

Module 8

Convention Implementation Topics/Issues

TRAINING NOTES

What you need to say/do

1. Display **PowerPoint Slide 8-1: International Case Processing under UIFSA 2008: Module 8** (title slide). After introducing the webinar course, display **PowerPoint Slide 8-2: Webinar Series**. Explain the targeted audience, the content of the webinar modules, and the webinar resources.
2. Display **PowerPoint Slide 8-3: Webinar Modules** as you explain the focus of each module.
3. Display **PowerPoint Slide 8-4: Module 8: Convention Implementation Topics/Issues** (title slide).
4. Beginning with **PowerPoint Slide 8-5: Overview of Module**, 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:

- 8-1 through 8-73

Handouts:

- None

WEBINAR INTRODUCTION: INTERNATIONAL CASE PROCESSING UNDER UIFSA 2008



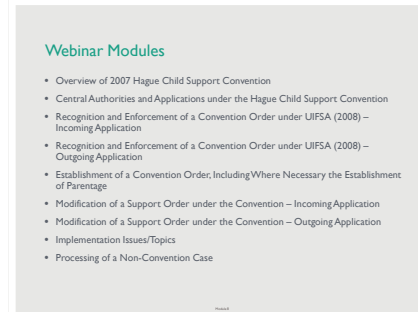
INTRODUCTION: TARGETED AUDIENCE

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, the focus shifts to 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, Module 4, 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.

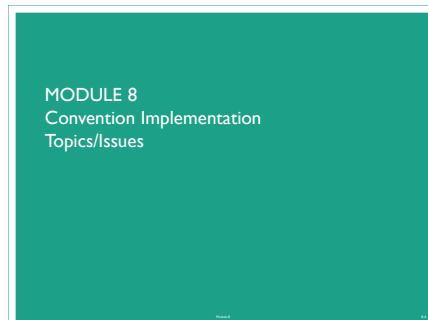
Module 8 addresses implementation issues and questions that have arisen.

Finally, in Module 9 the discussion turns toward processing international support cases from countries with bilateral reciprocity arrangements that are not Convention countries.

MODULE 8: CONVENTION IMPLEMENTATION TOPICS/ISSUES

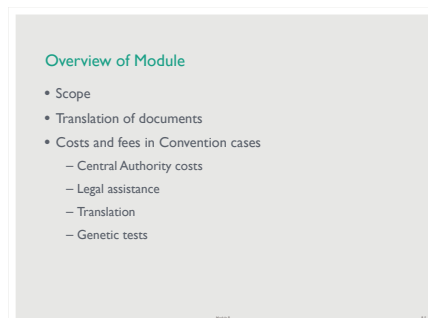
Time: 1.5 hours

8.1 CONVENTION IMPLEMENTATION TOPICS/ISSUES

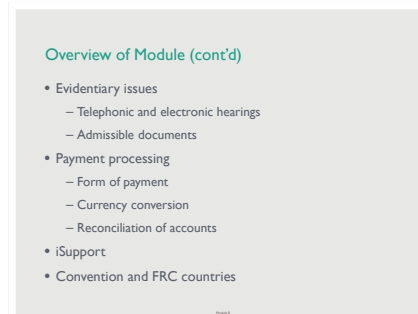


Today we are presenting Module 8, which addresses implementation issues related to the Hague Child Support Convention. We will also discuss some of the case processing questions that child support agencies have asked.

8.2 OVERVIEW OF MODULE



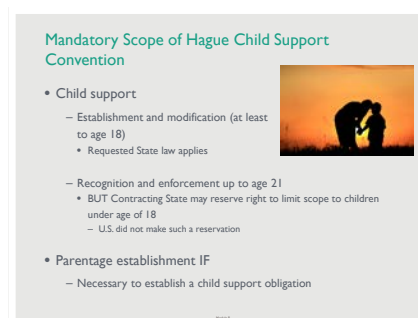
In the first half of the module, we will discuss questions that have arisen about the scope of the Convention. We will review Convention requirements regarding translation of documents and note translation resources that states have found helpful. We will also discuss the Convention provisions regarding costs and fees in a Convention case, and how that “plays out” in the United States.



In the second half of the module, we will review Convention and UIFSA provisions regarding evidence. This includes a discussion of telephonic and electronic hearings. We will explore a number of payment processing questions that have arisen in international cases. We will also discuss the latest developments with regard to iSupport. iSupport is an electronic case management and communication system in support of the Convention. Finally we will talk about the impact of U.S. ratification of the Hague Convention on existing bilateral agreements.

Throughout the presentation, keep in mind that when we refer to a Contracting State, or a requesting or requested State, we are referring to countries.

8.3 MANDATORY SCOPE OF HAGUE CHILD SUPPORT CONVENTION



Article 2 of the Hague Child Support Convention identifies the Convention's scope.

There was early agreement among delegates that the Convention should cover enforcement of child support. Within that area, there was discussion on whether the establishment of parentage should be mandatory and what age should be within the mandatory scope.

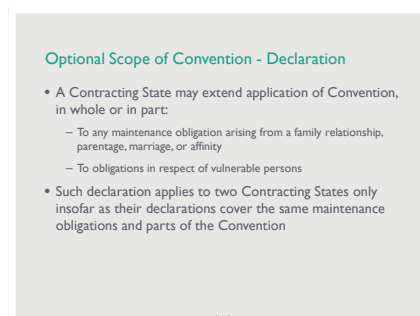
Ultimately, the decision was to include the establishment of parentage, if necessary to establish a child support obligation. An action to establish parentage only is **not** within the mandatory scope of the Convention. When establishing a support obligation, the law of the requested State applies. There is no requirement that a country change its duration of support for establishment purposes, beyond age 18.

With regard to enforcement, a Contracting State must provide for recognition and enforcement of a foreign child support order up to age 21. If a country wants to limit the scope of recognition and enforcement to children up to age 18, it must do so by a reservation. A reservation is a unilateral statement made by a country, when ratifying a treaty, where it says it's excluding or modifying the legal effect of a certain provision of the treaty. When a State makes a reservation, it means the limitation will apply when it's a requesting as well as requested State. Some countries may make a reservation to limit the obligation to recognize and enforce a child support order to age 18. The United States did not make such a reservation.



Recognition and enforcement of spousal support is within the mandatory scope if the spousal support is in conjunction with child support. If the application is related to spousal support only, it is still within the scope of the Convention. However, there is no requirement that Central Authorities perform services related to such applications. Those cases would be handled as direct requests to a tribunal. In other words, there is nothing in the Convention requiring IV-D agencies to handle spousal support only cases.

8.4 OPTIONAL SCOPE OF CONVENTION -- DECLARATION



In the final stages of negotiation, a group of Latin American States pressed to include maintenance obligations for vulnerable persons within the mandatory scope of the Convention. Vulnerable persons are individuals who are not able to support themselves due to a physical or mental impairment. Delegates did not reach consensus on this proposal, largely because many delegates felt there had been insufficient time to examine its full implications. However, the Convention allows a Contracting State to file a declaration that it will apply the Convention to obligations in respect of vulnerable persons.¹

Likewise a Contracting State may declare that it's extending the scope of the Convention to any maintenance obligation arising from a family arrangement, such as grandparents or an uncle.²

Such declarations apply to two Contracting States only insofar as their declarations are mutual.

The United States did not make these declarations.


¹ Article 2(3) of the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance [hereinafter Hague Child Support Convention]. Note that Article 37 allows a person to make a direct request to a tribunal for recognition and enforcement of a decision for support of a vulnerable person over the age of 21 where such decision was rendered before the person reached that age and provided for support beyond that age because of the impairment. Child support agencies are not involved in direct requests to a tribunal.

² *Id.*

8.5 CASE SCENARIOS

8.5.1 Case Scenario One

Case Scenario I



€500/month until child self-sufficient
Child now 21
No arrears

Texas recognized and is enforcing order from Spain under the Convention. Order requires support until child becomes self-sufficient. There are no arrears. Adult child is now 21 years old.

Is Texas IV-D agency required to provide services under the Convention for current support after child turns 21 years of age?

Let's look at this first case scenario.

In January 2017 a Convention application was sent from the Central Authority in Spain to Texas seeking recognition and enforcement of a Spanish order. The Texas tribunal recognized the order, and the Texas agency has been enforcing it. The Spanish order requires child support until the child becomes self-sufficient. The adult child is now 21 years. There are no arrears due under this order.

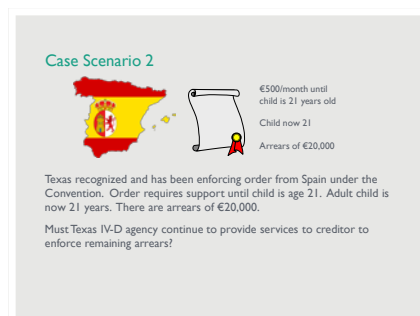
Is the Texas IV-D agency required to provide services under the Convention to enforce current support after the child turns 21 years of age?

Case Scenario I – Response

- No. Convention only requires recognition and enforcement of current child support for child under age of 21 years.
 - To enforce current support once child turns 21, creditor could retain private counsel in Texas

No. The Hague Child Support Convention only requires recognition and enforcement of current child support for a child under the age of 21 years. There is no Convention or federal requirement that the child support agency, acting as a Central Authority under the Convention, provide services to enforce the order for current support after age 21. To enforce current support once the child turns 21, the creditor can retain private counsel in Texas.

