

Module 3

Recognition and Enforcement of a Convention Order under UIFSA (2008) – Incoming Application

TRAINING NOTES

What you need to say/do

1. Display **PowerPoint Slide 3-1: International Case Processing under UIFSA 2008: Module 3** (title slide). After introducing the webinar course, display **PowerPoint Slide 3-2: Webinar Series**. Explain the targeted audience, the content of the webinar modules, and the webinar resources.
2. Display **PowerPoint Slide 3-3: Webinar Modules** as you explain the focus of each module.
3. Display **PowerPoint Slide 3-4: Module 3: Recognition and Enforcement of a Convention Order under UIFSA (2008) – Incoming Application** (title slide).
4. Beginning with **PowerPoint Slide 3-5: 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.

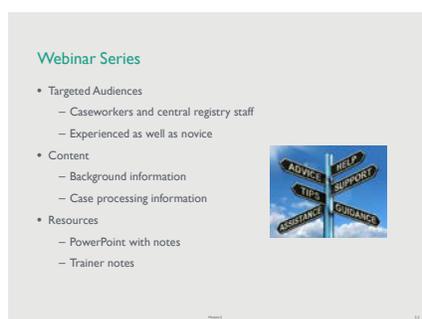
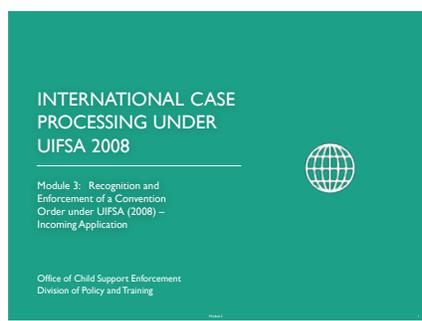
PowerPoint Slides:

- 3-1 through 3-69

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.

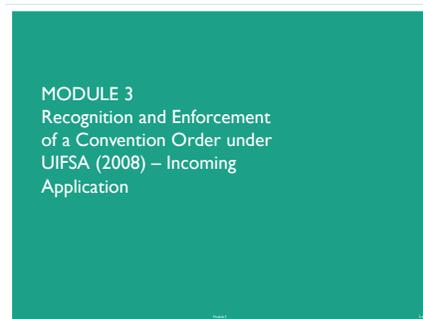
In Module 8 we will address implementation issues and questions that have arisen.

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

MODULE 3: RECOGNITION AND ENFORCEMENT OF A CONVENTION ORDER UNDER UIFSA (2008) – INCOMING APPLICATION

Time: 1.5 hours

3.1 RECOGNITION AND ENFORCEMENT OF A CONVENTION ORDER UNDER UIFSA (2008) – INCOMING APPLICATION



Today we are presenting Module 3, which focuses on an incoming application to the United States requesting recognition and enforcement of a support order issued by a Convention country. That means the emphasis will be on responsibilities of IV-D agencies. Keep in mind that Convention countries will provide reciprocal services for U.S. families, when we initiate an outgoing application.

3.2 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. Modules 1 and 2 explained the terms, and we will not review them again. However, if there are new participants to today’s

webinar, please check the Trainer Notes for Module 1 or 2 for an explanation of each term on the slide.

[Note to Trainer – The following information is provided in the Trainer Notes for Modules 1 and 2: 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, it is referring to 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 child support 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.]

3.3 ROLE OF REQUESTED CENTRAL AUTHORITY



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

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.

As you may notice, these Article 6 measures are similar to the services you already provide in intergovernmental cases. You will also 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.

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

Duties of Support Enforcement Agency – Section 307, UIFSA (2008)

- Must provide services to a petitioner requesting services through a Central Authority of a Convention country
- Must take all appropriate steps related to the application
 - Request a hearing, if needed
 - Obtain information, including financial, about parties
 - Send notices
 - Convert an order that is in foreign currency to equivalent U.S. dollars

Module 3: Recognition and Enforcement of a Convention Order under UIFSA (2008) – Incoming Application

The measures listed in Article 6 of the Convention are also similar to the responsibilities that UIFSA requires of a support enforcement agency.

Regardless of whether your state enacted Option A or Option B of UIFSA Section 307, you are required to provide services to a petitioner who has requested services through a Central Authority of a Convention country. That means you must take all appropriate steps related to the application, including converting an order that is in foreign currency to equivalent U.S. dollars. We will discuss currency conversion in detail during Module 8 of the webinar series.

3.5 HANDBOOK FOR CASEWORKERS ON PROCESSING CONVENTION CASES

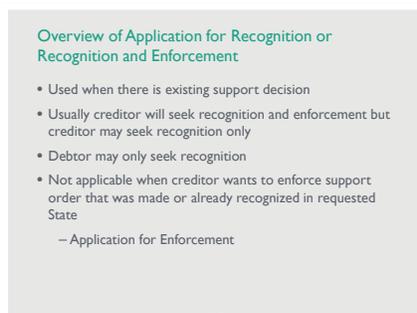


In Module 1 we explained how to reach Convention resources published by the Hague Conference on Private International Law. First, go to its website at www.hcch.net. There are two official languages used by the Hague Conference: English and French. For resources in English, click on the word “English.” 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.

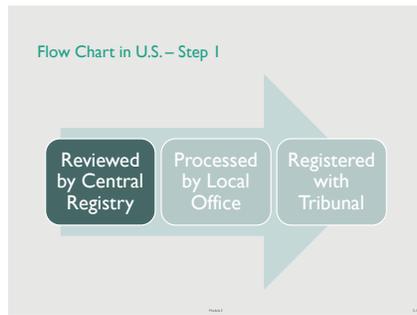
3.6 OVERVIEW OF APPLICATION FOR RECOGNITION OR RECOGNITION AND ENFORCEMENT



An application for recognition or recognition and enforcement is appropriate when there is an existing support order. In the majority of cases, the creditor will seek recognition and enforcement of the order. However, the Convention – and UIFSA – allow a creditor to seek recognition only. That may occur if the creditor is currently satisfied with the debtor’s payment but wants to have the order registered in case enforcement is later needed. A debtor may also request recognition of a Convention support order in order to suspend or limit the enforcement of an existing support order in the requested State.

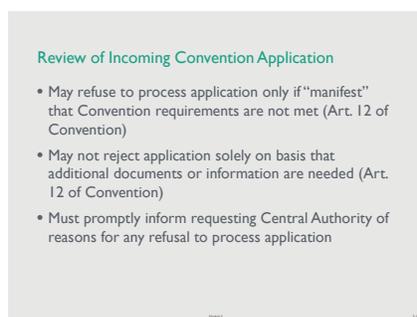
If the requested State issued its own support order, or has already recognized a Convention order, and that’s the order the creditor wants to enforce, then the creditor needs to file a different application. In that case, the creditor would file an Application for Enforcement of a Decision Made or Recognised in the Requested State. There is no need to request recognition.

3.7 FLOW CHART IN U.S. – STEP ONE



When a Contracting State, also referred to as a Convention country, sends an Application for Recognition and Enforcement to the United States, it should send the application to the Central Registry of the U.S. state where the obligor lives or has income or assets. Federal regulations require each state to establish a central registry for intergovernmental IV-D cases.¹ This Central Registry is responsible for receiving, transmitting, and responding to inquiries on all incoming intergovernmental IV-D cases. Federal regulations at 45 CFR 303.7(b) detail the responsibilities of the Central Registry.

3.7.1 Review of Incoming Convention Application



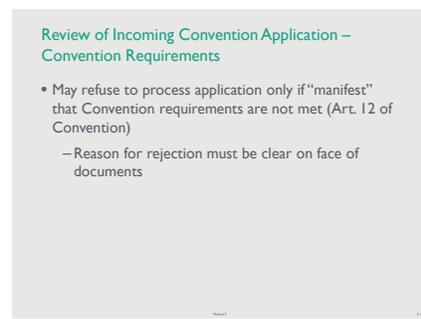
In its review of an application, there are two important provisions that govern the state Central Registry. First, the Central Registry may refuse to process an application only if it is manifest that Convention requirements are not met. Second, the Central Registry may not reject an application solely because additional documents or information are

¹ 45 CFR 302.36.

needed. In the rare case where the Central Registry decides to refuse to process the application, there must be prompt notice to the requesting Central Authority.

Let's talk more about each of these provisions.

3.7.1.1 Review of Incoming Application – Convention Requirements



First, the Central Registry 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 further states that 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. In other words, if there is any doubt, the state Central Registry should forward the application and documents to the local child support agency for processing and registering with the appropriate tribunal.

