INTERNATIONAL CHILD ABDUCTION, DOMESTIC VIOLENCE AND THE FUTURE OF THE HAGUE CONVENTION OF 1980: A PRELIMINARY ANALYSIS OF THE COLOMBIAN CONSTITUTIONAL COURT'S REVIEW OF THE *LOSICE CASE*

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Abstract:

Hundreds of women victims of domestic violence are obliged to leave their countries of residence in company of their children. However, under the application of The Hague Convention of 1980 women are later required to return their children to the father. Currently, Colombia's Constitutional Court is reviewing a case reflecting this same pattern. This article focuses on the question of whether domestic violence is included as an exception to the international restitution of children contemplated in article 13 of The Hague Convention. To answer this question, the text analyzes the relation between human rights and private international law, the impact of gender perspective and the supremacy of children's' rights.

Resumen:

Cientos de mujeres víctimas de violencia intrafamiliar se ven obligadas a dejar sus países de residencia en compañía de sus hijos/hijas. Sin embargo, bajo la aplicación del Convenio de La Haya de 1980 se ven obligadas a regresar a sus hijos/hijas con sus respectivos padres. Actualmente, en la Corte Constitucional de Colombia se encuentra en revisión una acción tutela sobre hechos similares a los mencionados. Este artículo aborda el cuestionamiento sobre si es posible afirmar que la violencia intrafamiliar es una causal de excepción para la restitución internacional de niños, niñas y adolescentes según lo estipulado en el artículo 13 del Convenio de La de Haya de 1980. Para responder esta pregunta, este texto busca analizar la relación

entre los derechos humanos y el derecho internacional privado, el impacto de la perspectiva de género y la supremacía de los derechos de los niños.

- **Palabras clave:** derecho internacional privado, sustracción internacional de niños, niñas y adolescentes, Convención de La Haya de 1980, violencia intrafamiliar, fragmentación del derecho internacional, derechos de las mujeres, enfoque de género, derechos de los niños, interpretación de tratados.

- **Key Words:** private international law, international child abductions, The Hague Convention of 1980, domestic violence, fragmentation of international law, women's rights, gender perspective, children's rights, treaty interpretation.

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I. INTRODUCTION

The World Health Organization has estimated that about 1 in 3 women worldwide have experienced either physical or sexual intimate partner violence or non-partner sexual violence in their lifetime.[1] Women victims of violence often find several challenges and obstacles in order to find protection and effective judicial remedies.[2] And as a result many of them take the necessary measures to protect themselves and their children, crossing frontiers and challenging the law. Law should not be complicit in victimizing women who have been victims of domestic violence. This text seeks to shed light to the problematic faced by hundreds of women that are victims of domestic violence and that are obliged to leave their countries of residence with their children, but are later required to give them up to the person that originally inflicted violence against them, under the application The Hague Convention on the Civil Aspects of International Child Abduction of 1980 (hereinafter "The Hague Convention of 1980").[3]

Article 13(b) of this Convention contains several exceptions to the international restitution of children. But domestic violence against one of the spouses is not included. There is however an exception to international child restitution whenever the rights of the child are at "grave risk" if returned. The legal debate faced at many courts of the State parties to The Hague Convention of 1980, centers in defining whether domestic violence is included under the term grave risk.[4] Several States have made notable developments on this matter, recognizing that domestic violence

[1] Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence. . (2013).

[2] SALLY ENGLE MERRY, HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE (University of Chicago Press. 2009).

[3] Sudha Shetty & Jeffrey L Edleson, *Adult domestic violence in cases of international parental child abduction*, 11 VIOLENCE AGAINST WOMEN (2005).

[4] Linda Silberman, *Hague Convention on International Child Abduction: A Brief Overview and Case Law Analysis*, FAMILY LAW QUARTERLY (1994).

could be included under the term risk,[5] but still many judges around the world refuse to accept this interpretation, since in their view the violence between the spouses does not result in establishing that the perpetrator of the violence is in fact a bad parent.[6] Under this circumstance, every decision in the world related to the application of the Hague Convention of 1980, acknowledging the victims of domestic violence, serves as an important landmark that could help state practice and subsequent legal arguments that in fact would shape the interpretation of article 13.

In that sense, Colombia is currently on the verge of deciding upon this matter. The Losice controversy is a case of international child restitution currently being reviewed by the Constitutional Court. This case involves domestic violence suffered by a Colombian woman and the possibility she faces of being obliged to return her daughter to the father, which has been accused of domestic violence. Hence, this is a unique opportunity for the Constitutional Court to set the record straight by clarifying this legal matter.

As this case is still under review of the Court, this article concerns itself with two main issues: first, the historical and political background of the case and Colombia's implementation of The Hague Convention of 1980; second, this article focuses on the question of interpretation of article 13 of The Hague Convention and whether domestic violence is included under the term risk. Part II tackles the former, and breaks down the different rules under international law that are applicable to the interpretation of article 13; analyzing the tensions between human rights and private international law, the impact of women's rights and gender perspective and the supremacy of children's' rights. Part III of this article, will provide an analysis of the possible interpretation that the Court could apply to article 13.

[5] Brenda Hale, *Taking Flight—Domestic Violence and Child Abduction*, 70 CURRENT LEGAL PROBLEMS (2017).

[6] Carol S Bruch, *The unmet needs of domestic violence victims and their children in Hague child abduction convention cases*, 38 FAMILY LAW QUARTERLY (2004).

