



Schenkkade 50
The Hague - 2595 AR
The Netherlands
Tel: +31-70-800-2093
Fax: +31-70-808-0254
Email: admin@childabductioncourt.eu

**PARENTAL CHILD KIDNAPPING IS NOT A VICTIMLESS CRIME
KIDNAPED HEARTS CONVENTION OF 1st JUNE 2018 ON THE
CRIME OF PARENTAL CHILD KIDNAPPING BASED ON THE UNCRC**

PREAMBLE

Letters Patent -- Proclaiming the Universal Jurisdiction of the International Criminal Court against Child Kidnapping in all UN Member States who signed the United Nations Convention on the Rights of the Child (UNCRC) and the United Nation Universal Declaration of Human Rights.

To the Peoples in and of the World and To All Those to Whom these Presents shall come, be It Known and Declared that:

The International Criminal Court against Child Kidnapping is hereby established by this Proclamation, and by the execution of the Notarial Deed of Incorporation, dated 16 March 2018, registered in the Netherlands Chamber of Commerce in The Hague under CCI number 71166505.

The International Criminal Court against Child Kidnapping shall exist and function according to the Constitution of the International Criminal Court against Child Kidnapping, according to its Kidnapped Hearts Convention and according to its Statutes pursuant to the ultimate purpose of realizing equal rights and dignity for each member of the human family – restoring truth and reason to the delivery of justice in the world.

The **United Nations Convention on the Rights of the Child** (UNCRC) is a legally binding international agreement setting out the civil, political, economic, social and cultural **rights** of every **child**, regardless of **their** race, religion or abilities.

The United Nations **Convention on the Rights of the Child** (commonly abbreviated as the **CRC** or **UNCRC**) is a human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children. The Convention defines a child as any human being under the age of eighteen, unless the age of majority is attained earlier under national legislation.

The UNCRC deals with the child-specific needs and rights. It requires that the "nations that ratified the UNCRC are bound to it by international law". Ratifying states must act in the best interests of the child. In all jurisdictions implementing the UNCRC requires compliance with child custody and guardianship laws as that every child has basic rights, including the right to life, to their own name and identity, to be raised by their parents within a family or cultural grouping, and to have a relationship with **both** parents, even if they are separated.

The UNCRC obliges states to allow parents to exercise their parental responsibilities. The Convention also acknowledges that children have the right to express their opinions and to have those opinions heard and acted upon when appropriate, to be protected from abuse or exploitation, and to have their privacy protected, and it requires that their lives not be subject to excessive interference.

The UNCRC also obliges signatory states to provide separate legal representation for a child in any judicial dispute concerning their care and asks that the child's viewpoint be heard in such cases.

The UNCRC forbids capital punishment for children. In its General Comment 8 (2006) the Committee on the Rights of the Child stated that there was an "obligation of all state parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children". Article 19 of the Convention states that state parties must "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence", but it makes no reference to corporal punishment. The Committee's interpretation of this section to encompass a prohibition on corporal punishment has been rejected by several state parties to the Convention, including Australia, Canada and the United Kingdom.

The European Court of Human Rights has referred to the Convention when interpreting the European Convention on Human Rights.

All Nations that signed and ratified the UNCRC are bound to it by international law and automatically award ICCACK universal jurisdiction when the UNCRC has been violated. Compliance with the UNCRC is monitored by ICCACK and by the UN Committee on the Rights of the Child, which is composed of members from countries around the world. Once a year, the Committee submits a report to the Third Committee of the United Nations General Assembly, which also hears a statement from the CRC Chair, and the Assembly adopts a Resolution on the Rights of the Child.

Governments of countries that have ratified the UNCRC are not required to sign the ICCACK Kidnapped Hearts Convention as they have already signed and ratified the UNCRC. However, UNCRC Member State Parties are required to report to, and appear before, the United Nations Committee on the Rights of the Child periodically to be examined on their progress with regards to the advancement of the implementation of the Convention and the status of child rights in their country. Their reports and the committee's written views and concerns are available on the committee's website.

The UN General Assembly adopted the Convention and opened it for signature on 20 November 1989 (the 30th anniversary of its Declaration of the Rights of the Child). It came into force on 2 September 1990, after it was ratified by the required number of nations. Currently, 196 countries are party to it, including every member of the United Nations except the United States.

Two optional protocols were adopted on 25 May 2000. The First Optional Protocol restricts the involvement of children in military conflicts, and the Second Optional Protocol prohibits the sale of children, child prostitution and child pornography. Both protocols have been ratified by more than 160 states, which grants ICCACK automatically jurisdiction for crimes committed against children in each UNCRC Member State.

A third optional protocol relating to communication of complaints was adopted in December 2011 and opened for signature on 28 February 2012. It came into effect on 14 April 2014.

Relevant Legal Instruments

Universal Instruments

The International Covenant on Civil and Political Rights, 1966

Basic Principles on the Independence of the Judiciary, 1985 Guidelines
on the Role of Prosecutors, 1990

Basic Principles on the Role of Lawyers, 1990

Regional Instruments

The African Charter on Human and Peoples' Rights, 1981 The
American Convention on Human Rights, 1969

The European Convention on Human Rights, 1950

Council of Europe Recommendation No. R (94) 12 of the Committee of Ministers to Member States on the independence, efficiency and role of judges.¹

The Role of Judges, Prosecutors and Lawyers in Upholding the Rule of Law, Including Human Rights Standards

In the modern constitutional State, the principle of an independent Judiciary has its origin in the theory of *separation of powers*, whereby the Executive, Legislature and Judiciary form three separate branches of government, which, in particular, constitute a system of mutual checks and balances aimed at preventing abuses of power to the detriment of a free society. This independence means that both the Judiciary as an institution and also the individual judges deciding particular cases must be able to exercise their professional responsibilities without being influenced by the Executive, the Legislature or any other inappropriate sources.

Only an independent Judiciary is able to render justice *impartially* on the basis of law, thereby also protecting the human rights and fundamental freedoms of the individual. For this essential task to be fulfilled efficiently, the public must have full confidence in the ability of the Judiciary to carry out its functions in this independent and impartial manner. Whenever this confidence begins to be eroded, neither the Judiciary as an institution nor individual judges will be able fully to perform this important task, or at least will not easily be *seen* to do so.

Consequently, the principle of independence of judges was not invented for the personal benefit of the judges themselves but was created to protect human beings against abuses of power. It follows that judges cannot act arbitrarily in any way by deciding cases according to their own personal preferences, but that *their duty is and remains to apply the law*. In the field of protecting the individual, this also means that judges have a responsibility to apply, whenever relevant, domestic and international human rights law.

