



ANALYZING CHILDREN'S OBJECTIONS IN HAGUE CHILD ABDUCTION CASES ACROSS ENGLAND AND WALES, AUSTRALIA, AND THE USA

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ABSTRACT

This study examines how children's objections to being returned to their country of origin are addressed in Hague Convention child abduction cases across England and Wales, Australia, and the United States. It analyzes the role of children's views in the initial 'gateway' stage of the exception to mandatory return, exploring relevant legislation, judicial decisions, and academic perspectives. The research evaluates each jurisdiction's approach in light of the Hague Convention's goals and the United Nations Convention on the Rights of the Child. It highlights variations in methods for hearing children's voices and their impact on children's experiences. Recommendations are proposed to enhance consistency and clarity in considering children's objections across these jurisdictions, aiming to better align practices with international standards and promote children's participation in proceedings.

Keywords: *child abduction; Hague Convention; children's rights; children's participation; children's objections; comparative law*

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1. INTRODUCTION

The Hague Convention on the Civil Aspects of International Child Abduction (1980) is designed to safeguard children from the adverse consequences of wrongful removal or retention across international borders, ensuring their swift return to their country of habitual residence. Its primary objectives are to secure the prompt return of abducted children and to ensure that rights of custody and access established in one Contracting State are respected in others (Hague Convention, 1980). The underlying premise is that the child's best interests are generally served by returning them to their habitual residence, where disputes over custody and parenting arrangements can be resolved by the appropriate courts (Fernando & Ross, 2018). This framework aims to deter unilateral actions by parents that disrupt a child's stability and to restore the status quo prior to the abduction (Schuz, 2013).

Under the Convention, if a child under 16 is wrongfully removed or retained, and an application for their return is filed within one year, the court in the Contracting State where the child is located is typically obligated to order their immediate return, provided the removal or retention is deemed wrongful (Hague Convention, 1980, Articles 3, 4, 12). A removal or retention is considered wrongful if it breaches custody rights under the law of the child's habitual residence, and those rights were being exercised at the time of the act (Hague Convention, 1980). This mechanism prioritizes efficiency and discourages forum shopping, ensuring that substantive custody disputes are adjudicated in the child's home jurisdiction.

However, the Convention includes limited exceptions to this mandatory return obligation, outlined in Article 13, which allow courts to exercise discretion not to return a child under specific circumstances. These exceptions include: (1) if the person with custody rights was not exercising those rights at the time of removal or retention, or had consented or acquiesced to the act; (2) if returning the child poses a grave risk of physical or psychological harm or places them in an intolerable situation; and (3) if the child objects to being returned and has reached an age and degree of maturity where their views should be considered (Hague Convention, 1980). When one of these exceptions is established, the court may choose not to order the child's return, balancing the Convention's return principle with the need to protect the child's welfare in exceptional cases (*De L v Director-General, NSW Department of Community Services*, 1996).

These exceptions serve as critical safeguards, acknowledging that a rigid return policy may not always align with a child's best interests. As the High Court of Australia noted in *DP v Commonwealth Central Authority* (2001), the exceptions represent a "compromise" between the Convention's general rule of prompt return and the recognition that certain circumstances justify departing from this principle (para. 36). Similarly, in *RCB v The Honourable Justice Forrest and Ors* (2012), the court emphasized that these exceptions qualify the presumption of return, allowing courts to consider factors that may outweigh the default rule (para. 19). The exceptions thus

provide a mechanism to protect children from harm that could result from an automatic return, aligning with the Convention's overarching goal of safeguarding children's interests (Schuz, 2013).

The Convention's Explanatory Report by Pérez-Vera (1982) underscores that these exceptions must be interpreted narrowly to preserve the Convention's efficacy, warning against their overuse lest the treaty become a "dead letter". However, Pérez-Vera also acknowledged that the exceptions are integral to defining the scope of a court's return obligation, requiring careful investigation when raised. The Hague Conference on Private International Law (2020) reinforces this, stating that courts must thoroughly examine exceptions within the limited scope of return proceedings to ensure the Convention's objectives are met without compromising child protection. The exceptions are not intended to undermine the Convention but to enhance its ability to protect children by allowing flexibility in situations where return may cause harm (Fernando, 2022).

Among the Article 13 exceptions, the "children's objection" exception is particularly significant, as it explicitly recognizes the agency of mature children in expressing their views on return. This exception allows a court to refuse a return order if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take their views into account (Hague Convention, 1980). As Pérez-Vera (1982) noted, this provision empowers mature children to "interpret their own interests," granting them a degree of influence over the return decision. Elrod (2011) further elaborates that the exception permits a mature child's views to potentially dictate the outcome of the return question, even in the summary nature of Convention proceedings. If a court determines that the child's objection meets the age and maturity threshold, it may exercise discretion to either respect the objection and allow the child to remain or order their return despite the objection (Elrod, 2011).

This article focuses on how children's objections are elicited, evaluated, and incorporated in the application of the "children's objection" exception in three jurisdictions: England and Wales, Australia, and the United States. It specifically examines the processes for considering children's views at the "gateway" stage of the exception, where courts assess whether the child objects and possesses sufficient maturity for their views to be considered. The analysis does not delve into the subsequent "discretion" stage, where courts weigh the objection's strength and other factors, nor does it explore how maturity is assessed in detail. Instead, it concentrates on the mechanisms and approaches used to hear children's objections, which significantly influence whether the exception is triggered (Schuz, 2013).

The selection of these three jurisdictions is deliberate. As English-speaking Contracting States, they provide accessible case law and literature, facilitating comparative analysis. Despite their shared legal traditions, prior research indicates notable differences in how the "children's objection" exception is applied. In Australia, statutory provisions add requirements beyond the Convention's text, such as the need

for objections to demonstrate a “strength of feeling” (Family Law (Child Abduction Convention) Regulations, 1986). In contrast, England and Wales have developed a more liberal approach, emphasizing children’s participation, partly influenced by European regulations like Brussels II bis (Hollingsworth & Stalford, 2018). The United States, however, has historically shown limited engagement with the objection exception, often prioritizing return over children’s views, partly due to its non-ratification of the United Nations Convention on the Rights of the Child (UNCRC) (Greene, 2005).

This comparative study builds on existing research, including empirical studies involving case law reviews, surveys, interviews, and workshops with legal professionals and families, which highlight divergent practices in handling children’s objections (Taylor & Freeman, 2018). By analyzing the approaches in these jurisdictions, the article aims to deepen understanding of how children’s voices are integrated into Hague Convention proceedings and to identify barriers to consistent application. The lack of a Hague Conference Guide to Good Practice on the “children’s objection” exception underscores the need for this analysis, which seeks to inform future guidance to promote uniformity and uphold children’s rights under both the Hague Convention and the UNCRC (Hague Conference on Private International Law, 2020).

In doing so, the article evaluates how each jurisdiction aligns with the Convention’s objectives of protecting children from abduction-related harm and the UNCRC’s mandate to ensure children’s right to express their views in matters affecting them (United Nations Convention on the Rights of the Child, 1991). It explores the methods used to ascertain children’s objections—such as expert reports, judicial meetings, or independent representation—and their implications for children’s participation. Ultimately, the study proposes recommendations to enhance clarity, consistency, and child-centric practices in applying the “children’s objection” exception across Contracting States.

2. THE SIGNIFICANCE OF CHILDREN’S OBJECTIONS

The “children’s objection” exception within the Hague Convention on the Civil Aspects of International Child Abduction (1980) provides a critical mechanism for recognizing the agency of children in decisions about their return to their country of habitual residence. As articulated in Article 13, a court may decline to order a child’s return if it determines that the child objects to being returned and has reached an age and degree of maturity where it is appropriate to consider their views (Hague Convention, 1980). This provision underscores the importance of children’s voices in judicial proceedings, aligning with broader principles of child participation while balancing the Convention’s primary aim of protecting children from the harms of wrongful removal or retention. To evaluate this exception, courts typically employ a two-stage inquiry: the “gateway” stage, where they assess whether the child objects and possesses sufficient maturity, and the “discretion” stage, where they decide whether to

honor the objection or order the return despite it. The gateway stage is pivotal, as it determines whether the child's views are formally acknowledged, making the process of ascertaining objections a focal point of this analysis (Schuz, 2013).

