

*The Hague Convention*

# Parental Child Abduction, Corruption and Mutual Confidence



Alf Friiso's 11-year-old son was abducted to Nicaragua in 2013. He is pictured here in connection with the annual conference of the iStand Parent Network, an American organization for parents of abducted children.

In 2013, my then 11-year-old son was abducted to Nicaragua from Norway. Like many other people in an increasingly globalized world, I have lived in different countries for studies and work, and I married a person from another country. As do many marriages, mine also ended. Our son's mother then unilaterally decided to take our son to Nicaragua and begin a new life there. She committed an illegal parental child abduction. The Hague Convention on Child Abduction should have resolved the situation, but was instead used to "approve" the abduction. Tragically, when contracting states cannot be trusted to comply with their treaty obligations, the Hague Convention can lead to unintentional and harmful results.

BY ALF FRIISO

In 2019, 75 children were illegally abducted from Norway. During the period 2005 – 2019, a total of 823 children were abducted, and my son was one of them.

My sense of helplessness was enormous when my son was abducted. As far as I knew, nothing could be done when your child has been taken out of the country. The Norwegian justice system has no mandate to follow up cases in other countries. No World Police Force exists who could bring an abducted child home again. That is what I initially thought.

But then I discovered the Hague Convention on Child Abduction. It turns out that there is a system in place whereby many countries participate to resolve conflicts between private persons, including cases regarding international pa-

rental child abduction. The Hague Convention on Child Abduction gave me a great deal of hope.

### **The Hague Conventions – resolving civil disputes across international borders**

Countries have sought to resolve private (civil) legal disputes between parties in different countries since the 19th century. In 1893, the Dutch lawyer Tobias Asser took an initiative to convene a large conference between 12 European nations – "The Hague Conference on Private International Law". The idea was that nations should agree upon common solutions on how private law disputes should be settled, with the ultimate aim of promoting international peace and stability. Several conferences were held in the following years, and resulted in a number of international agreements ("Hague Conventions") regarding for example marriage (1902), divorce (1902),

guardianship of minors (1902), deprivation of civil rights (1905), and more.

Tobias Asser was awarded the Nobel Peace Prize in 1911 for his work.

The Hague Conventions are based on mutual confidence. The system is implicitly founded on the presumption, or a common trust, that all parties to the conventions have judicial systems with the capacity and knowledge, and not least the will, to respect and fulfill the legal obligations set out in the conventions.

However, this has been controversial. As early as in 1904, the Swiss delegate to the Hague Convention, Freidrich Meilie, pointed out that serious concerns could be raised having to do with the "credibility of foreign officials, the firmness of foreign courts"<sup>1</sup>. He pointed out that accepting foreign court decisions "is a

1) The Four Hague Conferences on Private International Law, the Object of the Conferences and Probable Results: Paper Read Before the Universal Congress of Lawyers and Jurists at the St. Louis Exposition, September 29, 1904.

question of the most intense mutual confidence". Meili's remarks were in relation to a possible treaty on dealing with bankruptcies, but the central issue is the same – can one trust other countries' court systems?

The answer is clearly "yes" for many countries. In 1955, the "The World Organization for Cross-Border Co-operation in Civil and Commercial Matters" (also called HCCH from English and French: Hague Conference/Conférence de la Haye) was established under which the various private law Hague Conventions are negotiated. Norway was one of the founding members, and today a total of 84 countries and the European Union are members. Many countries are also parties to one or more Hague Conventions without having full HCCH membership. Currently, there are just under 40 Hague conventions and protocols within private international law.

### The Hague Convention on Child Abduction

*The Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (HCCH 1980 Child Abduction Convention) was established in 1980. This convention represents a milestone in securing the rights of children who have been unlawfully taken away from one of their parents. The convention is basically founded on a couple of very simple and elegant principles. In essence, if a parent takes their child to another country where the child is not a resident, and this has been done without the authorization of the other custodial parent, then the child is to be returned quickly to the country he or she was taken from (his or her country of "habitual residence"). It is essentially as easy as that. The country the child has been brought to (the "recipient country") is obliged not to take any decisions regarding custody issues.

