

Module 2

Central Authorities and Applications under the 2007 Hague Child Support Convention

TRAINING NOTES

What you need to say/do

1. Display **PowerPoint Slide 2-1: International Case Processing under UIFSA 2008: Module 2** (title slide). After introducing the webinar course, display **PowerPoint Slide 2-2: Webinar Series**. Explain the targeted audience, the content of the webinar modules, and the webinar resources.
2. Display **PowerPoint Slide 2-3: Webinar Modules** as you explain the focus of each module.
3. Display **PowerPoint Slide 2-4: Module 1: Central Authorities and Applications under the Hague Child Support Convention** (title slide).
4. Beginning with **PowerPoint Slide 2-5: Terms within Hague Child Support Convention**, follow the content of these Trainer Notes, displaying the appropriate PowerPoint slide.
5. In addition to trainer notes at the bottom of each PowerPoint slide, there is more background information in these Trainer Notes. You may use this information to supplement the slide content, based on the amount of training time you have.

What you need to know

1. It takes approximately 1.5 hours to complete this module.

PowerPoint Slides:

- 2-1 through 2-26

Handouts:

- None

WEBINAR INTRODUCTION: INTERNATIONAL CASE PROCESSING UNDER UIFSA 2008



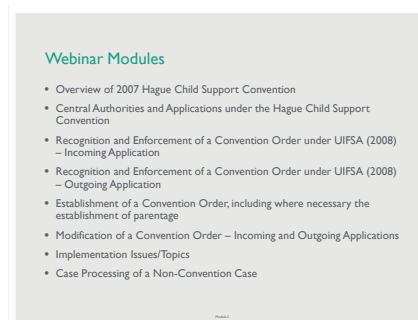
INTRODUCTION: TARGETED AUDIENCE

Welcome to the Webinar Series on International Case Processing under UIFSA 2008. Some people in the audience may have attended multiple conference workshops where speakers discussed the background of the Convention or presented an overview of UIFSA (2008). For others, this information will be brand new.

This webinar content is designed to cover both audiences.

The webinar resources for each module include the PowerPoint slides and notes, and an expanded set of trainer notes. These resources will be available on OCSE's website.

INTRODUCTION: OVERVIEW OF WEBINAR SERIES



The first two modules of the webinar series are overview modules. They provide background information about the Hague Child Support Convention so you will better understand the U.S. goals during treaty negotiations, the process used for negotiating an international treaty, and terminology in the Convention. They also discuss the scope of the Convention and services that a Central Authority must provide so that you will have a better idea of what to expect on **outgoing** cases to a Convention country.

Beginning with Module 3, we will focus on case processing. The most likely application under the Convention is an application to recognize and enforce a support order issued by a Convention country. For that reason, there is one module explaining the process and forms for incoming applications and a separate module explaining the process and forms for outgoing applications.

Module 5 examines incoming and outgoing applications for establishment of a support order, including establishment of parentage when necessary to obtain support.

Modules 6 and 7 examine incoming and outgoing applications for modification under the Convention.

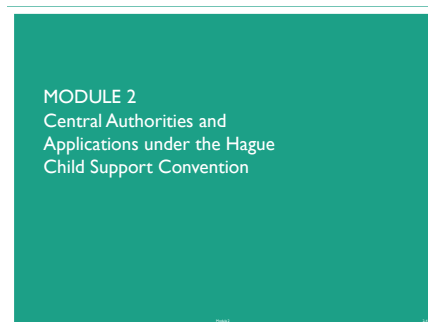
In Module 8 we will address implementation issues and questions that have arisen.

Finally, in Module 9 we will discuss processing international support cases from countries with bilateral reciprocity arrangements that are not Convention countries.

MODULE 2: CENTRAL AUTHORITIES AND APPLICATIONS UNDER THE HAGUE CHILD SUPPORT CONVENTION

Time: 1.5 hours

2.1 CENTRAL AUTHORITIES AND APPLICATIONS UNDER THE HAGUE CHILD SUPPORT CONVENTION



Module 1 of the webinar series provided an overview of the Hague Child Support Convention. Today we are presenting Module 2, which focuses on the role of the Central Authority under the Convention as well as available applications.

2.2 TERMS WITHIN HAGUE CHILD SUPPORT CONVENTION



Terms within Hague Child Support Convention		
Convention Terms	=	U.S. Equivalent
• Creditor		• Oblige
• Debtor		• Obligor
• State		• Country
• Maintenance		• Support
• Requesting State		• Initiating state
• Requested State		• Responding state
• Recognition and Enforcement of a Decision		• Recognition and Enforcement of Registered Order
• Maintenance Arrangement		• Foreign Support Agreement

Because the Convention applies to countries with various legal systems, it includes terminology that differs from the terms we use in the United States. This slide “converts” Convention terms to their equivalent U.S. terms. We covered these terms in Module 1, but thought it important to review them again.