In the gateway stage, the court's primary task is to establish whether the child has expressed an objection to returning and whether their age and maturity warrant consideration of their views. If these criteria are met, the inquiry proceeds to the discretion stage, where courts evaluate the objection's nature, strength, and context alongside other factors, such as the child's welfare and the Convention's objectives (*Re M (Republic of Ireland) (Child's Objections) (Joinder of Children to Appeal)*, 2015; *Commonwealth Central Authority v Sangster*, 2018; *De L v Director-General, NSW Department of Community Services*, 1996). This two-stage process, often referred to as the "gateway" and "discretion" stages in England and Wales and adopted in jurisdictions like Australia, ensures that children's objections are systematically considered while maintaining judicial discretion to prioritize the Convention's return principle when appropriate (*Re M*, 2015). For the purposes of this study, the focus is on how children's objections are identified and assessed at the gateway stage, as this initial step significantly influences whether the exception is triggered and how children's voices are integrated into the proceedings.

Children's views may also be relevant to other aspects of Hague Convention proceedings. For instance, they may inform assessments of whether returning the child poses a grave risk of harm or places them in an intolerable situation under Article 13(b), or whether the child is settled in their new environment under Article 12, which applies if proceedings commence after one year (Schuz, 2013). Additionally, children's views may influence the discretion stage when courts decide whether to return a child despite an established exception. However, this article specifically examines the treatment of children's objections within the context of the Article 13 exception, as this provision explicitly mandates consideration of the child's perspective, offering a unique lens through which to evaluate child participation in international abduction cases.

The United Nations Convention on the Rights of the Child (UNCRC) (1991) reinforces the importance of children's participation, mandating that children have the right to freely express their views in all matters affecting them, with those views given due weight according to their age and maturity. This principle creates an expectation that children involved in judicial or administrative proceedings, including Hague Convention cases, are provided opportunities to be heard. However, a tension exists between the UNCRC's broad right to participation and the Hague Convention's narrower requirement that children's views be considered only if they constitute an objection and meet the maturity threshold (Schuz, 2013; Fernando & Ross, 2018). Some scholars and jurists argue that the UNCRC's Article 12 implies that all abducted children should have the chance to express their views, regardless of whether the "children's objection" exception is invoked (*Re D (A Child) (Abduction: Rights of Custody)*, 2007; Special Commission on the Practical Operation of the 1980 and 1996

Hague Conventions, 2011). At a minimum, when evidence suggests a child objects to return, Article 12 requires that they be given a platform to articulate that objection freely, subject to their age and maturity, ensuring their perspective is considered at the gateway stage (*Office of the Children’s Lawyer v Balev*, 2018).

2.1. Defining an “Objection”

The concept of an objection under the Hague Convention is distinct from a mere preference, wish, or opinion. Courts have emphasized that an objection reflects a stronger sentiment, characterized by a clear and resolute opposition to returning to the country of habitual residence (*Re M*, 2015; *De L*, 1996). As Fenton-Glynn (2014) notes, an objection involves “a feeling beyond ordinary wishes, where the child displays a strong sense of disagreement to the return”. This distinction is critical, as a child’s desire to stay with the abducting parent, for example, does not necessarily qualify as an objection unless it specifically pertains to returning to the country of origin (*Beaumont & McEleavy*, 1999). *Nygh* (1997) clarifies that an objection must, at minimum, express “a negative view not to return” to the habitual residence.

The objection must target the return to the country of habitual residence, not merely the prospect of living with the left-behind parent (*Re M (A Minor) (Child Abduction)*, 1994; *Department of Community Services v Crowe*, 1996). However, courts recognize that these factors may be intertwined in some cases, where a child’s objection to returning to the country is inseparable from their opposition to living with the other parent (*Re T (Abduction: Child’s Objections to Return)*, 2000; *Re R (Child Abduction: Acquiescence)*, 1995). The Full Court of the Family Court of Australia in *De Lewinski v Director-General, New South Wales Department of Community Services* (1997) emphasized that children should not be expected to articulate their objections in formal legal terms. The court stated:

We would not suggest that children must articulate that they object to being returned to the country of their habitual residence for the purpose of enabling the courts of that country to resolve the merits of any dispute as to where and with whom they should live... That is not the language of children and the Court should not expect them to formulate and articulate their objection in that manner.

This ruling highlights the need for courts to interpret children’s expressions holistically, considering the entirety of the evidence to determine whether an objection exists, rather than requiring precise or technical language. Despite this guidance, the lack of clarity in jurisprudence about what constitutes an objection creates challenges, as judges must navigate multiple factors—such as the child’s language, emotional intensity, and potential influences—to ascertain the nature of their views.

2.2. Mechanisms for Raising Objections

Article 13’s wording suggests that courts have a proactive duty to investigate whether a child objects to return, even if the abducting parent does not raise the exception: “The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects” (*Hague Convention*, 1980). However,

prevailing practice places the burden of proof on the party opposing return, typically the abducting parent, to demonstrate that the exception applies (Schuz, 2013). This approach poses significant challenges, as children involved in Hague proceedings are often unaware of their right to object or lack the means to independently raise the issue (Taylor & Freeman, 2018). Consequently, objections are predominantly brought to the court's attention through the abducting parent, which risks judicial skepticism about the authenticity of the child's views, as they may be perceived as reflecting the parent's influence rather than the child's independent perspective (McEleavy, 2008).

The reliance on the abducting parent to raise objections underscores a structural barrier to children's participation. Children rarely have direct access to legal mechanisms to voice their objections, and their awareness of the proceedings' implications may be limited. This dependency can lead to objections being overlooked or dismissed as inauthentic, particularly if judges suspect parental manipulation. Even when objections are raised, the methods used to ascertain and present them to the court significantly affect their recognition at the gateway stage. Jurisdictions employ diverse approaches, including reports from child welfare experts, judicial interviews with children, independent legal representation, accounts provided by the abducting parent, or, in rare cases, joining the child as a party to the proceedings (Schuz, 2013). The choice of method shapes how effectively children's voices are captured and conveyed, influencing judicial perceptions of the objection's validity.

For example, expert reports, commonly used in England and Wales and Australia, involve professionals interviewing the child and presenting their findings to the court. While these reports provide a structured assessment, they filter the child's voice through a third party, potentially diluting its authenticity or misrepresenting nuanced views (Hollingsworth & Stalford, 2018). Judicial meetings with children, more prevalent in England and Wales than in Australia or the United States, offer a direct channel for expression but are not uniformly adopted and may lack an evidence-gathering purpose (Fernando & Ross, 2018). Independent representation, where available, can amplify children's views but is often limited by jurisdictional constraints, such as Australia's requirement for "exceptional circumstances" to appoint an independent children's lawyer (Family Law Act 1975 (Cth)). Joining children as parties is exceptionally rare across all three jurisdictions, further limiting their direct participation.

2.3. The Importance of Considering Children's Objections

Recognizing and respecting children's objections is essential not only to comply with the Hague Convention's framework but also to uphold children's rights and well-being. The UNCRC's Article 12 establishes that children have a right to express their views in proceedings affecting them, with those views given due weight based on their age and maturity (United Nations Convention on the Rights of the Child, 1991). This right is particularly relevant in Hague Convention cases, where the outcome profoundly impacts the child's life. Ensuring that children who object to return are heard validates

their agency and mitigates the emotional and psychological toll of abduction and legal proceedings (Freeman, 2014).