As is the case for many international conventions, there are some exceptions. Article 13 b) of the Abduction Convention, for example, states that a recipient country is not obliged to return a child if there is a grave risk that his or her return would expose the child to physical

or psychological harm. This is intended to be an extremely narrow exception, and is widely understood to be applicable in situations, for example, where the child would be sent into a war zone or to a country where the judicial system is incapable of handling accusations against the remaining parent for violence or mistreatment toward the child.

The underlying foundation of the Hague Convention on Child Abduction is mutual confidence between countries. The country, from which the child has been taken, must be able to have confidence that the recipient country will return the child if the necessary prerequisites of the convention are applicable. Likewise, the recipient country must be able to have confidence that the country, to which the child is returned, will act in the child's best interest and protect him or her from any form of physical or psychological harm. Without this mutual confidence, the system collapses and can even lead to unintentional and perverse results.

### My experience with the Hague Convention on Child Abduction

I was very happy and optimistic when I learned about the Hague Convention on Child Abduction and found out that both Norway and Nicaragua are parties to the Convention, and that Norway had accepted Nicaragua as a bilateral partner within the Convention<sup>2</sup>. I could easily establish that 1) my son was a resident of Norway, and 2) that I was a custodial parent who did not authorize my son's relocation to Nicaragua. I therefore fulfilled the basic requirements for having my son returned under the Convention.

I contacted the Norwegian Ministry of Justice, which is responsible for following up the Abduction Convention (so-called "Central Authority") and initiated a process to have my son returned home. The people I spoke with in the Ministry were cautious with regard to what they said to me, but my understanding was that they were optimistic that my son would be returned.

Unfortunately, the process did not go as it should have. The justice system in

Nicaragua did not adhere to their legal obligations under the Hague Convention on Child Abduction. In an incomprehensible ruling, a judge decided that my son should not be sent home. The Judge confirmed that my son was a permanent resident of Norway, and that I was a legal custodial parent protesting my son's relocation to Nicaragua. This should have been sufficient to conclude that my son must be returned. However, the Judge continued in an extremely elaborate and convoluted manner to make a case for not returning my son. Some examples of the points made by the Judge in the ruling:

- *The Judge wrote that I apparently agreed that my son should live with his mother because I had written in one sentence, in one document, that I did not want my son to lose contact with his mother (my point was that my son should have contact with both parents).*
- *The Judge noted that in the hours before my son was taken out of Norway, I had contacted a lawyer to prevent him from leaving the country. The Judge maintained that this was proof that I agreed that my son should move to Nicaragua (my son's mother had unexpectedly told me a few hours before leaving that she was taking our son to Nicaragua for a two week vacation and I tried to stop this – something which is not possible under Norwegian law, unfortunately). The fact that I contacted a lawyer to stop my son leaving the country clearly was proof of the exact opposite.*
- *The Judge also, weirdly, stated that according to Nicaraguan law both parents must agree if a child is to leave the country, and this further proved that I had agreed that my son move to Nicaragua. Nicaraguan law obviously is not applicable in Norway, so this reasoning is nonsensical.*
- *The Judge made a point of the "power" dynamics between myself and my son's mother, and maintained that I had all the "power" on my side since I worked at a Norwegian government ministry, and because I had followed all the procedures correctly and translated all the relevant documents to Spanish.*
- *The Judge pointed out that my son's*

2) The Convention takes effect between individual countries only when a current contracting state declares that they accept a new state's accession, which Norway has done vis-à-vis Nicaragua. Informally this is often referred to as being partners within the Convention.

mother claimed to be sick and could not live in Norway because of the cold climate.