When the Convention refers to a creditor, it is referring to the individual entitled to receive support – the person in the U.S. that most states would refer to as the obligee or

custodial parent. In some cases, the creditor may be a public body. When the Convention refers to a debtor, that is the individual responsible for payment of support. In the United States, most states use the term obligor or noncustodial parent.

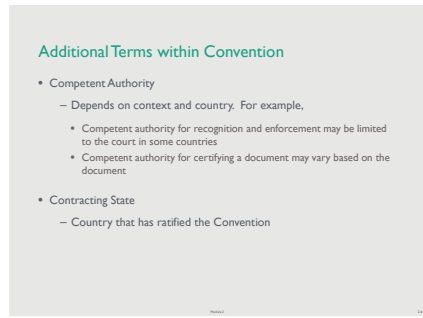
Probably the most confusing term to us in the United States is the Convention's use of the word "State." This is State with a capital "S" and means a country. A Contracting State is a country that has ratified or approved the Convention. In the United States we often refer to that country as a Convention country.

The Convention uses the term "maintenance" whereas in the United States we use the term "support."

When the Convention refers to a "requesting State," it is referring to the Contracting State (i.e., country) that is requesting services from another Contracting State. The Convention country receiving and responding to the request is called the "requested State." As you can tell, the equivalent terminology in UIFSA is an initiating state and a responding state.

For the most part, in implementing the Hague Child Support Convention, UIFSA (2008) uses words that are familiar to IV-D agencies. For example, the process that the Convention outlines for recognition and enforcement of a support decision is equivalent to the process in Article 7 for recognition and enforcement of a registered support order. However, there are a few additional definitions in Article 7 based on the Convention. Earlier, we discussed the definitions of Central Authority and direct request to a tribunal. Another new definition is the term "foreign support agreement." The drafters of UIFSA were trying to rephrase the definition in the Convention for "maintenance arrangement," using words more familiar to the United States. A "foreign support agreement" is an agreement for support in a record that is enforceable as a support order in the country of origin and has been authenticated by, registered, or filed with a foreign tribunal, and may be reviewed and modified by a foreign tribunal. It is not the same thing as a U.S. separation agreement, which is enforceable as a contract. Section 710 of UIFSA discusses the process for recognition and enforcement of a registered foreign support agreement.

2.3 ADDITIONAL TERMS WITHIN CONVENTION

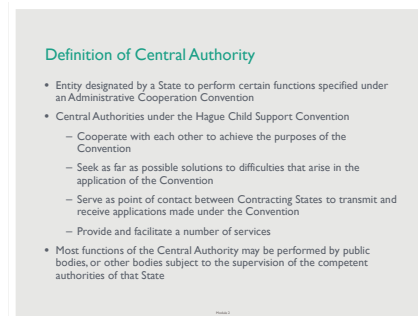


There are two additional terms we will use during this presentation.

The Convention often refers to the “competent authority.” There is no definition within the Convention because the identity of the competent authority will vary among Convention countries. It also depends upon the context of the action. For example, the Convention requires the competent authority in the requested state to declare without delay whether a decision registered for recognition and enforcement is in fact enforceable. Depending upon the country, the competent authority may be the court, an administrative agency, or both. Another provision within the Convention provides that if there is a challenge to a document submitted for recognition and enforcement, a complete copy of the document concerned, certified by the competent authority in the State of origin, must be provided promptly. It will be up to the State of origin to determine the competent authority for certifying the requested document. Within the United States, identification of the competent authority for various actions will likely vary among the individual states.

Some of the slides in Module 2 refer to a Contracting State. That term is a shorthand reference to a country that has ratified the Hague Child Support Convention.

2.4 DEFINITION OF CENTRAL AUTHORITY

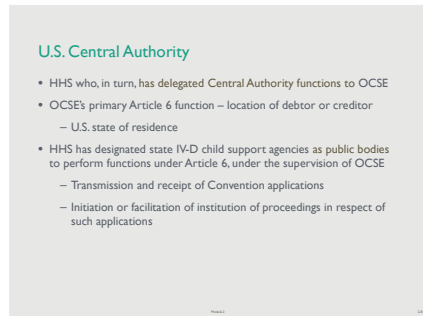


Each Administrative Cooperation Convention negotiated by the Hague Conference on Private International Law requires a Contracting State to designate a Central Authority. The Central Authority is an agency or organization that is designated to play a key role in the implementation and operation of the international treaty.

Article 5 of the Hague Child Support Convention lays out general functions of Central Authorities: they must cooperate with each other to achieve the Convention’s purposes and they must try to resolve as much as possible any difficulties that arise in the implementation of the Convention. Article 6 of the Convention lists specific functions of a Central Authority. For example, the Central Authority must both transmit and receive applications. Other Convention provisions place additional mandatory obligations on the Central Authority. These obligations emphasize the need for international cooperation among Contracting States.

The functions of the Central Authority may be performed by public bodies, or other bodies subject to the supervision of the competent authorities of the Contracting State. That means that countries will vary regarding what entity serves as the Central Authority. However, each Convention country is required to keep the Permanent Bureau informed of the identity of its Central Authority. That information is accessible from the Child Support Section of the Hague website; in the right hand column, click on the word “Authorities.” A Contracting State also identifies its Central Authority in the Country Profile that we discussed in Module 1.