8.5.2 Case Scenario Two



Case Scenario 2

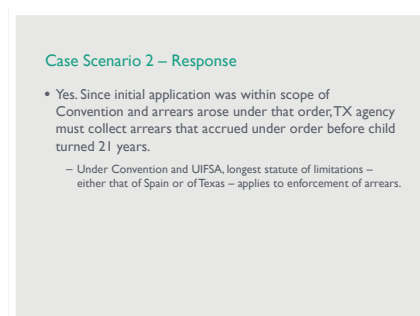
€500/month until child is 21 years old
Child now 21
Arrears of €20,000

Texas recognized and has been enforcing order from Spain under the Convention. Order requires support until child is age 21. Adult child is now 21 years. There are arrears of €20,000.

Must Texas IV-D agency continue to provide services to creditor to enforce remaining arrears?

This second scenario involves the same order from Spain, which was recognized and enforced during the child's minority. However, in this scenario, we will assume that when the child turns 21, there are arrears owed of 20,000 Euros.

We have already noted that there is no obligation under the Convention or federal law for the Texas IV-D agency, acting as the Central Authority in this Convention case, to provide services to enforce current support after the child turns 21 years of age. What about the arrears? Must the Texas agency continue to provide services under the Convention to enforce the remaining arrears?



Case Scenario 2 – Response


- Yes. Since initial application was within scope of Convention and arrears arose under that order, TX agency must collect arrears that accrued under order before child turned 21 years.
 - Under Convention and UIFSA, longest statute of limitations – either that of Spain or of Texas – applies to enforcement of arrears.

Yes. The Spanish order was recognized and enforced under the Convention during the child's minority. Since the initial application was within the scope of the Convention and the arrears arose under that order, the Texas IV-D agency must provide services to collect the arrears that accrued under the order before the child turned 21 years. Under the Convention and UIFSA, the longest statute of limitations – either that of Spain or of Texas – applies with regard to the enforceability of the arrears.³

³ See Section 604(b), UIFSA (2008)' Article 32(5) of the Hague Child Support Convention.

8.5.3 Case Scenario Three

Case Scenario 3



Adult child now 25
Arrears only order
for €20,000

Spanish order not sent to U.S. for recognition and enforcement during child's minority, because creditor did not know debtor's location. Creditor learns that debtor resides in Texas.

Can Central Authority in Spain transmit application to Texas on behalf of creditor, seeking recognition and enforcement of arrears-only order when child is 21 years or older?

Must Texas IV-D agency provide services to collect arrears only?

In this third scenario, we will assume that the Spanish order was never sent to the United States for recognition and enforcement during the child's minority. The creditor has recently learned that the debtor resides in Texas.

Can the Central Authority in Spain transmit an application to Texas on behalf of the creditor, seeking recognition and enforcement of an arrears-only order when the child is 21 years or older? If so, must the Texas IV-D agency provide services to collect arrears only?

Case Scenario 3 – Response

- If original order was made within scope of Convention, then arrears that accrued are enforceable under Convention
- Spanish Central Authority can send application for recognition and enforcement of arrears-only order
- Under Convention and UIFSA, longest statute of limitations applies

If the original order in Spain was made within the scope of the Convention (for a child support obligation arising from a parent-child relationship towards a person under the age of 21 years), then the arrears that accrued under the order are enforceable under the Convention. The Explanatory Report to the Convention emphasizes that a maintenance decision may be a decision for arrears only.⁴ As long as the creditor files an application for recognition and enforcement through the Central Authority where she resides, the Texas IV-D agency must provide services under the Convention. That means it must seek

⁴ See Para. 156, Explanatory Report, Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance [hereinafter Explanatory Report].

recognition and enforcement of the arrears-only order, under Article 7 of UIFSA. Under the Convention and UIFSA, the longest statute of limitations applies so the Central Authority in Spain may want to contact the Texas child support agency – or check the IRG – in advance to learn what the Texas statute of limitations is.

8.6 TRANSLATION OF DOCUMENTS



The next issue we will discuss is translation of documents.

8.6.1 Outgoing Documents



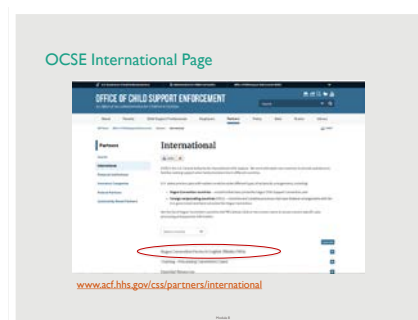
Article 44 of the Hague Child Support Convention addresses translation of documents and communications.

Any application and related documents must be in the original language, and must be accompanied by a translation into an official language of the requested State or another language that the requested State has declared it will accept, unless the competent authority of that State dispenses with translation. To reduce the costs and complexity of the translation of an entire support order, check the Country Profile to see if the country

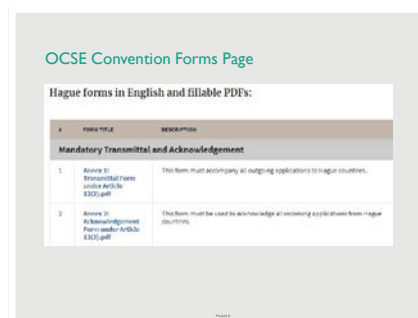
will accept an abstract or extract of the order. If an abstract is acceptable, use the Convention form titled Abstract of a Decision.

Unless otherwise agreed by the Central Authorities, any other communications between such Authorities must be in an official language of the requested State or in either English or French. However, a Contracting State may make a reservation objecting to the use of either English or French. For example, the U.S. has objected to the use of French when a Central Authority communicates with us. Such a reservation will be noted in the Status Table on the Child Support page of the Hague Conference website. You can also learn about a country's language requirements by checking its Country Profile.

8.6.1.1 Federal Office of Child Support Enforcement Translation Resources



This slide shows OCSE's International page and indicates where to access the Hague Convention forms.



Once you reach the Hague Convention forms page, you will find the English and fillable PDF versions of the mandatory Transmittal and Acknowledgment forms. You do not

need to worry about translating these two required forms. Most Convention countries will accept communication between Central Authorities in English.

OCSE Convention Forms Page (cont'd)

Application for Recognition and Enforcement of a Decision		
3	AC: Application for Recognition and Enforcement.pdf	This form is used for applications for recognition or recognition and enforcement of child support decisions, and includes the option to provide parental information voluntarily.
4	AC: Affidavit of a Decision.pdf	This form may accompany an application for recognition or to recognize and enforce a decision where the requested country has used the child's court as a basis of the child support decision. The form must be completed by the competent authority of the country of origin.
5	AC: Statement of enforceability of a Decision.pdf	This form may accompany an application for recognition or to recognize and enforce a decision and certifies that the decision is enforceable in the country of origin. The Statement of enforceability is completed by the competent authority of the country of origin.
6	AC: Statement of Proper Notice.pdf	This form may accompany an application for recognition or to recognize and enforce a decision and certifies that the proper notice of the proceedings and proceedings and proceedings has been served on the respondent and on appropriate persons in the country of origin. The Statement of Proper Notice is completed by the competent authority of the country of origin.
7	AC: Status of Application Report (Recognition and Enforcement).pdf	This form can be used by the requested country to replace the Central Authority in the requesting country about progress in a case for recognition or recognition and enforcement.

Page 5 3.0

You will also find the recommended Convention forms developed by the Convention Forms Working Group. You can use these forms for countries that have indicated they will accept forms in English. OCSE has grouped the forms related to a particular application. For example, these are the forms related to an Application for Recognition and Enforcement. The letter and number formatting is designed to help child support workers more easily identify the various applications and accompanying documents. They are not part of the actual form titles.

OCSE Convention Forms Page (cont'd)

Application for Recognition and Enforcement of a Decision		
3	AC: Application for Recognition and Enforcement.pdf	This form is used for applications for recognition or recognition and enforcement of child support decisions, and includes the option to provide parental information voluntarily.
4	AC: Affidavit of a Decision.pdf	This form may accompany an application for recognition or to recognize and enforce a decision where the requested country has used the child's court as a basis of the child support decision. The form must be completed by the competent authority of the country of origin.
5	AC: Statement of enforceability of a Decision.pdf	This form may accompany an application for recognition or to recognize and enforce a decision and certifies that the decision is enforceable in the country of origin. The Statement of enforceability is completed by the competent authority of the country of origin.
6	AC: Statement of Proper Notice.pdf	This form may accompany an application for recognition or to recognize and enforce a decision and certifies that the proper notice of the proceedings and proceedings and proceedings has been served on the respondent and on appropriate persons in the country of origin. The Statement of Proper Notice is completed by the competent authority of the country of origin.
7	AC: Status of Application Report (Recognition and Enforcement).pdf	This form can be used by the requested country to replace the Central Authority in the requesting country about progress in a case for recognition or recognition and enforcement.

Page 5 3.0

This slide shows the forms related to an Application for Enforcement of a Decision Made or Recognized in the Requested State as well as an Application for Establishment of a Decision.

OCSE Convention Forms Page (cont'd)		
Application for Modification of a Decision		
12	12) Application for Modification of a Decision.pdf	This form is used for applicants to modify a child support decision, and articulate the options to prevent enforced visitation, separation. The cases form can be used whether the applicant is the mother or the father.
13	13) Motion of Application Request (Modification).pdf	This form can be used by the requested county to apply the District Authority to resolve regarding custody, child support or a case for modification of a decision.
Financial Circumstances Form		
14	14) Financial Circumstances Form.pdf	This form can be used with any of the applications under the Convention. However, the form does not have to be completed for full-sister applications.