- The Judge wrote that “these circumstances are incompatible with equal rights and respect for women’s rights and dignity” and referred to articles 1 and 2 of the Convention on the Elimination of All Forms of Discrimination against Women.
- The ruling concluded with a decision that my son would not be returned to Norway based on article 13 of the Abduction Convention, specifically because my son could be subject to “serious physical and psychological danger” (despite the fact that no one, including my son’s mother, had ever indicated that such a danger existed).

I appealed the ruling immediately but went on to lose this appeal several months later without the court commenting upon my specific legal objections.

These rulings, and the judicial proceedings, were so strange that I had trouble understanding what was going on. Initially, I had a great deal of confidence in the Nicaraguan judicial system. After the first “weird” ruling I thought that perhaps this Judge was inexperienced and lacked the capacity to provide for a sound judgement. It was just too crazy to take seriously. I was confident that the ruling would be overturned in connection with my appeal.

However, after a while I began to understand that it was not inexperience that was the problem but something much more menacing, namely intervention from specific people at the highest level of the Nicaraguan justice system. I know now with certainty that these court rulings were subject to corruption.

The Norwegian Ministry of Justice reacted several times vis-à-vis Nicaraguan authorities, and pointed out Nicaragua’s violation of the Hague Convention on Child Abduction a number of times. E-mails, formal letters, diplomatic notes were sent from Norway to Nicaragua, including a letter from the Norwegian Minister of Justice Anders Anundsen. As far as I know, these communications were for the most part ignored by Nicaraguan authorities.

As the Abduction Convention does not contain any sanctions, there is not much a country can do if another member of the Convention decides to ignore their obligations. In my case, Norway stood powerless to do anything other than point out that Nicaragua was breaking their legal commitments. At least that was what the Ministry of Justice told me. When I complained about the obvious injustice of the Nicaraguan court rulings, they responded that they had no mandate or authority to have any opinion about the content of other countries’ judicial rulings or judicial processes. Case closed.

#### The Hague Convention on the International Recovery of Child Support

While the judicial proceedings regarding the Abduction Convention were taking place, another judge made an unexpected ruling whereby she decided that I would lose day-to-day custody of my son and that I should pay nearly my full net salary in child support.

This ruling is also very strange, and is in violation of Nicaragua’s own laws and international commitments i.e.

- This ruling came without any formal notification to me of the judicial process and without any participation from my side, which is a violation of Nicaragua’s constitution.
- The level of child support greatly exceeds the maximum level allowed under Nicaraguan law and did not consider the needs of the child nor the income situation for both parents, as the law requires.
- This ruling came before there was a final decision regarding my son’s return to Norway under the Hague Convention on Child Abduction, which is a clear violation of Nicaragua’s legal obligations under the Abduction Convention.

I appealed this ruling all the way to the Nicaraguan Supreme Court, but once more the court did not consider my arguments, and I lost. These rulings are also a part of the corruption that I experienced in the abduction rulings.

In April 2020, Nicaragua became a contracting party to the Hague Convention on the International Recovery of Child Support and other Forms of Family Maintenance. Norway is also a party to this Hague convention.

This Hague convention obligates parties to recognize and enforce child support rulings made in each other’s countries. This means that rulings on child support in any country that has acceded to this convention will be enforced in any other contracting party country.

#### Examples of Countries with Corruption and Weak Judicial Systems

Country	Status on Transparency International’s Corruption Perceptions Index 2019 (out of 180 countries) <sup>3</sup>	Status on World Justice Project’s Rule of Law Index for 2020 (out of 128 countries) <sup>4</sup>
Nicaragua	161	118
Turkmenistan	165	-
Zimbabwe	158	119
Uzbekistan	153	92
Guatemala	146	101

3) <https://www.transparency.org/cpi2019>

4) [https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online\\_0.pdf](https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf)



The Judicial Complex in Managua, Nicaragua.