The Explanatory Report gives the following example of when it might be manifest that 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 next slides discuss two other examples. They identify two questions the Central Registry should ask when conducting its review. If the answer to either question is “no,” then the Convention requirements are not met.

3.7.1.1.1 Is application within Convention scope?

CREDITOR	DEBTOR
<ul style="list-style-type: none">• Recognition or recognition and enforcement of a foreign support order• Enforcement of a support order issued or recognized in the responding state	<ul style="list-style-type: none">• Recognition of an order suspending or limiting enforcement of an existing support order of the responding state

One example of when it may be manifest that Convention requirements are not met is an application that is not within the scope of the Convention.

Applications available through a Central Authority are listed in Article 12 of the Convention. In the United States, we implemented this Article in Section 704 of UIFSA (2008).

The following enforcement applications are available to a creditor:

- Recognition or recognition and enforcement of a foreign support order, and
- Enforcement of a support order issued, or already recognized, by the responding state. (Note: Your UIFSA statute will refer to a “support order issued or recognized in this state.”)

The following enforcement application is available to a debtor:

- Recognition of an order suspending or limiting enforcement of an existing support order in the responding state. (Note: Your UIFSA statute will refer to an “existing support order of a tribunal of this state.”)

If the petitioner is seeking recognition and enforcement of a **custody** order and not a support order, that is not an available application under the Convention. It would be appropriate to return that application because it would be manifest that Convention requirements are not met.

3.7.1.1.2 Was order issued by Contracting State?



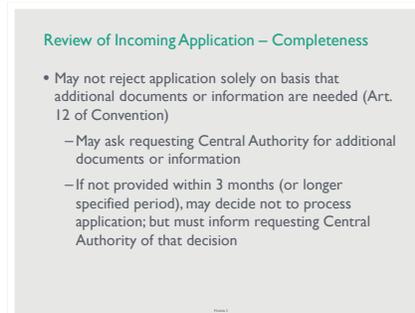
A second example of when it may be manifest that Convention requirements are not met is when the petitioner seeks recognition and enforcement of a support order that was not issued by a Contracting State.

As we discussed in Module 2, an applicant may use the Convention's procedures for recognition and enforcement of an order only if a Contracting State issued that order.² The most common example is illustrated by the first graphic on the slide. It depicts a Contracting State, Germany, requesting recognition and enforcement of an order it issued. However, another example is illustrated by the second graphic. In this case the requesting State – Spain – is not requesting recognition and enforcement of its own order but of an order issued by France, a different Contracting State. We will assume the creditor was living in France and got a support order there, before moving to Spain. The creditor living in Spain can request recognition and enforcement in the U.S. of the decision made in France since France is also a Contracting State.

Obviously, the applicant must also reside in a Contracting State. We discussed that also in Module 2.

² See Para. 240 of the Explanatory Report by Alegria Borrás and Jennifer Degeling, with the assistance of William Duncan and Philippe Lortie (Permanent Bureau), for the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (hereinafter Explanatory Report). A tribunal may decide to recognize an order made in a non-Contracting State on the basis of comity but that would not be a Convention proceeding. See para. 241 of the Explanatory Report.

3.7.1.2 Review of Incoming Convention Application – Completeness



There is a second important provision governing the Central Registry’s review of an incoming application.

It may not reject the Application for Recognition and Enforcement solely because additional documents or information are needed. If additional information is needed, the Central Registry should ask the requesting Central Authority for the information. The Convention allows a country to suspend processing the application until the information or document is received. If the information or documents are not provided within three months – or whatever longer time period is specified – the Convention allows a country to decide not to process the application. If that is the decision ultimately made by the Central Registry, the Central Registry must inform the requesting State of that decision. Hopefully, with the Convention’s emphasis on administrative cooperation, that outcome will be very rare.

3.7.1.2.1 Are required documents included with application?



In reviewing the application for completeness, the Central Registry should determine whether the required documents have been included.

Module 3: Recognition and Enforcement of a Convention Order under UIFSA (2008) – Incoming Application

Article 12 of the Convention requires that every application include a Transmittal using the required Convention form. An Application for Recognition and Enforcement must include additional documents. These documents are listed in Article 25 of the Convention. They are the only documents a Contracting State can require to accompany an Application for Recognition and Enforcement. In the United States, the required documents are listed in Section 706 of UIFSA (2008).

Although the Transmittal is a mandatory Convention form that all Convention countries must use, countries can decide what form they want a creditor to use for the other required documents. Each country identifies these forms within its responses to the Country Profile. As discussed during Modules 1 and 2, the Country Profile is maintained on the Child Support section of the Hague Conference website. It is the resource that most Contracting States use to inform the Permanent Bureau and other Convention countries of their child support laws and procedures. The Country Profile for the United States informs other Contracting States that we want them to use the recommended Convention forms that were developed by the Convention Forms Working Group for use with an Application for Recognition and Enforcement of a Convention Order.

3.7.1.2.2 Required documents

Required by UIFSA Section 706	When Used	Form/Document Used
Transmittal	Always	Convention Transmittal
Application	Always <ul style="list-style-type: none">If risk of harm	Convention Application <ul style="list-style-type: none">Convention Restricted Information on the Applicant
Complete text of order	Always unless your state allows an abstract or extract of order	Order itself or Convention Abstract, if acceptable
Record stating order is enforceable in issuing country	Always	Convention Statement of Enforceability

This slide and the next one identify the documents required under Section 706 of UIFSA (2008) for recognition and enforcement of a Convention order. The first column lists the document. The second column explains when the document is used. And the third column identifies the applicable Convention form. If there is no applicable standardized form, a country sending an application to the United States may use a domestic form or document.

Module 3: Recognition and Enforcement of a Convention Order under UIFSA (2008) – Incoming Application

We will go over these forms in just a minute. For now, note that there is no requirement to include a certified copy of the support order. The requirement is to include the complete text of the order, unless your state has indicated it will accept an abstract or extract.

Required by UIFSA Section 708	When Used	Form/Document Used
Record attesting to proper notice and opportunity to be heard	Always if respondent did not appear and was not represented	Convention Statement of Proper Notice
Record of arrears	Always if there are any	Domestic document showing amount and date calculated
Information about obligor	Always	Convention Financial Circumstances form (for applications by creditor only). Complete sections related to obligor)
Record showing req't for automatic adjustment and explaining how to adjust or index support amount	Always if order provides for automatic adjustment or indexation	Domestic document

Note also that there is no recommended Convention form or format for the record of arrears, if any. Whatever document a country sends should show the amount of any arrears and the date the amount was calculated.

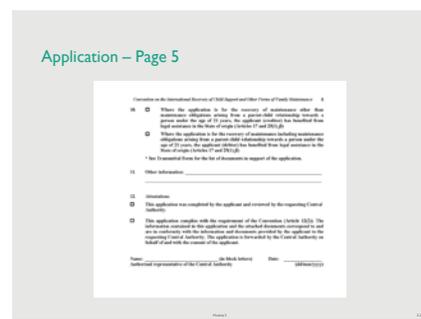
If a support order is supposed to be indexed automatically or adjusted on a specified frequency, Article 25 of the Convention requires the requesting Central Authority to include a document providing the information necessary to make the appropriate calculations. For example, if the adjustment is to be made using a cost of living percentage, the requesting Central Authority should provide details about which country will calculate the adjustment, what information is needed in order to make the calculation, and how the recalculated amount of support will be communicated to the requested Central Authority and the parties. According to the Explanatory Report of the Convention, it does not need to be a formal document. Any informal document, such as an e-mail or a fax, may suffice.³ The Explanatory Report also provides that any subsequent decision that adjusts the support amount does not have to go through the full recognition process. The initial recognition contemplates the future adjustments.⁴

³ See Para. 536 of the Explanatory Report.

⁴ See Para. 435 of the Explanatory Report. See also the Hague Conference on Private International Law, Practical Handbook for Caseworkers under the 2007 Child Support Convention, ftn. 88 (hereinafter The Practical Handbook).

Module 3: Recognition and Enforcement of a Convention Order under UIFSA (2008) – Incoming Application

Section 7 of the Application is particularly important. This is where the requesting State will note the applicable bases for recognition and enforcement of the order. The last tick box is significant for the United States. This is the tick box a country would check if the order was based on creditor jurisdiction – to which the United States has taken a reservation – but there are other facts under U.S. law that would have conferred personal jurisdiction. If a country checks that box, the facts listed should meet one of the bases for jurisdiction under Section 201 of UIFSA. We will discuss this in more detail later.