Like many family related controversies, this case may raise a multitude of issues beyond simply the application of article 13, such as the question regarding habitual permanence, bond making of the children, the appropriate role of the Central Authority and the burden of proof. However, this article stresses the unprecedented opportunity that the Constitutional Court has to examine the substantive contents of article 13 and to balance the necessary protection required by women victims of domestic violence. In that sense the facts of the Losice case will be assumed as true avoiding the question on standard and burden of proof. The interpretation of article 13 has the potential to shape the future of international child abductions litigation in Colombia and could serve as a very important precedent that would prompt change in The Hague Convention as a whole.

II. BACKGROUND OF THE *LOSICE* CASE

This chapter will address the historical and political background of the *Losice* case and Colombia's implementation of The Hague Convention of 1980. In that respect, I will first describe the history of The Hague Convention of 1980 to understand how international child abduction became an issue regulated under private international law. Second, I will address the Latin American approach to private international law. Third I will describe Colombia's implementation of The Hague Convention of 1980. Third, I will characterize the problematic of domestic violence in the context of international child abductions. Finally, I will refer to the factual and procedural aspects of the Losice case.

A. The Hague Convention of 1980 and the adoption of international child abduction as an issue of private international law.

The removal of children outside their country of habitual residence in breach of the guardian's custody rights is considered to be wrongful.[7] At first it would seem peculiar

[7] PAUL REID BEAUMONT & PETER EUGENE MCELEAVY, THE HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION (Oxford University Press. 1999).

that this issue was introduced in an international forum of private international law, rather than the United Nations, where during the same period of time the convention for the rights of children was being drafted and discussed.[8] To clarify this point, which will later be analyzed from the perspective of fragmentation in chapter II, it is necessary to evaluate the development of family law within private international law.

Private international law concerns itself with solving the conflict of laws from different States in different scenarios, such as repatriation, torts law, civil jurisdiction, amongst many others.[9] One of the main fields covered by this discipline is marriage and the regulations dealing with international families (which for the purposes of this text shall be understood as the legal relationship between individuals of different nationalities).[10] In this sense, since the early beginnings of the 20th Century, the Hague Conference of International Private law (hereinafter "The Hague Conference"), which is an international organization in charge of promoting the unification of private international law since 1893, has adopted several conventions seeking to regulate family affairs where domestic laws from different States enter into conflict with each other.[11] After World War II, The Hague Conference started revitalizing the regulations of international families, as a response to the changes in frontiers, economic development, migration and the evolution of transportation, which facilitated the formation of these families.[12] In parallel, child abductions or child kidnapping, as it was known before The Hague Convention of 1980, has been a problematic that States have registered in their public records since the 19th

[8] EUGEEN VERHELLEN, CONVENTION ON THE RIGHTS OF THE CHILD: BACKGROUND, MOTIVATION, STRATEGIES, MAIN THEMES (ERIC. 2000).

[9] JAMES J FAWCETT & JANEEN M CARRUTHERS, CHESHIRE, NORTH & FAWCETT PRIVATE INTERNATIONAL LAW § 14 (Oxford University Press Oxford. 2008).

[10] Linda Silberman & Karin Wolfe, *The Importance of Private International Law for Family Issues in an Era of Globalization: Two Case Studies-International Child Abduction and Same-Sex Unions*, 32 HOFSTRA L. REV. (2003).

[11] Hans Van Loon, *The Hague Conference on Private International Law*, 2 HAGUE JUSTICE JOURNAL (2007).

[12] George AL Droz & Adair Dyer, *The Hague Conference and the Main Issues of Private International Law for the Eighties*, 3 NW. J. INT'L L. & BUS. (1981).

Century.[13] The principal concern of these cases was the conflict of custody and rights of access to the children.[14]

This concern was intended to be solved through the Convention of 1902 related to the settlement of guardianship of minors.[15] In addition, in the 1960s The Hague Convention of 1961 on the Protection of Minors was enacted to determine jurisdiction for custody and the applicable law in making such determinations.[16] Many States argued that this Convention was not effective enough since there was no enforcement mechanism of the decisions taken.[17] So even if there was a definition of custody in favor of one of the parents, if the opposing parent left with the child to a foreign State, no measure obliged other States to enforce the decision. This criticism was raised by European States in the 1970s, resulting in several efforts to create a regional treaty of Recognition and Enforcement of Custody Decisions only applicable to the European continent.[18]

In The Hague Conference's thirteenth session of 1976 the Canadian delegation proposed to create a separate convention to deal with the problem of international child abductions.[19] This suggestion was accepted by the participating States and after several years of negotiations in 1980 a draft of the proposed convention was ready for signatures. The Hague Convention of 1980 contains both procedural and jurisdictional provisions, it does not offer uniform international standards for determining custody rights nor does it provide for enforcement of custody decrees

[13] PAULA S FASS, KIDNAPPED: CHILD ABDUCTION IN AMERICA (Oxford University Press on Demand. 1997).

[14] Janet R Johnston & Linda K Girdner, *Early identification of parents at risk for custody violations and prevention of child abductions*, 36 FAMILY COURT REVIEW (1998).

[15] Convention of 1902 relating to the settlement of guardianship of minors (Hague Conference on Private International law ed., 1902).

[16] Hague Conference on Private International Law, The Hague Convention of 1961 on the Protection of Minors § UNTS 1969, pp. 145 ff (Hague Conference on Private International Law ed., 5 October 1961).

[17] Droz & Dyer, NW. J. INT'L L. & BUS., 205 (1981).

[18] Id. at.