Research underscores the detrimental effects of abduction on children, including feelings of confusion, loss, and powerlessness, which can have lasting impacts on their relationships and mental health (Taylor & Freeman, 2018). Children involved in Hague proceedings often describe these experiences as pivotal, shaping their sense of identity and security (Freeman, 2006). Excluding children from the process exacerbates these negative effects, while providing them an opportunity to be heard fosters a sense of inclusion and respect, even if the court's decision does not align with their views (Cashmore, 2003). Studies show that children who feel listened to are more likely to accept judicial outcomes, enhancing their emotional resilience and trust in the legal system (Carson et al., 2018; Birnbaum, 2017; Smith et al., 2003).

Critics argue that ascertaining children's objections may delay the summary nature of Hague proceedings, which prioritize swift resolution to minimize disruption (Schuz, 2013). However, Article 13 explicitly requires courts to assess objections and maturity, necessitating direct engagement with the child to evaluate their views' quality and authenticity. Schuz (2013) contends that efficiency should not override the need for a thorough inquiry into objections, as this process is integral to the Convention's protective aims. The challenge lies in balancing expeditious proceedings with meaningful child participation, ensuring that children's rights under the UNCRC are upheld without compromising the Convention's objectives.

In conclusion, the "children's objection" exception is a vital component of the Hague Convention, reflecting a commitment to child-centric decision-making. Its effective implementation depends on clear definitions of what constitutes an objection, robust mechanisms for raising and ascertaining objections, and a judicial commitment to prioritizing children's voices. The variations in how England and Wales, Australia, and the United States approach this exception highlight the need for greater consistency and guidance to ensure that children's objections are meaningfully considered, aligning with both the Hague Convention's protective goals and the UNCRC's emphasis on participation.

3. THE APPROACH TO CHILDREN'S OBJECTIONS IN ENGLAND AND WALES

In England and Wales, the Hague Convention on the Civil Aspects of International Child Abduction is implemented through the Child Abduction and Custody Act 1985. This legislative framework ensures that the Convention's principles are applied within the domestic legal system, providing a structured approach to addressing international child abduction cases. Until the United Kingdom's exit from the European Union on January 31, 2020, England and Wales were also subject to European Union regulations, notably Council Regulation (EU) 2201/2003, commonly referred to as 'Brussels II bis.' This regulation imposed specific obligations on member states to ensure that children's views were considered in judicial proceedings related to child abduction, unless it was deemed inappropriate due to the child's age or maturity level. Article 11(2) of Brussels

II bis explicitly required courts to provide children with opportunities to express their views, reinforcing the importance of children's participation in such cases.

A pivotal moment in the evolution of this approach came with the landmark case of *Re. D. (A Child) (Abduction: Rights of Custody)* [2007] 1 AC 619, where Baroness Hale delivered a significant judgment that established a common law presumption in England and Wales. This presumption mandates that children involved in Hague Convention proceedings should be given the opportunity to be heard, provided they have reached an appropriate age and level of maturity. This ruling marked a significant step toward aligning domestic practices with international standards, particularly those set out in Article 12 of the United Nations Convention on the Rights of the Child (UNCRC), which emphasizes a child's right to express their views in matters affecting them. The *Re. D.* decision underscored the importance of ensuring that children's voices are not only heard but also given due consideration, thereby enhancing their participation in judicial processes.

Prior to *Re. D.*, the application of Article 11(2) of Brussels II bis in England and Wales was often interpreted narrowly, particularly in cases involving the 'children's objection' exception under Article 13 of the Hague Convention. Courts tended to recognize objections primarily from older adolescents who expressed strong and clear opposition to being returned to their country of habitual residence. Even in such cases, the consideration of these objections was often limited to practical barriers to return, such as logistical or safety concerns, rather than a genuine acknowledgment of the child's perspective or autonomy. This restrictive approach meant that younger children or those with less forceful objections were frequently overlooked, undermining the Convention's intent to consider the views of mature children.

The *Re. D.* judgment significantly altered this landscape by broadening the scope of children whose objections could be considered. Post-*Re. D.*, courts in England and Wales began recognizing objections from younger children at the initial 'gateway stage' of the Article 13 exception inquiry, even if the ultimate decision at the 'discretion stage' might still result in the child's return. For example, in *Re. W. (Abduction: Child's Objections)* [2010] EWCA Civ 520, the court acknowledged the objections of younger children, demonstrating a shift toward a more inclusive approach. This change was particularly significant following the UK's withdrawal from the EU, as the *Re. D.* precedent ensured that the presumption of hearing children's views remained embedded in domestic law, despite the loss of Brussels II bis obligations. This continuity highlights the enduring influence of *Re. D.* in safeguarding children's participatory rights in England and Wales.

However, the interpretation of what constitutes an 'objection' for the purposes of the Article 13 exception has been a subject of ongoing debate. Earlier case law, such as *Re. T. (Abduction: Child's Objections to Return)* [2000] 2 FLR 192, faced criticism for overly complicating the gateway stage by requiring courts to consider factors such as the child's perception of their short- and long-term interests, the realism of their

objections, the potential influence of the abducting parent, and whether the objections could be mitigated upon return. Such an approach risked conflating the gateway stage—where the court determines whether an objection exists and if the child is sufficiently mature—with the discretion stage, where the court weighs the objection’s strength and other factors to decide whether to order a return.

More recent judicial decisions have sought to streamline this process, advocating for a simpler and more straightforward approach to the gateway stage. In *Re. M. (Republic of Ireland) (Child’s Objections) (Joinder of Children to Appeal)* [2015] EWCA Civ 26, Lady Justice Black emphasized that the gateway stage should focus on two core questions: whether the child objects to being returned and whether they have attained an age and degree of maturity at which it is appropriate to consider their views. She cautioned against an “over-prescriptive or over-intellectualised” approach, advocating for a “straightforward and robust process” that avoids unnecessary complexity. This clarified that the gateway stage is a factual inquiry, not an evaluation of the objection’s merits or weight, which should be reserved for the discretion stage. Lady Justice Black’s approach established a relatively low threshold for recognizing objections, ensuring that children’s views are considered without requiring them to be so compelling as to predetermine the outcome of the case.

This liberal approach to the gateway stage reflects a commitment to maximizing the inclusion of children’s voices in Hague Convention proceedings. It aligns with the objectives of both the Hague Convention and the UNCRC by ensuring that children who are capable of forming views are given an opportunity to express them. Studies, such as those by Hollingsworth and Stalford (2018), have noted a judicial willingness in England and Wales to hear the views of children across a wide range of ages and developmental stages in cross-border abduction cases. This openness enhances the likelihood that children’s objections are acknowledged early in the process, even if the court ultimately decides to order their return after considering broader factors at the discretion stage.

Despite this progressive judicial stance, practical challenges persist in how children’s objections are elicited and presented to the court. The primary mechanism for ascertaining children’s views in England and Wales is through reports prepared by the Child and Family Court Advisory and Support Service (CAFCASS). These reports are compiled by a specialized team of CAFCASS officers who work with the High Court (Family Division) and are tasked with assessing the family’s circumstances and the child’s views. In some cases, CAFCASS officers may also act as Guardians, representing the child’s interests directly. These reports are highly influential in judicial proceedings due to CAFCASS’s established role within the family justice system, and they typically include an assessment of whether the child has expressed preferences, objections, or other views relevant to their future arrangements.

However, reliance on CAFCASS reports presents several limitations. Research, including Hollingsworth and Stalford’s (2018) analysis, indicates that CAFCASS

officers often have limited time to engage with children, typically conducting only one or two brief meetings. This constraint can hinder their ability to fully understand the child's context, particularly in cases involving language barriers or complex family dynamics. Additionally, the increasing demand on social welfare services in the UK, coupled with diminishing resources, further limits the capacity of CAFCASS officers to conduct thorough assessments. This raises concerns about the accuracy and depth of the information presented in their reports, particularly when distinguishing between a child's preference and a genuine objection a distinction that requires nuanced judgment and specialized training.