And finally, this slide shows the forms related to an Application for Modification of a Decision. You will send the Financial Circumstances Form with every application, although you will only complete the relevant sections.

8.6.1.2 Country Specific Language Information

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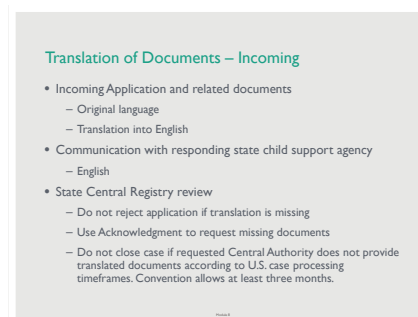
To learn the language requirements for each country, go to the OCSE International page and use the drop down menu for “Select a country.”

This slide shows the information available, using Austria as an example. On the left is information about that country's language requirements. It informs you of the communication language – generally English is acceptable in Convention cases, except for two countries (France and Luxembourg). It identifies the country's official language. And it also informs you of the required language for translation of forms and documents. If OCSE has forms translated into the required language, there is a hyperlink to such forms. For example, Austria accepts German/English bilingual forms.

Please review the language information carefully when preparing cases to send to another Hague country. If you need a Convention form in a language that is not currently accessible from the OCSE website, please contact OCSE for help.

While OCSE urges all states to have general policies concerning translation, there is no federally mandated type of translation provider. Some states use a single state contracted translation provider. Other states allow county child support agencies to access translation services as needed, with no overall state oversight. Often, child support agencies reach out to local universities or colleges to obtain translation services. At least one state requires county IV-D programs to request translation services through the Central Registry for review before the county is permitted to send the documents to the state translation provider.

8.6.2 Incoming Documents



For incoming cases to the United States, the application and related documents – such as an order – should be in the original language, accompanied by a translation into English. Most U.S. states, when enacting Article 7 of UIFSA (2008), agreed to accept an abstract or extract of the order in lieu of the entire text. For such states, the requesting Central Authority will likely use the Convention Abstract of a Decision form and translate the relevant provisions of the order rather than the entire text.

Communication to the local child support agency handling the case should be in English.

As we discussed in Module 3, a state Central Registry in the United States may refuse to process an incoming application only if it is manifest that Convention requirements are not met.

A Central Registry may **not** refuse to process an application if there is missing information or documents such as a translation of an application and related documents

into English. Instead, the Central Registry should request the translated documents from the country but continue to process the application to the extent possible.

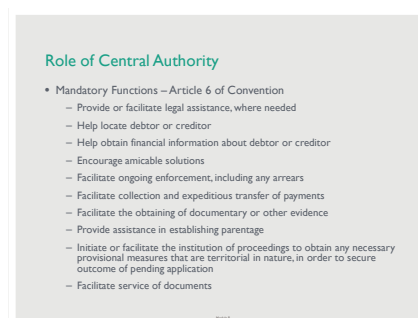
Remember that international cases are not subject to U.S. case processing timeframes, so the Central Registry should not automatically close the case if the requesting country does not provide translated documents according to U.S. case processing timeframes. Article 12 of the Convention provides that if the requesting Central Authority does not respond to a request within three months or a longer period specified by the requested Central Authority, the requested Central Authority may decide that it will no longer process the application. In this case, it shall inform the requesting Central Authority of this decision.

8.7 COSTS AND FEES IN CONVENTION CASES



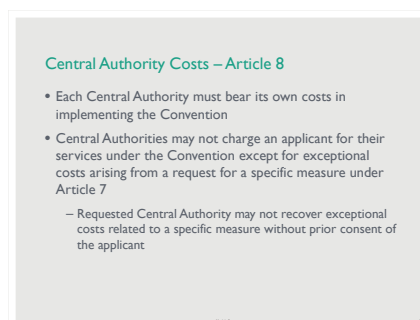
The next topic is costs and fees in Convention cases.

8.7.1 Central Authority Costs



The Convention 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 of the Convention. You will notice a lot of verbs like “help,” “encourage,” and “facilitate” in that list. We discussed these measures during the Module 2 webinar. Remember – because OCSE has designated state IV-D agencies as Central Authorities for receiving and transmitting Convention applications – you are responsible for performing these Article 6 measures, which are similar to the services you already provide in intergovernmental cases.



Article 8 prohibits Central Authorities from imposing any charge on an applicant for their services under the Convention.⁵

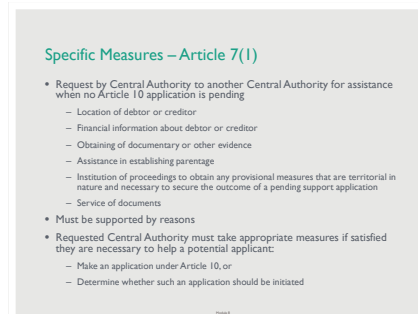
An exception to this prohibition is in Article 7 of the Convention. Requests for specific measures under Article 7 do not have the same benefits, such as cost-free services, as Chapter III applications have. We discussed Article 7 Specific Measures in detail during Module 2 of the webinar series.

If there are exceptional costs arising from a request for a specific measure under Article 7, a requested Central Authority may recover those exceptional costs.⁶ However, recovery is allowed only if the applicant provides prior consent to the 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's possible the result will be that no application is made.⁷

⁵ See Para. 216, Explanatory Report. Article 8(2) applies to the Central Authority in both the requesting and requested States. Para. 214, Explanatory Report.

⁶ Use of the word “may” in Article 8(2) means that the Central Authority has discretion as to whether or not it will impose charges in such cases. Para. 223, Explanatory Report.

⁷ See Para. 224, Explanatory Report.



Let's review the requests for specific measures under Article 7. A request for specific measures is a request for limited assistance rather than a Convention application. It is similar to the types of requests made on the Child Support Transmittal #3 that we use in the United States. In other words, it is not a request to initiate a proceeding. It is a request made prior to, or in the absence of, a formal application.

Article 7(1) of the Convention lists two possible 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 a Convention application, 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.⁸

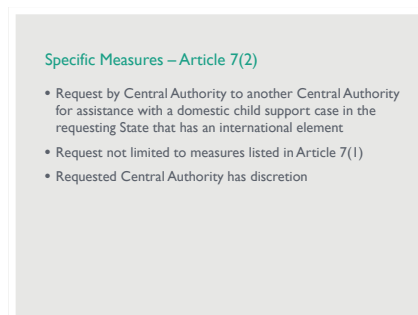
A request for specific measures under Article 7(1) may only be used for cases within the scope of the Convention. The specific measures sought are limited to the following Article 6 functions:

⁸ See Para. 191-193, and 201-204, Explanatory Report.

- 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
- 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.

It is important that the requesting Central Authority list reasons as to why the measures are appropriate and needed. If the requested Central Authority is satisfied that the measures are necessary to assist a potential applicant in making an application under Article 10 or in determining whether such an application should be initiated, it **must** take appropriate measures.

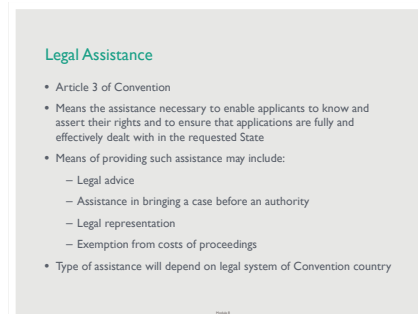


Article 7(2) applies even if both the debtor and creditor lived in the requesting State so long as there is an international element to the child support case. When a request is submitted under Article 7(2), the Central Authority has discretion in deciding whether to take the requested specific measures.⁹

⁹ See Para. 205 - 209, Explanatory Report.

8.7.2 Legal Assistance Costs

8.7.2.1 Definition of Legal Assistance

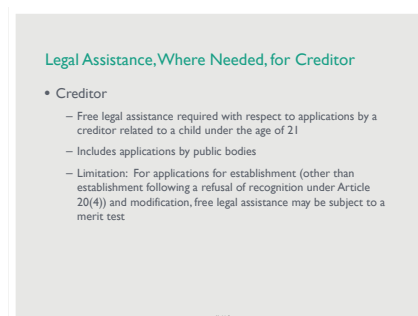


Legal Assistance

- Article 3 of Convention
- Means the assistance necessary to enable applicants to know and assert their rights and to ensure that applications are fully and effectively dealt with in the requested State
- Means of providing such assistance may include:
 - Legal advice
 - Assistance in bringing a case before an authority
 - Legal representation
 - Exemption from costs of proceedings
- Type of assistance will depend on legal system of Convention country

Several Convention provisions address requirements for legal assistance under the Convention. According to Article 3 of the Convention, “legal assistance” means “the assistance necessary to enable applicants to know and assert their rights and to ensure that applications are fully and effectively dealt with in the requested State. The means of providing such assistance may include as necessary legal advice, assistance in bringing a case before an authority, legal representation and exemption from costs of proceedings.” The type of legal assistance provided will depend on the legal system of the Convention country.

8.7.2.2 Legal Assistance for Creditor



Legal Assistance, Where Needed, for Creditor

- Creditor
 - Free legal assistance required with respect to applications by a creditor related to a child under the age of 21
 - Includes applications by public bodies
 - Limitation: For applications for establishment (other than establishment following a refusal of recognition under Article 20(4)) and modification, free legal assistance may be subject to a merit test

Article 15 of the Convention addresses free legal assistance for child support applications.