A legal system based on respect for the rule of law also needs strong, independent and impartial prosecutors willing resolutely to investigate and prosecute suspected crimes committed against human beings even if these crimes have been committed by persons acting in an official capacity.

Unless judges and prosecutors play their respective key roles to the full in maintaining justice in society, there is a serious risk that a culture of impunity will take root, thereby widening the gap between the population in general and the authorities. If people encounter problems in securing justice for themselves, they may be driven to take the law into

their own hands, resulting in a further deterioration in the administration of justice and, possibly, new outbreaks of violence.

Lastly, this legal system would not be complete without independent lawyers who are able to pursue their work freely and without fear of reprisals. Indeed, independent lawyers play a key role in defending human rights and fundamental freedoms *at all times*, a role which, together with that played by independent and impartial judges and prosecutors, is indispensable for ensuring that the rule of law prevails, and that individual rights are protected effectively.

In this regard it has been pointed out that all special rapporteurs of the United Nations Commission on Human Rights have emphasized the close relationship that exists between the greater or lesser respect for the due process guarantees of article 10 of the Universal Declaration of Human Rights and the greater or lesser gravity of the violations established.³ Human rights and fundamental freedoms are, in other words, “all the better safeguarded to the extent that the judiciary and the legal professions are protected from interference and pressure”.

Legal status and powers of the Court

1. The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.
2. The Court and its subsidiaries may exercise its functions and powers, as provided in this Convention, on the territory of any State Party who signed the UNCRC and, by establishment of local Tribunals, on the territory of any other State.

Exercise of jurisdiction

Competence of the Court and Jurisdiction, Admissibility & Applicable Law Article

Jurisdiction of the Court comprises all disputes where people or persons have suffered deprivation of their human rights including parental or Governmental child kidnapping by UNCRC Member State Parties or have suffered wrongs and seek to hold accountable those responsible for such so that justice may be done, and all applications submitted to it in accordance with this Convention, and all matters that confer jurisdiction on the Court.

The International Criminal Court against Child Kidnapping is a court of last resort against parental or Governmental child kidnappers, and therefore it seeks to complement, not replace, national Courts. Governed by an international treaty called the United Nations Convention on the Rights of the Child (UNCRC), and the

United Nation Universal Declaration of Human Rights, ICCACK is the world's first permanent international criminal court against parental child kidnapping. The work of the Court is supported by 196 Nations who signed the UNCRC and further supported by all Nations who signed the UN Declaration of Human Rights, which gives ICCACK automatically jurisdiction in each UN Member State, who violates the UNCRC and who violates the United Nation Universal Declaration of Human Rights.

The International Criminal Court against Child Kidnapping accepts universal jurisdiction based on the violation of national and international laws and treaties to prosecute individuals for the international crimes of (parental) child kidnapping, crimes against humanity, human rights violations, and the enforced disappearance of children by government officials.

The International Criminal Court against Child Kidnapping was established to provide judicial oversight on existing national judicial systems. Therefore, it may only exercise its jurisdiction when certain conditions are met, such as when national courts have violated the Constitution, or violated International Laws & Treaties or are unwilling or unable to prosecute parental child kidnappers or when the United Nations Security Council or individuals refer investigations to the Court.

The International Criminal Court against Child Kidnapping is the last resort for prosecution of the crime of (parental) child kidnapping, enforced disappearance of children by government officials, human rights violations, and crimes against humanity throughout the world.

The Court may exercise its jurisdiction with respect to a crime in accordance with the provisions of this Convention if:

1. A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by any person, non-governmental organisation or group of individuals in accordance with this Convention;
2. A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor;
3. A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under this Convention and [Chapter VII of the Charter of the United Nations]; or
4. The Prosecutor has initiated an investigation in respect of such a crime in accordance with this Convention or in accordance with the UNCRC.

The Court may exercise universal jurisdiction over crimes committed in the territory and by nationals of States who signed the UNCRC.

Universal jurisdiction allows states or international organizations to claim criminal jurisdiction over an accused person regardless of where the alleged crime was committed, and regardless of the accused's

nationality, country of residence, or any other relation with the prosecuting entity. Crimes prosecuted under universal jurisdiction are considered crimes against all, too serious to tolerate jurisdictional arbitrage.

The concept of universal jurisdiction is therefore closely linked to the idea that some international norms are *erga omnes*, or owed to the entire world community, as well as the concept of *jus cogens* – that certain international law obligations are binding on all states.

Universal jurisdiction may be asserted by a particular nation as well as by an international tribunal such as ICCACK. The result is the same: individuals become answerable for crimes defined and prosecuted regardless of where they live, or where the conduct occurred; crimes said to be so grievous as to be universally condemned.

International Law and the Independence and Impartiality of the Judiciary

Applicable international law

All general universal and regional human rights instruments guarantee the right to a fair hearing in civil and criminal proceedings before an independent and **impartial court or tribunal**, and the purpose of this section is to analyze the meaning of the terms “independent” and “**impartial**” in the light of the case-law of the **competent international monitoring organs**.

While these treaties as interpreted do not solve all the problems arising with particular regard to the notion of independence of the Judiciary, they do provide a number of essential clarifications.

Of the most important treaties, the International Covenant on Civil and Political Rights states in its article 14(1) that “all persons shall be equal before the courts and **tribunals**” and further, that “in the determination of any criminal charge against him, or of his rights and obligations in a suit of law, everyone shall be entitled to a fair and public hearing by a competent, independent and **impartial tribunal established by law**” (emphasis added).

The Human Rights Committee has unambiguously held that “**the right to be tried by an independent and impartial tribunal is an absolute right that may suffer no exception**”.

It is thus a right that is applicable in all circumstances and to all courts, whether ordinary or special.

Second, article 7(1) of the African Charter on Human and Peoples’ Rights provides that “every individual shall have the right to have his cause heard”, a right that comprises, in particular, “(b) the right to be presumed innocent until proved guilty by a competent court or **tribunal**”, as well as “(d) the right to be tried within a reasonable time by an IMPARTIAL court or **tribunal**” (emphasis added).

Furthermore, according to article 26 of the Charter, the States parties “shall have the duty to guarantee the independence of the Courts”. It is the view of the African Commission on Human and Peoples’ Rights that article 7 “should be considered non-derogable” since it provides “minimum protection to citizens”.⁷

Third, article 8(1) of the American Convention on Human Rights provides that “every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and **impartial**

tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature” (**emphasis added**).