2.5 U.S. CENTRAL AUTHORITY



In the United States, the Central Authority is the Department of Health and Human Services, with authority in the Secretary to perform the lawful acts necessary to execute the functions of the Central Authority. See Section 459A of the Social Security Act (42 U.S.C. § 659a) and [Executive Order 13752](#) of December 8, 2016, published in 81 Fed. Reg. 90,181 (Dec. 13, 2016). The Secretary has in turn delegated the responsibilities of the Central Authority to OCSE.

Article 6 of the Hague Convention lists two specific functions of Central Authorities:

- (1) They must transmit and receive applications under Chapter III. We will discuss those applications in a bit.
- (2) They must initiate or facilitate the institution of proceedings in respect of such applications.

Article 6 also requires the Central Authority to take all appropriate measures with regard to those applications. The U.S. delegation played a major role in ensuring that the list of measures is comprehensive. One of the specific measures is helping to locate the debtor or creditor. As it does now, OCSE will use the FPLS to assist Convention countries when they do not know the U.S. state in which the creditor or debtor resides. However, the information OCSE returns to the Convention country is the state of residence. It will not provide residential or employment address information.

The Executive Order specifically authorizes the designation of IV-D agencies as public bodies authorized to perform specific functions in relation to applications under the

Convention. Consistent with that authorization, on December 29, 2016, HHS formally designated state IV-D agencies as public bodies to perform functions related to applications under the Convention in accordance with UIFSA 2008, Title IV-D of the Social Security Act and implementing federal regulations, and OCSE guidance and instructions. See [82 Fed. Reg. 850](#) (Jan. 4, 2017). That means that applications for Convention cases will continue to be received and transmitted at the state level. And state child support agencies will be responsible for initiating the appropriate proceedings in relation to those applications. State child support agencies perform these specific Convention functions subject to the supervision of OCSE.

2.6 OTHER OCSE ACTIVITIES IN CONVENTION CASES



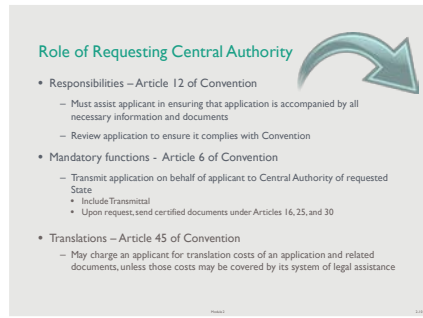
In addition to locate assistance to Convention countries, OCSE will play a critical role with regard to implementing the treaty in the United States.

It will provide policy guidance on implementation issues.

It will provide both state child support workers and Convention countries with tools and training resources on implementation in the United States.

It will continue to respond to customer service inquiries from a number of constituents.

2.7 ROLE OF REQUESTING CENTRAL AUTHORITY



The Convention outlines a number of responsibilities that the requesting Central Authority has when transmitting applications to a Convention country.

This slides summarizes those responsibilities.

In its role in the U.S. as a requesting Central Authority, a IV-D agency must help the petitioner complete the application and ensure that the Convention application includes all the necessary information and documents. The Country Profile is an excellent resource for identifying forms and information needed by the requested State. For example, in an establishment case, the requested State may require that hospital or other birth records be certified, or may require proof of the marriage of the parents. The IV-D agency must also review the application to ensure it complies with the Convention. U.S. states need to decide who will be conducting that review. Will it be at the local level or centralized with a unit that focuses on Convention cases? Child support agencies should also develop procedures regarding the review. Note that this review is limited to compliance with the Convention; it is not a determination about the merits of the application. A compliance review could include the following checklist:

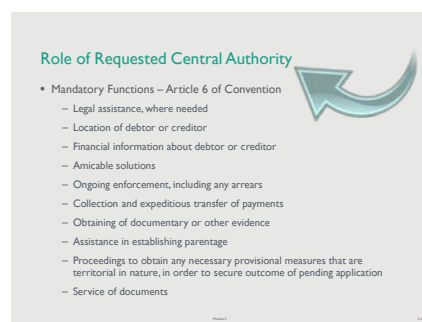
- Has the appropriate application form been completed?
- Is the support obligation within the scope of the Convention?
- Is the application sought one that is available under the Convention to the creditor? To the debtor?
- Are any mandatory documents included with the application?

When satisfied that the application complies with the requirements of the Convention, the requesting Central Authority must transmit the application to the Convention country on behalf of the applicant. The application must include a transmittal – one of two mandatory forms under the Convention. There is no need to include certified documents unless the requested Contracting State asks for them.

Article 45 of the Convention addresses translation. It authorizes the requesting Central Authority to charge an applicant translation costs unless those costs are covered by the country's system of legal assistance. That means that IV-D agencies should apply federal regulations regarding recovery of costs related to translation of documents. We will discuss translation issues during Module 8 of the webinar.