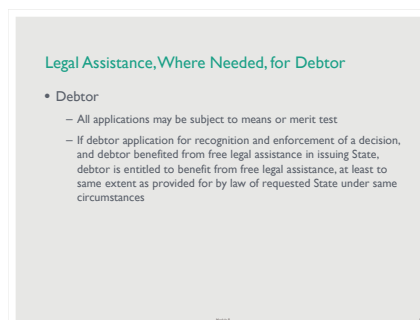
A requested country is required to provide free legal assistance with respect to applications by a creditor, including public bodies, related to a child under the age of

21. However, free legal assistance for some creditor applications may be subject to a merit test under the Convention.

The following creditor applications may **never** be subject to a merit test and, therefore, will always benefit from free legal assistance. These are applications by the creditor for recognition or recognition and enforcement of a decision. A creditor will also always have free legal assistance, if needed, for establishment of an order following a refusal of recognition under Article 20(4).

The creditor applications that can be subject to a merit test for free legal assistance include applications for establishment and modification, or appeals related to these applications. Under a “merit” test, a country has some discretion to protect itself from the burden and costs in a case that the country determines is “manifestly unfounded.” According to the Explanatory Report, the term “manifestly unfounded” should be construed narrowly. The Explanatory Report gives two examples of an application that may be “manifestly unfounded”: the very rich applicant while the debtor is so poor that there is no chance of success; and an application where there is no legal justification for the support claim.¹⁰ Such a determination would be decided on a case-by-case basis by the competent authority using domestic law. Of course, even if cost free legal assistance is not available to the applicant, he or she may still proceed with the case.¹¹

8.7.2.3 Legal Assistance for Debtor



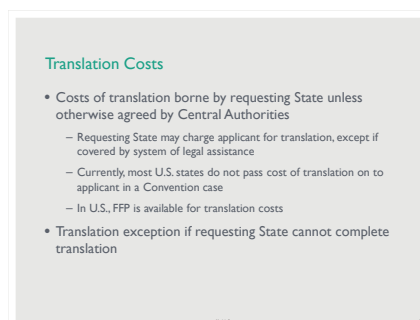
¹⁰ Para. 390, Explanatory Report.

¹¹ Para. 388, Explanatory Report.

In contrast, free legal assistance may always be subject to a means or merit test for all applications by a debtor.¹²

There is one exception. If the applicant is a debtor seeking recognition and enforcement of a decision and the applicant in the issuing State benefited from free legal assistance, the applicant debtor is entitled to benefit, at least to the same extent, from free legal assistance provided for by the law of the requested State under the same circumstances. Documentation supporting a U.S. debtor applicant's entitlement to free legal assistance could be a letter or statement from the child support agency in the requesting State declaring that the applicant, if she or he were to apply, would be granted legal assistance in that State, or has benefited from such assistance in the State of origin.¹³

8.7.3 Translation Costs



Let's shift from costs related to legal assistance to translation costs.

Article 45 of the Convention provides that the requesting country will bear the burden of translation unless the Central Authorities agree otherwise. Under the Convention, a Convention country may pass on the costs of translation to an applicant, unless it would be considered covered by the system of legal assistance. In the U.S., procedures for covering translation costs, or recovering such costs from domestic applicants, will vary. Most U.S. states currently do not pass the cost of translation on to a U.S. applicant in a Convention case. Instead they absorb the cost and seek federal financial participation (FFP).

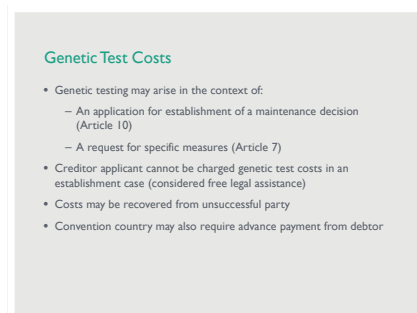
¹² See Article 17 of the Hague Child Support Convention; Para. 383, Explanatory Report.

¹³ See Para. 313, Explanatory Report.

As a practical matter, in outgoing cases, a U.S. state can save or minimize translation costs in a case if the requested country does not require document translation or if the requested country allows submission of an abstract in lieu of the complete text of the order. As a best practice, therefore, before translating any documents in a case, a IV-D agency should review translation and document requirements on the requested country's Country Profile and contact the country directly for clarification, as needed. If translation is needed, FFP is available for any translation costs.

The Convention provides a translation exception where it is not practical or possible for the requesting country to complete the translation. In such a situation, the Central Authorities in a particular case – or in general – may agree that the requested country complete the translation. If the requested country does not agree to this, and the requesting country cannot otherwise comply with translation requirements, then the requesting country may translate the documents into either English or French, according to the language requirements for communication in the requested country.¹⁴

8.7.4 Genetic Test Costs



What about genetic testing costs?

Under the Convention, genetic testing may arise in two contexts. A party may request genetic testing where there is an application to establish a support order and parentage establishment is a necessary first step. A Central Authority may also request assistance with genetic testing under Article 7 of the Convention. Article 7 addresses requests for specific measures when there is no Convention application pending. For example, a IV-D

¹⁴ Article 45(1) of the Hague Child Support Convention.

agency may request that another Central Authority provide assistance with genetic testing if the IV-D agency is seeking to establish parentage and a support obligation in a domestic case, and then plans to file a Convention application under Article 10 for recognition and enforcement of that order.

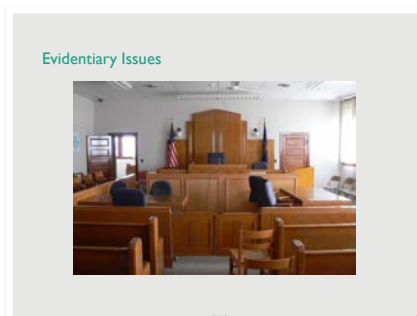
Payment of genetic test costs was a topic of extensive discussion during treaty negotiations because such costs are quite high in some countries.

The consensus reached was that genetic testing costs arising in the context of a Convention application for establishment of a decision are considered part of the cost-free legal assistance a Convention country must provide creditor applicants. Therefore, in no circumstance may a Convention country charge a creditor applicant for genetic testing in an establishment case.¹⁵

However, under Article 43, a country may recover costs from an unsuccessful party. According to the Explanatory Report, a country may also require advance payment from a debtor for genetic testing.¹⁶

In the United States, the costs of genetic testing in intergovernmental case processing are borne by the state IV-D agency incurring them.¹⁷ A cost recovery state may recover costs from the alleged father who denies paternity.

8.8 EVIDENTIARY ISSUES



¹⁵ See Para. 385, Explanatory Report.

¹⁶ See Para. 392, Explanatory Report.

¹⁷ See 45 C.F.R. 303.7(e)(1).

Let's move to a discussion of evidentiary provisions within UIFSA (2008) and the Hague Child Support Convention.

8.8.1 Transmission of Documentary Evidence

Transmission of Documentary Evidence	
UIFSA Documentary evidence can be transmitted by telephone, telecopier, or other electronic means that do not provide original record Cannot be excluded from evidence based on means of transmission Sec. 316(e)	Hague Child Support Convention Application made through Central Authorities of Contracting States, and any document or information appended thereto or provided by a Central Authority, may not be challenged based only on medium or means of communication employed Art. 13

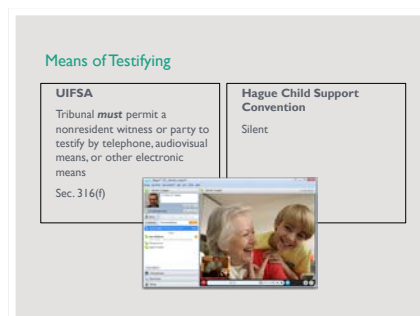
Both UIFSA and the Convention recognize advancements in technology and permit the transmission of evidence by electronic means.

8.8.2 Presence of Nonresident Party

Presence of Nonresident Party	
UIFSA Physical presence of nonresident party not required Sec. 316(a)	Hague Child Support Convention Physical presence of child or applicant not required Art. 29

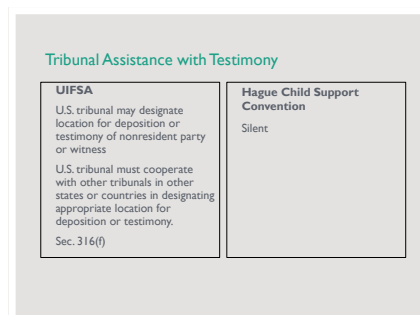
Both UIFSA and the Hague Convention also recognize the importance of providing a creditor with a swift, accessible system to recover child support. Requiring the presence of the child or the applicant would be contradictory to those objectives. The UIFSA provision is more expansive than the Convention provision; it does not require the physical presence of a nonresident party, regardless of whether the party is the petitioner or the respondent.

8.8.3 Means of Testifying



A big change from UIFSA (1996) to UIFSA (2008) is the requirement that tribunals **must** allow a witness or party residing outside the state to testify or be deposed by telephone, audiovisual means, or other electronic means. It is not discretionary. We will talk about coordination of such testimony in a minute. The Hague Convention does not have a similar provision, although Central Authorities are required to cooperate with each other in the processing of Convention applications.

8.8.4 Tribunal Assistance with Testimony



If a nonresident party or witness is testifying by telephone or other electronic means, the tribunal may designate the location from which it wants the person to testify. Section 316(f) of UIFSA mentions testimony from a tribunal outside the state but recognizes the forum tribunal may designate a different location. UIFSA also requires tribunals to cooperate with each other in designating an appropriate location for the deposition or testimony.

There is no similar provision in the Hague Convention.

8.8.5 Coordination of International Hearings



Let's assume there is an incoming Convention application to the U.S. and one of the parties wants a telephonic or electronic hearing. This slide and the next list issues that the child support agency needs to address.