Despite having paid much more in child support than the maximum amount allowed under Nicaraguan law, I have recently been contacted by a Norwegian lawyer who is threatening me with a law suit for more money based on Nicaragua's recent accession to the Hague Convention on the International Recovery of Child Support.

### Weak Judicial Systems and Mutual Confidence

Unfortunately, the fact is that many countries struggle with corruption, poor education systems and capacity constraints. The countries in the table "Examples of Countries with Corruption and Weak Judicial Systems" illustrate this. Norway has partnered with every one of these countries within the Hague Convention on Child Abduction. As a matter of comparison, Norway is number 7 on Transparency International's list, and number 2 on the World Justice Project's list.

Should Norway have complete confidence in the judicial systems of these countries, i.e. "The most intense mutual confidence"? Should Norway, without question, have total trust in the courts of these countries, i.e. trust in "the firmness of foreign courts"?

Mutual confidence is a two-way street. In my case the Nicaraguan court was very clear that they had no confidence in the Norwegian judicial system. By using article 13 of the Abduction Convention to prevent my son's return home with a claim that he could be subject to seri-

ous physical and psychological danger, the Nicaraguan court was unequivocally stating that they do not have confidence in the Norwegian court system or child protection authorities to protect children.

Because of my personal experiences, my focus in this article has to do with countries with weak judicial systems. However, sadly, certain countries with strong and well-functioning judicial systems also do not respect their country's legal obligations under the Hague Convention on Child Abduction. Establishing an effective level of trust and cooperation with these countries can be as challenging as for countries with weak and corrupt judicial systems.

### Suggestions for strengthening the Hague Convention on Child Abduction (and other Hague Conventions?)

Establishing and strengthening mutual confidence is the key for getting the Hague Convention on Child Abduction to work. Parties to the agreement must be able to trust each other. Active communication between countries must be established, and this is particularly important for countries that do not otherwise have much contact with each other. Information about how countries carry out their Hague obligations should be discussed openly. Norway should be extremely critical in deciding which countries it chooses to partner with. Some suggestions:

*Carry out a quality assurance review to determine whether partner countries have*

*the capacity and the will to fulfill their Hague obligations.* Norway should establish routines for evaluating the quality of partner countries' judicial systems. Information from Transparency International or the World Justice Project could be used for this purpose, as could information from other contracting parties, dialogue with individual countries, reports from Norwegian embassies etc. This is particularly important for countries that Norway does not have much contact with. Previous court rulings should be reviewed with a view towards evaluating whether there is a genuine will to fulfill their Hague convention obligations. These types of reviews should be carried out on a regular basis.

*Do not accept partnerships with countries who do not have a credible capacity and/or will to fulfill their Hague commitments.* HCCH contracting states, such as Norway, are not obligated to accept other countries as partners under the Abduction Convention. Countries such as Canada, the Netherlands, United Kingdom, Austria and the United States have, for example, not accepted Nicaragua as a partner within the Hague Convention on Child Abduction.

*Non-fulfillment of obligations under the Hague Convention should have consequences.* Even though there are no formal possibilities for sanctions under the Abduction Convention for non-compliance, Norway still can react. For example, Norway could request meetings with partner countries to discuss specific cases instead of sending one-way messages that are not acknowledged. Another alternative is to discuss convention violations with other contracting states to the convention, for example within the HCCH structure.

In serious cases, where a partner country clearly cannot, or will not, fulfill their Hague obligations, the partnership within the convention should be terminated. Some argue that having the Hague Convention on Child Abduction is better than nothing. I strongly disagree. In my case, the Hague Convention on Child Abduction was used to legitimize and authorize the abduction of my son. The final, corrupt, court ruling in Nicaragua led to the abduction case being closed by the Norwegian Ministry of Justice.

A corrupt judicial process, which leads to a formal approval of child abduction and closure of the case, is much worse than if the case had been kept open and Norwegian authorities had sought solutions through diplomatic channels or other mediation channels.