Lastly, article 6(1) of the European Convention on Human Rights specifies that “in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and **impartial tribunal established by law**” (**emphasis added**).

Although some countries may not yet have ratified or acceded to any of these human rights treaties, **they are still bound by customary rules of international law, as well as by general principles of law, of which the principle of an independent and impartial judiciary is generally considered to form part.**

They are thus also bound by the fundamental principles laid down in the Universal Declaration of Human Rights, which provides in its article 10 that “everyone is entitled in full equality to a fair and public hearing by an **independent and impartial tribunal**, in the determination of his rights and obligations and of any criminal charge against him”.

⁵See e.g. UN doc. E/CN.4/2000/61, Report of the Special Rapporteur on the independence of judges and lawyers, 74 pp.; and Attacks on Justice –The Harassment and Persecution of Judges and Lawyers (Centre for the Independence of Judges and Lawyers (CIJL), Geneva), 10th edn., January 1999-February 2000, 499 pp. 1

Basic Principles on the Independence of the Judiciary, 1985

In 1985, the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the Basic Principles on the Independence of the Judiciary, which were subsequently unanimously endorsed by the General Assembly.⁸ These principles can therefore be described as being declaratory of universally accepted views on this matter by the States Members of the United Nations, and they have become an important yardstick in assessing the independence of the Judiciary in the work of international monitoring organs and non-governmental organizations (NGOs).

These principles deal with the following subjects: (i) independence of the Judiciary; (ii) freedom of expression and association; (iii) qualifications, selection and training; (iv) conditions of service and tenure; (v) professional secrecy and immunity; and (vi) discipline, suspension and removal. Without seeking to be in any sense exhaustive, the present chapter will deal with some of the significant issues relating to the independence and impartiality of the judiciary.

The notions of independence and impartiality:

links and basic differences

The notions of “independence” and “impartiality” are closely linked, and in some instances the international control organs have dealt with them jointly. Yet each has its specific meaning and requirements, which will be further explained in more detail below. Suffice it to indicate at this juncture that the concept of “independence” is an expression of the constitutional value of judicial independence and, as stated by the Canadian Supreme Court in the case of *Valiente v. The Queen*, in a passage that conveys well the general understanding of the notion of independence of the Judiciary not only under Canadian constitutional law but also under international human rights law, this notion “connotes not only a state of mind but also a status or relationship to others – particularly to the executive branch of government – that rests on objective conditions or guarantees”.⁹ This status or relationship of independence of the Judiciary “involves both individual and institutional relationships: the individual independence of a judge as reflected in such matters as security of tenure and the institutional independence of the court as reflected in its institutional or administrative relationships to the executive and legislative branches of government”.¹⁰

By contrast, the Supreme Court of Canada described the concept of judicial “impartiality” as referring to “a state of mind or attitude of the tribunal in relation to the issues and the parties in a particular case”.¹¹ This view has also been confirmed at the international level, where, for instance, the Human Rights Committee has held that the notion of “impartiality” in article 14(1) “implies that judges must not harbour preconceptions about the matter put before them, and that they must not act in ways that promote the interests of one of the parties”.¹² As to the European Court of Human Rights, it considers that the notion of impartiality contains both a *subjective* and an *objective* element: not only must the tribunal be impartial, in that “no member of the tribunal should hold any personal prejudice or bias”, but it must also “be impartial from an objective viewpoint”, in that “it must offer guarantees to exclude any legitimate doubt in this respect”.¹³ The European Court thus adds to the more subjective mental element of bias the important aspect of availability of *guarantees*.

4.4 The notion of institutional independence

The notion of institutional independence means that the Judiciary has to be independent of the other branches of government, namely the Executive and Parliament. According to Principle 1 of the Basic Principles on the Independence of the Judiciary:

“The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.”

Furthermore, according to Principle 7 of the Basic Principles,

“It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.”

In order to secure true independence of the Judiciary from the other two branches of government, it is necessary for this independence to be guaranteed, preferably by the Constitution; or, failing this, by other legal provisions.

4.4.1 *Independence as to administrative matters*

Although international law does not provide details as to how this institutional independence is to be realized in practice, it is clear that, as a minimum, the Judiciary must be able to handle its own administration and matters that concern its operation in general. This includes “the assignment of cases to judges within the court to which they belong”, a matter which, as stated in Principle 14 of the Basic Principles, “is an internal matter of judicial administration”.

We do hereby, for Us, Our Heirs and Successors, and all People of the world, further grant unto the International Criminal Court against Child Kidnapping, for the benefit of humankind and planet earth, that this Convention, or the enrolment or exemplification thereof, shall be in all things valid and effectual in law according to the true intent and meaning thereof and shall be taken, construed and adjudged in the most favorable and beneficial sense for the best advantage of the International Criminal Court against Child Kidnapping, in its commitment to restoring truth and reason to the delivery of justice in the world, as well in Our Courts of Record as elsewhere by all Judges, Justices, Officers, Ministers and other public servants.

Conscious that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time,

Mindful that during this century millions of children have been victims of atrocities that deeply shock the conscience of humanity,

Recognizing that such crimes against children threaten the peace, security and well-being of the world,

Affirming that the crimes against children must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,

Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,

Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes,

Reaffirming the Purposes and Principles of the United Nations Convention for the Crime of Parental Child Kidnapping, and in particular that all States shall refrain from the interference with the enjoyment of the rights of children of freedom, to be free from torture or from any other inhumane treatment or enforced disappearance, or in any other manner inconsistent with the Purposes of the United Nations,

Determined to these ends and for the sake of present and future generations, to establish an independent permanent International Criminal Court Against Child Kidnapping using as Founding Treaty the United Nations Convention on the Rights of the Child, with jurisdiction over the crimes against children of concern to the international community as a whole,

Emphasizing that the International Criminal Court Against Child Kidnapping established under this Convention and its Statute shall be complementary to national criminal jurisdictions, resolved to guarantee lasting respect for and the enforcement of international justice.

Introduction

The International Criminal Court against Child Kidnapping (ICCACK) is an international court, headquartered in The Hague, The Netherlands, participating in a global fight to end impunity for parental and Governmental child kidnappers, and through international criminal justice, the Court aims to hold those responsible accountable for their crimes against children and Crimes against Humanity. The work of ICCACK includes to enforce international laws & treaties against parental child kidnappers and human rights abusers.