2.8 ROLE OF REQUESTED CENTRAL AUTHORITY

2.8.1 Mandatory Functions – Article 6



The Convention also outlines responsibilities that the Central Authority has when receiving applications from a Convention country. This slide summarizes measures that Article 6 requires a Central Authority to take, as appropriate, upon receipt of an application under Chapter III.

In its role in the U.S. as a requested Central Authority, a IV-D agency must:

- Provide or facilitate the provision of legal assistance, where circumstances require;
- Help locate the debtor or the creditor;
- Help obtain relevant financial information about the debtor or creditor, including income and the location of assets;

- Encourage amicable solutions with a view to obtaining voluntary payment of support. Examples are the use of mediation, conciliation, or similar processes;
- Facilitate the ongoing enforcement of support orders, including any arrears;
- Facilitate the collection and expeditious transfer of support payments;
- Facilitate the obtaining of documentary or other evidence;
- Provide assistance in establishing parentage where necessary to recover support;
- Initiate or facilitate the institution of proceedings to obtain any necessary provisional measures that are territorial in nature and the purpose of which is to secure the outcome of a pending maintenance application.

What does this mean? You may be asked to freeze the debtor's assets pending the outcome of any legal proceeding. The measure must be "provisional," meaning temporary, and "territorial" in nature, meaning the effect must be confined to the territory of the requested State. The purpose of freezing assets is to secure the outcome of the child support proceeding, in other words, to ensure that there is income or assets against which the child support can be enforced.


- Facilitate service of documents.

You will notice a lot of verbs like "help," "encourage," and "facilitate" in that list. The United States would have preferred stronger language but that was one of the compromises we made in order to ensure the Convention included a detailed list of responsibilities.

2.8.2 Responsibilities – Article 12

Role of Requested Central Authority (cont'd)

- Responsibilities – Article 12 of Convention
 - Within 6 weeks from receipt of application
 - Send acknowledgment
 - Inform requesting Central Authority of steps taken
 - Request any needed documents and information
 - Provide requesting Central Authority with name and contact details of person/unit responsible for answering questions about application
 - Within 3 months of acknowledgment
 - Inform requesting Central Authority of application status



Article 12 of the Convention was also important to the United States. It contains timeframes. This is unusual for a Hague Convention and another example of how

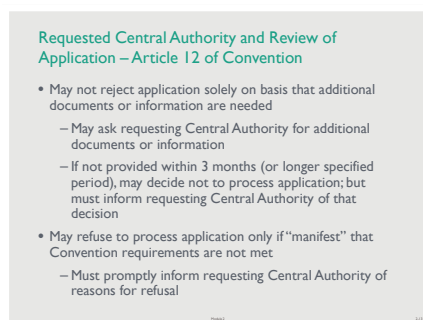
important it was to the U.S. that the treaty address the practical issue of delays in case processing.

The Convention requires the requested Central Authority to acknowledge receipt of the application within six weeks. There is a mandatory Acknowledgment form that must be used. The acknowledgment also informs the requesting State what initial steps have been taken, identifies any needed additional documents, and provides contact information. As you can see, it's patterned after the acknowledgment form we use in the U.S. in intergovernmental cases. So you can expect to receive such information from other Convention countries within the six-week timeframe.

In the United States, IV-D agencies are subject to tighter timeframes because of federal regulations. 45 CFR 303.7 requires the central registry in an intergovernmental case to acknowledge receipt and identify any missing documents within 10 working days of receipt.

Within three months of the Acknowledgment, the Central Authority in the requested State is required by the Convention to provide a status update to the requesting State.

2.8.3 Review of Application – Article 12



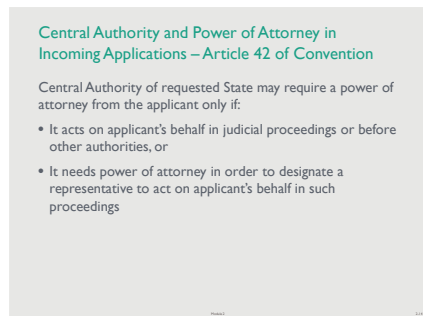
In its review of an application, there are two important provisions that govern the requested Central Authority.

The requested Central Authority may not reject an application solely because additional documents or information are needed. It may ask the requesting Central Authority for the additional information. The Convention allows a country to suspend processing the

application until the information or document is received. Keep in mind, however, that federal regulations governing IV-D agencies require the agency to continue processing the case to the extent possible. See 45 CFR 303.7(b)(3). Notice the timeframes in the Convention that Contracting States will be following. They are longer than timeframes governing IV-D agencies in an intergovernmental case.

