case to assess the best interests of the child, may either
  - request that other authority, directly or with the assistance of the Central Authority of its State, to assume jurisdiction to take such measures of protection as it considers to be necessary, or
  - suspend consideration of the case and invite the parties to introduce such a request before the authority of that other State.
- (2) The Contracting States whose authorities may be addressed as provided in the preceding paragraph are
  - a) a State of which the child is a national,
  - b) a State in which property of the child is located,
  - c) a State whose authorities are seised of an application for divorce or legal separation of the child's parents, or for annulment of their marriage,
  - d) a State with which the child has a substantial connection.
- (3) The authorities concerned may proceed to an exchange of views.
- (4) The authority addressed as provided in paragraph 1 may assume jurisdiction, in place of the authority having jurisdiction under Article 5 or 6, if it considers that this is in the child's best interests.

### **Article 15**

- (1) In exercising their jurisdiction under the provisions of Chapter II, the authorities of the Contracting States shall apply their own law.
- (2) However, in so far as the protection of the person or the property of the child requires, they may exceptionally apply or take into consideration the law of another State with which the situation has a substantial connection.
- (3) If the child's habitual residence changes to another Contracting State, the law of that other State governs, from the time of the change, the conditions of application of the measures taken in the State of the former habitual residence.

### **Webster & Webster (No 3) [2017] FamCA 815 (England)**

The parties agreed that the children should live with the mother. The father lived in England and disputes were the extent of holiday time the children should spend with the father and whether that should be overseas. Justice Austin discussed the Child Protection Convention and his comments (at [35], [36], [39]) are useful:

*Alternatively, the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children ("the 1996 Convention") is designed to resolve international jurisdictional disputes over children and makes provision for the recognition and enforcement in one Contracting*

State of parenting orders (called “measures of protection”) made in respect of children in another Contracting State. The 1996 Convention entered into force in Australia on 1 August 2003 and in the UK on 1 November 2012. The UK therefore meets the definition of a “Convention country” in Australia (s 111CA), even though it is not recognised as such in subordinate legislation (s 111CZ(2)(c); Schedule 1 to the *Family Law (Child Protection Convention) Regulations 2003* (Cth)). In the absence of such regulatory recognition, some doubt necessarily attends the mother’s entitlement to petition the Court’s Registrar to send a sealed copy of this Court’s orders to the Commonwealth Central Authority for transmission to the UK Central Authority (reg 10 of the *Family Law (Child Protection Convention) Regulations 2003* (Cth))

Nevertheless, the parenting orders made in these proceedings will be conditionally recognised by operation of law in the UK (Article 23) and, since the mother is an “interested person” or “interested party”, she would be able to request a court of competent jurisdiction in the UK to decide on the recognition in the UK of the parenting orders made by this Court (Article 24) and to issue a declaration of registration and enforceability in respect of the orders (Article 26). But that process would need to be initiated by the mother personally, in the UK, and at her expense. It would not necessarily be easy for her and it could be time-consuming, particularly if the father contests the enforceability of the orders on various grounds under the 1996 Convention (Articles 11, 23(2), 26)...

The inconvenience, difficulty, delay, and possible expense the mother would likely incur in procuring the children’s return to Australia by resort to either the 1996 Convention or the 1980 Convention, if wrongfully retained by the father in the UK (let alone in another foreign State which is not a signatory to those Conventions), tends to recommend the imposition of an embargo upon the children being taken or sent outside Australia to spend time with the father. As already noted, while the risk of their wrongful retention by him may not be as pronounced as the mother fears, the serious repercussions in the event of its occurrence means the risk is not worth taking. The mother and Independent Children’s Lawyer established the need to foreclose the children’s visits with the father outside Australia and an order should therefore clarify the parties’ rights under s 65Y of the Act.

***Zanda & Zanda* [2014] FamCAFC 173; (2014) FLC 93-607 (Lebanon)**

The parties and children had moved back and forth between Australia and Lebanon. The father unsuccessfully appealed an order restraining him from leaving Australia. Lebanon was not a party to the Convention, so the Full Court’s comments were dicta. It said (at [57]) that s 69E and s 65D(1) (the power to make parenting orders) must be applied in the light of Australia’s ratification of the Convention.

***Cape & Cape* [2013] FamCAFC 114; (2013) FLC 93-549 (Germany)**

The father appealed against the orders (residence, parental responsibility, and relocation) made by the trial judge which permitted the wife to take the child to Germany to live, provided orders were first obtained in Germany. One of the grounds of the appeal was that the Child Protection Convention relied upon by the trial judge was not (at [61]) sufficient “to overcome...a traditional reticence on the part of the court not to stay an order permitting a child to go abroad pending the determination of an appeal against that order”.

The Full Court found that the orders made by the trial judge were unclear as to whether the mother could take the child to Germany once the Australian orders were registered in Germany, or only after her undertaking was registered in the Australian court. The Full Court discharged the orders made at trial and made new orders providing that the mother return the child to Australia if the father's appeal was successful and an order made for the child's return. The orders further provided that the mother be entitled to remove the child from Australia 7 days after proof of registration, advance recognition (Art 24 of the Convention) or a declaration of enforceability (Art 26 of the Convention) from a German Court was filed in the Family Court of Western Australia.

***Ryland* [2018] FamCA 896 (unidentified country)**

The wife took the children from Australia to Country P. The children were in the care of social services in Country P, with limited supervised time with the wife and no direct contact with the husband. The husband succeeded in proceedings under the Child Abduction Convention and obtained an order from the Family Court of Australia that the children return to Australia.

The Family Senate of the Higher Regional Court of City O, pursuant to Art 11 Convention ('case of urgency'), temporarily stayed the enforcement of the Australian return order. The Family Court of Australia said (at [48]) that "It is a matter for the judicial officer in each contracting State to consider the extent of the measures necessary to ameliorate the urgency of the situation."

The Family Court held that Australia was not an inappropriate forum, but the more appropriate forum was Country P as necessary evidence was only available in that jurisdiction and the Country P court system was clearly competent to protect the children's best interests. The retention of the children in Country P was supported by Art 11 of the Child Protection Convention.

***Ormond & House* [2018] FamCA 861 (England)**

The mother was permitted to relocate with the child to England. The Family Court found that, as per the Convention, "the father could have some confidence that he could take steps in the UK...to enforce the provisions of the orders I will make that provide for the child to spend time with him" (at [2]). Justice Forrest cited the Practical Handbook on the Operation of the 1996 Child Protection Convention, 2014, p 110 [10.22]. The Practical Handbooks on the Hague Conventions are at <https://www.hcch.net/en/publications-and-studies/publications2/practical-handbooks>

***Contadini & Georgiou* [2018] FamCA 701 (unidentified country)**

The mother sought orders allowing her to relocate to Country B in Europe with the child. It was ordered that the mother make all relevant enquiries before the adjourned date to enable the Family Court to determine whether it would be able to make an order that if the mother obtained recognition of the Family Court orders from a court in Country B, or a declaration of enforceability in Country B,

or that the mother be entitled to remove the child from Australia 7 days after the documentary proof of registration of the orders in a court in Country B pursuant to the Child Protection Convention.