The ICCACK cannot reach these goals alone. As a court of last resort against parental child kidnappers, it seeks to complement, not replace, national Courts. Governed by an international treaty called the United Nations Convention on the Rights of the Child (UNCRC) and the United Nation Universal Declaration of Human Rights, ICCACK is the world's first permanent international criminal court against parental child kidnapping. Our work is supported by 196 Nations who signed the UNCRC and further supported by all Nations who signed the UN Declaration of Human Rights.

The Court's founding treaty, called the United Nations Convention for the Protection of the Rights of the Child, which has been signed by 196 Nations across the world, grants the ICCACK jurisdiction over crimes against children to prevent and/or eliminate such crimes completely.

The present Kidnapped Hearts Convention aims to protect children from the crime of parental or governmental child kidnapping by closing a huge gap in International Laws and Treaties.

The UNCRC State parties are convinced that the interests of children are of great significance at the time of custody disputes. To protect the rights of children internationally from the irreparable harmful effects of their wrongful removal or retention and depriving of their liberty of movement to return to their habitual residence, there is an urgent need of rigorous taskmasters to be implemented.

The UNCRC State parties have agreed that a child who was living in one Convention country, and who has been removed to or wrongfully retained in another Convention country in violation of the left-behind parent's (ne exeat) custodial rights, shall be promptly returned. Once the child has been returned, the custody dispute can then be resolved, if necessary, in the courts of that jurisdiction. This Convention does not address who should have custody of the child; it addresses where the custody case should be heard, however the Kidnapped Hearts Convention addresses the criminal aspects of parental child kidnapping and requires to hold the perpetrator accountable for his/her crime against an innocent child and the violation of the (ne exeat) custody rights of the left-behind parent.

1. Effect of Custody Order Concerning the wrongfully retained Child

Existing Custody Orders Children who otherwise fall within the scope of this Convention are **not** automatically removed from its protections by virtue of a judicial decision awarding custody to the alleged wrongdoer. This is true whether the decision as to custody was made, or is entitled to recognition, in the State to which the child has been wrongfully taken.

The State **cannot** refuse to return a wrongfully retained child solely on the basis of a court order awarding custody to the alleged wrongdoer made by one of its own courts or by the courts of another country. This provision is intended to ensure, inter alia, that the Convention takes precedence over decrees made in favor of parental child abductors before the court had notice of the wrongful removal or retention.

Thus, the person who wrongfully removes or retains the child in a Contracting State **cannot** insulate the child from the Convention's return provisions merely by obtaining a custody order in the country of new residence, or by seeking there to enforce another country's order. Nor may the alleged wrongdoer rely upon a stale decree awarding him or her custody, the provisions of which have been derogated from subsequently by agreement or acquiescence of the parties, to prevent the child's return under the Convention.

The State parties of the UNCRC agree that any falsely obtained custody order by the parental child kidnapper shall be declared VOID and the State party shall return the wrongfully retained child immediately.

2. Pre-Decree Removals or Retentions

Children who are wrongfully removed or retained prior to the entry of a custody order are protected by the UNCRC and this Convention. There need not be a custody order in effect in order to invoke the Convention's return provisions. Accordingly, under the Convention a wrongfully retained child will be ordered returned to the person with whom he or she was habitually resident in pre-decree abduction cases as well as in cases involving violations of existing custody orders.

Application of the Convention to pre-decree cases comes to grips with the reality that many children are abducted or retained long before custody actions have been initiated. In this manner a child is not prejudiced by the legal inaction of his or her physical custodian, who may not have anticipated the abduction, and the abductor is denied any legal advantage since the child is subject to the return provisions of the Convention.

The Convention's treatment of pre-decree abduction cases is distinguishable from the Council of Europe's Convention on Recognition and Enforcement of Decisions Relating to the Custody of Children, adopted in Strasbourg, France in November 1979 ("Strasbourg Convention"), and from domestic law in the United States, specifically the UCCJEA and the PKPA, all of which provide for enforcement of custody decrees. Although the UCCJEA and PKPA permit enforcement of a decree obtained by a parent in the home state after the child has been removed from that state, in the absence of such decree the enforcement provisions of those laws are inoperative.

In contrast to the restoration of the legal status quo ante brought about by application of the UCCJEA, the PKPA, and the Strasbourg Convention, the Hague Convention seeks restoration of the factual status quo ante and is not contingent on the existence of a custody decree. The Convention is premised upon the notion that the child should be promptly restored to his or her country of habitual residence so that a court there can examine the merits of the custody dispute and award custody in the child's best interests. Pre-decree abductions are discussed in greater detail in the section dealing with actionable conduct.

The States Parties to the UNCRC:

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Recognizing that the United Nations, in the Convention on the Rights of the Child, has proclaimed and agreed that State Parties shall respect and ensure the rights set forth therein 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.

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists to strive for the promotion and protection of the rights of the child,

Reaffirming that the rights of children require special protection, and calling for continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling that, in the Universal Declaration of Human Rights, Article 13, Point 2 specifies that: "Everyone has the right to leave any country, including his own, and to **return** to his country". Therefore, parental child kidnapping should not be treated or categorized as "civil aspect" any longer under International Laws and Treaties if a wrongfully retained child is DEPRIVED his/her liberty to return to his country of legal domicile and/or his/her country of citizenship,

*Reaffirming that under **Article 13, Point 2 of the Universal Declaration of Human Rights*** "Everyone has the right to leave any country, including his own, and to **return** to his country" and that "**imprisonment of a wrongfully retained child by international borders**", **violates this provision.**

Noting that and that article 3 of the Convention on the Rights of the Child specifies that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration, and that article 11 lays down that States Parties shall take measures to combat the illicit transfer and non-return of children

abroad and to this end they shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Stressing that the harmful effects for abducted children is devastating for their present and future developments.