This slide depicts page 5 of the Application for Recognition and Enforcement.

Section 10 is not relevant to us in the United States because IV-D agencies provide legal assistance without regard to whether the applicant received such assistance in the state of origin.

What is important about this final page of the Application is the Attestation at the end. Note that the Application is not signed under penalty of perjury. Rather, an authorized representative of the requesting Central Authority attests that the application was completed by the applicant and reviewed by the requesting Central Authority. Further, the representative attests that the application complies with the requirements of the Convention; that the application and accompanying documents are the same as those provided by the applicant to the requesting Central Authority; and that the applicant has consented to the forwarding of the application to the requested Central Authority.

Module 3: Recognition and Enforcement of a Convention Order under UIFSA (2008) – Incoming Application

3.7.1.2.2.3 *Restricted Information on the Applicant*

The form is titled "Restricted Information on the Applicant" and is part of an "Application for Recognition or Enforcement" under Article 10(b) or Article 30. It includes a note stating that the requesting Central Authority has determined that certain information should not be disclosed for health, safety, or liberty reasons. The form contains the following sections:

- 1. Requesting Central Authority file reference number: _____
- 2. Particulars of the applicant:
 - a. First name(s): _____
 - b. Surname(s): _____
 - c. Date of birth: _____ (DD/MM/YYYY)
 - d. Address: _____
 - e. Telephone number: _____
 - f. Fax number: _____
 - g. E-mail: _____
- 3. Payment:
 - a. Search fee (electronic transfer of payments) (if applicable): _____
 - b. Name of the bank: _____
 - c. NIBIC: _____
 - d. STREET address: _____
 - e. IBAN: _____
 - f. Account number: _____

If the requesting Central Authority has determined that certain identifying information should not be disclosed or confirmed for the protection of the health, safety, or liberty of a person, it will include this form with the Application for Recognition and Enforcement. The determination by the requesting Central Authority has the same purpose as the allegation by a party under Section 312 of UIFSA. The form is titled Restricted Information on the Applicant. It segregates personal and financial information about the applicant, and is similar to the revised intergovernmental forms we will use in interstate UIFSA cases.

3.7.1.2.2.4 *Abstract of Decision, if Acceptable*

The form is titled "Abstract of a Decision" and is part of an "Application for Recognition or Enforcement" under Article 25(b) or Article 30. It includes a note stating that the requesting Central Authority has determined that certain information should not be disclosed for health, safety, or liberty reasons. The form contains the following sections:

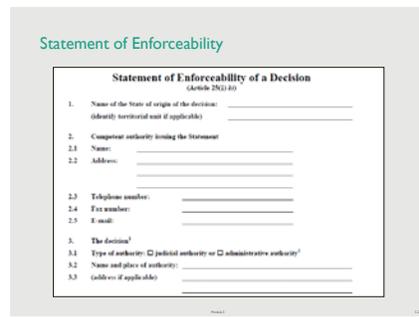
- 1. Name of the State of origin of the decision: _____
(Identify territorial unit if applicable)
- 2. Competent authority issuing the Abstract:
 - 2.1 Name: _____
 - 2.2 Address: _____
 - 2.3 Telephone number: _____
 - 2.4 Fax number: _____
 - 2.5 E-mail: _____
- 3. The decision:
 - 3.1 Type of authority: judicial authority or administrative authority¹
 - 3.2 Name and place of authority: _____
 - 3.3 (Address if applicable)

An Application for Recognition and Enforcement should always include the order itself unless your state – when it enacted UIFSA (2008) – indicated in Section 706(b) that an applicant could include an abstract or extract of the order drawn up by the issuing foreign tribunal in lieu of the order. An acceptable form for that abstract is the recommended Convention form developed by the Convention Forms Working Group.

Module 3: Recognition and Enforcement of a Convention Order under UIFSA (2008) – Incoming Application

As noted on this slide, the abstract provides a place to indicate whether the order was issued by a judicial or an administrative authority. The form continues for several pages and summarizes the key components of the order as it relates to child support, including current and past-due support.

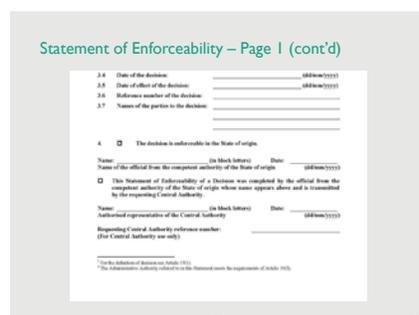
3.7.1.2.2.5 Statement of Enforceability



The image shows the first page of a form titled "Statement of Enforceability of a Decision (Article 25(1)(d))". The form is divided into several numbered sections:

- 1. Name of the State of origin of the decision: _____ (Identify territorial unit if applicable)
- 2. Competent authority issuing the Statement
 - 2.1 Name: _____
 - 2.2 Address: _____
 - 2.3 Telephone number: _____
 - 2.4 Fax number: _____
 - 2.5 E-mail: _____
- 3. The decision:
 - 3.1 Type of authority: judicial authority or administrative authority?
 - 3.2 Name and place of authority: _____
 - 3.3 (Address if applicable) _____

Another document that Section 706 of UIFSA (2008) requires is a record stating that the support order is enforceable in the issuing country. In our Country Profile, the United States has asked requesting Central Authorities to use this recommended Convention form. Titled Statement of Enforceability of a Decision, it provides contact information about the competent authority issuing the Statement as well as information about the authority that issued the decision.



The image shows the second page of the form, titled "Statement of Enforceability - Page 1 (cont'd)". It contains the following sections:

- 3.4 Date of the decision: _____ (dd/mm/yyyy)
- 3.5 Date of effect of the decision: _____ (dd/mm/yyyy)
- 3.6 Reference number of the decision: _____
- 3.7 Names of the parties to the decision: _____
- 4. The decision is enforceable in the State of origin.
 - Name: _____ (in block letters) State: _____ (dd/mm/yyyy)
 - Name of the official from the competent authority of the State of origin: _____ (dd/mm/yyyy)
- This Statement of Enforceability of a Decision was completed by the official from the competent authority of the State of origin whose name appears above and is transmitted by the requesting Central Authority.
 - Name: _____ (in block letters) State: _____ (dd/mm/yyyy)
 - Authorized representative of the Central Authority: _____
 - Requesting Central Authority reference number: _____ (Use Central Authority use only)

*For the application of Article 25(1)(d), the administrative authority referred to in this Statement must be the competent authority of Article 25(1)(d).

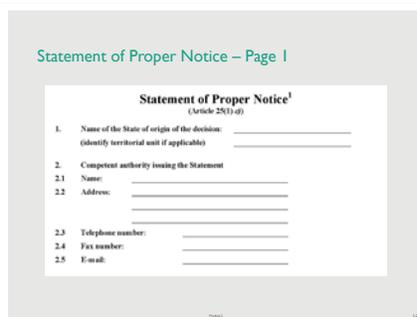
The bottom half of the Statement includes more information about the decision – the date it was issued, its effective date, the reference number, and the names of the parties.

Section 4 is the most important tick box. That's where the competent authority indicates that the order is enforceable in the State of origin.

Module 3: Recognition and Enforcement of a Convention Order under UIFSA (2008) – Incoming Application

There are two name blocks on the form. One is for the name of the official from the competent authority in the State of origin. As we discussed in Module 2, the identity of the competent authority will vary among countries. The other is for the name of the representative of the requesting Central Authority that is forwarding the Statement of Enforceability. That Central Authority representative indicates that the named official from the competent authority completed the Statement of Enforceability and that the Central Authority representative is transmitting the Statement to the requested Central Authority.

3.7.1.2.2.6 *Statement of Proper Notice*



The image shows a form titled "Statement of Proper Notice – Page 1". The form itself is titled "Statement of Proper Notice¹ (Article 20(1) d)". It contains the following fields:

- 1. Name of the State of origin of the decision: _____
(identify territorial unit if applicable)
- 2. Competent authority issuing the Statement
 - 2.1 Name: _____
 - 2.2 Address: _____
 - 2.3 Telephone number: _____
 - 2.4 Fax number: _____
 - 2.5 Email: _____

If the Convention support order was issued by default – in other words, the respondent did not appear and was not represented in the proceedings in the issuing country – Section 706 of UIFSA requires that the Application for Recognition and Enforcement include a record attesting to proper notice and an opportunity to be heard. The Country Profile for the United States indicates that it wants Convention countries to use the Statement of Proper Notice that was developed by the Convention Forms Working Group.