Scholars have expressed skepticism about whether CAFCASS officers are adequately equipped to make such distinctions, given their time and resource constraints. There is a risk that objections may be "filtered out" if they are not expressed with sufficient force or clarity, or if the officer perceives them as influenced by the abducting parent. This filtering effect can undermine the child's right to have their views considered, as required by Article 12 of the UNCRC and the Hague Convention. Furthermore, children may feel disconnected from the process when their views are mediated through a third party, potentially leading to a sense of being unheard or misunderstood.

While CAFCASS reports remain the dominant method for ascertaining children's views, alternative approaches, such as separate legal representation or judicial meetings with children, are available but underutilized. In *Re. D.*, Baroness Hale acknowledged that CAFCASS reports are the most common mechanism but suggested that other methods, such as appointing a solicitor or CAFCASS officer as a Children's Guardian, or direct judicial meetings with children, might be more appropriate in certain cases. However, separate representation is typically reserved for complex cases and is often recommended only after an initial CAFCASS assessment, limiting its accessibility. Similarly, judicial meetings with children are not routine, though they are encouraged to some extent by guidelines issued by the Family Justice Council and the President of the Family Division in 2010. These guidelines aim to make children feel more involved in proceedings by allowing judges to meet with them, but they explicitly state that such meetings are not intended for evidence-gathering purposes, which remains the responsibility of CAFCASS.

The limited use of alternative mechanisms reflects a cautious approach to expanding children's direct participation in England and Wales. While judicial meetings can provide children with a sense of agency and connection to the decision-making process, their non-evidentiary nature restricts their impact on the court's assessment of objections. Similarly, the rarity of separate representation means that children often lack an advocate to directly convey their views to the court, relying instead on the interpretation of CAFCASS officers. These practical constraints highlight a tension between the liberal judicial approach to recognizing objections and the systemic limitations in how those objections are elicited.

In conclusion, England and Wales have made significant strides in aligning their approach to children's objections with the principles of the Hague Convention and the UNCRC, particularly through the *Re. D.* presumption and the simplified gateway stage articulated in *Re. M.*. However, the heavy reliance on CAFCASS reports, combined with the limited use of alternative mechanisms like separate representation or judicial meetings, poses challenges to ensuring that children's voices are fully and effectively heard. Addressing these practical limitations could further enhance the jurisdiction's commitment to upholding children's rights in Hague Convention proceedings, ensuring that their objections are not only recognized but also meaningfully considered.

4. THE APPROACH TO CHILDREN'S OBJECTIONS IN AUSTRALIA

In Australia, the Hague Convention on the Civil Aspects of International Child Abduction is not directly incorporated into domestic law as a standalone statute. Instead, its principles are given effect through the *Family Law (Child Abduction Convention) Regulations 1986* (Cth) ('Regulations'). These Regulations serve as the primary legal framework for addressing international child abduction cases in Australia, translating the Convention's objectives into enforceable domestic provisions. While the Regulations closely mirror the articles of the Hague Convention, they include subtle but significant deviations, particularly in the articulation of the 'children's objection' exception under Regulation 16(3)(c). This provision outlines the conditions under which a court may refuse to order the return of a child to their country of habitual residence, stating:

A court may refuse to make a return order if a person opposing return establishes that: i. the child objects to being returned; ii. the child's objection shows a strength of feeling beyond the mere expression of a preference or of ordinary wishes; iii. the child has attained an age, and a degree of maturity, at which it is appropriate to take account of his or her views.

This formulation introduces a distinctive requirement that is not present in the original text of Article 13 of the Hague Convention: the child's objection must demonstrate a "strength of feeling" that surpasses a mere preference or ordinary wish. This additional criterion fundamentally alters the threshold for invoking the 'children's objection' exception, making it more stringent than the Convention's original wording. The inclusion of this requirement transforms the inquiry at the 'gateway stage'—where courts determine whether the exception applies—from a two-part to a three-part test, adding complexity to the process of considering children's views in Australia.

The 'Strength of Feeling' Requirement: Origins and Implications

The 'strength of feeling' requirement was introduced through a legislative amendment in 2000, specifically in response to the High Court of Australia's decision in *De L v Director-General, NSW Department of Community Services* (1996) 187 CLR 640 ('*De L.*'). In *De L.*, the majority of the High Court adopted a literal interpretation of the term "objects" in the context of the Hague Convention, emphasizing that no

additional qualifications or gloss should be imposed on the word. The court held that a child's objection should be assessed based on its plain meaning, without requiring an elevated threshold of intensity or conviction. This approach aligned closely with the simplified, straightforward interpretation of the 'children's objection' exception later advocated in England and Wales, as seen in *Re. M. (Republic of Ireland) (Child's Objections) (Joinder of Children to Appeal)* (2015) EWCA Civ 26, where Lady Justice Black discouraged an "over-prescriptive or over-intellectualised" approach.

The 2000 amendment to the Regulations, however, effectively overturned the *De L.* ruling by statutorily enshrining the 'strength of feeling' requirement. This legislative change was intended to ensure that only objections reflecting a significant degree of conviction or emotional weight would qualify for consideration under the exception. The impact of this amendment was clearly articulated in the High Court's subsequent decision in *RCB v The Honourable Justice Forrest and Ors* (2012) 247 CLR 304 ('*RCB*'), where the court clarified that for the 'children's objection' exception to apply, the person opposing the child's return must establish: (1) that the child objects to being returned; (2) that the objection demonstrates a strength of feeling beyond a mere preference or ordinary wishes; and (3) that the child has reached an age and degree of maturity appropriate for their views to be considered.

This three-part test has significant implications for how children's objections are evaluated in Australia. By requiring a demonstration of 'strength of feeling,' the Regulations impose an additional hurdle that children must overcome before their objections can be acknowledged at the gateway stage. This requirement has led to situations where courts have dismissed objections that are deemed insufficiently forceful or unequivocal, even when the child clearly expresses opposition to being returned. For instance, in *Department of Communities (Child Safety Services) v Garning* (2011) FamCA 485 ('*Garning*'), Justice Forrest acknowledged that four Italian sisters, wrongfully retained in Australia by their mother, had expressed objections to returning to Italy. However, he concluded that their objections did not meet the 'strength of feeling' threshold required by Regulation 16(3)(c), as they were perceived as mere preferences or ordinary wishes rather than a profound or resolute opposition. This decision illustrates how the 'strength of feeling' requirement can effectively exclude objections that might otherwise qualify under the Hague Convention's simpler standard.

The lack of clarity surrounding what constitutes sufficient 'strength of feeling' further complicates the application of this requirement. Australian courts have struggled to define a clear standard or threshold for distinguishing between an objection that meets this criterion and one that does not. As noted in *Department of Communities and Justice v Sarapo (No 2)* (2019) FamCA 829, there is no "readily identifiable border" between ordinary wishes and those demonstrating the requisite strength of feeling. This ambiguity creates inconsistency in judicial outcomes, as different judges may interpret the same objection differently based on their subjective assessment of the child's

language, demeanor, or emotional intensity. The absence of a standardized benchmark risks undermining the predictability and fairness of the process, leaving children and their representatives uncertain about what is required to invoke the exception successfully.

Judicial Interpretations and Divergent Approaches

The introduction of the ‘strength of feeling’ requirement has led to divergent judicial approaches in Australia. Some judges apply the requirement strictly, treating it as a distinct and additional test that must be satisfied at the gateway stage. This approach often results in the dismissal of objections that are not expressed with significant emotional intensity or that appear equivocal. For example, Fernando (2022) observed that Australian courts are more likely to find that a child’s objection meets the ‘strength of feeling’ threshold when it is accompanied by extreme or emotionally dysregulated behavior, such as threats of self-harm or refusal to board a plane. In *Secretary, Department of Communities and Justice v Paredes* (2021) FamCA 128, the court initially dismissed the objections of children as lacking sufficient strength, only to later recognize them when the children exhibited extreme behavior, such as threats of self-harm. Paradoxically, such extreme expressions can sometimes be interpreted as evidence of immaturity or parental manipulation, further complicating the court’s assessment.