***Lane & Armstrong [2018] FamCA 424 (United Kingdom)***

The wife was restrained from relocating the child outside Australia until she served documentary proof on the father that she had requested a decision from a competent Court in the United Kingdom for the recognition of the Australian orders pursuant to Art 24 Convention, and obtained a declaration of registration and enforceability from the United Kingdom Court pursuant to Art 26. She was also required to file an affidavit in the Family Court demonstrating her compliance.

***State Central Authority & Afridi [2018] FamCA 649 (Fiji)***

The mother lived in Fiji. The father and child lived in Australia. The State Central Authority sought orders under the Child Abduction Convention for the child to have Skype calls with the mother twice a week, face-to-face access for half of the Fiji summer holidays, and for the mother to have regular updates on the child's schooling and health. The Child Protection Convention was also relevant.

Parenting proceedings were pending in a Fijian court. The Family Court found that Australia was the appropriate forum to make parenting orders. Because the child lived in Australia, the Court found that the only circumstances in which Fijian courts would be competent to make parenting orders were "confined to pre-existing proceedings for which the courts in Fiji have jurisdiction under Articles 5 to 10 of the 1996 Convention". These were restricted to where the parents ask the court to decide parenting issues in the context of divorce proceedings which were currently underway in Fiji (Art 10), and "where jurisdiction has been transferred from Australia to Fiji" (Arts 8 and 9).

***Curzon & Curzon [2017] FamCA 575 (USA)***

The mother wanted to relocate with the three children to the United State. The father did not seek orders that the children live with him. The Family Court held that the 16 year old was able to decide for herself where she would live and the mother was able to relocate with the two younger children, aged 11 and 12. The mother was unable to request a USA court in State E to decide on the recognition of the Australian parenting orders or to obtain advance recognition and a declaration of enforceability of the Australian orders in the USA because the Convention had not yet entered into force there. However, Austin J observed (at [34]) that the Australian orders could still be enforced in the USA in the event orders were made enabling the mother to relocate to the USA. The father could request the Registry Manager of the Family Court of Australia to send a sealed copy of the orders to a court in State E for registration pursuant to the Family Law Regulations and State E's counterpart provisions to the FLA enabling registration of international parenting orders.

***Goen & Sinna [2017] FamCA 857 (USA)***

The child was living in Australia. There were parenting proceedings in the USA. Hague child abduction proceedings for the return of the child to the United States failed as the child was found to be habitually resident in Australia. The mother sought that the proceedings be continued in Australia. However the trial judge found that any delays or costs would be similar were the proceedings to be determined in either jurisdiction. The best evidence in relation to the mother's health and its impact on parenting was likely to be available in Australia. If the mother were required to travel to the USA, her health and the welfare of the child would be disadvantaged. Both parties were restrained from continuing legal proceedings in the USA court in relation to the child. It was held to be in the best interests of the child for the proceedings to be determined in Australia.

***Hunt & Planey [2017] FamCA 549 (United States of America)***

There was a long history of litigation. The father unsuccessfully appealed an order permitting the mother and child to relocate to the United States. The orders of the Family Court of Australia were registered in the Superior Court of California. These proceedings arose when the father sought to overturn the Australian orders on the basis that the child was at risk. The mother contended that Australia was not the appropriate forum. The parties agreed that the Convention did not apply in the United States. The Family Court found that on balance California was the more appropriate forum.

***Millar & Oakley [2017] FamCA 415 (unidentified African country)***

The trial judge dismissed the father's application to lift an injunction restraining him from leaving Australia. The injunction was made as there was a risk that he would go to Country B in Africa, reunite with the children (who had been left there with his parents), and never return the children to Australia. There were proceedings in Country B between the paternal grandparents and the mother as to the children's care. The father was restrained from continuing any parenting proceedings in Country B. The trial judge found that it was implicit in the father's case that the matter should proceed in Country B, not Australia. The reasoning of the Full Court in *Zanda & Zanda* was applied.

***Sloan & Sloan [2017] FamCA 186 (unidentified African country)***

The mother had wanted to take the children to Africa, but later agreed that Australia would remain the children's home. A notation to the orders made in relation to parental responsibility and shared time stated that the orders constituted "measures of protection directed to the protection of the person of the children" under the Convention. The notation was made to help guard against abduction or retention overseas.

***Olmos & Morrall (No 2) [2016] FamCA 812 (Germany)***

The mother was permitted to relocate with the children to Germany. The parties were required to seek that the orders be registered in Germany under the Convention, but the relocation was not subject to the registration. The fathers appeal was unsuccessful in *Olmos & Morrall* [2017] FamCAFC 2.

***Hutcheson & Meli [2016] FamCA 400 (United Kingdom)***

The mother was permitted to relocate with the child to the United Kingdom. The mother sought, among other things, orders that the parties obtain recognition (Art 24) and a declaration of enforceability (Art 26) in the UK of the orders of the Family Court. The trial judge recommended that steps be taken to register the orders in the UK, but did not consider that orders to that effect were necessary. The father's appeal against the relocation was unsuccessful in *Hutcheson & Meli* [2016] FamCAFC 258.

***Alfarsi & Elhage [2016] FamCA 428 (Iraq)***

The parents and children were Australian citizens. The father removed the children to Iraq in September 2014, but the children were habitually resident in Australia before that time. The father asserted that he did not know who was caring for the children in Iraq. The Convention had no application as Iraq was not a signatory.

The trial judge cited observations of Bennett J in *State Central Authority & Spring-Ernest (No.2)* [2013] FamCA 906 at [47]:

Prior to Australia's ratification of the 1996 Convention, this court's power to make orders about a child, including orders with extra territorial effect, was not circumscribed by where the child was habitually resident.

The trial judge said at ([58]):

The Convention is primarily designed to operate between contracting States to the Convention. However the implementation of the Convention into the Act has seen the introduction of 'qualifying connections' applicable in Australia as between Australia and non-Convention countries as to jurisdiction over a child (see s 111CC and s 111CD(1)(e) and (f)).

Subdiv C Div 4 of Pt XIII A FLA only applied if (as per s 111CC) there was an issue as to whether a court, as opposed to a "competent authority of a non-Convention country" (s 111CC(b)), had jurisdiction to take measures directed to protection of the child (i.e. parenting orders). No such issue arose. No evidence "of any such jurisdictional conflict ... [or the] existence or otherwise of any such 'competent authority' in Iraq that may or may not or has sought to exercise jurisdiction over the children" (at 61). Therefore the Convention had no application.

However, if this conclusion were wrong, the trial judge determined that the children were habitually resident in Australia despite their removal to Iraq (s 111CD(1)(e)). He commented in dicta that if the Convention as implemented into the FLA did in fact apply, the Court would have had jurisdiction over the children.