The first part of this form identifies the competent authority in the State of origin (i.e., issuing country) who is issuing the statement. As we discussed in Module 2, the identity of the competent authority will vary among countries. It may be a judicial representative in the State of origin who is completing the form; it may be an administrative official; it may be a representative from some other entity. What is important is that it be an official in the issuing country who is able to confirm that the respondent had proper notice as required by the law of the country that issued the order.

Module 3: Recognition and Enforcement of a Convention Order under UIFSA (2008) – Incoming Application

Statement of Proper Notice – Page 1 (cont'd)

3. The decision¹

3.1 Type of authority: judicial authority or administrative authority²

3.2 Name and place of authority: _____

3.3 Address (if applicable): _____

3.4 Date of the decision: _____ (dd/mm/yyyy)

3.5 Date of effect of the decision: _____ (dd/mm/yyyy)

3.6 Reference number of the decision: _____

3.7 Names of the parties to the decision: _____

4. Name of the respondent: _____

Section 3 of the form provides information about the order, including the authority that issued the order, the date of the order, the order's reference number, the names of the parties, and the name of the respondent.

Statement of Proper Notice – Page 2

5. Proper notice to the respondent

The respondent had proper notice of the proceedings and an opportunity to be heard (Certificate of Service attached if applicable)³

The respondent had proper notice of the decision and an opportunity to challenge or appeal it on fact and law (Certificate of Service attached if applicable)⁴

Name: _____ (in block letters) Date: _____ (dd/mm/yyyy)

Name of official from the competent authority of the State of origin: _____ (dd/mm/yyyy)

This Statement of Proper Notice was completed by the official from the competent authority of the State of origin whose name appears above and is transmitted by the requesting Central Authority.

Name: _____ (in block letters) Date: _____ (dd/mm/yyyy)

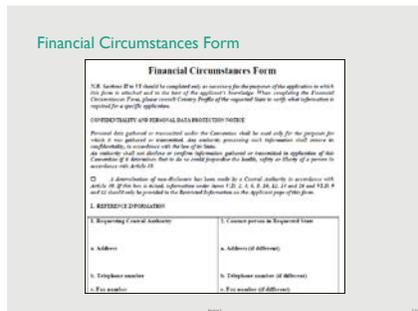
Authorized representative of the Central Authority

Requesting Central Authority reference number: _____
(Use Central Authority use only)

Page 2 of the form includes the information about notice. In section 5, the official from the competent authority of the State of origin indicates the type of notice and opportunity to be heard that the respondent received. There are two options. The first tick box is typical for judicial proceedings where the respondent receives advance notice and has an opportunity to be heard. The second tick box is more common in administrative proceedings where obligations are set *ex parte*, especially in the proceedings used by countries like Australia and Norway. This tick box indicates that the respondent received notice of the decision and had an opportunity to challenge or appeal it on fact and law after the decision was rendered.

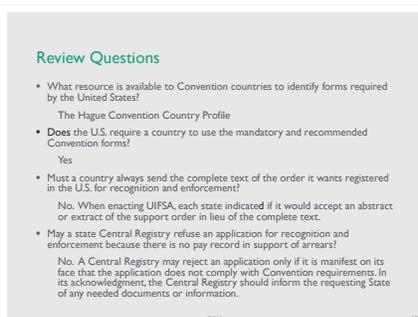
As with the Statement of Enforceability, there are two name blocks on the form. One is for the name of the official from the competent authority in the State of origin. As noted earlier, that competent authority will depend upon the country. The other is for the name of the representative of the requesting Central Authority that is forwarding the Statement of Proper Notice.

3.7.1.2.2.7 Financial Circumstances Form



The Financial Circumstances Form is another form the Convention Forms Working Group developed. If the applicant is seeking both recognition **and** enforcement of the order (which will happen in most cases), the requesting Central Authority will include this form. However, not every section of the form is relevant. The creditor portion of the form will probably be blank since that information is not required for an Application for Recognition and Enforcement. The sections that should be completed are those related to the debtor (or obligor). Those sections provide information about the obligor’s income and assets. In keeping with a “medium neutral” approach that allows for electronic transmission of documents, the form does not need to be signed. Rather the form identifies the person in the Central Authority responsible for either completing the application or reviewing the application if it was completed by the applicant personally.

3.7.2 Review Questions



Let’s review some of the material we’ve covered so far.

- What resource is available to Convention countries to identify forms required by the U.S.?

The Hague Convention Country Profile

- Does the U.S. require a country to use the mandatory and the recommended Convention forms?

Yes

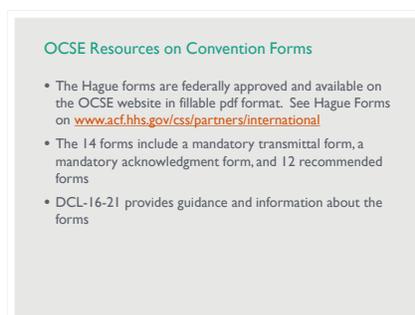
- Must a country always send the complete text of the order it wants registered in the U.S. for recognition and enforcement?

No. Some states, when enacting Section 706 of UIFSA, indicated that they would accept an abstract or extract of the support order drawn up by the issuing country.

- May a state Central Registry refuse an application for recognition and enforcement because there is no pay record in support of arrears?

No. A Central Registry may reject an application for recognition and enforcement only if it is manifest on its face that the application does not comply with Convention requirements. In its acknowledgment, the Central Registry should inform the requesting State of any needed documents or information.

3.7.3 OCSE Resources on Convention Forms



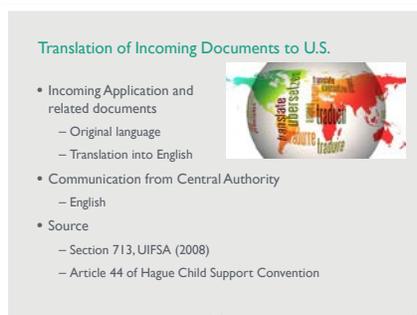
OCSE issued DCL-16-21, which provides guidance and information about the mandatory and recommended Convention forms. It has also formatted the forms into a fillable PDF format, which you can access from the OCSE website.

Module 3: Recognition and Enforcement of a Convention Order under UIFSA (2008) – Incoming Application



This slide depicts OCSE's International page at www.acf.hhs.gov/css/partners/international and shows where you would click to access the Hague Convention forms.

3.7.4 Translation of Incoming Documents to U.S.



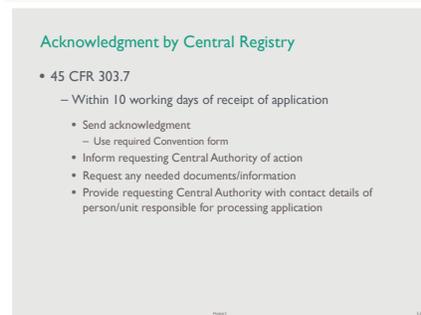
Section 713 of UIFSA (2008) and Article 44 of the Hague Child Support Convention address translation of documents and communications.

All incoming applications and related documents, such as the child support order, must be in their original language. In the United States we also require that they be translated into English.

Additionally, we require that a Convention country use English when communicating with a state child support agency about a Convention application.

In Module 8 we will discuss costs related to translation, as well as other translation issues.

3.7.5 Acknowledgment by Central Registry



Once the state Central Registry receives an Application for Recognition and Enforcement, it must acknowledge receipt of that application. Federal regulations governing intergovernmental cases require the Central Registry to acknowledge receipt of the application within 10 working days. Please note that the Convention timeframe for returning the Acknowledgment is within six weeks of receipt of the application. (This means that on outgoing cases, you will not likely get a reply within 10 days.) The Hague Child Support Convention has a mandatory Acknowledgment form. That is the form the Central Registry should use, not the federal intergovernmental Transmittal #1 Acknowledgment.

3.7.5.1 Acknowledgment Form



The Acknowledgment form begins with the standard notice of confidentiality and personal data protection. It identifies the requested Central Authority, as well as the contact person for any follow-up questions about the case. The form has a place to list the languages spoken by the contact person.