[19] Id. at, 204.

rendered by another foreign state.[20] The object and purpose of the Convention is to deter both wrongful "removals" of a child from one country to another and wrongful "retentions", assuring the prompt return of the children to their place of origin.[21] The States parties to this agreement agreed to return all wrongfully removed or retained children to the state of the child's habitual residence so that authorities in that state may exercise the power to determine the long-term custody between the disputing parties.[22] This Convention was a very important landmark for the Hague Conference since they had never taken upon such a complex affair. This is better exemplified by the words of George A.L. Droz and Adair Dyer Secretary General and First Secretary of The Hague Conference, respectively:

> *"Never before has The Hague Conference prepared a treaty on a topic raising such strong emotions. The approach taken was revolutionary, departing completely from the traditional pattern of treaties providing for the recognition and enforcement of judgments. Thus, a carefully fashioned tool has been placed at the disposal of lawyers and governmental authorities to fight a very specific modern phenomenon the abduction of children by parents."*[23]

As it can be concluded from this section, international child abduction became part of private international law because of the historic intent of this discipline to regulate international family affairs. It's important to highlight that even in 1981, the authorities of The Hague Conference were amused by this move, since it was unprecedented for international private law to deal with "*topics raising such strong emotions*." This statement would bare increasing importance in years to come, taking in consideration the complexity of family conflict, the well-being of the children and the

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[20] Merle H Weiner, *Navigating the Road between Uniformity and Progress: The Need for Purposive Analysis of the Hague Convention on the Civil Aspects on International Child Abduction*, 33 COLUM. HUM. RTS. L. REV. (2001).

[21] Elisa Vera-Pérez, Explanatory Report on the 1980 Hague Child Abduction Convention § Tome III (The Hague Conference on Private International Law 1982).

[22] Hague Convention on the Civil Aspects of International Child Abduction (25 October 1980).

[23] Droz & Dyer, NW. J. INT'L L. & BUS., 207 (1981).

occurrence of domestic violence, circumstances that would certainly put The Hague Convention of 1980 to test.

B. Latin America, private international law and the protection of sovereignty,

In 1980, only European States acceded to The Hague Convention.[24] Colombia ratified the Convention in 1995 and it was the seventh Latin American State in acceding this international instrument.[25] Currently 18 Latin American States are parties to the Convention as well.[26] This section will first develop the relation between Latin America and private international law. Second it will distinguish the distinctive Latin American approach to international child abduction and how it can affect a subsequent

Latin America has a long tradition of defining and unifying private international private law, dating back to the Panama Congress in 1829.[27] In fact, as pointed out by Alejandro Álvarez the very development and construction of the idea of a Latin American international law is based on the regional efforts to solve many conflicts between domestic laws between States.[28] The Calvo clause is an important example of the developments achieved during this period of time, reflecting in many ways a Latin American perspective of favoring sovereignty in conflict resolution.[29] And it is

[24] Linda Silberman, *Hague International Child Abduction Convention: A Progress Report*, 57 LAW AND CONTEMPORARY PROBLEMS (1994).

[25] Ley 173 de 1994. Congreso de la República de Colombia

[26] Prel. Doc. No 11 B of September 2017 - Part II — A statistical analysis of applications made in 2015 under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction — Regional report (Revised version, April 2018). (2018).

[27] Ernest G Lorenzen, *Pan-American Code of Private International Law*, 4 TUL. L. REV. (1929).

[28] Alejandro Alvarez, International Law and Related Subjects from the Point of View of the American Continent: A Report on Lectures Delivered in the Universities of the United States, 1916-1918, Under the Auspices of the Carnegie Endowment for International Peace, Including a Comparative Study of the Universities of Latin Amrica and the United States (The Endowment. 1922);Alejandro Alvarez, *Latin America and international law*, 3 American Journal of International Law (1909).

[29] Manuel R Garcia-Mora, *The Calvo Clause in Latin American Constitutions and International Law*, 33 MARQ. L. REV. (1949).

precisely sovereignty the cornerstone of how Latin America approached private international law, seeking to protect the respect and validity of each State's domestic law. To illustrate further, Latin American States in the 80's drafted a regional agreement to address international child abductions which resulted in the Interamerican Convention of Child Abductions of 1989.[30] Two instruments regulating the same subject matter with very few years of difference. This reflects the Latin American approach to private international law, intending to preserve regulations of the region which would attain prominence over the rules established by The Hague Convention of 1980. As it can be observed, Latin American States accepted The Hague Convention of 1980 but only after having created their very own instrument regulating the same subject matter, reflecting an interest for the preservation of regional values over a more universal approach.

This description not only explains the importance of sovereignty granted by Latin American States to international child abduction cases, but also it serves as a very important context to understand how Latin American States have addressed the interpretation of article 13. Latin American State's intent of preserving regional values in resistance to outside influence coming from The Hague Conference, not only results in preserving their sovereignty, but also unintendedly it makes it more difficult for the entry of other rules of international law that could help the interpretation of article 13. Further, I can avoid to mention the fact that there is a registered tendency of sexism and misogyny, which has been studied and reported widely, as being part of Latin American judicial and administrative institutions.[31] This fact needs to be taken into consideration because it shows the very difficult landscape women victims of domestic violence often face before Latin American tribunals and even more in a controversy involving The Hague Convention of 1980.

[30] Wilson de Jesus Beserra de Almeida, et al., *The limitations of the hague convention to solve conflicts arising out of international child kidnapping*, 13 REVISTA BRASILEIRA DE DIREITO (2017).