***Cullin & Tarankiev [2016] FamCA 263 (Sweden)***

The mother sought to relocate with child to Sweden. Relocation was permitted after July 2017, with other orders made for the mother's sole parental responsibility, as well as time with the father. The trial judge stated that the father might be able to rely on any Swedish legislation giving effect to the Convention if the mother does not act to support the child's relationship with the father as per the orders requiring the child to return to Australia each year to spend time with him. Applied *Cape & Cape*. The mother was ordered to take all reasonable steps to obtain recognition of orders, a declaration of enforceability, and registration of the Family Court orders in a Swedish court pursuant to Art 24 or 26 of the Convention.

***Baxter & Baxter [2016] FamCA 572 (Ireland)***

The mother sought to relocate to Ireland with the children. Even though not yet recognised in the subordinate legislation (Sch 1A *Family Law Regulations 1984* or Sch 1 *Family Law Amendment (Child Protection Convention) Regulations 2003*), Ireland had ratified the Convention and was a contracting state. The father was concerned about the enforceability of the orders in Ireland. As a precondition to relocation, the mother was ordered to obtain a declaration of registration and enforceability from a competent court in Ireland.

The Family Court noted (at [95]) that the orders obviated the need for the father to register the orders in Ireland an alternative manner, if the mother failed to comply, incurring expense and inconvenience. He would be required to request the Registrar of the Family Court to send a sealed copy of the orders to the Commonwealth Central Authority to be transmitted to the Irish Central Authority (reg 2 FLA Child Protection Convention Regs), or the Registry Manager of the Family Court sending the orders to "an appropriate court or authority" in Ireland even though Ireland was not yet a "prescribed overseas jurisdiction" in the regulations. The father would then have to launch litigation in Ireland to enforce the orders. Citing *Cape & Cape*, the trial judge (at [96]) noted that the Full Court had confirmed that it was desirable to obtain advance recognition and a declaration of enforceability.

The requirement for the mother to obtain advance recognition and a declaration of enforceability did not "impose an unreasonable burden upon her" (at [97]). Art 26(2) of the Convention required a "simple and rapid procedure". If these measures could not be followed, then the mother should not be allowed to relocate the children to Ireland.

**Koehler & Koehler [2016] FamCA 60 (Germany)**

The parties lived in Germany, where the child was born. They separated whilst on vacation in Australia. The father commenced proceedings in Germany, and the mother in the Federal Circuit Court in Melbourne. The State Central Authority sought that the child return to Germany, which was then her habitual place of residence. In earlier proceedings the trial judge accepted that the child was wrongfully removed from Germany but found that to return the child to Germany would be to risk harm to the child, and refused to order the child's return. The father stopped participating in the Australian proceedings and did not appear at the trial. The court found that the child was habitually resident in Australia pursuant to s 111CD FLA, as she had lived there for 2 years and was settled. Under Art 1.1(b) *Child Protection Convention*, as no request for return was still pending, the Family Court had jurisdiction to determine the parenting application under the FLA.

**Lowe & Durnov [2015] FamCA 643 (Germany)**

The trial judge noted that Germany was still not shown as a Convention country in Sch 1 to the Regulations, although it had ratified the Convention. The mother was allowed to relocate the child to Germany, and this was held to be in the best interests of the child. A meaningful relationship with the father could still be maintained. No evidence was adduced as to the law of Germany and the procedure for advance recognition of the orders. No orders were made as to advance recognition. The father was (at [67]) "clear and unequivocal" in holding that there would be no issue with the parties' adherence to orders for the child spending time with the father and the father's family. Without this clear stance, the trial judge, who had referred to *Cape*, commented (at [67]) that the failure to produce evidence establishing this "may have weighed the balance in favour of an order restraining the mother from removing the child from the Commonwealth of Australia until, at the very least, the mother had obtained some indication about advance recognition".

**Attorney General's Department & Sciacia [2017] FamCA 692 (Canada)**

The Attorney General's Department sought that the provisional orders of a Provincial Court in Canada be confirmed under reg 39 *Family Law Regulations 1984*. The father sought that the Canadian orders (which were in relation to the father's child support obligations) be discharged, or modified. The trial judge noted there was no authority or guidance as to the application of this regulation (reg 39(4)). She referred to the Child Protection Convention, but said (at [27]) that "it seems to me that where the court is not expressly empowered to take into account the law of a foreign state, whether or not that state is a party to a treaty or not, the law pursuant to which issues must be determined in this court is the law of Australia". She concluded that, as per reg 39, the law to be applied in determining whether the orders be discharged or confirmed was the Australian law - the FLA. She found that the court had jurisdiction to make child maintenance orders under Australian law.

### **Dawe & Short [2018] FamCAFC 205 (United Kingdom)**

The parties had a platonic relationship, had a child through IVF and purchased a property together for the mother and child to live in. The parties' friendship later broke down. Parenting orders made by the Family Court in the UK were later registered in Australia. The orders permitted the mother and child to relocate to Australia, and spend some time with the father in the school holidays.

The wife sought to vary the orders, but her application was dismissed by the trial judge, who found that s 70G and 70J FLA applied, and that as required by s 70J(1)(b) FLA the wife had failed to establish substantial grounds to justify that the child's welfare required that the Family Court of Australia exercise jurisdiction.

The parties agreed to allow the appeal by consent, on the basis that the provisions to which the trial judge referred did not apply. The orders were not of a prescribed overseas jurisdiction (reg 14(a) Family Law Regulations), as the UK was not identified in column 2 of Sch 1A of the Regulations. The appeal was allowed.

### **Hague Convention on the Civil Aspects of International Child Abduction**

This treaty provides a process for the return of children to their country of habitual residence. It is a method of international enforcement of custody and access. Its objects are set out in Article 1:

- a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
- b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

Countries which are parties to the Convention must accede to each other's ratification of the Convention before it is in force between the 2 countries. A full list of countries which according to the Attorney-General's Department with Australia are accepted by Australia is at:

<https://www.ag.gov.au/FamiliesAndMarriage/Families/InternationalFamilyLaw/Pages/HagueConventionOnTheCivilAspectsOfInternationalChildAbduction.aspx>

These countries are also set out in Sch 2 *Family Law (Child Abduction Convention) Regulations*.

A list of all countries which are parties to the Convention is at:

<https://www.hcch.net/en/instruments/conventions/publications1/?dtid=36&cid=24>

The countries which are parties to the Convention, but have not been accepted by Australia, noting that the Attorney-General's list is not up-to-date, are:

- Andorra—acceded in April 2011
- Bolivia – acceded in July 2016
- Lesotho—acceded in June 2012
- Morocco—acceded in March 2010

- Gabon—acceded in December 2010
- Guinea—acceded in November 2011
- Iraq—acceded in March 2014
- Jamaica – acceded in February 2017
- Kazakhstan—acceded in June 2013
- Cuba – acceded in December 2018
- Pakistan – acceded in December 2016
- Russia—acceded in July 2011
- Seychelles—acceded in May 2008
- Tunisia – acceded in July 2017
- Zambia—acceded in August 2014
- Philippines – acceded in March 2016

### **Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption 1993 (Intercountry Adoption Convention)**

Australia ratified the Intercountry Adoption Convention on 25 August 1998, and it entered into force on 1 December 1998.