Noting the adoption of the Rome Statute of the International Criminal Court, in particular, the inclusion therein as crimes against humanity when committed as part of a widespread or systematic attack, of the intentional infliction of severe pain or suffering, whether physical, psychological, emotional or mental, upon a person in the custody or under the control of the accused, and the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom, and the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children, and the imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law,

Also recalling the Declaration on the Protection of All Persons from Enforced Disappearance adopted by the General Assembly of the United Nations in its resolution 47/133 of 18 December 1992 and the International Convention for the Protection of All Persons from Enforced Disappearance,

Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes,

Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,

Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,

Promoting the provisions contained in the Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (the 'Hague Convention'), on State Parties' obligations to ensure a prompt return of a wrongful retained or concealed child abroad, as an affective remedy for the violation of the child's rights and a preventive measure to fight against the crime of parental child kidnapping,

Convinced of the need to strengthen international cooperation in the implementation of the present Convention, as well as the physical and psychosocial rehabilitation and social reintegration of children who are victims of the crime,

Recalling that a parent *ne exeat* right is a "right to custody" as in the landmark case *Abbott v. Abbott*, 560 U.S. 1 (2010), which was a decision by the Supreme Court of the United States holding that a parent's *ne exeat* right (in this case: the right to prevent a child to leave the country) is a "right to custody" under the Hague Convention on the Civil Aspects of International Child Abduction and the US International Child Abduction Remedies Act. The child thus should have been returned to Chile, the country of "habitual residence" because the mother violated the *ne exeat* right of the father when taking the child to the United States without the father's consent.

The Board of Trustees of ICCACK have agreed as follows:

Part I

Article 1

1. This Convention shall apply, except as otherwise stated herein, to the prevention, investigation and criminal prosecution of parental child kidnapping including criminal prosecution against every person who becomes complicit in the crime violating International Laws and Treaties.
2. No one shall be subject to parental child kidnapping or international Governmental child kidnapping.
3. No exceptional circumstances whatsoever, whether committed by parents or any governmental body, under internal political regulations or custom, may be invoked as a justification of child kidnapping, when it is in violation of the rights of the child, the child's other parent, family member or any other person who owns the legal responsibility of the child.
4. For the purpose of the present Convention:

“Child” must be considered a person under 18 of age;

“Parental child kidnapping” or “parental child abduction” is the intentional removal, concealment, or retention of a child either in the same country of habitual residence, or outside his/her country of habitual residence/legal domicile, by his/her or guardian in violation of the child's rights and of the child's other parent or guardian or anyone with legal responsibility for the child.

Article 2

The widespread or systematic practice of ‘parental child kidnapping’ constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law.

Article 3

States Parties to the present Convention shall take measures to ensure that “parental child kidnapping” constitutes an offence under its criminal law”.

Article 4

1. Each UNCRC State Party shall take the necessary measures to hold criminally responsible at least:
 - a) Any person who commits, solicits, induces or facilitates the commission of, attempts to commit, is an accomplice to or participates in a parental child kidnapping;
 - b) Any person who, with the knowledge of international laws and treaties, consciously disregards and conspires directly or indirectly with one or more other persons to commit the criminal act of parental child kidnapping, or becomes complicit in the criminal act of parental child kidnapping;
 - c) Any person who organizes, directs, aids, abets, facilitates or counsels the commission or the attempted commission, including providing the means for the commission, of parental child kidnapping;
2. No provision in this Convention relating to individual criminal responsibility shall affect the responsibility of States under international law.

Article 5

1. Parental child kidnapping committed by any person, including any of the parents or government officers when acting under the colour of law in their course of their official duty, capacity or employment has to be considered a criminal offence when the UNCRC has been violated or one or more, of the following conditions occur:
 - a) A child is separated from one or both of his/her parents or guardian and/or is deprived of his/her right of liberty to maintain a contact with one or **both** of his/her parents through correspondence and visits, without his/her best interest, and/or it is denied to the “left behind parent” the (ne exeat) right of custody and/or it is denied the right of access to his/her child/ren;
 - b) The wrongful retention or concealment places in order to take the child or keep the child retained either abroad or within the country of wrongful retention, without his/her best interest and/or with the purpose of interfering with (ne exeat) custody rights of the left behind parent;
 - c) A child is deprived of his or her liberty to return to his country of legal domicile and/or his country of citizenship, which is not in his/her best interest;
 - d) The kidnapped child is facing threat of serious harm, including, physical, psychological, mental or emotional torture or other cruel, inhuman or degrading treatment or punishment, or enforced disappearance, or enslavement, or imprisonment by keeping him/her wrongfully retained in another country, or a concurrent of these crimes has occurred as provided by Article 7, let. (c), (e), (f), (i) and (k) of the Rome Statue of the International Criminal Court;
 - e) There is no right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty and wrongful retention before a court or other competent, independent and impartial authority, and to a prompt decision on any such action;
 - f) The wrongful retention or concealment places the victim as an illegal immigrant into any jurisdiction other than his/her habitual residence/legal domicile at the time of the wrongful retention or concealment or by deception, without his/her best interest;

- g) The commission of wrongful retention or concealment is aimed at a material gain or with the intent of enriching himself/herself or a third person, by imposing to the “left behind” parent to pay “child support” for an illegal immigrant, wrongfully retained child into the local court system and/or to the child abducting parent;
- h) The wrongful retention or concealment violates International Laws and Treaties such as the UNCRC the UNHRC, for the immediate return of the wrongful retained child and/or the Rome Statute of the International Criminal Court, or other treaties, including by judicial or administrative national authorities and/or other “bad actors” as complicit in the crime of parental child kidnapping.

For the purpose of this article:

“Rights of custody” shall include (ne exeat) rights relating to the care of the “left behind” parent or guardian authorized by the competent court or if unauthorized then either parent of the child who is living at the child’s habitual residence and, in particular, the right to determine the child’s place of residence;

“Rights of access” shall include the right to take a child for a limited period of time to a place other than the child’s habitual residence or from the parent or guardian authorized by the court or if unauthorized then either parent taking away the child from “left behind” parent;

“Interference with custody” shall include the conduct of whoever, without lawful authority and in the absence of a court order determining rights to custody or visitation with any minor, knowingly or recklessly takes or entices, or aids, abets, hires, or otherwise procures another to take or entice, any minor or any incompetent person from the custody of the minor’s or incompetent person’s parent, his or her guardian, a public agency having the lawful charge of the minor or incompetent person, or any other lawful custodian commits the offense of interference with custody, when acting under the colour in their course of their official duty, capacity or employment.

Article 6

1. Each UNCRC State Party shall make the offence of parental kidnapping punishable by appropriate criminal penalties which take into account its extreme seriousness, including imprisonment, with the assistance of the International Criminal Court against Child Kidnapping.
2. Each UNCRC State Party may establish:
 - a) Mitigating circumstances, in particular for persons who, having been implicated in the commission of parental kidnapping, effectively contribute to bringing the kidnapped child forward alive or healthy or to identify the perpetrators of the kidnapping;

- b) Without prejudice to other criminal procedures, aggravating circumstances, in particular in the event of the death of the kidnapped child or the commission of other crimes, such as the psychological, mental or emotional torture or other cruel, inhuman or degrading treatment or punishment or enforced disappearance.