First, how must the request be made? Some states have court rules requiring the party to make a formal request, using a standardized form. For example, New York State has a unified court system. On its website is a form titled Electronic Testimony Application and Waiver of Personal Appearance that the New York Family Court uses for hearings in child support cases.

Second, what type of assistance can the IV-D agency expect from the requesting Central Authority? That will depend on the country. For example, the Federal Office of Justice in Germany will inform the applicant about the telephonic hearing. However, it will be up to the applicant to arrange for his or her participation. If the applicant is represented by the local German Youth Welfare Office, sometimes the local office will assist, including serving as a location for the testimony. Other countries are less receptive, citing concerns over various coordination issues. The Central Authority in some countries may mistakenly believe that the IV-D attorney represents the applicant and therefore not understand why there may still be a need for the applicant to testify telephonically, if requested by the obligor. At least one country has requested a formal standardized form requesting participation by the applicant in a telephonic hearing.

The two coordination issues raised the most by countries are time zones and location. Tribunals and parties need to be flexible in accommodating different time zones.

Tribunals also differ regarding the designated location for testimony by the nonresident party. Some tribunals require a formal setting such as a child support agency office, a court room, or a notary's office. Other tribunals are comfortable designating a person's home, especially if the time differential is large.



Technology is much more accessible these days. Most U.S. courtrooms have speaker telephones or computers. Depending on the service provider, some courts may be limited to incoming international telephone calls and unable to place outgoing calls. Obviously, the nonresident party also needs access to the technology used. If the person plans to call from a cellphone, rather than a land line, it may be advisable to check the quality of the phone connection in advance. If Facetime or Skype is used, there is no cost to the party.

Another issue raised by telephonic and electronic hearings is verification of the testifying party. If testimony is provided by telephone, a party or witness before the tribunal can identify the voice of the nonresident person. Alternatively, an official outside the state – such as a notary or agency representative – can view a photographic identification and verify the identity of the person. Verification of the person is less problematic if the person is testifying by Skype or Facetime, which provides a visual image.

In some international cases, the tribunal will need to provide interpretation for the person testifying. Most U.S. courts have contracts with private companies or local universities or colleges for interpretation services. If you need such services, make sure you provide advance notice to the court. Try to also learn in advance if there will be dialect issues.

The tribunal will also need to address how documents will be admitted during the telephonic or electronic hearing.

Finally, in the United States any attorney outside the forum who makes an appearance and participates in the hearing must either be licensed to practice in that forum or admitted through a *pro hac vice* process. This includes attorneys located in Convention countries. “*Pro hac vice*” is a Latin phrase, meaning “for this turn” or “for this occasion.” It is a special kind of admission by which a lawyer, who has not been admitted to practice in a particular jurisdiction, is nevertheless allowed to participate in a particular case being heard in that jurisdiction. States have different requirements regarding the *pro hac vice* admission process.

8.8.6 Communication between Tribunals

Communication between Tribunals	
UIFSA U.S. tribunal may communicate with tribunal outside the state to obtain information about: <ul style="list-style-type: none">– Laws– Legal effect of tribunal's order– Status of a proceeding Sec. 317	Hague Child Support Convention Silent

Section 317 of UIFSA (2008) authorizes a state tribunal to communicate with a tribunal “outside this state” in a record or by telephone, email, or other means. The phrase “outside this state” means a tribunal of another state (as defined by UIFSA), a foreign country, or a foreign nation that is not defined by UIFSA as a foreign country. The communication can be about the laws, legal effect of an order, or status of a proceeding. A U.S. tribunal may furnish similar information by similar means to a tribunal in another country.

There is no similar provision in the Convention regarding competent authorities.

8.8.7 Assistance with Discovery

Assistance with Discovery	
UIFSA U.S. tribunal may request a tribunal <i>outside the state</i> to assist in obtaining discovery; and, upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal <i>outside the state</i> Sec. 318	Hague Child Support Convention Silent regarding responsibility of competent authority In relation to an application, a Central Authority must take "all appropriate measures" to "facilitate the obtaining of documentary or other evidence" Art. 6(2)(g)

Section 318 authorizes a tribunal to help a tribunal “outside the state” with the discovery process. Again, “outside the state” includes a tribunal in a Convention country.

Although the Hague Convention is silent regarding similar authority of a competent authority, Article 6 of the Convention requires the Central Authority to take all appropriate measures to help obtain needed documents or evidence in a Convention case. The type of assistance a Central Authority may provide will vary among Convention countries.

8.9 PAYMENT PROCESSING



The next set of slides address payment processing in international cases.

8.9.1 Payment Processing Requirements in UIFSA

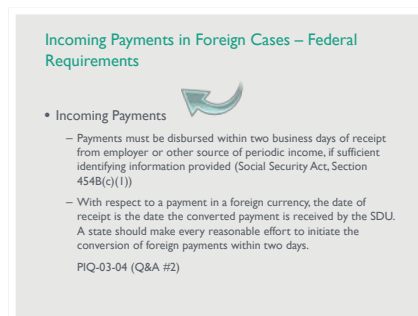


Let's first examine requirements under UIFSA, and then requirements governing IV-D agencies under federal law.

Section 319 of UIFSA (2008) has a general requirement that a support enforcement agency or tribunal must disburse promptly any amounts received under an order, as directed by that order. And, if requested, the support enforcement agency or tribunal must furnish a certified statement by the custodian of the record of the amounts and dates of any payments received to a requesting party or tribunal of another state or a foreign country.

8.9.2 Federal Payment Processing Requirements

8.9.2.1 Incoming Payments in Foreign Cases



Federal law has more specific requirements, including timeframes. Under Section 454 of the Social Security Act, incoming payments should be made to the appropriate state disbursement unit (SDU). The SDU, in turn, must disburse such payments within two business days of receipt of the money, if there is sufficient identifying information.

OCSE has issued policy making it clear that the two-day disbursement timeframe applies in international cases. This is true whether the obligee lives in the United States, or whether payments are being sent to an obligee in a foreign country. Let's first look at incoming payments sent to a state SDU, for distribution to an obligee in the U.S.

In PIQ-03-04, a state raised the following question: How does the two-day rule in Section 454B of the Act apply to foreign payments?

OCSE responded that the state should send the converted U.S. dollar payment to the custodial parent within two days of receipt. The answer further stated:

We recognize that foreign payments present unique and significant transaction costs – in terms of both time and money. Neither the Act nor related regulations expressly recognize the impact of these costs on the disbursement of support. However, in light of Congress' commitment to international enforcement (see, e.g., sections 454(32) and 459A of the Act), we do not believe that Congress intended for U.S. families to be denied prompt payments of child support simply because the payments are received in a foreign currency.

Section 454B(c) generally defines the date of a collection as the date of receipt by the SDU. With respect to a payment in a foreign currency, we interpret the date of receipt to be the date that the converted payment is received by the SDU. For example, if a state receives a check in Canadian dollars, it may need to send the payment to a bank to convert the amount into U.S. dollars, a process that may take more than the two days provided for in the Act. In this case, a state should disburse the payment in U.S. dollars within two business days of receiving the converted payment. A state should make every reasonable effort to initiate the conversion of foreign payments within two days.

Incoming Payments in Foreign Cases (cont'd)

PIQ-03-04

- QUESTION 1: Must a state accept a payment from an obligor in a foreign country if the payment is made in a foreign currency?
- RESPONSE: Yes. Section 454B of the Social Security Act requires that states operate a state disbursement unit (SDU) for the collection and disbursement of payments under support orders being enforced on behalf of children. Section 454B(b)(1) goes on to specify that the state disbursement unit is required to have procedures "for receipt of payments from parents, employers, and other States..." – without qualification or exception.

PIQ-03-04

In PIQ-03-04, OCSE also addressed a question related to currency rather than timeframes. The question was: Must a state accept payment from an obligor in a foreign country if the payment is made in a foreign currency?

OCSE answered "Yes." It pointed out that the requirement for an SDU to have procedures for the receipt of payments from parents, employers, and other States did not have any qualifications or exceptions. Therefore, the SDU must accept payment in foreign currency. Of course, an exception is if the foreign checks/drafts are received in currencies not currently exchanging with the United States. Follow your state policy addressing that situation. If you have questions, you may contact OCSE.

8.9.2.2 Outgoing Payments in Foreign Cases

Outgoing Payments in Foreign Cases – Federal Requirements

- Outgoing Payments
 - Payments must be disbursed within two business days of receipt from employer or other source of periodic income, if sufficient identifying information provided (Social Security Act, Section 454B(c)(1))
 - IV-D agency may obtain permission from a custodial parent in a Convention or foreign reciprocating country to send payments using an alternative disbursement timeframe in order to avoid transaction costs and currency conversion fees. For example, the custodial parent may agree to bundled payments sent monthly. The IV-D agency should document the custodial parent's consent in its records.

PIQ-04-01 (Q&A #9)

What if the obligor resides in the United States, and the SDU needs to forward support payments to the creditor in a foreign country?

In PIQ-04-01, the following question was raised:

Are states required to meet the two-day disbursement timeframe in section 454B of the Act when sending collections to foreign reciprocating countries under section 459A of

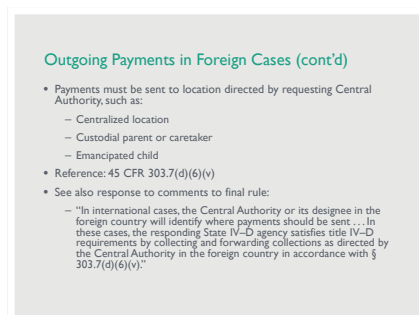
the Act? For example, if multiple wage withholdings a month are being used to collect support on behalf of a child residing in a foreign reciprocating country, can the IV-D agency bundle the collections into a single larger amount and transfer the money on a monthly basis? The problem is that small payments are eaten up by processing and currency conversion fees.

