# The Hague Convention on Child Abduction and UK Overseas Territories: VB v TR

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In a recent decision of the Family Division of the English and Welsh High Court—*VB v TR (Re RR)* [2020] EWFC 28, Mr Justice Mostyn highlighted a lacuna in the protection of children from abduction under the 1980 Hague Convention on the Civil Aspects of International Child Abduction ('the Convention'). As a result of what Mr Justice Mostyn (at para 7) refers to as a 'colonial anachronism', unconsented removals of children from the British overseas territory of Bermuda to the UK proper fall outside the remit of either the convention or domestic law.

**Facts**

VB and TR are parents from Bermuda with a young son, RR. In 2019, TR removed RR from Bermuda secretly, without the consent of VB, and in violation of Bermudian court orders. The UK ratified the 1980 Convention on the Civil Aspects of International Child Abduction in 1986 and implemented it domestically by way of the Child Abduction and Custody Act 1985. Section 28(1)(*c*) of that Act enables the UK to extend the effect of the Convention to Overseas Territories by means of an Order in Council. However, Bermuda, which enjoys full internal self-governance (with its own laws, parliament, and courts) instead passed the International Child Abduction Act 1988, which essentially transposed the 1985 Act into Bermudian law. As a consequence, the UK made an Article 39 Notification declaring that the Convention applied to Bermuda, which is now listed in the annex of authorities required by Article 18 of the Convention.

**Decision**

As both Bermuda and the UK are signatories to the Convention, one would expect that arrangements for the return of RR could be easily carried out. Mr Justice Mostyn notes (at para 12), if TR had gone to the USA (or indeed, any state other than the UK), the Convention would unquestionably applied as Bermuda is listed in the aforementioned annex of authorities. The problem arises because, for the

purposes of the Convention, the UK and Bermuda are a single state party; therefore, because there is no 'international' element to child abduction between the UK and Bermuda, the Convention is not considered to apply. This 'counterintuitive' (para 21) state of affairs has caused confusion, including a 2014 ruling which (mistakenly) held that Bermuda is not a party to the Convention.

Of course, there is no inherent problem with the Convention being inapplicable between different British jurisdictions. For example, if a parent who removed a child from Northern Ireland to England against a court order, the English court would automatically recognize the Northern Irish court order under the Family Law Act 1986, s 25, which provides for mutual enforcement of family court orders across the UK. However, that Act does not apply to Bermuda, because Bermuda is not a part of the United Kingdom (whatever the Convention might say). A Bermudian court is, for all intents and purposes, a foreign court in the eyes of the law of England and Wales.

Thus, there is a paradoxical and frustrating outcome: for the purposes of the Convention, Bermuda is part of the UK, but, for the purposes of English and Welsh family law, Bermuda is a foreign country. This is contrary to the intention of both the Bermudian and British Parliaments in implementing the Convention: namely, to prevent the unlawful abduction of children. The result is that Mr Justice Mostyn, rather than beginning with the presumption that RR should be returned (as he would under the Convention) or automatically implementing the Bermudian court's order (as he would with a court from a 'domestic' UK jurisdiction), was forced to essentially ignore the Bermudian court's order, and to circuitously employ a complex legal test under the Children Act 1989, s 1(1) to determine if it would be in the interests of the welfare of RR for him to be returned to Bermuda. Mr Justice Mostyn ultimately held that it was in the child's best interests to return to Bermuda, albeit at a time more conducive to international travel than the current pandemic. The only alternative route would be to employ the test for the recognition of foreign custodial orders set out by the Privy Council in *C v C (Jersey)* [2019] UKPC 40, which focuses on questions of public policy rather than the child's welfare.

**Comment**

The lacuna in the UK's regime for protecting against child abduction is, as Mr

Justice Mostyn correctly put it (at para 12), ‘an embarrassment’. The defect in this very important area of the law was so severe that the judge felt it appropriate to state (in the same paragraphs) , bluntly, ‘the law needs to be changed’—either to add Bermuda (and other overseas territories) to the domestic list of recognised Hague Convention authorities,  or to extend the automatic recognition of orders under the Family Law Act to all British Overseas Territories. Either option would be a welcome and necessary respite from the current state of affairs, by which abduction from a territory party to the Convention (Bermuda) to another party (the UK) is not covered by the law.  In a matter as serious as this, it is astonishing that, two decades after Bermuda joined the Convention, there is still no UK framework for ensuring the swift return of abducted children to their homes.