Article 7

Crimes within the jurisdiction of the Court

1. The Court has jurisdiction in accordance with this Convention with respect to the following crimes:
 - a) Parental child kidnapping;
 - b) Crimes against humanity;
 - c) Enforced disappearance of children by Government Officials;
 - d) Governmental child kidnapping, violating International Laws & Treaties;
 - e) Child Trafficking;
 - f) Child Trafficking for Sexual, Financial and Labour Exploitation;
 - g) Online Child Sexual Abuse Material for Commercial and Non-Commercial Exploitation;
 - h) Concealment of wrongfully retained children;
 - i) Harboursing of illegal immigrant wrongfully retained children.
 - j) Any other crime as provided and criminalised by the International Convention Against Child Kidnapping.

Article 8

1. Each UNCRC Member State Party shall take the necessary measures to establish its competence to exercise jurisdiction over the offence of the parental kidnapping:
 - a) When the offence is committed in any territory under its jurisdiction or on board of a ship, Aircraft or vehicle registered in that State;
 - b) When the alleged offender is one of its nationals;
 - c) When the kidnapped child is one of its nationals and the UNCRC Member State Party considers it appropriate.

2. Each UNCRC Member State Party shall likewise take such measures as may be necessary to establish its competence to exercise jurisdiction over the offence of parental kidnapping when the alleged offender is present in any territory under its jurisdiction, whether or not the offence of parental kidnapping occurred in its jurisdiction, unless it extradites or surrenders him or her to another State in accordance with its international obligations or surrenders him or her to an international criminal tribunal whose jurisdiction it has recognized.
3. This Convention does not exclude any additional criminal jurisdiction exercised in accordance with national or international law.

Article 9

1. Upon being satisfied, after an examination of the information available to it, that the circumstances so warrant, any UNCRC Member State Party in whose territory a person suspected of having committed any offence referred to in article 4 is present shall take him or her into custody or take such other legal measures as are necessary to ensure his or her presence. The custody and other legal measures shall be as provided for in the law of that UNCRC Member State Party but may be maintained only for such time as is necessary to ensure the person's presence at a criminal trial, or to surrender for extradition proceedings.
2. Such UNCRC Member State shall immediately make a preliminary inquiry into the facts.
3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.
4. When a UNCRC Member State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 8, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 10

1. The UNCRC Member State Party in the territory under whose jurisdiction a person alleged to have committed an offence of parental child kidnapping is found shall, if it does not extradite that person or

surrender him or her to another State in accordance with its international obligations or surrender him or her to a national or an international criminal tribunal whose jurisdiction it has recognized, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that UNCRC Member State Party. In the cases referred to in article 8, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 8, paragraph 1.
3. Any person against whom proceedings are brought in connection with an offence of parental child kidnapping shall be guaranteed fair treatment at all stages of the proceedings.

Article 11

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between UNCRC Member States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a UNCRC Member State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another UNCRC Member State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. UNCRC Member States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 8, paragraph 1.

Article 12

1. UNCRC Member States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings (discovery).
2. UNCRC Member States Parties shall carry out their obligations under paragraph I of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 13

UNCRC Member State parties shall guarantee to any person that:

- a) Every child is entitled to the right to life, liberty and security, without distinction of any kind, such as race, ethnicity, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and that no child is deprived of his liberty except on such grounds and in accordance with such procedure as are established by law;
- b) Every child is entitled to the right to be free from parental child kidnapping, wrongful retention, and concealment, and that no wrongfully retained child is subjected to physical, emotional, psychological or mental torture or to cruel, inhuman or degrading treatment or punishment, or enforced disappearance, or enslavement or imprisonment by keeping him/her wrongfully retained in another country;
- c) No child is deprived of to his/her right to move freely without any fear and without obstruction of movement within the borders of each State and to leave any country, including his own, and to return to his country of legal domicile and/or his country of citizenship (For the purpose of this article, the term “habitual residence” means that it can only be applied if the wrongfully retained child would be a legal resident in the place of “habitual residence/legal domicile”);
- d) Every retained child has the right to an effective remedy by the competent judicial national tribunals or courts for acts violating the fundamental rights granted him by the constitution or by law.
- e) Every retained child has the right to an effective remedy by the competent judicial national tribunals or courts for acts violating the fundamental rights granted to him/her by the national constitution or by international laws and treaties with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial national tribunal or court previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.
- f) No child is arbitrarily deprived of his/her right to a nationality, without due process of law and if the wrongfully retained or removed child was under a disability or incapacitated when the wrongful retention occurred and his/her parent, or guardian, did file a suit in court for compensatory or punitive

damages when child was under 18 years of age. Upon attaining 18 years of age, the wrongfully retained child can maintain an action at law in his/her own name, and is not barred by a Statute of Limitation to file suit in his/her name

- g) No wrongfully retained child is deprived of his/her liberty to not be separated with a judicial sentence from his/her “left behind” parent or guardian unless it is proven, beyond a reasonable doubt and with respect of other procedural rules of due process, that the “left behind” parent is unqualified to be a caring and loving parent and solely in the child's best interest;
- h) No wrongfully retained child is deprived of his/her right to maintain contact with **both** his or her parents through correspondence and visits. If personal visits cannot be maintained, alternatively, through telephone, email, video chat or other electronic means such as Skype, Facetime, Facebook etc.

Article 14

Each UNCRC Member State Party has confirmed to adopt legislative, administrative or other effective measures which are appropriate and consistent with their legal systems, ensuring that:

- a) Any individual has the right to report the facts to the competent authorities, which shall examine the allegation promptly and impartially and, where necessary, undertake without delay a thorough and impartial investigation, and that appropriate steps shall be taken, where necessary, to ensure that the complainant, witnesses, relatives of the kidnapped child and their defence counsel, as well as persons participating in the investigation, are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.
- b) Where there are reasonable grounds for believing that a child has been subjected to parental kidnapping, competent authorities shall undertake an investigation, even if there has been no formal complaint.
- c) The necessary measures to prevent and sanction acts that hinder the conduct of an investigation and sanctioning are taken. In particular, it shall ensure that persons suspected of having committed an offence of parental kidnapping are not in a position to influence the progress of an investigation or the trial by means of pressure or acts of intimidation or reprisal aimed at the complainant, witnesses, relatives of the kidnapped child or their defence counsel, or at persons participating in the investigation, or acts of corruption aimed at the parental kidnapper.
- d) The administrative and judicial authorities are taking stringent actions against such criminals and that will decrease the crime rate of parental child kidnapping.
- e) In case of any unnecessary delay in prosecuting or punishing such criminals, the authorities are answerable.