Second, the requested Central Authority may refuse to process an application only if it is manifest that Convention requirements are not met. According to the Explanatory Report, “manifest” means it must be clear on the face of the documents that the requirements are not fulfilled. The stringent standard recognizes that the requesting Central Authority should have already reviewed the application to ensure that it complies with the Convention. The Explanatory Report gives the following example of when it might be manifest that the Convention requirements are not met: the party previously submitted an application concerning the same debtor that had failed on a specific ground and now the applicant is submitting the same application with no change of circumstances. The Practical Handbook for Caseworkers, which is a resource we mentioned during Module 1, provides another example: The application seeks a determination of custody only, but custody is not within the scope of the Convention. If the requested Central Authority decides to refuse to process the application, there must be prompt notice to the requesting State. According to the Explanatory Report, if it’s unclear whether the application satisfies Convention requirements, it is preferable for the requested Central Authority to go ahead and process it and not make any decision that is more properly left to the competent authority acting on the application.

2.8.4 Power of Attorney in Incoming Applications – Article 42



Article 42 of the Convention will not come into play in incoming Convention cases in the United States. IV-D agencies and attorneys do not represent an individual applicant. However, you need to be aware of Article 42 because of your outgoing cases.

Ordinarily, a requested Central Authority will process applications quickly without the need for any additional formal documents requesting assistance. However, under certain countries' domestic law, there must be a power of attorney in order for the Central Authority to act on behalf of the applicant. In that limited circumstance, Article 42 permits a Central Authority of the requested State to require a power of attorney from the applicant in order to represent the applicant before authorities.

2.9 RESPONSIBILITIES OF CENTRAL AUTHORITIES IN REQUESTING AND REQUESTED STATES – ARTICLE 12



Article 12 of the Convention outlines basic requirements for effective and efficient case management that apply to Central Authorities in both the requesting and requested States. Look at the adverbs that emphasize speed during the process: “timely,” “quickly,” and “rapid.”

When you couple this language with the timeframes discussed earlier, it's evident how important it was to delegates that this Convention result in more streamlined case processing.

2.10 APPLICATIONS THROUGH CENTRAL AUTHORITIES

Applications through Central Authority	
CREDITOR	DEBTOR
<ul style="list-style-type: none">• Establishment of a Decision, including, if necessary, Determination of Parentage<ul style="list-style-type: none">– No existing order– Recognition of foreign support order refused for certain reasons• Recognition or Recognition and Enforcement of a Foreign Decision• Enforcement of a Decision Made or Recognized in Requested State• Modification of a Decision<ul style="list-style-type: none">– Decision made in requested State– Decision made in State other than requested State	<ul style="list-style-type: none">• Recognition of a Foreign Decision leading to the suspension, or limiting the enforcement, of a previous decision in the requested State• Modification of a Decision<ul style="list-style-type: none">– Decision made in requested State– Decision made in State other than requested State

The applications that are available through a Central Authority are listed in Article 12 of the Convention. In the United States, we have implemented this Article in Section 704 of UIFSA (2008). Although the U.S. delegation urged that the same applications be available to both creditors and debtors, that position was ultimately not successful.

2.10.1 Applications Available to Creditor

The consensus reached was that the following applications must be available to a creditor in a requesting State seeking to recover maintenance under the Convention:

- Establishment of a support decision, including, if necessary, determination of parentage;
- Recognition and enforcement of a support decision;
- Enforcement of a decision issued, or already recognized by, the requested State; and
- Modification of a decision.

2.10.2 Applications Available to Debtor

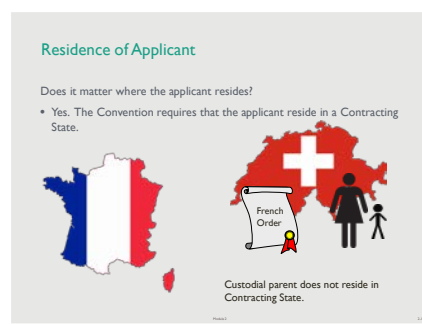
There was also consensus that the following applications must be available to a debtor in a requesting State:

- Recognition and enforcement of a decision suspending or limiting enforcement of a prior decision in the requested State; and
- Modification of a decision.

Under the Convention, there is no application available to a debtor through a Central Authority to establish support or determine parentage.

We will discuss each of these applications in later modules.

2.11 RESIDENCE OF APPLICANT



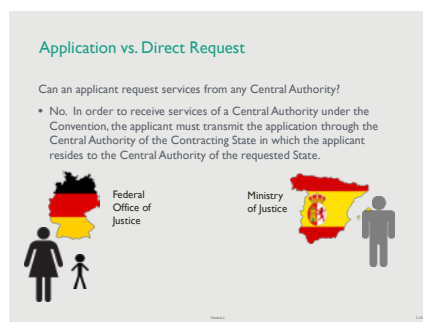
Article 10 of the Convention sets the threshold criteria the creditor or debtor must meet when seeking the assistance of a Central Authority under that Article:¹

- 1) The applicant must be in the requesting Contracting State;
- 2) The applicant must be the creditor (or a person acting for the creditor) who is seeking to recover maintenance in another Contracting State (the requested State) OR must be the debtor against whom there is already a maintenance decision; and
- 3) The application must be one of the applications described in Article 10(1) a) to f).