OCSE issued the following response:

Section 454(32)(A) of the Act requires that the state plan for child and spousal support must "provide that any request for services under this part by a foreign reciprocating country or a foreign country with which the State has an arrangement...shall be treated as a request by a State." [Action Transmittal 98-24](#), Question 12, clarified that the 2-day disbursement time frame in section 454B of the Act applies in interstate cases. Therefore, when sending collections to a foreign reciprocating country, a state should meet the 2-day disbursement timeframe.

However, there may be circumstances in which a custodial parent in a foreign reciprocating country consents to having the IV-D agency hold and send the payments in a single larger amount in order to avoid transaction costs and currency conversion fees. The IV-D agency may obtain permission from the custodial parent in a foreign reciprocating country to send payments using an alternative disbursement timeframe, i.e. bi-weekly, monthly, bi-monthly. The IV-D agency would need to document the custodial parent's consent in its records. As the capability for sending electronic payments expands in the future, and transaction costs are reduced, such arrangements should not be needed.

Please contact OCSE for guidance if your state is considering implementing bundled payments.



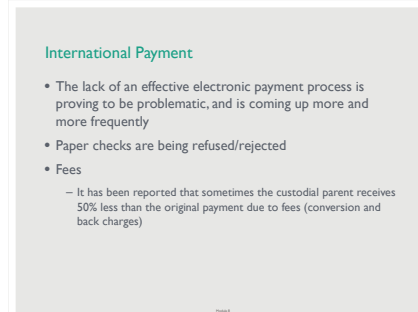
Federal regulations at 45 CFR § 303.7(d)(6)(v) require the IV-D agency to send support payments to the location specified by the initiating agency.

When the Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs Rule was finalized, one commenter asked that OCSE address the treatment of interstate/UIFSA cases where money is sent to the initiating state's SDU and international cases, which may order support payment directly to the adult child and/or to other caretaker situations.

OCSE responded by noting the term “initiating agency” is defined in 45 CFR § 301.1 to include an agency of a country that is either a foreign reciprocating country or a country with which the State has entered into a reciprocal arrangement and in which an individual has applied for or is receiving child support enforcement services. In international cases, the Central Authority or its designee in the foreign country will identify where payments should be sent, for example, to the Central Authority, court, custodial parent, caretaker, or an emancipated child. In these cases, the responding state IV-D agency satisfies title IV-D requirements by collecting and forwarding collections as directed by the Central Authority in the foreign country.¹⁸ Note: The final intergovernmental rule, which revised the definition for “initiating agency,” was published in 2010. Subsequent amendments to the Social Security Act in P.L. 113-183 clarified that IV-D requirements for international cases also apply to Hague cases now that the Treaty is in effect.

¹⁸ See 81 Fed. Reg. 93,514 (Dec. 20, 2016).

8.9.3 International Payment



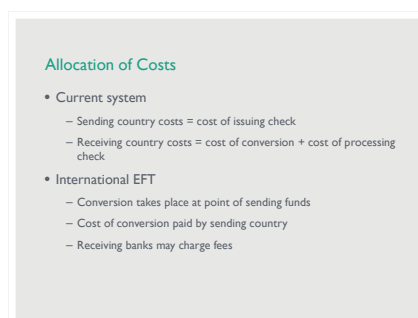
International Payment

- The lack of an effective electronic payment process is proving to be problematic, and is coming up more and more frequently
- Paper checks are being refused/rejected
- Fees
 - It has been reported that sometimes the custodial parent receives 50% less than the original payment due to fees (conversion and bank charges)

The lack of an effective process for transmitting funds electronically on international cases is becoming problematic and is being raised more frequently by other countries. We are seeing instances where other countries are refusing to accept paper checks and are insisting on other forms of payment.

In addition, the fees associated with cashing paper checks in other countries can be significant. It has been reported that sometimes the custodial parent will receive less than half of the original check amount because of deductions for bank charges and the cost to convert the USD check into local currency.

8.9.4 Allocation of Costs



Allocation of Costs

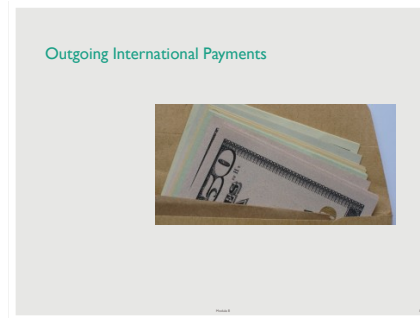
- Current system
 - Sending country costs = cost of issuing check
 - Receiving country costs = cost of conversion + cost of processing check
- International EFT
 - Conversion takes place at point of sending funds
 - Cost of conversion paid by sending country
 - Receiving banks may charge fees

With checks, the sending country has costs associated with issuing the check, and the receiving country has costs associated with currency conversion and the cost of processing the check.

If electronic funds transfer is used in an international case, currency conversion takes place at the point of sending funds. That means the country incurring currency

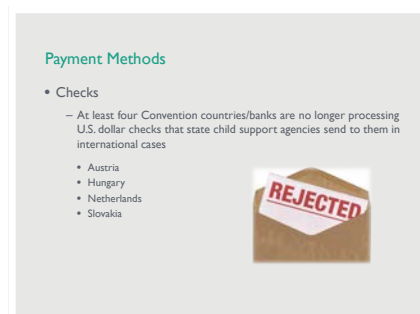
conversion costs is the sending country. The receiving country may still face fees charged by the receiving bank.

8.9.5 Outgoing International Payments



The next slides drill down a bit deeper into outgoing and incoming international payments.

8.9.5.1 *Payment Methods*

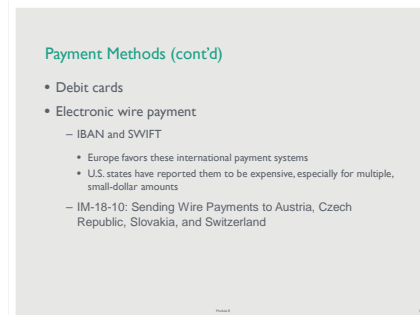


When a U.S. child support agency sends payments by check to a Convention country, the foreign bank in the receiving country must revert to a U.S. clearing bank to convert the money into local currency, for example, into euros (EUR) for Austria, the Netherlands, and Slovakia; and into forints (HUF) for Hungary. At least four Convention countries are no longer processing U.S. dollar (USD) checks in support cases.

Austria and Slovakia say their banks have stopped dealing in paper checks generally.

Hungary says all Hungarian banks have terminated their contracts with U.S. clearing banks like Bank of America and Wells Fargo because of the high cost of USD clearing services charged by the U.S. banks.

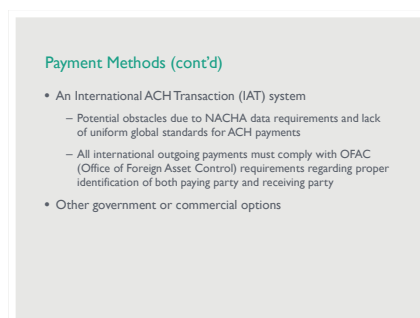
The Netherlands says its bank – ABN Amro – no longer processes USD checks in the Netherlands. However, the bank has business in North America and the Netherlands Central Authority plans to talk to the bank about possible solutions.



Some U.S. states have begun using debit cards as an alternative to issuing checks to custodial parents in other countries.

Another alternative to checks is use of some form of international electronic payment. IBAN is an acronym for International Bank Account Number. SWIFT is the acronym for The Society for Worldwide Interbank Financial Telecommunication. Although Europe favors wire payments through the IBAN and SWIFT systems, U.S. states have reported them to be expensive, especially for multiple, small dollar amounts that are typical of child support payments. Each transmission involves payment initiation, data transmission, and reconciliation phases.

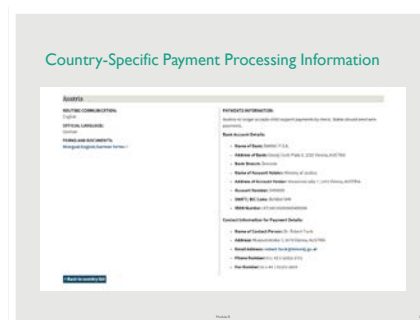
OCSE has issued guidance for working with the four Convention countries and Switzerland that have indicated they will no longer accept checks in U.S. dollars. See [IM-18-10](#).



Other possible payments methods in international cases are payment through an international ACH transaction system or other government and commercial options.

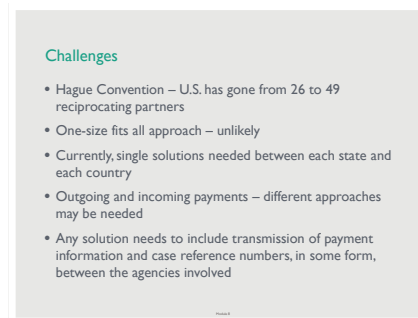
The National Automated Clearing House Association (NACHA) is the entity that developed rules for the electronic transmission of payments domestically. It has developed an ACH format to be used for electronic transmission of international child support (International ACH Transaction – IAT). However, there is no single global standard for ACH as each country or payment area (Europe has a Single European Payment Area) has its own banking and financial regulations. That means the data accompanying outgoing payments will have to be reformatted into the format of the receiving country or area. This process may take time to develop.