*High level dialogue with partner countries' authorities.* Norway should, as a matter of routine, have high level dialogues with other Hague partners regarding how the bilateral cooperation between our countries are functioning within the Hague Convention. Rather than focusing on specific cases, the idea would be to establish better channels for communication, create contacts and build up mutual confidence. Good communication and effective dialogue are elements that cannot be overestimated in order for the Hague system to function.

*Annual report to the Norwegian Parliament.* The State Department (foreign ministry) of the United States is required by law to report to the US Congress annually on international parental child abduction, specifically on countries which have engaged in a pattern of noncompliance with regard to the Hague Convention<sup>5</sup>. This report provides useful information regarding where the Hague Convention on Child Abduction is not functioning. Authorities from many countries read this report, and this provides some pres-

sure in getting contracting parties to the Convention to respect their legal obligations. If more countries, such as Norway, also produced similar reports, this pressure could be increased. The Norwegian Ministry of Justice should consider providing an annual report to Parliament on international parental abduction and non-compliance by partner countries to the Hague Convention.

*Work towards improving the Convention.* The Hague Convention on Child Abduction was established 40 years ago and dealt with another reality than what we deal with today. There are many options for improving this convention. For example, some form of sanctions could be integrated into the convention if a country refuses to respect its legal obligations – perhaps the International Court of Justice could have a role here. Another example could be that if a recipient country decides to invoke an exemption under article 13 as a reason to not return an abducted child, formal discussions would have to be held with the authorities of the country the child was abducted from. There are a host of possibilities which could improve the functioning of this convention.

**The Hague Conventions works if partner countries can be trusted – if not, bad situations can be made much worse**  
The Hague Conventions have been suc-

cessful within many areas in terms of solving private legal conflicts across international borders. The Hague Convention on Child Abduction has been particularly successful in securing the best interests of children in cases where parents disagree and live in different countries. Many children have been able to maintain relationships with both their parents and families because of this convention. Tobias Asser deserves his Nobel Peace Prize.

However, danger lurks, especially when dealing with countries with corruption problems, weak judicial systems and/or lack of will to fulfill their international legal obligations. It should not be possible to abduct a Norwegian child, get the abduction approved in a weak and corrupt judicial system, and in addition establish a dizzyingly high level of child support and get this ruling enforced in Norway – on the basis of the Hague Conventions.



On 12 September 1893, Tobias Asser, Dutch Jurist, Scholar and Statesman, realized a vision: He opened the first Session of the Hague Conference on Private International Law [HCCH].

*This article represents the opinions of the author and not necessarily F2F.*

5) Latest report: <https://travel.state.gov/content/dam/NEWIPCAAssets/2020%20Annual%20Report%20and%20Appendices%201MAY2020.pdf>

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## About F2F:

**The Joint Custody Association of Norway - F2F is a voluntary non-profit parent-child organization.**

*The focus of F2F's work is based on the assurance that the child needs both his parents and the support of their relatives on both sides of the family. The most important person in our work is the child, and the child's main care providers are usually the parents. It is the parents' task in fellowship to establish moral principles, to foster, raise and care for the child within the framework of the humanist tradition.*

*F2F recognizes modern family forms and the reorganized family, as equitable to the traditional core family as a framework for fostering children. A breakup of a re-*

*lationship with subsequent reorganization from a nuclear family to a family in two households, should therefore not normally change the parents' roles towards the child in any other way than the child's time spent alternately with the parents.*

*Since its foundation in 1985, the association has worked purposefully to create safe family relationships for children with two homes. F2F believes that the best interests of the child after the parents' breach of cohabitation is that the parents continue as equal parents in the conduct of their parental duties regardless of their*

*emotional relationship with each other. F2F is working actively towards a more coherent, normative and effective law that does not reward or open for positioning, intrigue and tactical play.*

*F2F is gender neutral and politically independent. We maintain that both mothers and fathers are important to the psychosocial development of the child. The needs of the child are at the heart of our work.*