[31] Violeta Sara-Lafime, *Machismo in Latin America and the Caribbean*, WOMEN IN THE THIRD WORLD: AN ENCYCLOPEDIA OF CONTEMPORARY ISSUES (2014);Patricia M Hernandez, *The myth of machismo: An everyday reality for Latin American women*, 15. THOMAS L. REV. (2002).

I don't intend to make generalizations on how sexism and misogyny have permeated Latin American administrative and judicial institutions. But this fact serves as an additional insight of the problematic studied in this article. The judicial authorities in the Losice case will certainly reflect much of this reality, reinforcing the importance of developing better legal arguments that would help women who have been victims of domestic violence and are facing a child restitution request.

C. Colombia's implementation of The Hague Convention of 1980

Latin America's perspective and treatment to international child abductions set the context to observe how Colombia implemented The Hague Convention of 1980. Colombia's process of accession and implementation of this Convention was marked by the difficulties of its institutions and the complexity of the procedures. Colombia is currently the second State in Latin America with the largest numbers of request received for the return of children. I will first describe the role of the Central Authority. Second I will describe how Child Protection services work in Colombia. Third, I will briefly explain how the process of international child restitution is applied.

First, The Hague Convention requires States to assign a Central Authority in accordance with article 7.[32] The Central Authority has the mandate to return abducted children by encouraging cooperation between officials in each State and among other States parties to the Convention. In addition, Central Authorities must assist in locating the child, attempt to facilitate a voluntary return, and, if necessary, initiate legal proceedings for the child's return.[33] Most States have appointed the ministry of international affairs o or its equivalent as the Central Authority, as is the

[32] Hague Convention on the Civil Aspects of International Child Abduction. 25 October 1980.

[33] The Hague Convention on Private International Law, Guide to Good Practice Child Abduction Convention: Part I - Central Authority Practice (The Hague Conference on Private International Law 2003).

case of México, Argentina, France, the United States , amongst many others.[34] In Colombia, the government appointed the *Instituto Colombiano de Bienestar Familiar (*hereinafter "ICBF") as the Central Authority.[35]

The ICBF is a governmental institution that has the function of protecting and preserving the rights of children and families in Colombia.[36] This function is too broad and in fact it reflects the magnitude and size of this institution. For the purposes of this article, the only department from the ICBF that will be analyzed and described will be Child Protection Services, since the ICBF has multiple divisions and programs directed to prevention efforts. The fact that the ICBF is the Central Authority of The Hague Convention of 1980 bares great importance, since the perspective and operation of the treaty is in the hands of an institution that seeks to protect the rights of children.

Second, I shall explain very briefly the operation of child protection services in Colombia to illustrate how international child abductions are handled by the Central Authority. But first, it's important to point out that according to domestic regulations, the department inside of the ICBF that performs the duties of Central Authority is the Subdivision of Adoptions, located at the central level and as part of the larger division of Child Protection Services.[37]

The Child Protection system in Colombia is lead first by an administrative authority called Family Official, which are lawyers distributed all along the national territory in charge of protecting the rights of children.[38] Each of them counts with an

[34] The Hague Conference on Private International Law, *List of Central Authorities* (2018), *available at* https://www.hcch.net/en/instruments/conventions/authorities1/?cid=24.

[35] ICBF, Resolución 1399 de 1998

[36] Decreto 0987 (2012).

[37] Id. at, art. 41.

[38] Código de Infancia y Adolescencia Ley 1098 (2006).arts. 79-80

interdisciplinary team conformed by 1 psychologist, 1 social worker and 1 nutritionist. It's important to point out that the Family Officials are part of the ICBF. They work at the municipal level divided in different divisions. Whenever they come into knowledge of the occurrence of a violation of a right against children, they must take the case and evaluate whether or not a protection measure is applicable.[39] A protection measure could include the removal of a children from his/her parents to be placed with extensive family, foster care or even an institution.[40]

Whenever a child is internationally abducted by one of the parents the left behind parent will start an application in the State of habitual residence. The Central Authority of this State will communicate with its counterpart of the State where the child is presumably being abducted and will begin the necessary actions to locate and return the child.[41] I will only focus on the cases where Colombia is the State party required to return a child.

In Colombia, the return application will first arrive to the Subdivision of Adoptions of the ICBF, who in compliance of article 7 will distribute the application to the Family Official subscribed to the specific region where the child is presumed to be located.[42] Family Officials play a key role in the application of The Hague Convention of 1980, since they will have the mandate to locate the child and to persuade the alleged abductor, to comply with the custody settlement and as result to return the child.

If this process is not satisfactory, the Central Authority will instruct the left behind parent to initiate the judicial proceedings in order for a domestic court to order the

[39] Id. at, art. 50.

[40] Id. at, art. 52-54.

[41] Law. 2003.

[42] Instituto Colombiano de Bienestar Familiar, Anexo 1: Restablecimiento internacional de derechos de niñas, niños y adolescentes en el marco de tratados y convenios internacionales del Lineamiento Técnico Administrativo de Ruta de Actuaciones para el Restablecimientoi de Derechos de Niños, Niñas y Adolescentes con sus Derechos Inobservados, Amenazados o Vulnerados (ICBF 2016).

return. At this point, is very important to highlight that Family Officials have the duty to participate in all judicial proceedings dealing with issues concerning children.[43] They have the possibility of intervening but are not party to the process. They may point arguments and concerns to the judge that may impact the decision. Once the return is judicially ordered, the Family Official will prepare the child for the process of restitution.