OCSE is working with states to assess if there are other government or commercial options that will accomplish the goal of rapid, low-cost money transfers from U.S. child support agencies to foreign countries.



Because payment processing requirements are in flux, OCSE has developed a useful resource for caseworkers. Remember the drop down box on OCSE's International page? When you select a country, it will also provide you payment information about that country. For example, Austria no longer accepts payment by check. States should send wire payments instead. The website also provides bank account information and contact information for payment details.

8.9.5.2 Challenges



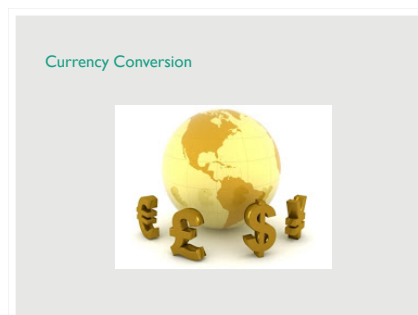
This slide summarizes the challenges ahead for international payment processing.

With our ratification of the Hague Convention, the United States has gone from 26 to 49 reciprocating partners – each of which will have its own payment processing requirements. It is unlikely that one approach will work with all of our international partners. Therefore, OCSE encourages states to work with countries in developing needed solutions. A number of states are already being proactive. They have found that different approaches may be needed for outgoing and incoming payments.

In addition to minimizing costs, it is important that any solution includes the transmission of payment information and case reference numbers, in some form, between the agencies involved.

OCSE has an international payment team that is exploring longer-term solutions for sending payments across borders. In the meantime, if your state is having trouble with international payments, we encourage you to contact OCSE for assistance.

8.10 CURRENCY CONVERSION



Currency conversion is another issue that arises in Convention cases.

8.10.1 UIFSA Requirements

UIFSA Requirements			
UIFSA Section	Responsible Party	Triggering Event	Conversion
Section 307(d)	Support enforcement agency	When requesting registration and enforcement of a support order stated in a foreign currency	Convert foreign currency amount into the equivalent U.S. dollars
Section 304(b)	Initiating state tribunal	When requested by a responding tribunal in a foreign country	Convert U.S. amount of support sought into the equivalent amount in the foreign currency
Section 305(f)	Responding state tribunal	When requested to enforce a support order or modify a support order stated in a foreign currency	Convert foreign currency amount into the equivalent U.S. dollars

Although the Hague Child Support Convention is silent on currency conversion, UIFSA (2008) addresses currency conversion in a number of sections that are applicable to all cases, including Convention cases. If a responding tribunal in a foreign country requests conversion of a support amount stated in U.S. dollars, Section 304(b) of UIFSA requires the U.S. initiating tribunal to convert the amount into the equivalent amount in the foreign currency. If requested to enforce or modify a support order stated in foreign currency, Section 305(f) requires the responding U.S. tribunal to convert the support amount into the equivalent amount in U.S. dollars. Similarly, Section 307(d) provides that a support enforcement agency requesting registration and enforcement of a support order stated in a foreign currency must convert the amount into the equivalent amount in U.S. dollars. Each entity is required to make the conversion “under the applicable official or market exchange rate as publicly reported.” A few countries maintain an official exchange rate for their currency. However, the vast majority of countries recognize that the value of their currency is subject to daily market fluctuations. Therefore, a specific amount of support in a foreign currency will inevitably have a variable value as the foreign currency rises or falls against the U.S. dollar.¹⁹ UIFSA does not provide guidance on the timing of currency conversion. However, the language directing a conversion to a monetary equivalence in dollars is intended to make clear the equivalence is not a modification of the original order to a dollar figure.

¹⁹ Official Comment to Section 304, UIFSA (2008).

8.10.2 Federal Policy

Federal Policy

PIQ-04-01

- **QUESTION 6:** What date should be applied for converting the foreign country's order amount into a U.S. dollar amount (for example, the date the request for review was received or the date the order was entered)?
- **RESPONSE:** There is no Federal rule on this issue. The decision should be made based on state law and procedure.

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In 2004, OCSE's Division of Policy and Training addressed a question regarding the date of currency conversion. The response noted there is no federal rule regarding what date should be used for converting a support amount stated in foreign currency into a U.S. dollar amount. That means a IV-D agency or tribunal will follow state law and procedure.

Federal Policy (cont'd)

PIQ-03-04

- **QUESTION 4:** Should the costs of converting a foreign payment into U.S. dollars be deducted from the amount paid to the obligee and credited to the obligor?
- **RESPONSE:** No. Because FFP is available for the costs of converting a payment in a foreign currency, the obligee should receive the value of the foreign payment as of the date of the conversion. Conversion costs are a cost of doing business, similar to the costs associated with processing domestic payments (e.g., cashing checks, money orders, etc.). If a state receives a child support payment of \$150 (Can.), and the conversion rate available to the IV-D agency is \$1.50 (Can.): \$1.00 (U.S.), the obligee should receive and the obligor should be credited with a \$100 (U.S.) payment. The usual rules for payments then apply, meaning that if the converted amount paid is less than the amount due, the obligor is in arrears. Likewise, if the converted payment exceeds the amount due, the state should handle the excess payment as it would in a domestic case.

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In PIQ-03-04, OCSE responded to a question about whether the cost of currency conversion could be deducted from the amount paid to the obligee and credited to the obligor. The answer was No. Currency conversion costs are considered costs of doing business. As such, the obligee should receive, and the obligor should be credited with, the full value of the payment made, using the applicable conversion rate. The IV-D agency can seek FFP for the costs of converting the payment.

8.10.3 Basis for Conversion

Basis for Conversion

- Internet exchange rate websites
 - OCSE has no preferred website
 - IRS website lists following government and external resources to assist in currency conversion:
 - Bureau of the Fiscal Service, Department of Treasury
www.fiscal.treasury.gov/freports/gtr/treasRatRateExch/historicalRates.htm
(quarterly updates and historical rates back to 2001)
 - Federal Reserve,
www.federalreserve.gov/releases/h10/current (weekly updates)
 - Oanda.com, www.oanda.com/currency/converter/ (daily calculator)
 - Xe.com, www.xe.com/ (daily calculator)
 - X-rates.com, www.x-rates.com/calculator/?from=USD&to=EUR&amount=1 (daily calculator)
 - States use variety of websites

Page 8 8.10.3

The rules and mechanisms to convert from or to foreign currency are left to each U.S. state. OCSE does not maintain a currency conversion table or calculator on its website. However, the Internal Revenue Service website lists a number of government and external resources to assist in currency conversion. Those resources are listed on this slide.

Some state child support agencies have official policy on which website it wants staff to use for currency conversion in international support cases. For example, Illinois has a shortcut to www.oanda.com on its state agency website. Many states do not have a statewide policy and leave it up to the local agency to determine which publicly available exchange rate site to use.

8.10.4 Date of Conversion

Date of Conversion – State Approaches

- Current support
 - Date of order
 - Date order is registered in responding state for enforcement
 - Date order is entered in system by state Central Registry
- Alleged arrears
 - Date order is entered in system by state Central Registry
 - Date noted in the Application or Letter of Transmittal Requesting Registration
 - Date order is registered in responding state for enforcement
 - Beginning with date of enforcement action, average over time during which arrears accrued
- Future arrears
 - Date of past-due installment
 - Date at time of enforcement action

Page 8 8.10.4

There is nothing in federal policy, UIFSA, or the Convention that specifies a date for currency conversion when a support amount is stated in foreign currency. Some state IV-D agencies have issued policy guidance. It appears that most state agencies leave it to the discretion of the local office. In conversations with representatives of several state

IV-D agencies, there does not appear to be consensus on what date is used. If a country seeks recognition and enforcement of an order for current support that is stated in foreign currency, some IV-D agencies convert the amount to the U.S. dollar equivalence on the date the order is received by the state Central Registry and entered on the system. That equivalent amount may be updated again at the time notice of registration is sent. Other IV-D representatives noted they do currency conversion at the time the order is registered. We did not talk to any state that based currency conversion on the date the foreign support order was issued.

Similarly, if the order includes support arrears, states vary on the date used for currency conversion. If the application or letter of transmittal requesting registration alleges an arrearage amount as of a specific date, some states use that same date to determine the currency conversion rate. One IV-D attorney noted that if arrears are owed for more than three years, she uses historical data to determine the average conversion rate for each year of arrears. More frequently, states appear to use the date the order is registered in the responding state for enforcement.

Once the foreign support order is registered for enforcement and the tribunal has established an equivalent U.S. currency amount, very few states update the currency conversion rate based on when each payment is due or made. In the context of an enforcement action, many states update the currency conversion rate on the date the enforcement action is initiated.

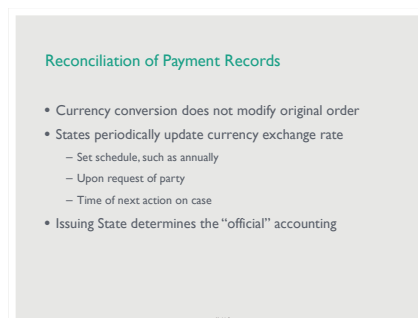
8.10.5 Notice of Registration – Suggested Language



When registering a Convention order for recognition and enforcement that has a support amount stated in a foreign currency, the best practice is for the agency or tribunal to include the U.S. dollar equivalence in the notice of registration. The date when the conversion rate is obtained should also be noted. Using equivalence language notifies the parties of the amount owed in U.S. dollars but also makes it clear that the order is not being modified into U.S. dollars. In other words, the obligor still owes the amount as specified in the foreign order.