- f) Not any kind of support and/or complicity, toleration or perverse incentive for parental child kidnapping will occur within its jurisdiction;

Article 15

1. Each UNCRC Member State Party shall ensure in its legal system that the victim of an act of parental kidnapping obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of parental kidnapping, his/her 'left-behind parent' is entitled to compensation for the loss of companionship, love and affection to his/her child.
2. Every wrongfully retained child deprived of his or her liberty to return to his country of legal domicile or country of citizenship, has the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty and wrongful retention before a court or other competent, independent and impartial authority, and to a prompt decision on any such action. (For the purpose of this article, the term "habitual residence" means that it can only be applied if the wrongfully retained child would be a **legal** resident in the place of "habitual residence");
3. If the "left behind parent" has been victim of wrongful child retention, such a parent is compensated with compensatory damages and punitive damage with the assistance of the International Criminal Court against Child Kidnapping.
4. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national or international law.

Article 16

Each UNCRC Member State Party has confirmed to ensure that:

- a) The right to return to his/her country of citizen of the kidnapped child is promptly and expeditiously guaranteed;
- b) The release and return of a child is realized with humanity and respect for the inherent dignity of the human person, and in a manner, which considers the needs of persons of his or her age;
- c) The acceptance or denial of the release and return of the child shall not be founded on the merits of the rights of custody, nor in the event that the parent child kidnapper is raising that the wrongfully retained child is now "well settled" in its new environment.

Article 17

1. UNCRC Member States Parties shall afford one another the greatest measure of mutual legal assistance in connection with criminal proceedings brought in respect of an offence of parental kidnapping, including the supply of all evidence at their disposal that is necessary for the proceedings and the return of the kidnapped child as a prompt and effective remedy and preventive measure against parental child kidnapping.
2. Such mutual legal assistance shall be subject to the conditions provided for by the domestic law of the requested UNCRC Member State Party or by applicable treaties on mutual legal assistance, including, in particular, the conditions in relation to the grounds upon which the requested State Party may refuse to grant mutual legal assistance or may make it subject to conditions.

Article 18

UNCRC Member States Parties shall cooperate with each other and shall afford one another the greatest measure of mutual assistance with a view to assisting victims of parental kidnapping, and in searching for, locating and releasing disappeared children and, in the event of death, in exhuming and identifying them and returning their remains.

Article 19

1. Each UNCRC Member State Party shall designate a Central Authority that assists national and foreign authorities in such matters as extradition for crime of parental child kidnapping, international legal assistance, the transfer of enforcement of sentences and criminal proceedings and the return of the kidnapped or wrongfully retained child.
2. Federal States, or States with more than one system of law or States having autonomous territorial organizations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.
3. Each Central Authority may be assisted by other national or international authorities such as Police, Interpol intelligence services and/or other authorities and/or others for the prompt arrest or prosecution of person organizing, directing, aiding, abetting, facilitating or counselling the commission of parental child kidnapping.
4. Each UNCRC Member State Party shall ensure that its Central Authority serves as a contact point for international cooperation and that, when it has reason to believe that a child is wrongfully retained or conceived in another State Party, it shall through it without delay transmit the application to that State Party or its competent agency, including Central Authority, and to take other active actions provided by international treaties and other conventions.

1. For the application of this article, each UNCRC Member State Party shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements

Article 20

1. UNCRC Member State Parties shall ensure that any individual may apply for the return of the child, using a model complaint form which shall be provided by each State Party through its Central Agency, or other competent national or international authority.
2. Applications for the return shall be submitted to Central Authorities, under rules provided by international treaties and other conventions, and they shall have accepted them.

Article 21

1. Each UNCRC Member State Party shall take appropriate measure that ensure that in that circumstance of rejection of an application for the return of the child, or a term of six weeks from the date of commencement of the proceedings has expired without that the competent authority reached a decision or initiated a criminal investigation, the applicant, the Central Authority or any other public agency of the requested State, or any other international organization, on its own initiative or if asked by the Central Authority of the requesting State, has the right to request a statement of the reasons for the delay or for the denial of criminal prosecution. The reply received or transmitted to the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the left behind parent/applicant, as the case may be.
2. If the delay is considered unnecessary or the denial of the initiation of criminal prosecution unfounded, then an action shall be taken by the requesting State against the person or institution facilitating or counselling the sanctioning and there shall be grant of compensatory damages to the “left behind parent” or guardian for such unnecessary delay.

Article 22

1. Where a child has been wrongfully removed or retained in terms of Article 4 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the UNCRC

Member State Party where the child is, a period of one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall at least order the return of the child forthwith.

2. Even where the proceedings have been commenced after the expiration of the period of one year of the date of the wrongful removal or retention, referred to in the preceding paragraph, UNCRC Member State Parties shall also order the return of the wrongfully retained child with immediate effect to avoid that the child abducting parent receives a “PERVERSE INCENTIVE” by concealing the child.

Article 23

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

Article 24

1. Each State Party shall not order the return of the child if it has been established under opposition of any person, institution or other body or *ex officio* and beyond reasonable doubt that:
 - a) The person, institution or other body having the care of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention,
 - b) There is a grave and imminent risk that the return would expose the child to physical or psychological harm, serious injury or otherwise places the child in an intolerable situation.

Article 25

1. If in order to evaluate whether a criminal liability shall be addressed it might be necessary to ascertain previously the right of custody in a civil proceeding, each UNCRC Member State Party shall ensure that the criminal proceeding is suspended until the civil proceeding's decision becomes final and all the domestic remedies have been exhausted. This provision does **not** affect the ne exeat custody right or the right of return of the child and/or the right of access of the 'left-behind' parent or guardian.
2. A judicial or administrative decision under this Convention concerning the return of the child or the commission of parental child kidnapping shall not be taken to be determination on the merits of any custody issue, unless either the conduct of parental child kidnapper is ascribable under Article

4(c),(d),(g),(h) of this Convention, and/or a grave and imminent risk that the return would expose the child to physical or psychological harm, serious injury or otherwise places the child in an intolerable situation has been ascertained.

3. Each UNCRC Member State party shall ensure that any violation of paragraphs 1 of this article is treated as a perverse incentive to commit further parental child kidnapping, and/or to support conceal and/or traumatization of the child, which interfere with the enjoyment of the child's right to move in the society freely.