#### ***Suttikul and Anor & Suttikul and Ors [2017] FamCA 70***

A married couple launched proceedings in the NSW Supreme Court to adopt the wife's niece, who moved from Country B to Australia on a temporary student visa. The NSW Supreme Court identified a jurisdictional issue. The couple filed proceedings in the Family Court to seek declarations which they thought would assist them in the NSW Supreme Court adoption matter – i.e. that the niece was no longer habitually resident in Country B, that the principles of *loco parentis* did not apply to the applicants, and that the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* (Cth) could not interfere with NSW Supreme Court jurisdiction to determine intercountry adoptions under the NSW Act.

The application was dismissed for lack of jurisdiction. The Family Court had no jurisdiction to grant child adoptions under NSW law. The NSW Supreme Court had jurisdiction in intercountry adoptions pursuant to reg 25 Hague Convention Regulations. The Family Court had no jurisdiction if it was invested in a State court (r 24A(2)).

The application was also dismissed as an abuse of process. An issue estoppel arose as there were proceedings in the NSW Supreme Court on the jurisdictional question, and there were incomplete proceedings in the AAT in relation to an administrative review of the refusal of an adoption visa for the niece.

### **Hague Convention on Celebration and Recognition of the Validity of Marriages**

#### ***Nygh & Kasey [2010] FamCA 145 (2 March 2010)***

The parties lived in Australia, but had married in Thailand in 1982 and returned to Australia shortly afterwards. The wife filed for divorce, but the question was whether the parties had a valid marriage. The husband argued that they were never legally married; they had a religious ceremony but were not married under Thai law. The marriage was in accordance with Catholic rites. There was no registration of the marriage – it was not valid in Thailand. However various witnesses believed they

were a married couple. Faulks DCJ found that the ceremony would have given rise to a valid marriage had it occurred in Australia.

The wife did not register the marriage under Thai law because, at the time, she would have been required to adopt her husband's surname. She held a strong conscientious objection to this.

Faulks DCJ referred to the *Marriage Act 1961* (Cth), of which Part VA gives effect to Ch II of the Convention.

Under s 88E(1) of the *Marriage Act*, a marriage solemnised in a foreign country is valid in Australia if recognised to be so under the common law rules of private international law. Faulks DCJ considered (at [59]) that, in the context of the Convention and referring to the Convention's Preamble, this section "appears to be part of the broader objective of recognising the validity of foreign marriages wherever that is reasonable to do so".

Faulks DCJ cited *Milder v Milder* [1959] VicRep 17; [1959] VR95, which was quoted by the Full Court of the Family Court in *Banh* [1981] FamCA 7; (1981) FLC 91-010. In accordance with the rule in *Milder*, the law of the land in which the marriage was celebrated (*lex loci celebrationis*) is inapplicable where compliance is "to be regarded as impossible, whether because there is no law enforce there or because facilities are denied or because compliance would be against conscience" (at 98).

Was it "impossible" for the parties to register the marriage in Thailand? Impossibility was read relatively narrowly in *Milder*, and was not found. However, Faulks DCJ distinguished *Milder* because in that case it was asserted by one of the parties that the ceremony was not intended to bring about a marriage. The real issue in the present case was (at [76]):

"whether the alleged "conscientious objection" of the applicant to the **registration** of the marriage in Thailand would support the validity of the marriage, even though it failed in the circumstances to comply with the *lex loci celebrationis*."

It was deemed open to the court to find a conscientious objection exception under the common law rules of private international law. There was some discussion about what 'conscientious objection' would require. Faulks DCJ said (at [84]-[86]):

"The applicant's conviction while falling short perhaps of the high morality of the sanctity of human life nevertheless deals with a major matter of conscience. She asserts it relates to the question of discrimination against woman and the rights of a woman to be regarded as an individual, notwithstanding their marriage to a man.

Accordingly, in my opinion, on the basis of the substance of the belief and also the firmly held nature of the conviction, the applicant has made out that she had a conscientious objection to the registration of the marriage in Thailand at the time.

Consequently, given my views about the extended definition of conscience in accordance with the statements set out by his Honour Justice Smith in *Milder v Milder*, referred to with approval in the Full Court of the Family Court in *Banh*, the applicant has made out that she had a conscientious objection to registering the marriage in Thailand.”

The marriage was found to be valid in accordance with common law rules of private international law and s 88E(1) of the Marriage Act. A divorce order was made. Given the husband had entered another marriage in Australia in 2009, there was the potential for bigamy, but Faulks DCJ did not find that he knew, believed or was reckless to the fact that he was already married at the time.

### **Hague Convention on the Recognition of Divorce and Legal Separations**

This Convention came into force in Australia on 23 November 1985. Overseas divorces must be recognised by the parties to the treaty if one of the following factors listed in Article 2 applies to proceedings in the other contracting state:

- (1) the respondent had his habitual residence there; or
- (2) the petitioner had his habitual residence there and one of the following further conditions was fulfilled -
  - a) such habitual residence had continued for not less than one year immediately prior to the institution of proceedings;
  - b) the spouses last habitually resided there together; or
- (3) both spouses were nationals of that State; or
- (4) the petitioner was a national of that State and one of the following further conditions was fulfilled -
  - a) the petitioner had his habitual residence there; or
  - b) he had habitually resided there for a continuous period of one year falling, at least in part, within the two years preceding the institution of the proceedings; or
- (5) the petitioner for divorce was a national of that State and both the following further conditions were fulfilled -
  - a) the petitioner was present in that State at the date of institution of the proceedings and
  - b) the spouses last habitually resided together in a State whose law, at the date of institution of the proceedings, did not provide for divorce.

Section 104 FLA, which implements the Convention, states (in part):

- (3) A dissolution or annulment of a marriage effected in accordance with the law of an overseas country shall be recognized as valid in Australia where-
  - (a) the respondent was ordinarily resident in the overseas country at the relevant date;
  - (b) the applicant was ordinarily resident in the overseas country at the relevant date and either-
    - (i) the ordinary residence of the applicant had continued for not less than 1 year immediately before the relevant date; or
    - (ii) the last place of cohabitation of the parties to the marriage was in that country;
  - (c) the applicant or the respondent was domiciled in the overseas country at the relevant date;
  - (d) the respondent was a national of the overseas country at the relevant date;
  - (e) the applicant was a national of the overseas country at the relevant date and either-
    - (i) the applicant was ordinarily resident in that country at that date; or

- (ii) the applicant had been ordinarily resident in that country for a continuous period of 1 year falling, at least in part, within the 2 years immediately before the relevant date; or
- (f) the applicant was a national of, and present in, the overseas country at the relevant date and the last place of cohabitation of the parties to the marriage was in an overseas country the law of which, at the relevant date, did not provide for dissolution of marriage or annulment of marriage, as the case may be.
- (4) A dissolution or annulment of a marriage shall not be recognized as valid by virtue of sub-section (3) where-
  - (a) under the common law rules of private international law, recognition of its validity would be refused on the ground that a party to the marriage had been denied natural justice or that the dissolution or annulment was obtained by fraud; or
  - (b) recognition would manifestly be contrary to public policy.
- (5) Any dissolution or annulment of a marriage that would be recognized as valid under the common law rules of private international law but to which none of the preceding provisions of this section applies shall be recognized as valid in Australia, and the operation of this sub-section shall not be limited by any implication from those provisions....