Because many countries note dates in a different format from the United States, it is advisable to write out the date of the currency conversion, specifically including the name of the month.

8.10.6 Reconciliation of Payment Records



As we've noted several times, the currency conversion does not modify the original order.

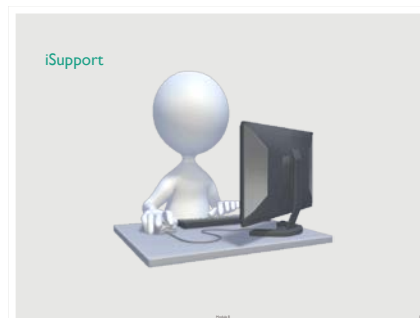
Most states periodically update the currency exchange rate of a registered foreign support order. Some do it administratively; others require court action. Obviously your statewide system will impact whether it is possible to automatically trigger an adjustment review on foreign orders or whether such a review must be done on an *ad hoc* basis.

At least one state with formal policy on currency conversion requires adjustments, after the initial conversion, in several circumstances. One is upon request of the noncustodial parent, the custodial party, or the initiating jurisdiction, as long as requests are not made more frequently than once a month. It also requires an annual review of the equivalence

rates and requires local agencies to reconcile account balances with the issuing country, where possible. Finally, the policy requires a review and update of the equivalence rates prior to the filing of a support action in the case. State policy requires that the local agency provide a copy of the outcome of each currency equivalence rate review to the parties and the initiating jurisdiction.

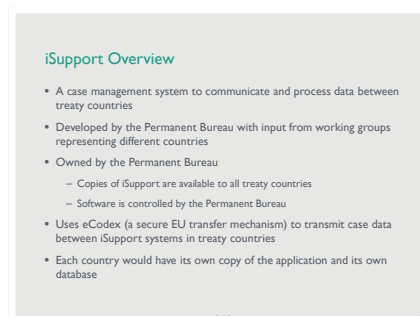
Whether or not your state updates the currency conversion rate, keep in mind that the issuing foreign tribunal determines the “official” accounting. Because of rate fluctuations, it is rare that accounts “match up.” If an obligor has paid off arrears, using the U.S. dollar equivalence rate that your agency is using, but the issuing foreign jurisdiction states that arrears are still owed in the foreign currency, it is the issuing jurisdiction’s accounting that governs. If needed, ask the Central Authority to send you an order stating the remaining arrears under the foreign currency.

8.11 ISUPPORT



The next slides provide information about iSupport.

8.11.1 Overview

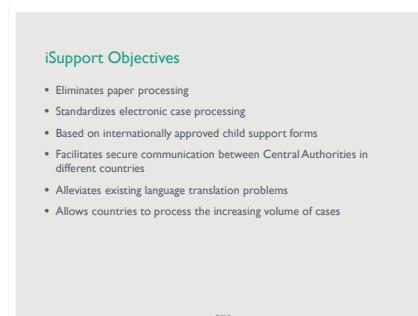


iSupport is a case management system that is designed to support the processing of cases under the Hague Convention. It will allow case data and communications to flow electronically through a secure system between the Central Authorities of different countries. iSupport was developed by the Permanent Bureau in The Hague based on input from working groups that included representatives from a number of different countries. The United States participated in the working groups.

The Permanent Bureau owns iSupport, and controls (with input from an international Advisory Board) any changes or modification. Any treaty country may have a copy of iSupport. Each country will maintain its own separate database and separate copy of the application. There is no central database and each country only has access to its own application, cases, and database.

iSupport uses a secure communication called eCodex. This is an EU data transfer mechanism that ensures all information and documents are properly and securely encrypted and protected when they are sent between countries.

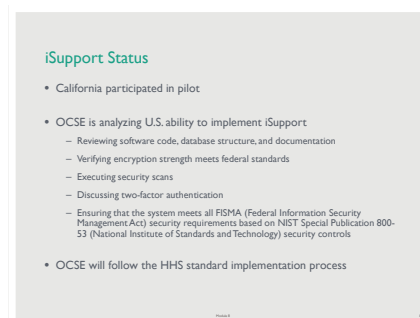
8.11.2 Objectives



Because many countries, including U.S. states, are moving away from the use of paper, and there can be significant delays in sending documents by mail, most countries prefer a standardized electronic case processing system. The iSupport application was developed with a number of goals in mind. The system needed to be able to support the completion of the mandatory and recommended Convention forms. It needed to provide a way for the forms to be transmitted securely between the Central Authorities. Because the approved forms, with the use of tick boxes and minimal open text fields, are

intended to be easily translated, the system was designed to support generating forms in any language. Finally, as the international caseload grows, the goal was to develop an automated system that will allow countries to better manage these cases.

8.11.3 Status



At this point, development and testing have been completed and iSupport is in production. California participated in the piloting of iSupport with Portugal (the only other State currently using iSupport). Other countries are expected to start using iSupport in the near future.

OCSE is analyzing the U.S. ability to implement iSupport and is looking at a number of issues, including;

- Reviewing the software code, database structure, and the documentation,
- Verifying that encryption strength meets federal standards,
- Executing security scans,
- Discussing two-factor authentication, and
- Ensuring that the system meets all FISMA (Federal Information Security Management Act) security requirements based on NIST Special Publication 800-53 (National Institute of Standards and Technology) security controls.

Once these issues have been resolved, the implementation of iSupport will follow the standard HHS implementation process.

8.12 IMPACT OF CONVENTION ON FOREIGN RECIPROCATING COUNTRIES

Impact of Convention on FRCs

- **QUESTION:** Now that the Hague Child Support Convention has entered into force in the United States, how should states handle cases that are currently being worked under a federal bilateral agreement?
- **RESPONSE:** States should continue to work cases that were initiated under a bilateral agreement so as not to disrupt payments to families. However, if a major action requiring a new application is necessary, such as a modification, and the other country is also a Convention country, states should use Convention forms and follow Convention requirements, as provided in Article 7 of UIFSA and the Convention.
- **QUESTION:** What about new cases with Convention countries that are also FRCs?
- **RESPONSE:** For new cases, if the Convention country is also an FRC, the terms of the Hague Convention will now govern whenever there is an application for services under the Convention and states must send and receive new cases in accord with Article 7 of UIFSA 2008 and the Convention.

The following FRCs are now Convention countries: Czech Republic, Finland, Hungary, Ireland, Netherlands, Norway, Poland, Portugal, Slovakia, and the United Kingdom.

OCSE's Division of Policy and Training has received numerous inquiries on the impact of U.S. ratification of the Hague Child Support Convention on cases with Convention countries that are also foreign reciprocating countries under prior bilateral agreements. This slide and the next one address some of those inquiries.

QUESTION: Now that the Hague Child Support Convention has entered into force in the United States, how should states handle cases that are currently being worked under a federal bilateral agreement?

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Impact of Convention on FRCs (cont'd)

- **QUESTION:** If we receive a case from a Hague country, which is also an FRC, and the Central Authority uses old procedures and forms, do we reject the case?
- **RESPONSE:** A new application from a Hague country must be on Hague forms and follow Hague procedures. However, where possible, work with the requesting Central Authority to process the case. For example, if the Central Authority sends a mix of old and new forms, communicate which Convention forms are needed, rather than rejecting the whole package.
- **QUESTION:** We worked with different German agencies under our state bilateral agreement. Do we only work through the German Central Authority going forward?
- **RESPONSE:** Yes, all case processing for Hague Convention cases to and from Germany is now directed through Germany's one Central Authority under the Convention, the Federal Office of Justice in Bonn, Germany. This includes requests for specific measures such as locate requests. However, for old/existing cases, where a new application is not required, a state may continue to work with the previous contact agency in Germany.

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QUESTION: We worked with different German agencies under our state bilateral agreement. Do we only work through the German Central Authority going forward?

RESPONSE: Yes, all case processing for Hague Convention cases to and from Germany is now directed through Germany's one Central Authority under the Convention, the Federal Office of Justice in Bonn, Germany. This includes requests for specific measures such as locate requests. However, for old/existing cases, where a new application is not required, a state may continue to work with the previous contact agency in Germany.

8.13 RESOURCE ON CONVENTION COUNTRY REQUIREMENTS

Your New Best Friend!

- Handbook for Caseworkers
 - Checklists
 - Flow charts
 - Step by step instructions
 - FAQs



In Module 1 we explained how to reach Convention resources published by the Hague Conference on Private International Law. First, go to its website at www.hcch.net. There are two official languages used by the Hague Conference: English and French. For resources in English, click on the word “English.” That takes you to a page containing a list of topics for which the Hague Conference has developed Conventions. Click on “Child Support” in order to reach all the resources related to the Hague Child Support Convention.

Included on that Child Support page is a wonderful resource for child support caseworkers and lawyers. In fact, its title is the Practical Handbook for Caseworkers! It was written by Hannah Roots, a child support attorney in British Columbia who often speaks at U.S. child support conferences. The handbook contains detailed information about processing each application under the Hague Child Support Convention. Chapters discuss incoming and outgoing applications, and include flow charts, instructions on how to complete Convention forms, and responses to frequently asked questions.

8.14 QUESTIONS OR FEEDBACK

You probably have lots of questions about implementing the Convention in the United States. OCSE’s Division of Policy and Training will continue to issue guidance on these implementation issues.

To address immediate needs, the Division is hosting this webinar training series. This module discussed implementation issues under the Hague Child Support Convention. The next – and final – module will discuss processing cases with foreign countries that are not Convention countries.



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

Thank you for attending this webinar.