Article 26

1. At any time after the receipt of an application for the return of a child and before a determination on the merits of a criminal proceeding against parental child kidnapper has been reached, the judicial or administrative authority of each UNCRC Member State Party shall take such interim measures as may be necessary in exceptional circumstances to avoid possible irreparable damage to the victim or victims of the alleged violations.
2. Where the national authority exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication.

Article 27

Central Authorities appointed by UNCRC Member State Parties are bound by the obligations of international cooperation which are set forth in this Convention to promote the peaceful enjoyment of the (ne exeat) rights set forth in this Convention and the fulfilment of any conditions to which the exercise of such rights may be subject. To this end, each State Party, through its Central Authority shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

PART III

Article 28

1. A Committee against Parental Child Kidnapping (hereinafter referred to as the Committee) shall be established to carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity and be independent and impartial. The experts shall be elected by the States Parties according to equitable geographical distribution. Due account shall be taken of the usefulness of the participation in the work of the Committee of persons having relevant legal experience and of balanced gender representation.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the ICCACK Board of Trustees. Each UNCRC Member State Party may nominate one person from among its own nationals.
3. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if re-nominated. The term of five of the members elected at the first election shall also expire at the end of four years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 2 of this article.
4. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the International Criminal Court against Child Kidnapping, as laid down in the relevant sections of the Convention on the Privileges and Immunities of the International Criminal Court against Child Kidnapping.

Article 29

1. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:
 - a) Six members shall constitute a quorum;
 - b) Decisions of the Committee shall be made by a majority vote of the members present.
2. The Secretary-General of the International Criminal Court against Child Kidnapping shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

Article 30

1. In the framework of the competencies granted by this Convention, the Committee shall cooperate with all relevant organs, offices and specialized agencies and funds of the United Nations, with the treaty bodies instituted by international instruments, with the special procedures of the United Nations and with the relevant regional intergovernmental organizations or bodies, as well as with all relevant State institutions, agencies or offices working towards the protection of all children against parental child kidnapping.
2. As it discharges its mandate, the Committee shall consult other treaty bodies instituted by relevant international human rights instruments, in particular the Human Rights Committee instituted by the International Covenant on Civil and Political Rights, with a view to ensuring the consistency of their respective observations and recommendations.

Article 31

1. If the Committee receives reliable information which appears to it to contain indications that parental child kidnapping is being practised on a systematic or widespread basis in the territory of a UNCRC Member State Party, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.
2. Taking into account any observations which may have been submitted by the UNCRC Member State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.
3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the UNCRC Member State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.
4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these findings to the UNCRC Member State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.
5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the UNCRC Member State Party shall be sought.

Article 32

1. A request that a parental kidnapped child should be sought and found may be submitted to the Committee, as a matter of urgency, by relatives of the kidnapped child or their legal representatives, their counsel or any person authorized by them, as well as by any other person or organization having a legitimate interest.
2. If the Committee considers that a request for urgent action submitted in pursuance of paragraph 1 of this article:
 - a) Is not manifestly unfounded;
 - b) Does not constitute an abuse of the right of submission of such requests;
 - c) Has already been duly presented to the competent bodies of the UNCRC Member State Party concerned, such as those authorized to undertake investigations, where such a possibility exists;
 - d) Is not incompatible with the provisions of this Convention; and
 - e) The same matter is not being examined under another procedure of international investigation or settlement of the same nature;

It shall request the UNCRC Member State Party concerned to provide it with information on the situation of the persons sought, within a time limit set by the Committee.

3. In the light of the information provided by the UNCRC Member State Party concerned in accordance with paragraph 2 of this article, the Committee may transmit recommendations to the State Party,

including a request that the State Party should take all the necessary measures, including interim measures, to locate and protect the person concerned in accordance with this Convention and to inform the Committee, within a specified period of time, of measures taken, taking into account the urgency of the situation. The Committee shall inform the person submitting the urgent action request of its recommendations and of the information provided to it by the State as it becomes available.

4. The Committee shall continue its efforts to work with the UNCRC Member State Party concerned for as long as the fate of the kidnapped child remains unresolved. The person presenting the request shall be kept informed.

Article 33

1. The Committee shall have competence solely in respect of parental child kidnapping, which commenced after the entry into force of this Convention.

PART IV

Article 34

Nothing in this Convention shall affect any provisions which are more conducive to the protection of all children from parental child kidnapping and which may be contained in:

- a) The law of a UNCRC Member State Party;
- b) International law in force for that UNCRC Member State.

Article 35

1. This Convention is open for signature by all Member States of the United Nations.
2. This Convention is not subject to ratification by all Member States of the United Nations. All UNCRC Member State Parties are automatically required to abide to International Laws and Treaties they have signed and ratified with the United Nations. Violations of these UN Treaties automatically grants ICCACK universal jurisdiction to protect and enforce the Human Rights of the Child.

Article 36

The provisions of this Convention shall apply to all parts of federal States who signed the UNCRC without any limitations or exceptions.

Article 37

1. Any dispute between two or more UNCRC Member States Parties concerning the interpretation or application of the UNCRC and this Convention which cannot be settled through negotiation or by the procedures expressly provided for in this Convention shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

Article 38

1. Any State may at any time withdraw a reservation it has made. The withdraw shall be notified to the Secretary-General of the United Nations. The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 39

Denunciation

1. A UNCRC Member State Party may not denounce the present Convention because the Member State has signed and ratified the UNCRC.
2. Any denunciation shall not have the effect of releasing the State Party concerned from its obligations under the UNCRC or this Convention in respect of any act which, being capable of constituting a violation of such obligations under the UNCRC, may have been performed by it before the date at which the denunciation became effective.

Article 40

Signature and ratification

1. This Convention shall be open to the signature of the members of the United Nations, who signed the United Nations Convention on the Rights of the Child.
2. The present Convention shall come into force immediately regardless if any UNCRC Member State Party signs or ratifies this Convention.

Done at The Hague, The Netherlands, this 1st day of June 2018, in English in a single copy which shall remain deposited in the archives of the International Criminal Court against Child Kidnapping. The

Secretary General shall transmit certified copies to each Member of the Board of Trustees and send this Convention as registered mail to the United Nations and to each of the 196 UNCRC Member State Parties.

In witness whereof the undersigned Members of the Board of Trustees of ICCACK, being duly authorized thereto, have signed this Convention.

Date: 1st June 2018

**Mark Rackley – Trustee
International Criminal Court against Child Kidnapping**