In conclusion, Colombia has a very complex procedure to fulfil the provisions of The Hague Convention of 1980. The ICBF has a dual role in the process of returning children who have been abducted, both as Central Authority and as advocate for the children's rights. This dual role causes challenges and complications to Colombia's compliance of article 7 of The Hague Convention, since as it will be evidenced in the Losice case, the distinctive views between the Family Officials, the judges and the Subdivision of Adoptions at the ICBF, will affect the recognition and acknowledgement of domestic violence as being a "grave risk" under the terms of article 13.

D. Domestic violence and child abduction cases in the context of The Hague Convention and Colombia

The Hague Convention of 1980 was created under the factual assumption that most abductors were disappointed non-primary careers, usually fathers, upset at the breakdown of their marriage and the loss of contact with their children.[44] Freedman points out that the stereotype of the abductor was based on the idea that often women would receive the custody rights over the children after a separation and that the abduction would result as an attempt of an unhappy father trying to challenge the decision.[45] In general, the Hague Convention of 1980 operates effectively to

[43] Id. at.

[44] MARILYN FREEMAN, INTERNATIONAL CHILD ABDUCTION: THE EFFECTS (Reunite International Child Abduction Centre. 2006).

[45] Id. at.

resolve cases related to this particular circumstance.[46] However this stereotype was debunked by an overwhelming reality that showed that in most cases of child abductions, the abductors were women and most of the cases involved domestic violence.[47] In fact, child abduction cases involving domestic violence have been reported since several decades ago. Many of these cases have caught the attention of the media for the legal implications across frontiers and because of the public plights made by the mothers.[48] The Losice case is no exception. This case has caused public outrage and has created pressure for the judicial authorities.[49] In this section, I will characterize the problematic of domestic violence in the context of international child abductions. Second I will describe several efforts that have been made to bring a final and enduring solution to this situation. Further, I will analyze how this problematic has developed in Colombia, to set the context for the Losice case.

Since there is no unified definition of domestic violence in international law, several legislations from a wide variety of States define domestic violence as a pattern of abusive and threatening behaviors that may include sexual, physical, emotional, economical violence.[50] Notwithstanding the fact that domestic violence could occur regardless of gender, for the purposes of this article domestic violence will focus solely on the domestic violence against women.

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[46] BEAUMONT & MCELEAVY. 1999.

[47] Jeffrey L Edleson & Taryn Lindhorst, *Multiple perspectives on battered mothers and their children fleeing to the United States for safety*, (2010).

[48] Mirela Iverac, *Protecting Kids: Rethinking the Hague Convention*, TIME 2010.

[49] EL TIEMPO, *Nuevo 'round' en caso de restitución internacional de menor colombiana*(2017), *available at* http://www.eltiempo.com/colombia/otras-ciudades/caso-de-nina-colombiana-envuelto-en-restitucion-internacional-de-menores-107888.

[50] Mary Ellsberg, et al., Intimate partner violence and women's physical and mental health in the WHO multi-country study on women's health and domestic violence: an observational study, 371 THE LANCET (2008);Claudia Garcia-Moreno, et al., Prevalence of intimate partner violence: findings from the WHO multi-country study on women's health and domestic violence, 368 THE LANCET (2006).

Thousands of women in the world have experienced some time in their lives domestic violence.[51] According, to the Committee of the CEDAW most judicial systems in the world do not guarantee the right of justice to women victims of domestic violence.[52] Women face several challenges to denounce circumstances of abuse and are not effectively protected. This problematic is even worse for women that are part of an international family, because they find themselves living outside their States of origin/citizenship experiencing even more challenges and barriers.[53] When facing these difficulties, women often find that their only available option is to return to their State of origin, fleeing the abusive relationship, in company of their children. This act becomes an illegal abduction of the children, since they do not count with the authorization of the father and full custody rights.

According to the latest statistical report presented in the Hague Conference in 2017, from the return applications reviewed, 73% of the abductors were mothers, a higher proportion than the 69% recorded in 2008, 68% in 2003 and 69% in 1999.[54] Further, after a review of several cases, domestic violence was found to be a motivating factor for relocation in nearly 50% cases brought against women.[55] Hence an important number of cases that are brought in application of The Hague Convention of 1980 are mainly against women primary-parents who move with their children back to their country of citizenship/origin because of domestic violence. Further the report also shows that 45% of the requests made ended with the return of the child.[56]

These figures show that The Hague Convention of 1980 could unintentionally become an instrument against women victims of domestic violence, if this issue is

[51] Organization. 2013.

[52] UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 33 Women's access to Justice (2015)

[53] Neil A Englehart, *CEDAW and Gender Violence: An Empirical Assessment*, MICH. ST. L. REV. (2014).

[54] A statistical analysis of applications made in 2015 under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. (2017).

[55] Id. at.

[56] Id. at.

not addressed correctly. Several efforts have been made in different States, trying to change the way judges and other authorities apply The Hague Convention, in order to recognize and protect women, this is evidence in Berkeley University's The Hague Domestic Violence Project.[57] This initiative seeks to give legal counsel to battered women and to train judges and litigators on how the Convention should be applied in cases of domestic violence in US. Courts.