Module 3: Recognition and Enforcement of a Convention Order under UIFSA (2008) – Incoming Application

Acknowledgment – Page 1 (cont'd)

3. Requesting Central Authority
Country: _____
Address: _____

4. The requested Central Authority acknowledges receipt on _____ (date) of the transmittal from the requesting Central Authority (reference number _____) dated _____ (date) concerning the following application under:

Article 10(1)(a)
 Article 10(1)(b)
 Article 10(1)(c)
 Article 10(1)(d)
 Article 10(2)(a)
 Article 10(2)(b)
 Article 10(2)(c)

Final Act

Section 4 of the Acknowledgment is where the state Central Registry would acknowledge receipt of the Application for Recognition and Enforcement of a Convention order. The articles listed are references to articles within the Hague Child Support Convention – not sections of UIFSA. The transmittal and application you received from the requesting Central Authority will identify the applicable Convention article. You may also look at the Convention itself to determine which article subsection applies or refer to the Practical Handbook for Caseworkers. Both are accessible on the Hague Conference website. For purposes of our discussion, the Central Registry would be checking the first box – Article 10(1)a – to acknowledge receipt of the Application for Recognition and Enforcement of a Convention order.

Acknowledgment – Page 2

Family name of applicant: _____
Family name of the person for whom maintenance is sought or payable: _____
Family name of debtor: _____

5. Initial steps taken by the requesting Central Authority:

The file is complete and is under consideration
 An official report of application report
 Name of applicant report will follow
 Please provide the following additional information and/or documentation: _____

The requested Central Authority refuses to process this application as it is unclear that the requirements of that Convention are satisfied (Art. 13(b)). This refusal:
 cannot be an attached document
 will be set out in a document to follow

The requested Central Authority reports that the requesting Central Authority informs it of any change in the status of the application.

Name: _____ (to which letters) Date: _____
Authorized representative of the Central Authority (signature)

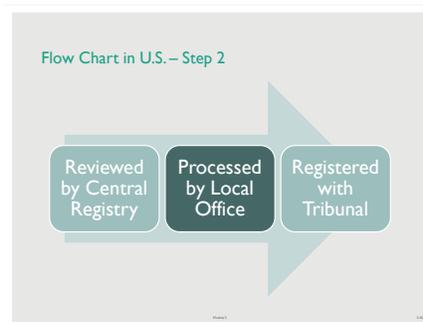
The Acknowledgment includes areas to provide the family name of the applicant, the person for whom maintenance or support is sought or payable, and the debtor. You will find this information on the Transmittal that accompanied the incoming application.

Section 5 of the Acknowledgment is where the state Central Registry notes what initial steps have been taken. There are tick boxes to indicate whether the file is complete, or whether additional information or documentation is needed. There is also a tick box to indicate if the Central Registry (i.e., the requested Central Authority) refuses to process

the application because it is manifest that the requirements of the Convention are not fulfilled. As we discussed earlier, if that rare action is taken, the reasons must be provided.

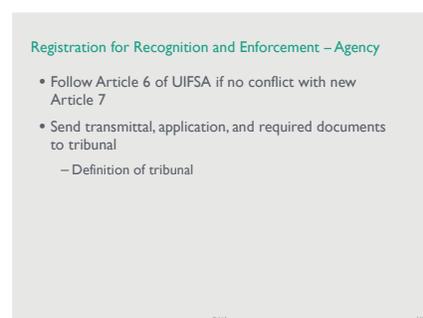
Finally there is a standard request that the requesting Central Authority keep the requested Central Authority informed of any changes in the status of the application. Note that the form is not signed; however, the name of the authorized representative of the Central Authority should appear on the form. In the U.S., that would be the name of the appropriate person in the state Central Registry.

3.8 FLOW CHART IN U.S. – STEP TWO



Now that we've discussed the Acknowledgment form, let's talk about the actual processing of the Application for Recognition and Enforcement at the local level.

3.8.1 Registration for Recognition and Enforcement – Agency

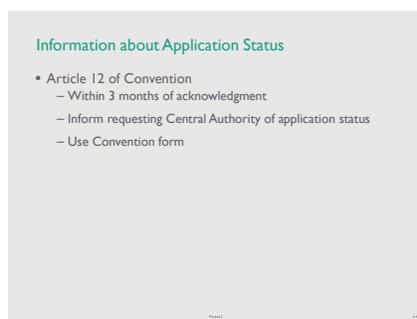


When the local child support office receives the application from the state Central Registry, it should review the application and accompanying documents again to ensure that the application is complete. If any additional information is needed, it should notify

the requesting Central Authority. It may use the Status of Application form to make the request. It may also try sending the request via e-mail.

Section 706 of UIFSA requires the support enforcement agency to register the Convention order as it would other orders under Article 6. That means you should file the Convention support order with the appropriate tribunal in your state. However, Section 706 also notes that there are some requirements within the new Article 7 that supersede the registration provisions within Article 6. These differences mainly impact the tribunal and any contest.

3.8.2 Information about Application Status



Within three months of the Acknowledgment, the requested Central Authority must provide a status update to the requesting State. This timeframe is a Convention requirement.

In most U.S. states, it will be the local agency working the case that sends the status form. In doing so, you should use the Status of Application Report that the Convention Forms Working Group developed. It is one of the recommended forms that is accessible from OCSE's website. Because there are four Status of Application forms, make sure you use the one specifically for recognition and enforcement.

3.8.2.1 Status of Application Form

Status of Application – Page 1

Status of Application Report – Article 12^f
Application for Recognition or Enforcement and Enforcement
(Article 18(a)) (Article 18(c)) or (Article 18e)

CONFIDENTIALITY AND PERSONAL DATA PROTECTION NOTICE

Personal data gathered or transmitted under this Convention shall be used only for the purposes for which it was gathered or transmitted. Any authority processing such information shall ensure its confidentiality, its accuracy and its use in the best

An authority shall not disclose or divulge information gathered or transmitted in application of this Convention if it is necessary due to its or another jurisdiction's health, safety or liberty of a person to

continue such disclosure
 A certification of non-disclosure has been made by a Central Authority in accordance with Article 18

1. Requested Court Authority	2. Cases given to requested State
a. Address	a. Address of authority
b. Telephone number	b. Telephone number (if different)
c. Fax number	c. Fax number (if different)
d. E-mail	d. E-mail (if different)
e. Internet address	e. E-mail (if different)
f. Jurisdiction: (<input type="checkbox"/> Contract Report, <input type="checkbox"/> Dec. of the Request, <input type="checkbox"/> Other (specify))	

That Status form begins with the standard notice of confidentiality and personal data protection. It provides contact information for the requested Central Authority and identifies the person in the requested State who can provide information about the application. That is the place where you would most likely list the appropriate person in the local child support office. There are tick boxes to indicate whether this is the first status report – the one required three months after the acknowledgment – or a subsequent status report.

Section 3 of the form, which is not shown, provides information that identifies the relevant application.

Status of Application – Page 2

4. Status of the application in the requested State

a. On _____ (dd/mm/yyyy) the competent authority declared the decision enforceable or registered the decision for enforcement.
(declaration or registration attached for information purposes only;
 applicant has been notified of the declaration or registration;
 applicant will be notified of the declaration or registration)

b. On or by _____ (dd/mm/yyyy) the competent authority is due to declare whether the decision is enforceable or is to be registered for enforcement

c. On _____ (dd/mm/yyyy) the respondent lodged a challenge or an appeal against the declaration or registration

d. On _____ (dd/mm/yyyy) the competent authority issued a decision refusing recognition and enforcement (decision attached for information purposes only; applicant has been notified of the decision; applicant will be notified of the decision)

e. On _____ (dd/mm/yyyy) the competent authority refused recognition and enforcement as a result of a reservation under Article 20(2). On _____ (dd/mm/yyyy) a decision was established for the benefit of the creditor in accordance with Article 20(4).

Section 4 is where you indicate the current status of the application.

In the United States, use the first tick box to state that the application, order, and accompanying documents have been registered or filed with the appropriate tribunal.

Module 3: Recognition and Enforcement of a Convention Order under UIFSA (2008) – Incoming Application

Use the tick boxes in Section 10 if the respondent has challenged the registration of the Convention order. The grounds listed are from Article 22 of the Convention, which has been implemented in the United States in UIFSA Section 708.

Status of Application – Page 4

g. The decision was made in violation of Article 18

h. The authenticity or integrity of any document transmitted in accordance with Article 25(1) (a), (b) or (3) (b)

i. The debt for past due payments has been fulfilled.

11. The requested Central Authority has refused to process the application for the following reason(s):

a. Requesting Central Authority did not produce the additional documents or information within the period provided under Article 12(9)

b. Requirements of the Convention manifestly not fulfilled (reasons attached)

Name: _____ (in block letters) Date: _____ (dd/mm/yyyy)
Authorized representative of the Central Authority

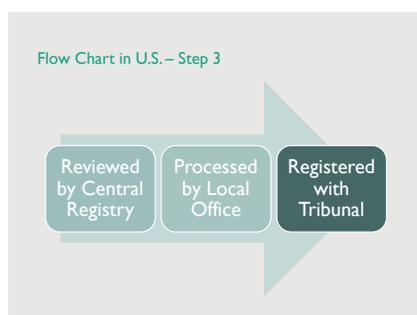
Use tick box 11 if you, as the requested Central Authority, are refusing to process the application for one of two reasons.