In the example depicted on the slide, the custodial parent has an order issued by France, which is a Convention country. However, because she resides in Switzerland, which is not a Convention country, she cannot file an application under the Convention.

¹ See Para. 235, Explanatory Report, Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance [hereinafter Explanatory Report].

2.12 APPLICATION VS. DIRECT REQUEST



The Convention distinguishes between an application and a direct request to a competent authority. A Central Authority is only required to assist with an application.

Can an applicant receive services from any Central Authority?

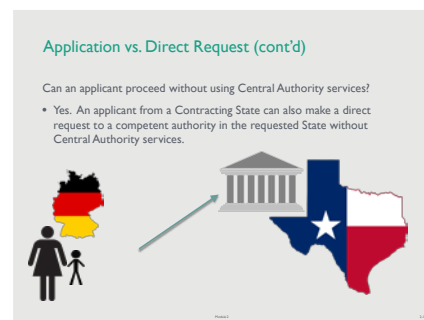
No. In order for an applicant to receive the free services of a Central Authority under the Convention, the application must be made through a Central Authority in accordance with Article 9. Article 9 requires that an application must be made through the Central Authority of the Contracting State in which the applicant resides to the Central Authority of the requested State. Residence excludes mere presence.²

In the case scenario depicted on the slide, the applicant will work with the Central Authority in Germany, which is where she resides. The Central Authority in Germany is the Federal Office of Justice. Once it is satisfied that the application complies with the Convention, the Federal Office of Justice will transmit the application to the Central Authority in Spain, where the debtor resides.

If a country's internal law allows a Central Authority to accept an application sent directly to it by an applicant rather than sent through the Central Authority where the applicant resides, that would not be regarded as an application under Chapter III of the Convention. For example, as discussed below, if a U.S. state has enacted Alternative A under Section 307 of UIFSA, and requires a support enforcement agency to accept direction applications for IV-D services in a UIFSA proceeding from applicants in

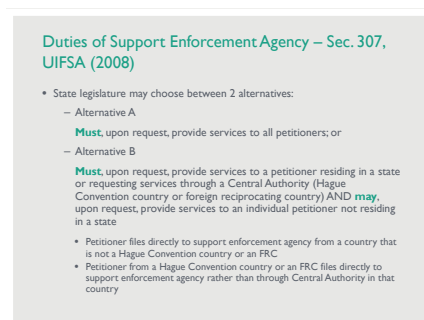
² See Para. 229, Explanatory Report.

Convention countries, any case arising from that type of unilateral action by the applicant, which does not involve the Central Authority in the country where the applicant resides, would be handled under Articles I through VI of UIFSA (2008) – not under the new Article VII. It would not be considered a Convention case.



The Convention also allows an applicant to make certain requests directly to a competent authority in the Contracting State. In other words, the applicant can file directly to a tribunal. But such cases do not involve any services by the Central Authority. And in the United States, such cases filed directly with a court would not receive any IV-D services. Direct requests are addressed in Section 705 of UIFSA (2008). Keep in mind that a direct request under the Convention is not the same thing as a direct application for IV-D services.

2.13 DUTIES OF SUPPORT ENFORCEMENT AGENCY – SECTION 307, UIFSA (2008)



Applying through a Central Authority is also important under UIFSA.

When a state legislature enacted UIFSA (2008), it could choose between Alternative A and Alternative B of the Model Act. Both alternatives are based on language in the

federal Preventing Sex Trafficking and Strengthening Families Act that Congress passed in 2014.

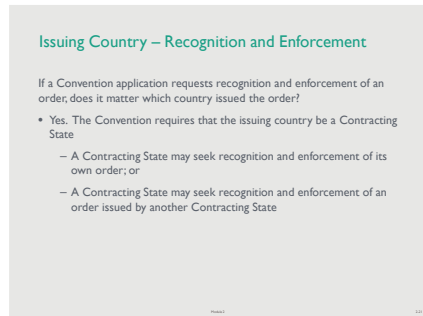
If your state enacted Alternative A, you as the support enforcement agency must provide services in UIFSA proceedings to all petitioners regardless of where they reside. That includes petitioners living in other countries who have directly applied for IV-D services.

If your state enacted Alternative B, you as the support enforcement agency must provide services in a UIFSA proceeding to a petitioner who resides in a state, as defined by UIFSA. You must also provide services in a UIFSA proceeding to a petitioner who requests services through a Central Authority. That Central Authority may be in a Hague Convention country or a foreign reciprocating country.

However, under Alternative B, if you receive a direct application for IV-D services from a petitioner who lives in a foreign nation that is **not** a Hague Convention country or an FRC, you as the support enforcement agency have discretion about providing services in a UIFSA proceeding. Similarly, you may – but are not required – to provide services in a UIFSA proceeding to a petitioner who lives in a Hague Convention country or an FRC and applies directly for IV-D services rather than going through his or her Central Authority.

If your state agency has policy that it will not provide IV-D services in such direct application cases, it is appropriate for the child support agency to advise the petitioner of the possibility of filing a direct request for establishment, modification, or enforcement to the tribunal.