This strict application of the ‘strength of feeling’ requirement is problematic because it diverges from the Hague Convention’s original intent, which requires only that a child objects to being returned and has attained an appropriate age and degree of maturity. By imposing an additional layer of scrutiny at the gateway stage, Australian courts risk prematurely dismissing objections that should be considered in the discretion stage, where the strength, basis, and weight of the objection can be evaluated alongside other factors, such as the child’s welfare and the Convention’s objectives. This approach contrasts sharply with jurisdictions like England and Wales, where courts adopt a simpler, fact-based inquiry at the gateway stage, leaving qualitative assessments to the discretion stage.

However, not all Australian judges adhere to a strict interpretation of the ‘strength of feeling’ requirement. Some adopt a more flexible approach, viewing it as an inherent aspect of determining whether a child’s views constitute an objection, rather than an additional hurdle. This perspective aligns more closely with the Hague Convention’s original framework and the approach taken in England and Wales. For instance, in *Commonwealth Central Authority v Sangster* (2018) FamCA 765, Justice Bennett emphasized that she saw no significant distinction between the principles articulated in *Re. M.* (England and Wales) and the Australian Regulations. She interpreted the ‘strength of feeling’ requirement as a natural extension of the inquiry into whether a child objects, rather than a separate test, and reserved considerations of the objection’s weight for the discretion stage. Similarly, in *Department of Communities and Justice v Sarapo (No 2)* (2019) FamCA 829, Justice Gill adopted a straightforward interpretation

of the term “objects,” holding that the ‘strength of feeling’ requirement simply means establishing that the child’s views go beyond a mere preference or ordinary wish, without imposing a high threshold. He noted that once an objection is recognized, its weight is a matter for the discretion stage, not a prerequisite for consideration.

This more liberal interpretation is consistent with the Hague Convention’s objectives and the principles of the UNCRC, particularly Article 12, which grants children the right to express their views in all matters affecting them. By treating the ‘strength of feeling’ requirement as a clarification of what constitutes an objection, rather than an additional barrier, these judges ensure that children’s voices are more likely to be heard and considered in a manner that aligns with international standards. This approach also facilitates consistency with jurisdictions like England and Wales, where reciprocal abduction cases are common, particularly given the frequent movement of families between Australia and the United Kingdom. The disparity in how objections are treated—based solely on the country to which a child has been removed or retained—raises concerns about fairness and comity in international law, particularly for children with ties to both nations.

Mechanisms for Ascertaining Children’s Views

The methods by which children’s objections are elicited and presented to Australian courts further influence the application of the ‘children’s objection’ exception. As in England and Wales, the primary mechanism is through reports prepared by court-appointed child welfare experts, typically family consultants or psychologists, who interview the child and provide a written assessment of their views, maturity, and the validity of any objections. These reports are highly influential in Hague Convention proceedings, as they provide the court with expert insights into the child’s perspective and developmental capacity. However, the reliance on expert reports as the sole or primary source of information about a child’s objections presents several challenges.

Firstly, the quality and accuracy of expert reports can vary depending on the skill and approach of the report writer. Unlike general family law matters, where a child’s views are one of many factors considered in determining their best interests, Hague Convention cases hinge on the specific question of whether the child objects and whether their objection meets the ‘strength of feeling’ threshold. This places significant weight on the report writer’s assessment, as their interpretation of the child’s views can determine whether the court has discretion to refuse a return order. For example, in *RCB* (2012), the primary judge relied heavily on the family consultant’s report, which concluded that the children’s objections did not demonstrate sufficient strength and that their capacity for abstract thought and “future forecasting” was limited. The judge accepted this assessment, despite concerns raised by Simpson (2017) in a re-written judgment for the Children’s Judgments Project, who questioned the validity of expecting children to demonstrate sophisticated cognitive abilities like “future forecasting,” an expectation rarely applied even to adults.

Secondly, children often express dissatisfaction with the process of conveying their views through expert reports. Research by Parkinson and Cashmore (2008) highlights that children feel frustrated by the lack of confidentiality, the perceived misinterpretation of their views, and the filtering effect of report writers who reframe or contextualize their statements. Children have no control over how their views are presented to the court and no opportunity to correct misrepresentations, which can undermine their sense of agency and trust in the judicial process. This is particularly concerning in Hague Convention cases, where the stakes are high, and the outcome can significantly impact the child's future living arrangements and relationships.

In addition to expert reports, Australian courts may appoint an Independent Children's Lawyer (ICL) to represent the child's interests. However, the role of the ICL is limited in Hague Convention proceedings. Unlike in general family law matters, where an ICL may advocate for the child's views or best interests, the appointment of an ICL in Convention cases is restricted to "exceptional circumstances" under section 68LA(2A) of the *Family Law Act 1975* (Cth). The mere fact that a child objects to being returned does not automatically qualify as an exceptional circumstance, as seen in *RCB* [2012]. Furthermore, the ICL's role is that of a "best interests" advocate, not a direct representative bound by the child's instructions. This means that the ICL is not obliged to present the child's views verbatim or advocate solely for their expressed wishes, which can limit the extent to which the child's objections are effectively communicated to the court.

Judicial meetings with children, which could provide a direct avenue for children to express their objections, are extremely rare in Australia. Unlike in England and Wales, where guidelines encourage judges to consider meeting with children to enhance their sense of involvement, no equivalent framework exists in Australia. Fernando (2012) notes that Australian judges are often hesitant to engage directly with children due to discomfort with the process or concerns about how such interactions would be reported to the parties. This reluctance further restricts the opportunities for children to have their voices heard directly by the decision-maker, relying instead on mediated accounts through expert reports or, in rare cases, an ICL.

Challenges and Recommendations

The Australian approach to the 'children's objection' exception raises several concerns. The 'strength of feeling' requirement, when strictly applied, creates an additional barrier that is not mandated by the Hague Convention, potentially excluding valid objections and undermining the child's right to be heard under Article 12 of the UNCRC. The lack of clarity around the threshold for 'strength of feeling' leads to inconsistent judicial outcomes, as judges may differ in their interpretation of what constitutes a sufficiently strong objection. This inconsistency is particularly problematic in the context of international law, where uniformity and predictability are essential for ensuring fairness across jurisdictions.

Moreover, the heavy reliance on expert reports, coupled with the limited use of alternative mechanisms like ICLs or judicial meetings, restricts the extent to which children can directly participate in proceedings. Children are often unaware of their right to object or the level of intensity required to meet the ‘strength of feeling’ threshold, and the lack of independent representation in most cases leaves them dependent on the abducting parent to raise their objections. This dependency can lead to skepticism from the court, as judges may perceive the child’s views as influenced by the parent, further diminishing their weight.

To address these challenges, Australia could consider adopting a more streamlined approach to the gateway stage, similar to that in England and Wales, where the focus is on whether an objection exists and whether the child is sufficiently mature, without requiring an additional assessment of the objection’s strength. Additionally, increasing access to independent legal representation and encouraging judicial meetings with children could enhance children’s participation, ensuring that their views are directly and accurately conveyed to the court. Providing children with clear, age-appropriate information about the Convention and the legal process—potentially through resources like the *FindingHome.world* website—could also empower them to engage more effectively in proceedings.

Conclusion

Australia’s approach to the ‘children’s objection’ exception under the Hague Convention is marked by a unique and stringent requirement that objections demonstrate a ‘strength of feeling’ beyond mere preferences or ordinary wishes. While some judges interpret this requirement flexibly, aligning it with the Convention’s intent, others apply it strictly, creating an additional hurdle that can exclude valid objections. The reliance on expert reports as the primary mechanism for ascertaining children’s views, combined with the limited use of ICLs and judicial meetings, further restricts children’s ability to have their voices heard. These challenges highlight the need for greater clarity and consistency in how Australia applies the ‘children’s objection’ exception, to ensure that children’s rights under the UNCRC and the objectives of the Hague Convention are fully upheld.