### ***Dane & Kabrig [2013] FamCAFC 113***

The wife sought a stay of the Australian divorce proceedings to permit the matter to proceed in India. The test was whether Australia was a clearly inappropriate forum. The wife argued that an Australian divorce order would not be recognised in India because of the Hindu Marriage Act, and that India had not entered into the Divorce Convention. However, the trial judge found that Australia was not a clearly inappropriate forum to hear the divorce application. The parties lived, and were likely to continue to live, in Australia. Both parties were Australian citizens, and the husband had property in Australia. The fact that an Australian order may not be recognised in India might have been significant if the parties were living in India, but this was not the case. Even if the order could not be recognised in India, this could not “and should not prevent the husband here from exercising rights under Australian law” (at [29]). The trial judge made the divorce order. The Full Court of the Family Court dismissed the wife’s appeal.

### ***Talwar & Sarai [2018] FamCAFC 152***

A different approach was taken by the Full Court of the Family Court in this case where the trial judge had followed *Dane & Kabrig* and found that Australia was not a clearly inappropriate forum to hear the divorce application. The Full Court distinguished *Dane & Kalbrig* as the wife in *Talwar* was living in India, intended to continue to live in India, would be detrimentally affected by a divorce occurring in Australia rather than India and complete relief (including dowry issues) was available in India, but not in Australia. The Full Court remitted the matter for re-hearing.

### ***United Nations Convention on the Recovery Abroad of Maintenance (UNCRAM)***

Australia acceded to this Convention on 12 February 1985. It aims to overcome the legal and practical difficulties involved in establishing claims for maintenance abroad where other reciprocal

arrangements do not exist. It operates in Australia in relation to maintenance under the FLA through s 111 FLA and regs 40-56 *Family Law Regulations 1984* and there are also provisions in the *Child Support (Registration and Collection) Act and Regulations*.

The text of the Convention appears at Sch 3 *Family Law Regulations 1984*. The current active UNCRAM members are listed in Sch 4 *Family Law Regulations*.

A payee in an UNCRAM country can make an application to another UNCRAM country in which the liable parent resides for that country to establish a maintenance liability on their behalf. A few UNCRAM countries, not including Australia, will register an existing liability under UNCRAM but only where their domestic law allows. Wherever possible, Australia will use other arrangements in place with a reciprocating jurisdiction in preference to making applications under UNCRAM.

A payee may need to make an UNCRAM application if they are seeking maintenance from a payer in an UNCRAM country, but cannot do so under reciprocal arrangements (e.g. because the laws of the reciprocating jurisdiction do not allow that jurisdiction to recognise a child support assessment). A payee can prepare an UNCRAM application for a liability to be created (Art 3) or for recognition of an existing child support assessment or court order (Art 5). The Registrar will transmit the application to the relevant country along with a copy of the child support assessment (or court order, if a child support assessment cannot be made).

A court in the receiving UNCRAM country (i.e. where the payer resides) will decide the level of maintenance payable under the relevant law in that jurisdiction (Art 6). It may take into account the information provided by the Registrar in making that decision.

### **Hague Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations**

On 1 February 2002 Australia became a contracting state to this Convention. The other signatories are mainly European countries with which Australia previously had no reciprocal arrangement (and prior to the Hague Convention had to rely on applications to these countries being sent under UNCRAM).

This Convention applies to both spousal and child support obligations. It has the effect of establishing reciprocal agreements with other contracting states to recognize and enforce maintenance decisions made by judicial or administrative authorities in Convention countries.

It provides for recognition of administrative assessments (rather than just court orders or court registered agreements). It also provides for the relatively simple and speedy enforcement of existing Australian liabilities by overseas courts and administrative authorities. However, a contracting state

will only recognize a decision of an administrative authority such as the Australian Registrar of Child Support if the laws of that state support that recognition.

It operates in Australia in relation to maintenance under the FLA through s 111A FLA.

### **Sibley & Cassidy [2015] FamCA 912**

The husband was an Australian, and the wife Canadian. There were Canadian proceedings related to child abduction under the Hague Convention, which resulted in an order for the wife to return the child to Australia. The Canadian Court also ordered the husband to pay child and spousal support, and made orders in relation to costs. The wife retained sole custody. There were earlier proceedings in the Family Court of Australia. In the proceedings at hand, the parties sought orders for property settlement pursuant to s 79.

Regulation 30(2) *Family Law Regulations* provides that enforcement proceedings for an overseas maintenance entry liability “may be taken as if the liability were an order made under Part VII or VIII of the Act”. The FLA and its Regulations and Rules apply to the proceedings so far as they are applicable (reg 30(3)). The Court noted that s 66E FLA (providing that a child maintenance order not be made if an application for administrative assessment of child support could be made) did not apply to proceedings under Regulations made pursuant to s 111A (i.e. in relation to overseas maintenance). The Australian Child Support Agency had made an assessment providing for both the husband and the wife to pay an amount of child support to each other.

It was found that the orders sought by the husband, discharging all future and unpaid child support and spousal maintenance of both parties to nil, departing from the assessment and granting the wife an interest in the husband’s superannuation, were just and equitable. It was just and equitable to take into account the Canadian orders (regarding child support, spousal maintenance, and costs) as well as the Australian child support assessment, in order to abide by “the provisions of the international child support and spouse maintenance legislation” (at [123]).

### **Agreement between Australia and New Zealand**

The *Agreement between the Government of Australia and the Government of New Zealand on Child and Spousal Maintenance (2000)* facilitates the collection of liabilities under maintenance orders and administrative assessments of child support. The Australian Child Support Registrar and New Zealand Inland Revenue Child Support can each collect child support liabilities assessed by the other authority.

The agreement limits the jurisdiction of each country. The country where the payee is habitually resident issues and administers the assessment, and the country where the payer resides is responsible for collection. The agreement provides that a child support assessment made in one

country will end from the day before the date that country receives written notice that the payee is habitually resident in the other country. The notice can be from the payer, payee or the other Contracting State.

The full text of the agreement is at Sch 1 *Child Support (Registration & Collection) Regulations 2018*.

### **Agreement between Australia and United States of America**

The *Agreement between the Government of Australia and the Government of the United States of America for the Enforcement of Maintenance (Support) Obligations* came into force on 12 December 2002. The Agreement:

- deals with the enforcement of court orders and administrative assessments;
- provides for a liability to be created in and varied in the country in which the payee is resident except where the payer has had no or little connection with Australia. Where a USA liability is registered in Australia and the payee still lives in the state of the USA where the liability was initiated, that state will claim continuing jurisdiction over the liability. Therefore the USA cannot recognise a variation by an Australian court of the liability, despite it being available to the liable parent in Australia and recognised in Australia;
- obliges each country to assist in locating payers, serving notices and providing advice;
- provides for the protection of privacy and for information sharing.

For Australia, the agreement applies in Australia, Norfolk Island and the territories of Christmas and Cocos (Keeling) Islands. For the USA, the agreement applies in the fifty states, American Samoa, the District of Columbia, Guam, Puerto Rico, the United States Virgin Islands and any other jurisdiction of the United States participating in Title IV-D of the Social Security Act.