2.14 ISSUING COUNTRY – RECOGNITION AND ENFORCEMENT



If there's an existing order that the applicant wants the requested State to recognize and enforce, does it matter which country issued the order? Yes, it does matter.

An applicant may use the Convention's procedures for recognition and enforcement of an order only if a Convention Contracting State issued that order. However, it need not be a decision of the requesting State.³ For example, let's assume the creditor was living in France and got a support order there. Later the creditor moves to Germany. The debtor is living in Austria. France, Germany, and Austria are all Contracting States to the Hague Child Support Convention. Therefore, the creditor living in Germany can request recognition and enforcement in Austria of the decision made in France.

During negotiations delegates discussed whether to allow use of Convention procedures for recognition and enforcement where a non-Contracting State had issued the order. It was agreed that only a decision made in a Contracting State is entitled to recognition and enforcement under the Convention. The rationale is that the Hague Conference wants to encourage countries to develop effective child support systems and ratify the Convention. One of the primary motivating factors for ratification is the streamlined procedures for recognition and enforcement. If a country can have its orders enforced, regardless of whether it has the laws and procedures required by the Convention, there is less likelihood that the country will take the needed steps to join the Convention.

³ See Para. 240, Explanatory Report.

If a Contracting State wants to seek recognition and enforcement of a decision by a non-Contracting State under comity, such action would be outside the Convention. We discussed comity during Module 1.

2.15 ISSUING COUNTRY – MODIFICATION

Issuing Country – Modification

If a Convention application requests modification of an order, does it matter which country issued the order?

- No. An applicant in a Contracting State may request modification of an order issued by a non-Contracting State. HOWEVER ...
 - Any modification will be processed under the law of the requested State
 - In the United States, a foreign support order issued by a non-Contracting State would be registered for modification under Article 6 of UIFSA
 - If the order is modified by a Contracting State, the applicant may seek recognition and enforcement of the order in any Contracting State because the modified order is an order issued by a Contracting State

If there's an existing order that the applicant wants the requested State to modify, does it matter which country issued the order? No.

In contrast to an application for recognition and enforcement, an application for modification under Article 10(1)(f) or 10(2)(c) of the Convention can be based on an order issued in any country. However, whether a non-Contracting State decision can be modified depends on the law of the requested Contracting State.⁴

Let's talk about how that will work in the United States. In the U.S. a foreign support order must first be recognized before it can be modified. The procedure used for recognition and enforcement will vary, depending upon whether the foreign support order was issued by a Contracting State.

If the Convention application seeks modification of an order issued by a Contracting State, the order will first be registered for recognition and enforcement under Article 7 of UIFSA. Assuming the tribunal recognizes the Convention order, Article 18 of the Hague Child Support Convention and Section 711 of UIFSA limit its jurisdiction to modify the order: with limited exceptions, a tribunal may not modify a Convention child support order if the creditor remains a resident of the foreign country that issued the support

⁴ See Para. 262, Explanatory Report. See also footnote 106, Explanatory Report.

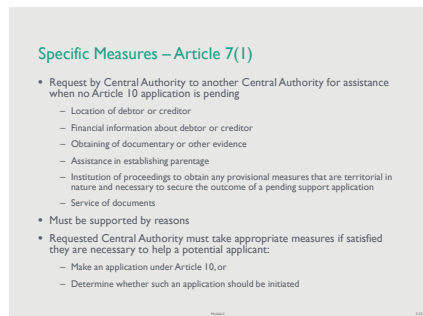
order. On the other hand, if the U.S. tribunal does not recognize the order under UIFSA Section 708, subsection (b)(2), (4), or (9), Section 708(c) applies. That subsection requires the tribunal to allow a reasonable time for the applicant to seek establishment of a new Convention order, which could be in a different amount.

Let's assume, however, that the creditor in a Contracting State requests modification in the U.S. of an order issued by a **non-Contracting** State. That is an authorized application under the Convention. However, because the order was not issued by a Contracting State, the mandatory recognition provisions of the Convention do not apply. Assuming the order was issued by a foreign country as defined by UIFSA, the U.S. tribunal should apply Article 6 of UIFSA with regard to recognition and enforcement of that underlying order – not Article 7. Section 616 of UIFSA outlines the procedure to register a foreign support order for modification if the order is not under the Convention. If the U.S. tribunal is able to recognize the foreign support order under state law, it should also comply with Section 615 of UIFSA 2008: “if a foreign country lacks or refuses to exercise jurisdiction to modify its child support order pursuant to its laws, a tribunal of this state may assume jurisdiction to modify the child-support order.” The tribunal will then apply its state law regarding modification. If the tribunal modifies the order, Section 615(b) of UIFSA 2008 provides that the order issued modifying the foreign child support order is the controlling order. Accordingly, the new, modified decision can later be sent to any Contracting State for recognition and enforcement because – at that point – it's an order issued by a Contracting State.