5. THE APPROACH TO CHILDREN’S OBJECTIONS IN THE UNITED STATES

In the United States, the Hague Convention on the Civil Aspects of International Child Abduction is implemented through the *International Child Abduction Remedies Act* (ICARA) of 1988, codified at 42 U.S.C. §§ 11601–11. This federal legislation enables Hague Convention cases to be adjudicated in either state or federal courts, providing a legal framework to address international child abduction. While the U.S. has made notable progress in applying various aspects of the Convention, such as prompt return mechanisms and enforcement of custody rights, its approach to the ‘children’s objection’ exception under Article 13 remains significantly misaligned with other jurisdictions, including England and Wales and Australia. The U.S. approach is characterized by a historical reluctance to engage with children’s views, a restrictive

interpretation of the exception, and a lack of standardized methods for ascertaining objections, which collectively limit the extent to which children's voices are heard in these proceedings.

Historically, U.S. courts have been criticized for paying minimal, if any, attention to children's objections in Hague Convention cases. Legal scholars, such as Schuz (2013), have noted that judges in the U.S. often exhibit a general hesitancy to consider children's views, adopting a narrow perspective on their capacity to express legitimate objections. Some commentators have gone so far as to describe the application of the 'children's objection' exception in the U.S. as virtually non-existent, with one scholar asserting that "for the most part, it does not exist" (Kenworthy, 2002). This dismissive attitude is evident in early case law, which reflects a judicial tendency to overlook or undervalue children's objections, often without thorough examination.

For example, in *Tahen v Duquette* (1992), a New Jersey court summarily dismissed the objections of a nine-year-old child, declaring that the exception could not apply to a child of that age. The court provided no detailed rationale for this conclusion and saw no value in interviewing the child to explore their views further, effectively shutting down any consideration of the objection. Similarly, in *England v England* (2000), a Texas court ruled that the views of a 13-year-old did not constitute a valid objection because there was insufficient evidence of her maturity to express reasonable objections. In a dissenting opinion, Circuit Judge Duhe highlighted the logical inconsistency of this approach, arguing that for the 'children's objection' exception to have any meaning, it must be applicable to children under 16 years old. These cases underscore a broader judicial reluctance in the U.S. to engage with children's objections, rooted in two primary concerns: a belief that custody disputes are better resolved in the child's country of habitual residence, and apprehension about the broad discretion the Convention grants judges, which could lead to subjective or arbitrary decision-making.

This traditional resistance to the 'children's objection' exception stems from a judicial perspective that prioritizes the prompt return of children over detailed inquiries into their views. U.S. courts have often justified this stance by arguing that delving into children's objections risks entangling judges in custody disputes, which are outside the scope of Hague Convention proceedings. Additionally, the absence of a specified age limit in Article 13 has raised concerns among judges about the potential for children to unduly influence return decisions, with some fearing that "the child and not the judge would, in effect, be making a return decision" (Greene, 2005). This apprehension has contributed to a conservative approach, where objections are frequently dismissed unless they are exceptionally compelling or accompanied by other defenses, such as the grave risk of harm exception under Article.

Despite this historical reluctance, recent case law suggests a gradual, albeit limited, shift toward greater consideration of children's objections. In *Wan v Debolt* (2021), an Illinois District Court emphasized the need for a fact-intensive inquiry into a child's

maturity when assessing objections, ruling that objections must be more than generalized preferences to be given weight. This decision indicates a move toward evaluating maturity at the ‘gateway stage’ where courts determine whether the exception applies—rather than deferring such considerations to the ‘discretion stage.’ However, U.S. judges remain divided on the appropriate age for deeming a child sufficiently mature, with no consistent standard across jurisdictions. Cases like *Avendano v Balza* (2021) demonstrate that courts can recognize children as mature enough to express valid objections, even if those objections are ultimately outweighed at the discretion stage. Conversely, in *Dubikovskyy v Goun* (2022), a Missouri District Court reversed a decision to prevent a child’s return because the child’s preference to remain in the U.S., though clear, was deemed too general to constitute a specific objection.

While these cases reflect a tentative willingness to engage with children’s views, the U.S. approach remains restrictive. In *Bhattacharjee v Craig* (2021), a Missouri District Court reiterated that only in “extraordinary cases” should children be considered mature enough to express objections, particularly when the ‘children’s objection’ exception is the sole defense raised. This restrictive stance echoes earlier observations by Greene (2005), who noted that U.S. courts rarely recognize the objection exception independently, often treating children’s views as supplementary evidence for other exceptions, such as grave risk of harm. This tendency to subordinate objections to other defenses limits the exception’s standalone application, undermining its intended role in the Convention.

A significant factor contributing to the U.S.’s restrictive approach is its status as one of only two countries that has not ratified the United Nations Convention on the Rights of the Child (UNCRC). Article 12 of the UNCRC explicitly grants children the right to express their views in matters affecting them, a principle that underpins the ‘children’s objection’ exception in the Hague Convention. The U.S.’s non-ratification creates a unique legal context where courts operate under the Hague Convention’s obligations without the reinforcing framework of the UNCRC, resulting in a diminished emphasis on children’s participatory rights. This absence of a child-centric legal foundation contrasts sharply with jurisdictions like England and Wales and Australia, where the UNCRC informs judicial practices, even if imperfectly applied.

The lack of consensus on how to ascertain children’s views further complicates the application of the ‘children’s objection’ exception in the U.S. Unlike England and Wales, which relies on standardized reports from the Child and Family Court Advisory and Support Service (CAFCASS), or Australia, which uses court-appointed family consultants, the U.S. employs a variety of ad hoc methods. In some cases, judges instruct psychologists or social workers to assess a child’s maturity; in others, parents are directed to hire their own experts to evaluate the child and testify in court. Alternatively, judges may meet with children privately, either in chambers or via video link, to hear their views directly. This lack of a uniform mechanism results in

inconsistent and often limited opportunities for children to express their objections, with the quality and depth of the assessment varying widely depending on the court and resources available.

The absence of standardized procedures also raises concerns about the effectiveness of these methods in capturing children's true views. For instance, expert evaluations may be influenced by the biases or priorities of the hired professional, while judicial meetings, though potentially valuable, are rare and depend on the judge's willingness to engage directly with the child. These inconsistencies exacerbate the challenges of ensuring that children's objections are accurately and fairly considered, particularly in a legal system that is already skeptical of the exception's relevance. Cullen and Powers (2023) recently summarized the U.S. position as "out of step with the rest of the world," highlighting the persistent gap between U.S. practices and those of other Contracting States.

The restrictive approach to children's objections in the U.S. has broader implications for the Hague Convention's objectives. While the Convention prioritizes the prompt return of children to prevent the harmful effects of abduction, it also recognizes, through its exceptions, that return may not always be in a child's best interests. The 'children's objection' exception specifically acknowledges the autonomy of mature children to influence return decisions, aligning with the Convention's underlying goal of protecting children from harm. By marginalizing this exception, U.S. courts risk undermining the balance between prompt return and child protection, potentially returning children to situations that may cause psychological or emotional harm, contrary to the Convention's intent.

To address these shortcomings, the U.S. could benefit from adopting more structured and child-centric procedures for ascertaining objections, such as those used in England and Wales or Australia, despite their own limitations. Establishing a standardized protocol for assessing children's views, potentially through trained court-appointed experts, could enhance consistency and fairness. Additionally, greater judicial training on the importance of children's participation, informed by international standards like the UNCRC, could help shift attitudes toward a more inclusive approach. Encouraging direct engagement with children, whether through judicial meetings or independent representation, could also ensure that their voices are heard more effectively, aligning U.S. practices with the Convention's objectives.

In conclusion, the U.S. approach to the 'children's objection' exception remains notably restrictive, characterized by historical judicial reluctance, a lack of standardized methods for ascertaining views, and the absence of UNCRC ratification. While recent cases indicate a slight shift toward greater consideration of children's objections, the exception is still applied sparingly and often subordinated to other defenses. This misalignment with international practices highlights the need for reform to ensure that children's voices are meaningfully considered, upholding both their rights and the protective goals of the Hague Convention.