### ***Trans-Tasman Proceedings Act***

The *Trans-Tasman Proceedings Act 2010* (Cth) (“TTPA”) implements the Agreement between the Government of Australia and the Government of New Zealand on Trans-Tasman court proceedings and regulating enforcement. It applies to:

- determining the jurisdiction of court cases;
- registration and enforcement of court judgments;
- procedural matters, such as issuing and serving subpoenas and giving evidence.

Proceedings under the FLA (save for contempt matters which may arguably be excluded) are covered. However, civil proceedings relating wholly or partially to an “excluded matter” are not covered. An “excluded matter” is defined in s 4 as:

- (a) the dissolution of a marriage, or
- (b) the enforcement of:
  - (i) an obligation under Australian law to maintain a spouse or a de facto partner (within the meaning of the *Acts Interpretation Act 1901*), or
  - (ii) an obligation under New Zealand law to maintain a spouse, a civil union partner (within the meaning of the *Civil Union Act 2004* of New Zealand) or a de facto partner (within the meaning of the *Property (Relationships) Act 1976* of New Zealand), or
- (c) the enforcement of a child support obligation.

There are other exemptions which are not relevant to family law matters.

The test for an application to stay an Australian proceeding on forum grounds is in s 17(1) TTPA:

A defendant in a civil proceeding in an Australian court may apply to the court for an order staying the proceeding on the grounds that a New Zealand court is the more appropriate court to determine the matters in issue.

A stay of the Australian proceeding can be ordered by an Australian court on an application under s 17(1) if it is satisfied that a New Zealand court, in accordance with s 19(1):

- (a) has jurisdiction to determine the matters in issue between the parties to the proceeding; and
- (b) is the more appropriate court to determine those matters.

An unusual aspect is that the test for a stay of Australian proceedings is that New Zealand is “the more appropriate court” whereas the test for family law (and general law) matters is that the Australian court is a “clearly inappropriate forum” (*Voth v Manildra Flour Mills Pty Ltd* (1990) 171 CLR 538).

The matters to be considered by the Australian court in determining whether a New Zealand court is the more appropriate court under s 19(1)(b) are listed in s 19(2):

- (a) the places of residence of the parties or, if a party is not an individual, its principal place of business;
- (b) the places of residence of the witnesses likely to be called in the proceeding;
- (c) the place where the subject matter of the proceeding is situated;
- (d) any agreement between the parties about the court or place in which those matters should be determined or the proceeding should be commenced (other than an exclusive choice of court agreement to which s 20(1) applies);
- (e) the law that it would be most appropriate to apply in the proceeding;
- (f) whether a related or similar proceeding has been commenced against the defendant or another person in a court in New Zealand;
- (g) the financial circumstances of the parties, so far as the Australian court is aware of them;
- (h) any matter that is prescribed by the regulations;

- (i) any other matter that the Australian court considers relevant; and must not take into account the fact that the proceeding was commenced in Australia.

### ***Nevill & Nevill***

The trial judge in *Nevill & Nevill* [2015] FamCA 876 (which was upheld in *Nevill & Nevill* [2016] FamCAFC 41; (2016) FLC ¶93-694) referred to the decision of Brereton J in *Re Featherston Resources Limited, Tetley v Weston* [2014] NSWSC 1139. Justice Brereton considered the relevant provisions of the Trans-Tasman Act in the context of the *Corporations Act 2001* (Cth). Justice Brereton noted (at p [51]) that, whilst the power conferred by s 17 is discretionary, "it would be an exceptional case, if there is one at all, in which being satisfied that the New Zealand court had jurisdiction and was the more appropriate one, the Court would not stay the Australian proceedings". Justice Kent agreed with this statement. Justice Brereton pointed out that the test directed attention to the more "appropriate", not the more "convenient", court. Whilst convenience was an important consideration, it was not determinative. The factors which "loomed large" for the trial judge were (at [62]):

- (i) The parties are both New Zealand nationals and they lived for the greater part of their married life in New Zealand, having commenced cohabitation there in January 2003 and marrying there in January 2005. Conversely, the marriage relationship (prior to final separation) only subsisted for some six months after the parties came to Australia in January 2013;
- (ii) The parties accumulated their existing property or the property interests of either of them predominately [sic] whilst they pursued their married life together in New Zealand;
- (iii) The property of the parties or either of them is substantially situated in New Zealand. There are obviously substantial property interests involved;
- (iv) The wife's trust, which predominately [sic] owns or controls the vast majority of what may be conveniently described as the wife's assets (including the real property that was the parties' former matrimonial home in City F) is a New Zealand trust with a corporate trustee which is New Zealand based;
- (v) The husband's trust, which overwhelmingly in terms of value owns or controls the vast majority of property interests which are the focus of these proceedings, is a New Zealand trust with New Zealand trustees including both an individual resident in New Zealand and a corporate trustee;
- (vi) Neither party has acquired any asset of any significance in Australia beyond personal items;
- (vii) All, or predominately [sic] all, events referred to by either party in their respective evidence to date (accepting that to be preliminary) as to the acquisition or improvement of property or property interests (and historical real property transactions during the course of the marriage) occurred in New Zealand, and some of these are seemingly in dispute.

The trial judge (at [73]-[76]) made an order permanently staying the Australian proceedings having concluded:

The subject matter of these proceedings is property overwhelmingly situated in New Zealand.

There are potential aspects relating to the trust law of New Zealand, in particular as regards the husband's trust and his pursuit of proceedings for the declaratory relief in relation to the husband's trust that potentially have a connection with property settlement proceedings.

The parties' marriage subsisted for most of its duration in New Zealand and overwhelmingly in New Zealand as compared with Australia. In my judgment the nature and subject matter of the issues in dispute between the parties and the inter-relationship between those issues and New Zealand, render the Family Court in New Zealand (or the High Court if the proceedings are transferred there) the more appropriate court within the meaning of the Act.

The discretion under s 17(1) of the Act thus enlivened, there is no reason not to conclude, in circumstances where a New Zealand court has jurisdiction and appears to be the more appropriate court to determine the matters in issue between the parties, that these proceedings ought be stayed".

### ***Foreign Judgments Act 1991 (Cth)***

The *Foreign Judgments Act 1991* (Cth) does not apply to "a matrimonial cause or proceedings in connection with matrimonial matters" (s 3), but de facto financial causes appear to be enforceable under that Act.

### **Service**

There are 4 options for service overseas:

1. Australia is a party to *The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters 1965*. Service procedures are set out in Regulations 21AC-21AN *Family Law Regulations 1984*.
2. Service in New Zealand is covered by r 26A.03, *Family Law Rules 2004* which implements the Trans-Tasman Act procedures.
3. Part 7.6 of the *Family Law Rules 2004* deals with service in non-convention countries. If the country to be served is party to a Convention with Australia other than the Hague Service Convention, refer to Regulations 21AO to 21AS *Family Law Regulations 1984*.
4. The *Federal Circuit Court Rules 2001* do not provide for service overseas, but adopts the relevant rules from Div 10.4 *Federal Court Rules 2011* (see Div 10.4 to Div 10-6 and Div 34.4).