Further, this problematic has also been addressed at The Hague Conference. Since the entry in to force of the Convention, States have raised concerns in regards to the scope of article 13. During the 1990's the position of the Conference was that the interpretation of this article should be restrictive.[58] This position was reaffirmed by the fourth meeting in 2001 and the fifth meeting in 2006.[59] However, in 2011, States began to discuss how the exception worked in the context of allegations of domestic violence. The Conference noted the importance and concern attached to domestic violence in a number of jurisdictions. They concluded that the 'allegation of domestic violence and other possible risks to the child should be adequately and promptly examined to the extent required to analyze the grave risk exception.[60] When the meeting reconvened in 2012, they recommended that further work be carried out to promote consistency in the interpretation of Article 13(1)(b) including, but not limited to, allegations of domestic violence.[61] As a result, a working group composed of judges, central authorities, and cross disciplinary experts was conformed to develop a Guide to Good Practice on the interpretation and application of Article 13(1)(b).[62]

[57] The Goldman School of Public Policy - University of California Berkeley, *The Hague Domestic Violence Project*(2003), *available at* http://gspp.berkeley.edu/global/the-hague-domestic-violence-project.

[58] Hale, CURRENT LEGAL PROBLEMS, (2017).

[59] Id. at.

[60] Id. at.

[61] Id. at.

[62] Id. at.

The first draft of this document was presented in October of 2017 at The Hague Conference. It is expected that in the following years a final document is adopted. These guides of good practices are not mandatory, nor binding to State parties.[63] The draft document represents an important effort to settle this issue. However, at this point the draft is merely informative in the sense that it does not provide a specific interpretation to article 13(1)(b). At least, the guide does include as annexes to the guide, several rules regarding the protection of women under international law.[64] But in the end, the problem with this document is that it does not establish the legal relation between the rules under international law protecting women and The Hague Convention of 1980, nor does it clarify legally how to solve this situation. For that reason, it's important to stress upon the need to work domestically on the settlement of this cases, creating sufficient state practice and opinion juris.

Colombia's record in this regard is very similar to the global tendency presented in 2017 at The Hague Conference. In Colombia, there is no system of information to register exactly how many of these cases involved claims of alleged domestic violence. However, the Central Authority does affirm that most of the cases received involve circumstances of domestic violence, as stated in the Questionnaire on the practical operation of the 1996 Child Protection and 1980 Child Abduction Convention on 2017.[65]

As it can be concluded, the majority of the cases dealt by The Hague Convention of 1980 involve women fleeing abusive and violent homes. After describing this problematic that affects hundreds of women around the globe, the following section will address the case that will be reviewed by Colombia's Constitutional Court.

[63] Law. 2003.

[64] Permanent Bureau - The Hague Conference on Private International Law, Draft Guide to Good Practice on Article 13(1)(b) of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (2017).

[65] ICBF, Cuestionario sobre el funcionamiento práctico del Convenio de La Haya de 1980 sobre los Aspectos Civiles de la Sustracción Internacional de Menores (2017)

E. The Losice case

In 2007, Ivette Nieto (Colombian) and Marcelo Losice (Argentinian) decided to live together as a couple in Buenos Aires, Argentina. Ivette had a daughter from a previous relationship. Since 2010, Ivette reports that circumstances of domestic violence occurred within her house, describing Marcelo as being a very violent man. In 2012, Marcelo and Ivette welcomed a daughter (by virtue of the special protection children have in terms of confidentiality she will be named hereinafter as "Losice")[66]. According to court records, the violence intensified after the birth of Losice. In 2015, Ivette travelled with her daughters to Colombia to visit her relatives, however she did not plan to return to Argentina. As soon as Marcelo discovered Ivette's intentions, he begun a judicial process in Argentina activating The Hague Convention of 1980 in order to secure the return of Losice. At the same time, Ivette visited the ICBF to start a process of custody rights over Losice.

The 13 of march 2015, a family tribunal in the province of Quilmes in Buenos Aires ordered the restitution of Losice. This decision was notified to Colombia's Central Authority the ICBF. As a result, the process for the determination of custody was suspended. The ICBF through a Family Official approached Ivette to find a conciliatory resolution of the conflict, where she would have to accept the Argentinian judicial decision of restitution and hence she would voluntarily return Losice to her father. This stage is the administrative part of the process were the Central Authority tries to convince the abductor to accept the decision of restitution and voluntarily return the children. In this case, Ivette refused to voluntarily return Losice. Once this stage of the process culminated, the Family Official proceeded to transfer the process to a judicial authority, to decide whether or not to order the restitution of Losice.

[66] Ley 1098 (2006).

1. First Instance Decision

The case was assumed by the Family Circuit Tribunal from the city of Ibague in the department of Tolima. The tribunal delivered its judgement on September of 2016 denying the request for restitution. The tribunal acknowledge several rules applicable to the case including the Convention on the Rights of Children.[67] It's interesting that the judge even made a mention to *jus cogens* norms in the judgement, placing the rights of children on top and as having a special supremacy in Colombian law.[68] However, the decision's central argument was that separating Losice from her mother would not be in her best interest, since her father in Argentina did not have time to take care of her since he works.

The judge mentioned the issue regarding domestic violence, but it did not address it as being a "grave risk" under article 13(1)(b). This judgment favored Ivette but it was based on a stereotype that the child would be better with the mother, since the father is the one that works. This argument would later affect Ivette since it was the basis for the appeal made by the council of Marcelo. In general, the decision of this judge encompasses to conflicting views. On one side, the judge accepts the possibility of introducing external rules outside of private international law to solve the case. On the other hand, he decides to solve the case under a stereotypical assumption of women's role in society. Hence he debunked the concerned presented earlier regarding the Latin American tradition of favoring sovereignty and regional values. But he confirms the fact that sexism permeates judicial institutions.