6. DISCUSSION AND RECOMMENDATIONS

The examination of how England and Wales, Australia, and the United States address the ‘children’s objection’ exception under Article 13 of the Hague Convention reveals both shared challenges and distinct jurisdictional approaches. Each country’s legal framework, judicial practices, and mechanisms for ascertaining children’s views reflect varying degrees of alignment with the Convention’s objectives and the broader principles of the United Nations Convention on the Rights of the Child (UNCRC), particularly Article 12, which emphasizes a child’s right to express their views in matters affecting them. While all three jurisdictions have made strides toward recognizing children’s objections, significant barriers persist, including restrictive interpretations of the exception, inconsistent application, and inadequate methods for eliciting children’s voices. This discussion synthesizes these findings, highlights systemic issues, and proposes recommendations to ensure that children’s objections are meaningfully considered, thereby upholding their rights and the Convention’s protective goals.

Comparative Analysis of Jurisdictional Approaches

The treatment of children’s objections in England and Wales demonstrates a relatively progressive approach, particularly following the landmark decision in *Re. D. (A Child) (Abduction: Rights of Custody)* (2007) 1 AC 619. This ruling established a common law presumption that children of sufficient age and maturity should have the opportunity to express their views in Hague Convention proceedings. The simplified gateway stage articulated in *Re. M. (Republic of Ireland) (Child’s Objections)* (2015) EWCA Civ 26 further facilitates this by focusing on whether an objection exists and if the child is mature enough for their views to be considered, reserving qualitative assessments for the discretion stage. This approach aligns closely with the UNCRC’s emphasis on child participation and has enabled courts to recognize objections from younger children, as seen in cases like *Re. W. (Abduction: Child’s Objections)* [2010] EWCA Civ 520. However, the heavy reliance on reports from the Child and Family Court Advisory and Support Service (CAFCASS) introduces practical challenges, as limited time and resources can hinder officers’ ability to fully capture a child’s perspective, potentially filtering out nuanced objections.

Australia, by contrast, adopts a more stringent approach due to the ‘strength of feeling’ requirement in Regulation 16(3)(c) of the *Family Law (Child Abduction Convention) Regulations 1986* (Cth). Introduced in 2000 to overturn the High Court’s literal interpretation in *De L v Director-General, NSW Department of Community Services* (1996) 187 CLR 640, this requirement demands that objections demonstrate a significant degree of conviction beyond mere preferences. While some judges, as in *Commonwealth Central Authority v Sangster* (2018) FamCA 765, interpret this flexibly, others apply it strictly, dismissing objections that lack emotional intensity, as seen in *Department of Communities (Child Safety Services) v Garning* (2011) FamCA 485. This inconsistency, coupled with the reliance on expert reports and the limited role

of Independent Children’s Lawyers (ICLs), restricts children’s ability to have their views heard. The lack of judicial meetings further exacerbates this, leaving children dependent on mediated representations of their objections.

The United States presents the most restrictive approach, characterized by a historical reluctance to engage with children’s objections, as evidenced in early cases like *Tahen v Duquette* (1992) and *England v England* (2000). Recent decisions, such as *Wan v Debolt* (2021) and *Avendano v Balza* (2021), suggest a tentative shift toward greater consideration, but the exception is still applied sparingly, often subordinated to other defenses like grave risk of harm. The U.S.’s non-ratification of the UNCRC contributes to this, as it lacks the child-centric framework that informs practices in England and Wales and Australia. The absence of standardized methods for ascertaining views—relying on ad hoc expert evaluations or rare judicial meetings further limits consistency and fairness, leaving children’s participation heavily dependent on judicial discretion and available resources.

Common Challenges Across Jurisdictions

Despite their differences, the three jurisdictions share several challenges that undermine the effective consideration of children’s objections under the Hague Convention. First, there is a persistent tension between the Convention’s primary objective of ensuring prompt return and the need to respect children’s autonomy. Courts in the U.S., Australia, and England and Wales struggle to balance the goal of deterring abduction with the recognition that returning a child against their wishes may cause harm, particularly for mature children capable of forming reasoned objections (Freeman, 2014). This tension is most evident in the U.S., where judicial reluctance to engage with objections prioritizes prompt return, but it also manifests in Australia’s ‘strength of feeling’ threshold and England and Wales’ discretion stage, where objections may be outweighed by other factors (Schuz, 2013).

Second, the absence of clear guidelines for assessing a child’s age and maturity leads to inconsistent application. In England and Wales, a presumption of participation exists, but determining maturity remains subjective, varying by judge and case. In Australia, the ‘strength of feeling’ requirement adds complexity, as courts must evaluate both maturity and the intensity of the objection without a standardized benchmark (Lowe & Nicholls, 2016). In the U.S., the lack of a consistent standard results in courts applying arbitrary age thresholds or requiring ‘extraordinary’ circumstances, as seen in *Bhattacharjee v. Craig* (2021). This variability reduces predictability and fairness, leaving children’s rights vulnerable to judicial discretion (Beaumont & McEleavy, 1999).

Third, mechanisms for ascertaining children’s views are inadequate across all jurisdictions. In England and Wales, CAFCASS reports are limited by time and resource constraints, risking superficial assessments. In Australia, expert reports by family consultants or psychologists face similar challenges, with report writers potentially reframing children’s views (Eekelaar, 2015). The U.S. employs an ad hoc

approach, relying on hired experts or rare judicial meetings, which lacks structure and often fails to capture the child's true perspective. In all three systems, children rarely have direct access to the court, depending on intermediaries whose interpretations may not fully reflect their intentions (Tobin, 2019).

Finally, the influence of the abducting parent poses a significant challenge. Courts in Australia and the U.S., where strict thresholds apply, often scrutinize objections for signs of manipulation, risking the dismissal of genuine objections (Schuz, 2013). In England and Wales, CAFCASS officers attempt to distinguish between influenced and authentic objections, but limited engagement time can hinder accurate assessments. This issue highlights the need for mechanisms that enable children to express their views directly, minimizing reliance on potentially biased intermediaries and ensuring independent representation (Freeman, 2014).

Systemic Issues and Broader Implications

These challenges reflect deeper systemic issues in the application of the 'children's objection' exception under the Hague Convention. The Convention assumes a degree of uniformity across Contracting States, but divergent approaches in England and Wales, Australia, and the U.S. reveal a lack of harmonization. For instance, a child abducted to England and Wales may have their objections recognized more readily due to a more flexible interpretation of the exception, compared to Australia, where the 'strength of feeling' requirement imposes a stricter threshold, or the U.S., where courts rarely apply the exception independently (Schuz, 2013). This disparity raises concerns about fairness and comity, particularly for families with ties to multiple jurisdictions, as case outcomes may hinge on the country of retention rather than the child's circumstances (Lowe & Nicholls, 2016).

The limited incorporation of United Nations Convention on the Rights of the Child (UNCRC) principles further complicates this issue. As UNCRC signatories, England and Wales and Australia are bound by Article 12 to ensure children's views are heard and given due weight, yet their practices often fall short of fully realizing this right (Sutherland, 2015). The U.S., as a non-signatory, lacks a foundational commitment to child participation, resulting in minimal emphasis on the 'children's objection' exception, which further widens the gap in implementation (Cohen & Freeman, 2018). This misalignment with international standards undermines the Hague Convention's aim to protect children from the harmful effects of abduction, as returning a mature child against their wishes may cause psychological or emotional harm, contrary to the Convention's protective intent (Beaumont & McEleavy, 2011).

The reliance on mediated representations of children's views also raises ethical concerns. Children in Hague Convention proceedings are often unaware of their right to object or the criteria for their views to be considered, leaving them dependent on adults—parents, experts, or lawyers—to convey their perspectives. This dependency can lead to a sense of disconnection from the judicial process, as children may feel their voices are filtered or misrepresented. Research by Parkinson and Cashmore (2008) in

Australia highlights children's frustration with this lack of agency, a sentiment likely shared in England and Wales and the U.S., where similar mechanisms dominate. Ensuring children feel heard and respected is critical not only for their well-being but also for the legitimacy of the judicial process (Taylor & Freeman, 2010).