Information about the Hague Service Convention, including a link to the full list of countries which are signatories to the Convention and their status, is on the Attorney-General Department's website <https://www.ag.gov.au/Internationalrelations/PrivateInternationalLaw/Pages/ServingaLegalDocumentAcrossInternationalBorders.aspx>. This website and the links should be checked, not only to ascertain whether the country where service is to occur is covered, but there may be other specific requirements, such as the manner of service and whether a translator is required.

Service of a document on a person in a non-convention country may be made:

- (a) in accordance with the law of the non-convention country, or
- (b) if the non-convention country permits service of judicial documents through the

diplomatic channel (r 7.19(1)).

A person seeking to serve a document on a person in a non-convention country through Diplomatic channels must:

- (a) ask the Registry Manager in writing to arrange service
- (b) translate each document, if necessary, into an official language of that country, and
- (c) lodge with the court two copies of each document to be served (r 7.19(2)).

The documents to be served are sealed and sent by the Registry Manager to the Secretary of the Department of Foreign Affairs & Trade with a written request (prepared by the court) that the documents be sent to the government of the non-convention country for service (r 7.19(2)).

Service in a non-convention country can be proven by an official certificate or declaration sent to the court by the government or court of the non-convention country, stating that the document has been personally served, or served in another way under that law of the country (r 7.20(1)(a)). The certificate or declaration once filed has effect as if it were an affidavit of service (r 7.20(2)).

Service by a private process server may be possible if permitted by the foreign country.

Bilateral treaties, except for those within Korea and Thailand, were established as an extension of the *Convention between the United Kingdom & Germany regarding Legal Proceedings in Civil & Commercial Matters* (by virtue of Australia's membership of the Commonwealth). In most cases the bilateral treaties have been largely overtaken by the 1965 Hague Convention. Australia has separate treaties with Korea and Thailand covering service and the taking of evidence:

- Treaty of Judicial Assistance in civil and commercial matters between Australia and the Republic of Korea 1999
- Agreement on Judicial Assistance in civil and commercial matters and co-operating in Arbitration between Australia and the Kingdom of Thailand 1999

There is no separate legislation implementing these treaties. In relation to family law, the countries are covered by the phrase "Convention Countries" in the *Family Law Regulations*.

Service of initiating documents and subpoenas in New Zealand is covered by the *Trans-Tasman Proceedings Act 2010*. Service of initiating documents for "a civil proceeding commenced in an Australian Court" (s 8(i)(a)) are covered by Div 2 of the *Trans-Tasman Proceedings Act 2010*, subject to certain exclusions. A civil proceeding is defined in s 4.05 as "a proceeding that is not a criminal proceeding".

Initiating documents which are covered by Div 2 "must be served in the same way that the document is required or permitted under the procedural rules of the Australian court or tribunal, to be served in the place of issue" (s 9). The note to s 9 expressly provides that the leave of the Australian court is

not required. The initiating document must, however, be accompanied by information for the defendant that is prescribed by the *Trans-Tasman Proceedings Regulations 2012* (s 11). Form 1 is contained in Sch 1 to the Regulations.

Service of subpoenas in New Zealand in relation to a proceeding in an Australian court cannot be done without the leave of the Australian court (s 31(1)). In determining whether to grant leave, the court must take into account:

- (a) the significance of the evidence to be given, or the document or thing to be produced, by the person named; and
- (b) whether the evidence, document or thing could be obtained by other means without significantly greater expense, and with less inconvenience to the person named.

In giving leave, the court may impose conditions, and must impose a condition that the subpoena cannot be served after a specified day (s 31(4)). The person to be served cannot be less than 18 years old (s 31(5)).

The subpoena must be served in New Zealand in accordance with the relevant procedural rules of the Australian court and any directions given by the Australian court that gave leave for the subpoena to be served (r 32(1)). The subpoena must be accompanied by the form prescribed under the *Trans-Tasman Regulations 2012*, which is Form 4 in Sch 1 (s 32(2)).

Allowances and travelling expenses sufficient to meet the reasonable expenses of compliance must be paid at the time of service of the subpoena or some other reasonable time before the person named is required to comply with it (s 33). Importantly, if production of documents or things is required rather than the attendance of a person, the document or thing can be produced at any registry of the High Court of New Zealand not later than 10 days before the date specified in the subpoena as the date required for production.

Division 10.6 *Federal Court Rules 2011* which deals with service under The Hague Convention, applies to proceedings in the Federal Circuit Court.

## **Evidence**

This is a difficult topic. Many countries have restrictions on their residents giving evidence in overseas courts. If you want an overseas witness to give evidence in an Australian court proceeding, the law of both countries needs to be addressed.

## **Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters 1970**

Information about this Convention and the steps to be followed is at:

<https://www.hcch.net/en/instruments/conventions/full-text/?cid=82>

See also *Family Law Regulations*, regs 53 and 54.

### **Foreign Evidence Act 1994**

Part 2 of this Act sets out procedures for the examination of witnesses abroad for proceedings in some Australian courts.

A party can apply to a superior court (including the Family Court and the Federal Court) in Australia for an order that a person outside Australia be examined outside Australia (s 7(1)(a)), a commission be issued for such examination (s 7(1)(b)), or a letter of request be issued to the foreign judicial authorities to take evidence from that person or cause it to be taken (s 7(1)(c)). In determining whether or not to make the order, the court will consider (s 2(2)):

- (a) whether the person is willing or able to come to Australia to give evidence in the proceeding;
- (b) whether the person will be able to give evidence material to any issue to be tried in the proceeding;
- (c) whether, having regard to the interests of the parties to the proceeding, justice will be better served by granting or refusing the order.

The court may make directions and requests relating to the procedure to be followed for the examination (s 8). Evidence taken at an examination abroad is then admissible in the Australian superior court (s 9), as long as the court remains satisfied that at the time of the hearing that the person is not in Australia or unable to attend the hearing (s 9(a)) and that the evidence would have been admissible if adduced at the time of the hearing (s 9(b)). Part 6 of the Act relates to proceedings in Australian courts for the taking of evidence for use in proceedings in a foreign court. For child support and family law Federal Circuit Court proceedings, the Family Court can exercise its powers on the application of a party to Federal Circuit Court proceedings (s 9A(1)).

### **Convention on the Law Applicable to Trusts and on their Recognition (Trusts Convention)**

Australia ratified the Trusts Convention on 17 October 1991, and it entered into force on 1 January 1992. There are only 14 contracting parties, including Canada, China, the UK, and the USA.

### ***Teo & Guan* [2015] FamCAFC 94**

The husband submitted that the Family Court of Western Australia was required to recognise a Deed of Family Arrangement, setting out declarations of trust under Singaporean law to the effect that the 5 parties (the husband, wife and their children) to the Deed share the assets equally. The husband argued this was pursuant to the Trusts Convention. However, this argument failed as the FLA “confers power to set aside a ‘disposition’, which is defined by s 106B(5) to include the creation of an interest in a trust”.