The first is that the requesting Central Authority did not produce the documents or information you had requested within the required time period.

The second is the rare situation that you have determined that the requirements of the Convention are manifestly not fulfilled. In that circumstance, you must provide the reasons for that decision.

At the bottom of the form is a place for the name of the person completing the form.

3.9 FLOW CHART IN U.S. – STEP THREE



The next slides focus on what happens once a Convention support order has been registered with the tribunal for recognition and enforcement.

3.9.1 Registration for Recognition and Enforcement – Tribunal



To the extent there is no conflict with the new Article 7 in UIFSA (2008), the tribunal should also apply Article 6 of UIFSA. That means, the registering tribunal should cause the order to be filed as an order of a tribunal of another state or a foreign support order, together with one copy of the documents and information. The order is registered when it is filed in the registering tribunal.

When the order is registered, the registering tribunal must notify the nonregistering party.

At this point, Articles 6 and 7 diverge. The registering tribunal is governed by Section 706 regarding documents that must accompany the request for registration of a Convention support order and the only basis upon which it can vacate the registration on its own motion. It is governed by Section 707 regarding timeframes for contesting the registered order, and it is governed by Section 708 regarding the limited grounds on which it may refuse to recognize and enforce a registered Convention support order. Section 709 addresses partial enforcement of a registered order. Section 710 governs recognition and enforcement of a foreign support agreement.

3.9.2 Registering Tribunal



Section 706 of UIFSA (2008) provides that a tribunal may vacate the registration of a Convention support order even if the respondent has not filed a contest. This differs from registration under Article 6 of UIFSA. However, the tribunal may take such action only in the limited situation where the tribunal finds that recognition and enforcement of the order would be manifestly incompatible with public policy. An example of when a U.S. tribunal may vacate registration on the basis that recognition and enforcement would be manifestly incompatible with public policy is a support order against a left-behind U.S. parent in a wrongful abduction case. The Official Comment to UIFSA notes another possible example: a tribunal might reject an application to enforce an order against a biological parent whose rights had been subsequently terminated and the child later adopted. Bottom line – it should be very rare that a tribunal vacates the registration on its own motion.

UIFSA requires the registering tribunal to notify the parties of the registration or any order vacating the registration. There is no timeframe but the notice must be given “promptly.” The contents of the notice should be similar to the notice under Section 605 with the exception that there is a longer time period for filing a contest.

Section 707 provides that if the nonregistering party fails to timely contest the registered Convention order, the order is enforceable. If there is a contest, the tribunal must resolve it. The tribunal is bound by the findings of fact on which the foreign tribunal based its jurisdiction, and may not review the merits of the order. It is only deciding whether the contesting party has proven one of the allowable grounds for contest.

3.9.3 Applicable Timeframes for Challenge

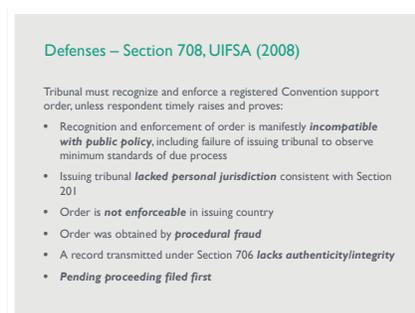


The timeframe for challenging a registered Convention support order is longer than that allowed for challenging a registered foreign support order that was issued by a non-Convention foreign country.

In the case of a non-Convention support order, most states follow UIFSA’s recommended timeframe of 20 days. On the slide, you will notice that the number 20 is in brackets. That is because the Uniform Law Commissioners recommended 20 days but left it to the discretion of states when they enacted UIFSA.

On the other hand, the Hague Child Support Convention contains specific timeframes that all Contracting States must follow. Those timeframes are reflected in Section 707 of UIFSA (2008). That means every U.S. state requires that in the case of a registered Convention support order, the respondent must file a contest within 30 days after the notice of registration. If the contesting party does not reside in the United States – for example, the obligor lives abroad but the order was registered in a U.S. state where the obligor has property – the contest must be filed not later than 60 days after the notice.

3.9.4 Defenses – Section 708, UIFSA (2008)



Section 708 of UIFSA (2008) lists the only grounds on which a party may contest a registered Convention support order.

The first is that recognition and enforcement is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe due process. As discussed earlier, this means that recognition and enforcement of the order would have an intolerable result. It is not enough that there is some kind of discrepancy with domestic law. The public policy exception should have only a very limited application.⁵

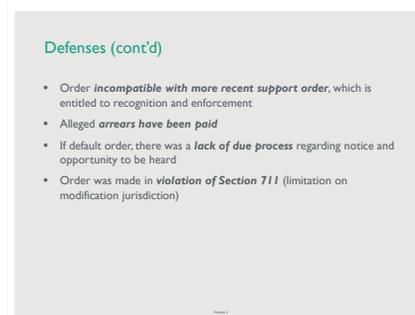
The second ground is that the issuing tribunal lacked personal jurisdiction consistent with the long arm bases for jurisdiction listed in Section 201 of UIFSA. The reference to Section 201 is important. Much of the world allows a tribunal to issue a support order if the creditor resides there. This is often called creditor-based jurisdiction. In the United States, however, a tribunal must have personal jurisdiction over both parties. To have personal jurisdiction over a nonresident, the individual must have sufficient contacts with the forum so that it is fair for the tribunal to issue an order binding the individual. By seeking relief, the petitioner has submitted to the forum's jurisdiction. To have personal jurisdiction over the respondent, our law requires us to look at contacts between the respondent and the forum. The relevant Supreme Court case concerning child support is *Kulko vs. Superior Court*, 436 U.S. 84 (1978). Section 201 is the UIFSA provision that lists sufficient contacts between a nonresident defendant and the forum that satisfy U.S. due process requirements. Even if the tribunal that issued the Convention order used creditor-based jurisdiction, the U.S. tribunal should recognize the order if the facts of the case would support a basis of personal jurisdiction under Section 201 of UIFSA.⁶ If a respondent raises this challenge, it may be necessary for the child support attorney to request a continuance to learn more about the facts of the case in order to determine whether they support long arm jurisdiction.

⁵ See Para. 478-479 of the Explanatory Report.

⁶ As noted in Para. 443 of the Explanatory Report, it is not the actual basis on which the issuing authority exercised jurisdiction that is relevant. The question is whether one of the jurisdictional bases for recognition and enforcement in fact existed.

Other allowable challenges listed on this slide are:

- The order is not enforceable in the issuing country.
- The order was obtained by fraud in connection with a matter of procedure.
- A record transmitted in accordance with Section 706 lacks authenticity or integrity
- These documents are the complete text of the support order (or the abstract or extract of the order if allowed by the registering state), a record stating that the order is enforceable in the issuing country, and, where necessary, the record showing the amount of any arrears.⁷
- A proceeding between the same parties and having the same purpose is pending before a tribunal of the registering state and that proceeding was the first to be filed.



In addition to the grounds for a contest that are listed on the prior slide, a respondent may also raise these four grounds:

- The registered order is incompatible with a more recent order, and that order is entitled to recognition and enforcement.
- The alleged arrears have been paid. (This is similar to a defense under Article 6 of UIFSA. It is a defense to the alleged arrears but is not a defense to the registration itself.)
- If the registered order was a default order, the respondent can try to prove that there was a lack of due process regarding notice and an opportunity to be heard.
- Finally, a contest is allowable if the order was issued in violation of Section 711 of UIFSA, which limits a tribunal's jurisdiction to modify. We will discuss this provision during Module 6 of the webinar series.

⁷ See Para. 511 of the Explanatory Report.

3.9.5 Review Questions

Review Questions

- Is the procedure for registration of a Convention order the same as that for registration of a U.S. state order or a non-Convention foreign support order?
No. There are different required documents, timeframes, and defenses. Also note that a responding state cannot decide to administratively enforce a Convention order without registration. Article 7 requires registration for recognition and enforcement.
- May a tribunal vacate the registration, on its own motion, because it does not agree with the decision?
No. A tribunal may vacate a registration without the filing of a contest by the non-registering party only if, acting on its own motion, it finds that recognition and enforcement would be manifestly incompatible with public policy.