2. Second instance decision

The second instance in this case was the Superior Tribunal of Ibagué who accepted the appeal in October the 5th 2016. During the process of review, the Argentinian Central Authority communicated with the ICBF and the Superior Tribunal of Ibagué

[67] Proceso RN:73001311004, (Juzgado Cuarto de Familia del Circuito de Ibagué, 2016).

[68] Id. at.

urging both to upheld the rightful application of The Hague Convention of 1980. Further, Argentina communicated with the special judge appointed in Colombia to support and guide other judges in the application of The Hague Convention. Judge Jaime Londoño Salazar emitted a communication urging the Superior Tribunal of Ibagué to revoke the first instance decision, because in his view there had been an improper application of the Convention as no exception of article 13 was raised by the lower tribunal.[69] On the 10th of March 2017, the Superior Tribunal of Ibagué took into account the arguments presented by Marcelo, which were in line with the considerations expressed by Judge Londoño and the government of Argentina and revoked the first instance judgement, ordering the immediate restitution of the Losice girl.[70]

3. Supreme Court's decision

In June of 2017, Ivette Nieto and the Family Official, that had known about the case since the very beginning, presented a constitutional remedy called "tutela" against the decision of the High Tribunal of Ibagué arguing a violation to the fundamental right of due process. According to the applicants there was a violation to the right of due process since the Tribunal failed to acknowledge several key facts of the case including the allegations of domestic violence. Further, they argued that the decision of the Tribunal endangered the rights of Losice since there was a "great risk" of returning to a violent home. Both the Central Authority -ICBF- and Judge Londoño reaffirmed their arguments presented at the High Tribunal of Ibagué, manifesting that the first instance decision disregarded The Hague Convention of 1980. The Supreme Court evaluated several arguments brought in the previous judicial instances including the application of the Convention on the Rights of Children. The Supreme Court acknowledged that in fact the High Tribunal of Ibagué neglected to

[69] Fallo de Apelación Proceso RN:73001311004, (Tribunal Superior Distrito Judicial Ibagué, Sala Civil, 2017).

[70] Id. at.

consider the allegations of domestic violence, but still it did not address article 13.[71] The Supreme Court in the end decided to revoke the second instance decision and it ordered the High Tribunal of Ibagué to take a decision again taking into consideration the facts and issues that were overlooked. Ten days later, the High Tribunal of Ibagué issued a new decision confirming the first instance decision of September 2016. In its judgement the Tribunal emphatically stated that it was complying with the order of the Supreme Court by issuing a new judgement.

There was a general backlash against the decisions of the High Tribunal and the Supreme Court. Some even suggested that it was a result of the pressure that Ivette Nieto had created by appealing to the congress, the President of the Republic and public media.[72] In that sense, the Argentinian Embassy, Mr. Londoño and the ICBF requested the Constitutional Court (which is the highest tribunal of Colombia in charge of safekeeping the constitution and the review of "tutelas" all across the country) to review again the decision of the Supreme Court of Justice.[73] The purpose of this review as stated by Argentina and Mr. Londoño is to uphold the rightful and appropriate application of The Hague Convention of 1980.

Undoubtedly, the first judicial decision of September 2016 contains several mistakes that will influence the review of the Constitutional Court. The judge favored Ivette Nieto, but it failed to recognize her as a victim of domestic violence and its relation with the exception of "grave risk" under article 13 of The Hague Convention. The Constitutional Court will have a very difficult job in defending the legality of the first instance decision. But at the same time, the Court will have the opportunity to finally address the interpretation of article 13. No other high tribunal in Colombia has ever attempted to do it and the decision itself will serve as a future precedent for all judicial

[71] Acción de Tutela - STC9528-2017, (Corte Suprema de Justicia de Colombia, 2017).

[72] Carol Malaver, *'Yo amo a mi hija y estoy haciendo lo que un buen padre haría'*, EL TIEMPO, 2017.

[73] Jorge Londoño Salazar, Solicitud de Escogencia y Revisión Tutelas 11001-02-03-000-2017 y 11001-02-03-000-2017-01469-01 restitución internacinal - Ivette Johana Nieto v. Tribuanal Superior de Ibagué (Corte Constitucional de Colombia ed., 2017).

and administrative authorities in Colombia. The Court will also have the task to define and establish how different rules under international law, which are part of Colombian law, interact with each other in the application of The Hague Convention of 1980. The next section will address precisely this issue before turning to the proposed interpretation of article 13.

III. RULES UNDER INTERNATIONAL LAW THAT ARE APPLICABLE TO THE INTERPRETATION OF ARTICLE 13

The Hague Conference's draft document on good practices regarding the application of article 13 and domestic violence outlines many of the topics of international law that are to be taken in consideration in the application of this article. As it has been previously established, the draft document does not address the relation between article 13 and other rules of international law. This section seeks to study precisely that relation.

First, I will address the issue of fragmentation and isolation of private international law. Second. I will study the relation between private international and human rights law; pointing out how the universality and supremacy of certain rules under human rights law result to be transversal and omnipresent in every area of international law regardless of the isolation of private international law. Finally, this section will analyze the legal framework of women's and children's rights, setting the normative background that the Colombian Constitutional Court will have to take into account in its interpretation of article 13(b).