**Nevill & Nevill [2016] FamCAFC 41; (2016) FLC 93-694**

The Full Court upheld the permanent stay of the property settlement proceedings because New Zealand law was the most appropriate law to apply. The Full Court quoted (at 39) the trial judge who referred both counsel to the “*Trusts (Hague Convention) Act 1991 (Cth)* under which Australia has adopted the articles of that convention ... [as] part of our domestic law ... within those articles is how one determines the proper law of a trust in a case that arises” resulting in the (correct) concession by both counsel that the law of New Zealand governed the trusts”.

**Possible reforms/changes**

The Australian Attorney-General's Department is taking part in the Hague Conference Judgments Project. A draft Convention was produced in May 2018 to establish uniform rules for the recognition and enforcement of foreign judgments in civil and commercial matters. It will exclude most, if not all, family law matters.

**Conclusion**

This has been an overview of the international treaties affecting family law, some of the Australian legislation and case law. However, facts will vary and assistance from lawyers in overseas jurisdictions will often be required.

The assistance of Laura Woodbridge in the research and writing of this paper is gratefully acknowledged.

© Copyright - Jacqueline Campbell of Forte Family Lawyers. An earlier version of this paper was first presented to the International Academy of Family Lawyers Sydney Conference, 18 Feb 2019.

## Schedule A

Bilateral treaties on judicial co-operation with Australia listed on Austlii.edu.au. (They may not all cover family law matters):

- Treaty on Judicial Assistance in Civil and Commercial Matters between Australia and the Republic of Korea [2000] ATS 5
- Agreement on Judicial Assistance in Civil and Commercial Matters and Co-operation in Arbitration between Australia and the Kingdom of Thailand [1998] ATS 18
- Agreement between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland providing for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters [1994] ATS 27
- Convention on the Taking of Evidence Abroad in Civil or Commercial Matters [1992] ATS 37
- Exchange of Notes constituting an Agreement between the Government of Australia and the Government of Israel regarding the Taking of Evidence in One Country for use in Criminal Proceedings in the Other Country [1983] ATS 7
- Agreement between the Government of Australia and the Government of the Republic of Nauru relating to Appeals to the High Court of Australia from the Supreme Court of Nauru [1977] ATS 11
- Convention between United Kingdom and France supplementary to the Convention respecting Legal Proceedings in Civil and Commercial Matters of 2 February 1922, and Procedures-Verbal [1959] ATS 18
- Exchange of Notes between the Government of Australia and the Government of Japan regarding the Revival of Pre-War Treaties between Australia and Japan [1953] ATS 9
- Protocol between Australia, Canada, New Zealand, United Kingdom of Great Britain and Northern Ireland and United States of America, and Japan, on the Exercise of Criminal Jurisdiction over the United Nations Forces in Japan, and Agreed Official Minutes regarding Article concerning Criminal Jurisdiction [1953] ATS 7
- Exchange of Notes constituting an Agreement between the Government of Australia and the Government of Austria reviving the Convention on Legal Proceedings in Civil and Commercial Matters of 31 March 1931 [1952] ATS 4
- Convention between the United Kingdom of Great Britain and Northern Ireland and Switzerland concerning Legal Proceedings [1940] ATS 2
- Exchange of Notes constituting an Agreement between the Governments of the United Kingdom of Great Britain and Northern Ireland, Canada, the Commonwealth of Australia and New Zealand, and the Government of Iraq regarding the Service of Documents [1939] ATS 9
- Convention between the United Kingdom and France for the Abolition of Capitulations in Morocco and Zanzibar, Protocol of Signature [1938] ATS 12
- Convention regarding the Abolition of the Capitulations in Egypt, Protocol and Declaration by the Royal Egyptian Government [1938] ATS 11
- Convention between the United Kingdom and Yugoslavia regarding Legal Proceedings in Civil and Commercial Matters [1938] ATS 2
- Convention between the United Kingdom and Greece regarding Legal Proceedings in Civil and Commercial Matters [1938] ATS 1

- Australian Treaty Series 1937 No. 3 - Civil Procedure Convention Between Great Britain and Lithuania [1937] Ats 3
- Australian Treaty Series 1937 No. 2 - Convention Between Great Britain and Northern Ireland and Iraq Regarding Legal Proceedings In Civil and Commercial Matters [1937] Ats 2
- AUSTRALIAN TREATY SERIES 1937 No. 1 - CONVENTION BETWEEN HIS MAJESTY IN RESPECT OF THE UNITED KINGDOM AND THE REGENT OF THE KINGDOM OF HUNGARY REGARDING LEGAL PROCEEDINGS IN CIVIL AND COMMERCIAL MATTERS [1937] ATS 1
- Convention between the United Kingdom and the Czechoslovak Republic supplementary to the Convention relative to Legal Proceedings in Civil and Commercial Matters of 11 November 1924 [1936] ATS 1
- Convention between the United Kingdom and the Republic of Turkey regarding Legal Proceedings in Civil and Commercial Matters, and Protocol of Signature [1935] ATS 5
- Convention between the United Kingdom and the Netherlands regarding Legal Proceedings in Civil and Commercial Matters [1935] ATS 4
- Convention between the United Kingdom and Finland regarding Legal Proceedings in Civil and Commercial Matters [1935] ATS 3
- Convention between the United Kingdom and Denmark regarding Legal Proceedings in Civil and Commercial Matters [1935] ATS 2
- Convention between the United Kingdom and Belgium supplementary to the Convention respecting Legal Proceedings in Civil and Commercial Matters of 21 June 1922 [1935] ATS 1
- Convention between the United Kingdom and Sweden regarding Legal Proceedings in Civil and Commercial Matters [1933] ATS 10
- Convention between the United Kingdom and Spain regarding Legal Proceedings in Civil and Commercial Matters [1933] ATS 9
- Convention between the United Kingdom and the Portuguese Republic regarding Legal Proceedings in Civil and Commercial Matters [1933] ATS 8
- Convention between the United Kingdom and Poland regarding Legal Proceedings in Civil and Commercial Matters [1933] ATS 7
- Convention between the United Kingdom and Norway regarding Legal Proceedings in Civil and Commercial Matters [1933] ATS 6
- Convention between the United Kingdom and Italy regarding Legal Proceedings in Civil and Commercial Matters [1933] ATS 5
- Convention between the United Kingdom and Germany regarding Legal Proceedings in Civil and Commercial Matters [1933] ATS 4
- Convention between the United Kingdom and Estonia regarding Legal Proceedings in Civil and Commercial Matters [1933] ATS 3
- Convention between the United Kingdom and the Czechoslovak Republic relative to Legal Proceedings in Civil and Commercial Matters [1933] ATS 2
- Convention between the United Kingdom and the Republic of Austria regarding Legal Proceedings in Civil and Commercial Matters [1933] ATS 1

- Convention between the United Kingdom and France respecting Legal Proceedings in Civil and Commercial Matters [1928] ATS 2
- Convention between the United Kingdom and Belgium respecting Legal Proceedings in Civil and Commercial Matters [1928] ATS 1