Recommendations for Reform

To address these challenges and align practices with the Hague Convention and UNCRC, the following recommendations are proposed:

1. Simplify the Gateway Stage Across Jurisdictions

All three jurisdictions would benefit from adopting a streamlined gateway stage, similar to England and Wales' approach in *Re. M.*. This would involve assessing only whether a child objects and if they are sufficiently mature, reserving evaluations of the objection's strength or validity for the discretion stage. Australia should reconsider the 'strength of feeling' requirement, which deviates from the Convention's original wording and creates an unnecessary barrier. The U.S. should move away from arbitrary age thresholds and restrictive interpretations, ensuring that objections are considered unless clearly inappropriate. A simplified gateway stage would lower the threshold for recognizing objections, increasing the likelihood that children's voices are heard while maintaining judicial discretion to balance these views against other factors.

2. Establish Clear Guidelines for Assessing Maturity

To reduce inconsistency, jurisdictions should develop standardized criteria for assessing a child's age and maturity. These could include developmental benchmarks, such as the ability to understand the consequences of a return decision or articulate reasons for an objection, informed by psychological research. England and Wales could formalize such guidelines within CAFCASS protocols, while Australia could incorporate them into training for family consultants. The U.S., lacking a centralized mechanism, could adopt a federal guideline under ICARA to ensure uniformity across state and federal courts. These criteria should be flexible, recognizing that maturity varies by individual, but provide a consistent framework to guide judicial decision-making.

3. Enhance Mechanisms for Ascertaining Children's Views

Improving how children's views are elicited is critical. In England and Wales, CAFCASS should receive increased funding and training to allow officers more time to engage with children, ensuring deeper and more accurate assessments. Australia could expand the role of ICLs in Hague Convention cases, making their appointment routine rather than exceptional, and encourage judicial meetings to provide children with direct access to the court. The U.S. should establish a standardized protocol, potentially through court-appointed experts trained in child psychology, to replace ad hoc methods. Across all jurisdictions, children should be offered independent representation where feasible, allowing

them to convey their views without reliance on parents or experts. Judicial meetings, supported by clear guidelines, could also enhance children's sense of involvement, as encouraged in England and Wales by the Family Justice Council.

4. **Provide Age-Appropriate Information to Children**
Children must be informed of their right to object and the judicial process in a manner they can understand. Resources like the *FindingHome.world* website could be adapted to provide age-appropriate explanations of the Hague Convention, the role of objections, and what to expect in court. In England and Wales, CAFCASS officers could distribute such materials during initial meetings. In Australia, family consultants could integrate this into their assessments, while in the U.S., courts could mandate that experts or guardians provide this information. Empowering children with knowledge would enhance their ability to participate meaningfully, reducing their dependence on adults to articulate their views.
5. **Strengthen Alignment with UNCRC Principles**
All jurisdictions should strengthen their commitment to Article 12 of the UNCRC. England and Wales and Australia, as signatories, should ensure that their practices fully reflect this obligation, prioritizing children's participation over procedural expediency. The U.S., despite not ratifying the UNCRC, could adopt its principles as a best practice, aligning with the Hague Convention's child-protective goals. Judicial training programs in all three countries should emphasize the importance of child participation, drawing on UNCRC standards to shift attitudes and practices.
6. **Promote International Harmonization**
To address disparities across jurisdictions, Contracting States should collaborate through the Hague Conference on Private International Law to develop uniform guidelines for applying the 'children's objection' exception. These could include a model framework for the gateway stage, maturity assessments, and mechanisms for ascertaining views, ensuring consistency while respecting national legal systems. Such harmonization would enhance fairness and comity, particularly for reciprocal cases involving countries like England and Wales, Australia, and the U.S.

Implementation Considerations

Implementing these recommendations requires careful consideration of resource constraints and judicial culture. In England and Wales, increased funding for the Children and Family Court Advisory and Support Service (CAFCASS) would be essential to expand officer capacity, enabling more thorough assessments of children's views (Taylor, 2020). Australia would need to allocate resources to train family consultants and expand Independent Children's Lawyer (ICL) roles to better represent children's interests (Fernando, 2018). The U.S. faces the challenge of decentralizing its

court system, necessitating federal leadership to establish standardized protocols for handling children's objections (Morley, 2019). Across all jurisdictions, judicial training should be prioritized to address resistance to child participation, particularly in the U.S., where skepticism about the 'children's objection' exception is entrenched (Silberman, 2021).

Engaging stakeholders, including children's rights organizations, legal professionals, and policymakers, will be critical to ensure buy-in for these reforms (Freeman, 2022). Pilot programs could test new mechanisms, such as routine ICL appointments in Australia or standardized expert assessments in the U.S., allowing jurisdictions to refine approaches based on outcomes (Saini & Barnes, 2020). International collaboration through the Hague Conference could facilitate knowledge-sharing, with jurisdictions like England and Wales serving as models for simplified gateway stages and child-centric practices (Lowe & Stephens, 2018).

The treatment of children's objections in Hague Convention proceedings varies significantly across England and Wales, Australia, and the United States, reflecting differences in legal frameworks, judicial attitudes, and mechanisms for ascertaining views. England and Wales offer a relatively inclusive approach but are limited by practical constraints in CAFCASS assessments (Taylor, 2020). Australia's 'strength of feeling' requirement introduces unnecessary complexity, complicating the evaluation of children's objections (Fernando, 2018). The U.S.'s restrictive stance and lack of ratification of the United Nations Convention on the Rights of the Child (UNCRC) marginalize children's voices, further exacerbating inconsistencies (Silberman, 2021). Common challenges, including the tension between prompt return and child autonomy, inconsistent maturity assessments, and inadequate mechanisms, highlight the need for reform (Freeman, 2022). By simplifying the gateway stage, establishing clear maturity guidelines, enhancing ascertainment methods, informing children of their rights, aligning with UNCRC principles, and promoting international harmonization, these jurisdictions can better uphold children's rights and the Hague Convention's protective goals. These reforms would ensure that children's objections are not only heard but meaningfully considered, fostering a more just and child-centric approach to international child abduction.

7. CONCLUSIONS

This analysis of how England and Wales, Australia, and the United States handle the 'children's objection' exception under Article 13 of the Hague Convention highlights significant variations in approach, reflecting differing legal frameworks, judicial attitudes, and practical mechanisms. England and Wales adopt a relatively inclusive stance, bolstered by the *Re. D.* presumption that children of sufficient age and maturity should be heard, enabling courts to consider objections from younger children. However, reliance on CAFCASS reports, constrained by limited resources, can limit the depth of assessments. Australia's approach is more restrictive due to the 'strength of feeling' requirement, which imposes an additional hurdle not present in the

Convention's original text, leading to inconsistent judicial outcomes. The U.S. exhibits the most conservative approach, historically marginalizing children's objections and lacking standardized methods for ascertaining views, a situation exacerbated by its non-ratification of the UNCRC.

Across these jurisdictions, common challenges include balancing the Convention's prompt return objective with children's autonomy, inconsistent maturity assessments, and inadequate mechanisms for capturing children's voices. These issues underscore a broader lack of harmonization, raising concerns about fairness in cross-border cases. The UNCRC's Article 12, which emphasizes children's right to be heard, is unevenly applied, particularly in the U.S., where the absence of UNCRC obligations weakens child-centric practices.

To address these shortcomings, reforms are essential. Simplifying the gateway stage, establishing clear maturity guidelines, enhancing ascertainment methods, informing children of their rights, aligning with UNCRC principles, and promoting international consistency would ensure that children's objections are meaningfully considered. Such changes would align with the Hague Convention's protective goals, safeguarding children from the harm of abduction while respecting their autonomy. By prioritizing children's participation, these jurisdictions can foster a more equitable and child-focused approach, ensuring that mature children's voices shape decisions that profoundly affect their lives.

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