**What role do the concepts of "best interests" or "welfare of the child" play in deciding a Hague case for return of a child?**

The terms "best Interests" or "welfare of the child" do not appear in either the text of the 1980 Convention or in ICARA. This omission is deliberate, because the Hague Convention is not a treaty that concerns itself with child custody determinations. A fundamental basis for adopting the Convention is that courts of the child's habitual residence are best placed to make child custody determinations, and questions of "best interests" or "welfare of the child" (hereinafter "best interests") should be answered by those courts.

The Hague Convention was drafted to protect the interests of children who have been subject to transnational abduction.[1] The Convention is based on the principle that the best interests of the child are well served when decisions regarding custody rights are made in the country of habitual residence.[2]

Although there would be little disagreement that the best-interests standard should always guide a court's award of custody and visitation rights, the term "best interests" is vague and may be interpreted differently by different nations. Custody awards in different countries reflect a nation's social and moral values among the factors that courts consider in arriving at the best interests of a child. It would be highly presumptive of a court hearing a Hague Convention return case to inject a set of value judgments into a child custody determination that may be inimical to the values and standards held by the community of the child's habitual residence.[3]

When parties litigate the defense in Article 13(b), where it is alleged that a return of the child would expose that child to a "grave risk" of physical or psychological harm, the lines between litigating the grave risk issue or best interest can become blurred. Courts must avoid a situation where an Article 13(b) defense devolves into an attempt to litigate the child's best interest in establishing or maintaining a particular custodial arrangement.[4]

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1. *See* Chafin v. Chafin, 133 S. Ct. 1017, 1027 (2013) (noting that "application of the traditional stay factors ensures that each case will receive the individualized treatment necessary for appropriate consideration of the child's best interests").

2. Abbott v. Abbott, 560 U.S. 1, 20 (2010).

3. *Id*. at 3 ("There is no reason to doubt the ability of other contracting states to carry out their duty to make decisions in the best interests of the children.").

4. *See* Charalambous v. Charalambous, 627 F.3d 462 (1st Cir. 2010) ("The Article 13(b) defense may not be used 'as a vehicle to litigate (or relitigate) the child's best interests.'" (citing Danaipour v. McLarey, 286 F.3d 1, 14 (1st Cir. 2002))).