2.16 REQUEST FOR SPECIFIC MEASURES

A request for specific measures is a request for limited assistance rather than an application under Article 10 of the Convention. It is similar to the Child Support Enforcement Transmittal #3 that we use in the United States.

2.16.1 Specific Measures where Application Contemplated



Article 7 of the Convention authorizes a Central Authority to make a request for specific measures in certain circumstances. This slide identifies the two situations in which a request for specific measures might be made by a Central Authority and the Convention *requires* action by the requested Central Authority. The first is a request that is preliminary to an application for the establishment, modification, or enforcement of a support order, for example, a request for assistance made to a Central Authority to verify whether the debtor resides in the State to which the requesting Central Authority wants to send a support application. The second is a request for assistance that will help determine whether an application will be filed in the future. For example, the request could be for information about the debtor's income that will allow the requesting State to establish a support order that it will later seek to be recognized and enforced in the requested State. In this example a future application under the Convention is definitely contemplated.⁵

A request for specific measures under Article 7(1) may only be used for cases within the scope of the Convention. The specific measures sought are limited to the following Article 6 functions:

- Help locate the debtor or the creditor
- Help obtain relevant financial information about the debtor or creditor, including income and the location of assets
- Facilitate the obtaining of documentary or other evidence

⁵ See Para. 191-193, and 201-204, Explanatory Report.

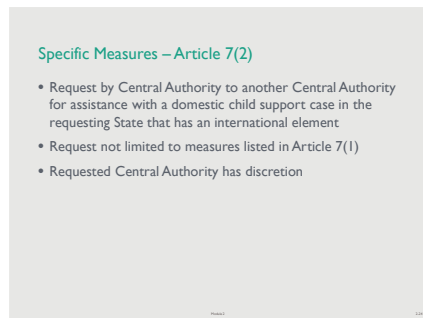
- Provide assistance in establishing parentage where necessary to recover support
- Institute or help institute proceedings to obtain any provisional measures that are territorial in nature and necessary to secure the outcome of a pending support application
- Facilitate service of documents.

Finally the specific measures requested must be needed in order to assist in making, or deciding to make, an Article 10 application.

If you are the IV-D agency making a request for specific measures under Article 7(1) to a Central Authority in a Convention country, you should provide reasons for your request. You should provide enough information that the requested Central Authority will be satisfied, from the reasons given, that the specific measures requested are necessary to assist in making, or deciding to make, an Article 10 application. There is no recommended form for a request for limited measures. The Country Profile will provide information about whether the requested State has a specific form it wants you to use.

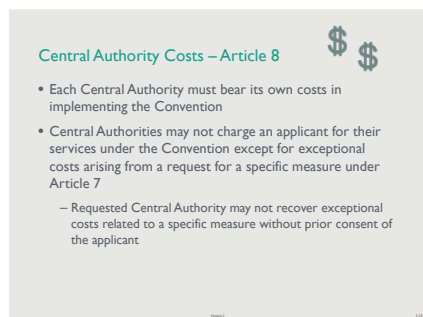
The Central Authority in the requested State has discretion to refuse assistance if it is not “satisfied” that the measures are necessary. However, when the Central Authority is “satisfied,” it is bound to take appropriate measures. What measures are appropriate will be based on the laws and resources of the requested State. An appropriate measure could be the referral of the request by the requested Central Authority to an appropriate authority in that country.

2.16.2 Specific Measures Related to Domestic Case



Article 7(2) applies even if both the debtor and creditor lived in the requesting State so long as there is an international element to the child support case. When a request is submitted under Article 7(2), the Central Authority has discretion in deciding whether to take the requested specific measures. One reason for the discretion is that the specific measures referred to in subsection 2 are not restricted to the six measures mentioned in Article 7(1).⁶

2.17 CENTRAL AUTHORITY COSTS



Requests for specific measures under Article 7 do not have the same benefits, such as cost-free services, as Chapter III applications have.

Article 8 prohibits Central Authorities from imposing any charge on an applicant for their services under the Convention. The exception is for exceptional costs arising from a request for a specific measure under Article 7. A requested Central Authority may recover such exceptional costs but only if the applicant provides prior consent to the

⁶ See Para. 205 - 209, Explanatory Report.

services at that cost. The consensus of Convention delegates was to require prior consent because Article 7 requests for specific measures may trigger considerable costs, even though it is possible that the result will be that no application is made.

2.18 QUESTIONS OR FEEDBACK

To address immediate questions on implementing the Convention, OCSE's Division of Policy and Training is hosting this webinar training series. In this module we discussed the responsibilities of the Central Authority under the Convention. We distinguished between the responsibilities of OCSE and state IV-D agencies as Central Authorities in the United States. We discussed the role of the requesting Central Authority and the role of the requested Central Authority in a Hague case. We also presented an overview of applications available to a creditor and the more limited applications available to a debtor.

The remaining modules focus on case processing, starting with the most common application – recognition and enforcement of a Convention order.



At any point, please do not hesitate to contact OCSE at the address on the slide with questions you may have or feedback on the webinar content.

Thank you for attending this webinar.