We've covered a lot of material so let's stop here, and review some key points.

- Is the procedure for registration of a Convention order the same as that under Article 6 of UIFSA for registration of a U.S. state order or a non-Convention foreign support order?

No. Registration of a Convention order under Article 7 has different document requirements, timeframes, and allowable defenses. Also note that a responding state cannot decide to administratively enforce a Convention order without registration. Article 7 requires registration for recognition and enforcement.

- May a tribunal vacate the registration, on its own motion, because it does not agree with the decision?

No. A tribunal may vacate a registration without the filing of a contest by the non-registering party only if, acting on its own motion, it finds that recognition and enforcement would be manifestly incompatible with public policy.

3.9.6 Proceeding on Challenge

3.9.6.1 Choice of Law – Section 604, UIFSA (2008)

Choice of Law – Section 604, UIFSA (2008)

- Law of issuing foreign country governs:
 - Current support payments, including duration
 - Computation and payment of arrears, including interest accrual
 - Existence and satisfaction of other support obligations
- Law of responding state governs:
 - Enforcement procedures and remedies
- Law of issuing foreign country or responding state – whichever is longest – governs:
 - Statute of limitations on arrears



If the respondent challenges the registration of a Convention support order, the respondent has the burden of proving one of the allowable grounds on which a tribunal may refuse to recognize and enforce a registered order.

Section 707 of UIFSA (2008) provides that Sections 605 through 608 of UIFSA apply to a contest of a registered Convention support order unless Article 7 otherwise directs. That means the tribunal will apply the choice of law rules under Section 604⁸ of UIFSA.

The law of the country that issued the registered order governs the nature, extent, amount, and duration of current support payments, as well as the computation of arrears and accrual of interest on the arrears. Note that the Country Profile for each Contracting State sets out the rules in that State concerning the duration of child support.

The law of the responding state – the state holding the hearing on any registration challenge and the state enforcing the order if it is recognized – governs enforcement procedures and remedies.

And the law of the issuing country or the law of the responding state – whichever is longer – governs the statute of limitations on arrears. From a practical perspective, this will require the country that issued the order to provide some form of verification as to the limitation period that is applicable for decisions made in that country. In many cases, the issuing country is also the requesting State, so this information is not difficult to obtain. The Country Profile for the issuing State will also indicate what the limitation period for collection of arrears is in that State.

It is important to remember that the limitation period for collection of arrears only affects the enforcement of arrears owing under the support order. The obligation to pay any current support continues as required by the order, despite any restriction on collection of arrears.

⁸ Article 32(4) and (5) of the Convention contains the choice of law rule applicable to Convention applications that is similar to that within UIFSA.

3.9.6.2 Admissibility of Evidence – Section 316, UIFSA (2008)

Admissibility of Evidence – Section 316, UIFSA (2008)

- “Penalty of perjury” replaces under oath
- Electronic transmission of documents permitted
- Tribunal **must** permit a nonresident witness or party to testify by telephone, audiovisual means, or other electronic means



Small text at the bottom of the slide: "Page 3" and "117"

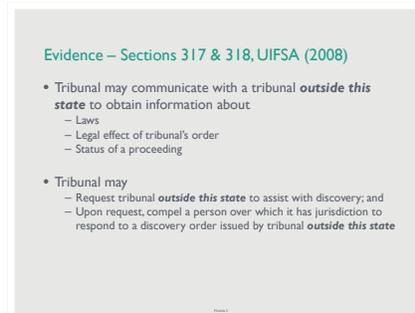
Another UIFSA provision that is important in international cases – including Convention cases – is Section 316.

It replaces the requirement that a person swear under oath before a notary in order for information in a document to be admissible into evidence. Section 316 provides that an affidavit or a document, which would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under penalty of perjury by a party or witness residing “outside this state.” We will discuss that provision in more detail in a later module.

Section 316 encourages tribunals and parties to take advantage of modern methods of communication. It authorizes the transmission of documents from outside the state by telephone, telecopier, or other electronic means.

A big change from UIFSA 1996 is the requirement that tribunals **must** allow a witness or party residing outside the state to testify by telephone, audiovisual means, or other electronic means. It is not discretionary. We will talk about this requirement in a later module.

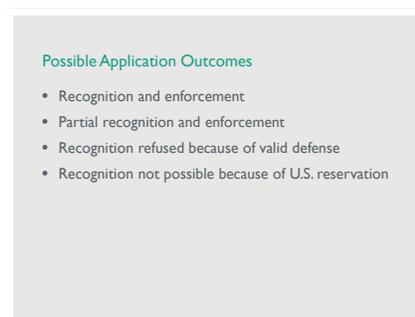
3.9.6.3 Admissibility of Evidence – Sections 317 and 318, UIFSA (2008)



Section 317 authorizes a state tribunal to communicate with a tribunal “outside this state.” “Outside this state” means a tribunal of another state (as defined by UIFSA), a foreign country, or a foreign nation that is not defined as a foreign country under UIFSA. In other words, any place but where the tribunal is located! The communication can be about the laws, legal effect of an order, or status of a proceeding.

Section 318 authorizes a tribunal to help a tribunal “outside the state” with the discovery process.

3.9.6.4 Possible Application Outcomes



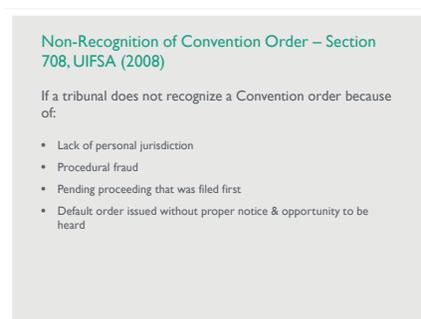
In most cases, the result of the Application for Recognition and Enforcement will be that the order is recognized and enforceable in the same manner as if the order had been made by the responding state.

However, Section 709 of UIFSA (2008) also recognizes the possibility of partial recognition and enforcement. For example, if there is a dispute about arrears, the tribunal can recognize and enforce the order with regard to current support while the challenge about arrears is under way.

In some cases, the tribunal will refuse to recognize the order because the non-registering party has proven a valid basis for challenging the recognition and enforcement.

In some cases, the support order cannot be recognized because of a reservation that the Contracting State has made under the Convention. For example, the United States will not recognize an order based solely on creditor jurisdiction when there is no factual basis for personal jurisdiction over the debtor under UIFSA Section 201.

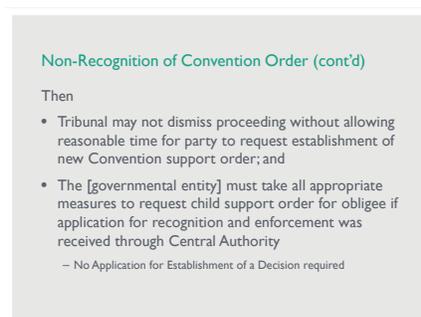
3.9.6.5 Non-Recognition of Convention Order – Section 708, UIFSA (2008)



Where an order cannot be recognized because:

- The issuing tribunal lacked personal jurisdiction consistent with UIFSA Section 201;
- The order was obtained by fraud in connection with a matter of procedure; or
- In a case where the respondent neither appeared nor was represented in the proceeding in the issuing foreign country, the respondent did not receive proper notice and an opportunity to be heard;

then . . .



Section 708 of UIFSA (2008) prohibits the tribunal from dismissing the proceeding without allowing a reasonable time for a party to request the establishment of a new Convention support order. In fact, the IV-D agency must take all appropriate measures to request a child support order if the application for recognition and enforcement came from a Central Authority in the requesting State pursuant to Section 704.

You may need additional information or documents from the applicant in order to proceed with establishment. For example, you will probably need the applicant to complete the creditor sections of the Financial Circumstances form. You may use the Status of Application form to request this information. However, it is not necessary for the applicant to file a new Application for Establishment of a Decision.⁹

What if the tribunal in your state does not recognize the order based on lack of personal jurisdiction, the child is age 20, and the law of your state only requires support to age 18? Does UIFSA require the tribunal to establish a support order in that situation? No. Section 303 of UIFSA makes it clear that a responding tribunal determines the duty of support and the amount payable in accordance with its state law and support guidelines. So if your state does not establish a support obligation for children older than 18, the tribunal is not required to establish a support obligation for a child in a Convention case. The same result is reached under Article 20(5) of the Convention. Only if the child is less than 18 years of age does the Convention require appropriate measures to establish a support order.¹⁰

Note also that this requirement that the support enforcement agency “take all appropriate measures” to request the establishment of an order only applies to child support. It does not apply to claims for spousal support, if recognition and enforcement of such an order is refused.¹¹

⁹ See Para. 466 of the Explanatory Report: “it will be the Central Authority which will proceed with the necessary applications in order to establish a new decision, without the need for a new application from the creditor.”

¹⁰ See Para. 471 of the Explanatory Report.

¹¹ See Para. 468 of the Explanatory Report.

3.9.7 Foreign Support Agreement – Section 710, UIFSA (2008)

Foreign Support Agreement – Section 710, UIFSA (2008)

- **Definition**
 - Agreement enforceable as support order in issuing country
 - Formally drawn up or registered as authentic instrument by a foreign tribunal; or authenticated, registered, or filed with a foreign tribunal
 - May be reviewed and modified by a foreign tribunal
- **Documents**
 - Complete text of foreign support agreement
 - Record stating agreement is enforceable as a support order in issuing country

As we discussed during Modules 1 and 2, the Hague Child Support Convention also requires procedures for the recognition and enforcement of maintenance arrangements. UIFSA refers to these arrangements as foreign support agreements. Section 701 of UIFSA (2008) contains the definition of a foreign support agreement and Section 710(b) lists the documents that must accompany an application or direct request for recognition and enforcement of a foreign support agreement.

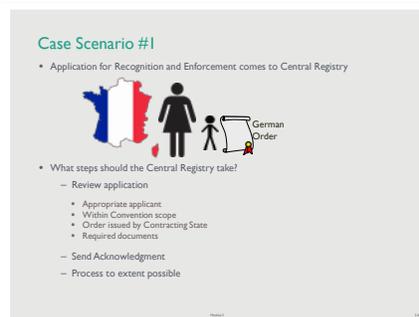
Foreign Support Agreement (cont'd)

- **Review by tribunal**
 - May vacate registration on own motion only if finding that recognition and enforcement would be manifestly incompatible with public policy
 - If respondent challenges, may refuse recognition and enforcement if it finds:
 - Recognition and enforcement manifestly incompatible with public policy
 - Agreement obtained by fraud or falsifications
 - Agreement is incompatible with support order involving same parties and purpose if support order is entitled to recognition and enforcement under UIFSA
 - Record submitted with application lacks authenticity or integrity
- **Suspension of proceeding**
 - Must suspend proceeding to recognize and enforce during pendency of a challenge to or appeal of agreement before a tribunal of another state or foreign country

Section 710 also outlines the procedure for recognition and enforcement of such an agreement. As you can tell from this slide, it's similar to the procedure for recognition and enforcement of a Convention support order. There are two differences. First, there is a requirement that the tribunal must suspend a proceeding for recognition and enforcement of the agreement during the pendency of a challenge or an appeal of the agreement before a tribunal of another U.S. state or a foreign country. Second, there is no requirement to allow a reasonable time for a party to request establishment of a new order if the foreign support agreement is not recognized and enforced.

3.10 CASE SCENARIO ONE

The next few slides present case scenarios.



In the first case scenario, the custodial parent and child live in France. She has a German support order. The Central Authority in France has sent an Application for Recognition and Enforcement to the Central Registry of Idaho, where the obligor resides.

What steps should the Central Registry take?

[After allowing time for the participants to think about the appropriate answer, the trainer should go over the steps identified on the slide. For example, in reviewing the application, the Central Registry should ask the following questions:

- Is the application one that is available to the particular applicant?

In this scenario, a creditor is seeking recognition and enforcement of a support order. That is an application available to the creditor.

- Is the Application for recognition and enforcement of an order that is within the Convention scope?

Yes. A child support order is within the scope of the Convention.

- Was the order issued by a Contracting State?

Yes. The order was issued by Germany, which is a Contracting State.

- Is the application complete? Is it accompanied by the required additional documents?

Module 3: Recognition and Enforcement of a Convention Order under UIFSA (2008) – Incoming Application

We do not have sufficient facts to answer these last two questions. If there are missing documents, the Central Registry should notify the requesting State of the needed documents when it sends the Acknowledgment form.]

Case Scenario #1 (cont'd)

- Convention order registered with tribunal



- What steps should the tribunal take?
 - Send notice of registration
 - If no timely contest, order is confirmed by operation of law and enforceable (Section 707(c))
 - Only exception: tribunal may vacate registration without the filing of a contest if, acting on own motion, tribunal finds recognition and enforcement would be manifestly incompatible with public policy
 - If contest, comply with Section 708, UIFSA (2008)

Let us assume that the Central Registry has timely acknowledged the application and forwarded the application to the appropriate local child support office. That office has filed the application and supporting documents with the tribunal, which has registered the order.

Following registration of the Convention order, what steps should the tribunal take?

[After allowing time for the participants to think about the appropriate answer, the trainer should list the steps identified on the slide.]

Are these grounds for refusal to recognize and enforce a registered Convention order?

- Respondent challenges on basis that Convention order is not certified
- Respondent challenges on basis that support amount is too high
- Respondent challenges on basis that record stating that support order is enforceable in issuing country is not submitted under penalty of perjury
- Respondent challenges on basis that there is no support duty under the law of Maryland because the child is 19 and not attending high school



Let's assume that the respondent challenges the registration on the basis that the Convention order is not certified. Is that a ground upon which the tribunal may refuse to recognize and enforce the order? No, it is not. However, an allowable ground under Section 708 of UIFSA (2008) is that a record transmitted under Section 706 lacks authenticity or integrity. If the respondent argues that the order is not authentic and the

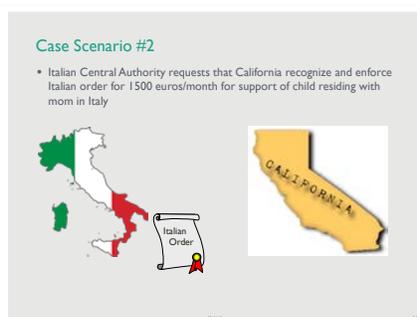
tribunal has reason to believe that the order may be forged, a tribunal may request the production of a certified copy of the order.

What if the respondent challenges the registration on the basis that the support amount exceeds his ability to pay? That is not a permissible ground for challenging registration. It may affect the ability of the requested State to use certain enforcement measures, but if that is the only challenge, the tribunal must still recognize the order as enforceable in the United States.

May a tribunal refuse to recognize and enforce a registered order because the Statement of Enforceability that the competent authority completes is not signed under penalty of perjury? No. The form does not require signature under oath or penalty of perjury. That is not one of the limited defenses listed in Section 708 of UIFSA.

Let's assume that the respondent challenges the registration because the Convention order requires support to age 21 but the law of Maryland, where the order has been registered, only requires support to age 18 unless the child is enrolled in secondary school. Then support may continue until the child completes school or reaches age 19, whichever occurs first. Is that a valid defense? No. Section 604 provides that duration is governed by the law of the issuing foreign country.

3.11 CASE SCENARIO TWO



In Case Scenario #2, the Italian Central Authority has requested that California recognize and enforce an Italian support order for 1,500 euros.

Case Scenario #2 (cont'd)

- Child was conceived in Switzerland when dad worked in U.S. Embassy and mom worked at Swiss hotel



- Obligor contests registration on basis that Italian court did not have personal jurisdiction over him
- Is that a valid defense? Will it be a successful defense in this case?

The child was conceived in Switzerland.

After receiving the notice of registration, the obligor in the U.S. timely contests the registration on the basis that the Italian court used creditor based jurisdiction, he has had no contacts with Italy, and therefore the Italian court did not have personal jurisdiction over him.

Is that a valid defense to recognition and enforcement of the registered Convention order?

Yes, it is.

Will it be a successful defense in this case?

Section 708 of UIFSA (2008) provides that a tribunal may refuse recognition and enforcement of a registered Convention order if the issuing tribunal lacked personal jurisdiction consistent with Section 201 of UIFSA. So the question is whether the facts presented meet one of the bases for jurisdiction under Section 201. On the limited facts we have, it does not appear that they do. Conception did not occur in Italy. If the obligor has had no other contacts with Italy that are consistent with Section 201, the tribunal will find that the Italian court lacked personal jurisdiction over the obligor and will refuse to recognize and enforce the order.

That is not the final step, however. Section 708 also requires the tribunal to allow the Italian creditor a reasonable time to request the establishment of a new Convention order.

3.12 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 the most common application – recognition and enforcement of a Convention order. Today we focused on incoming applications to the United States. Module 4 discusses outgoing applications for recognition and enforcement from the United States to a Convention country.



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.