A. Fragmentation and the isolation of private international law

The International Law Commission's report headed by Marti Koskenniemi establishes that the fragmentation of international law reflects the rapid expansion of international legal activity into various new fields and the diversification of its

objects and techniques.[74] Further, it also provides that this phenomenon can also create the danger of conflicting and incompatible rules, principles, rule-systems and institutional practices.[75] It is clear from the ILC's report, that the phenomenon of fragmentation does not intend to provide solutions to the conflicts between rules and systems.[76] However, the study of fragmentation allows us to analyze private international law from a different point of view, observing it's dynamics and interactions with other areas of international law. I will first address the question on how does private international law fit within international law. Then I will refer to the conceptual distinction between "public" and "private." Third it will be argued how such distinction has caused an isolation of private international law.

1. Private international law is part of International Law

International law is not a random collection of norms.[77] According to the ILC's report there are meaningful relations between them. Norms may thus exist at higher and lower hierarchical levels, their formulation may involve greater or lesser generality and specificity and their validity may date back to earlier or later moments in time.[78] Hence the norms of international law operate as a system.[79] There is a debate addressed amply by several scholars regarding the systemic nature of international law. But for the purposes of this text, I will refrain from addressing that debate. The crucial point of analysis lies on defining whether or not to place private international law within the system of norms of international law. To answer this question, I will refer to the definitions of both concepts. Second I will refer to the meaningful relation

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[74] Martti Koskenniemi, Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law. Report of the Study Group of the International Law Commission. (International Law Comission 2006).

[75] Id. at.

[76] Id. at.

[77] Id. at.

[78] Matti Koskenniemi, *Fragmentation of international law: difficulties arising from the diversification and expansion of international law: Report of the study group of the international law commission*, (2014).

[79] Joost Pauwelyn, *Bridging fragmentation and unity: International law as a universe of inter-connected islands*, 25 MICH. J. INT'L L. (2003).

between norms for both branches and finally I will address how private international law is configured as a subsystem under international law.

International law has been defined as the system of norms regulating the relations between States, individuals and international organizations.[80] Private international law on the other hand, has been defined as a system of rules regulating the conflict of laws between States.[81] These definitions would initially suggest that both areas are built upon norms. Further it could also be argued that they regulate different issues. But these differences are not sufficient to vanish private international law as being fundamentally outside of international law.

Koskenniemi argued that there was a meaningful interaction of norms within International law. Are there norms in common of both private and international law? The answer is yes, their regulations are based on the same legal instruments: treaties, custom and principles. Private international law does not intend to work outside of the sources of international law of this parameters. Fragmentation suggests that subsystems may develop within the general system of international law.[82] Pulkowski establishes that subsystems in international law appear to operate more autonomously from general international law once they attain a high degree of regulatory 'thickness' and institutionalization.[83] The rules of private international law are more specialized and have developed through The Hague Conference. In consequence is accurate to affirm that private international is a subsystem within international law.

2. The artificial distinction of Private and Public international law: a historical tradition and a result of legal education

[80] JAMES CRAWFORD, BROWNLIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW (Oxford University Press. 2012).

[81] FAWCETT & CARRUTHERS. 2008.

[82] Dirk Pulkowski, *Narratives of fragmentation: International law between unity and multiplicity*, ESIL AGORA PAPER (3) (2005).

[83] Id. at.

Having clarified this first issue, the question regarding the distinction of "public" and "private" remains. The history of private international law in fact is considered to have developed independently from the Westphalian Peace Agreement[84]. Courts and judicial systems all across the European continent were developing rules to solve conflicts. Later in the XIX century States decided to include many of these rules in treaties.[85] Hence, historically there has been a distinction between private and public international law. This apparent distinction has been reinforced by legal education as pointed out by Joel R. Paul.[86] Legal education sets out a complete separation between the disciplines, as most students don't see private international law in their international law course, reaffirming the fragmentation between them.[87]

In contrast, many scholar have called this distinction a myth.[88] A political distinction created by tradition, rather than a distinction based on fundamental differences as the sources for both disciplines are the same.[89] This criticism does not seek to deny the fact that private international law regulates certain matters in the sphere of domestic law, that are very different to subjects of international law such as statehood or the use of force. But the purpose of this section is to stop looking at private international as a different realm or like an outsider. The dichotomy between private and public apart from specializing each field, results in narrowing the view of international law as a whole. And this can be also evidenced in the approaches to address the problematic of domestic violence and The Hague Convention. To solve

[84] Hessel E Yntema, *The Historic Bases of Private International Law*, THE AMERICAN JOURNAL OF COMPARATIVE LAW (1953).

[85] Id. at.

[86] Joel R Paul, *The isolation of private international law*, 7 WIS. INT'L LJ (1988).

[87] Id. at.

[88] Harold G Maier, *Extraterritorial jurisdiction at a crossroads: An intersection between public and private international law*, 76 AMERICAN JOURNAL OF INTERNATIONAL LAW (1982).

[89] John R Stevenson, *The Relationship of Private International Law to Public International Law*, 52 COLUMBIA LAW REVIEW (1952).

this issue private international requires to be more flexible and accept all of the resources to its disposal.

3. The isolation of private international: A miss conception of a self-contained subsystem

Further this distinction has isolated private international. Isolation may be understood as a radical consequence of fragmentation: A normative self-containing subsystem operating by itself with complete independence from other branches.[90] There is an idea of private international law as being a system that regulates its self without the need to interact with other realms. In part, this idea is sustained by how The Hague Conference has developed its workings. The problematic raised by domestic violence in international child abduction cases reflects how insufficient private international results to be if it seeks solutions only found within The Hague Conference's system. And this text, seeks precisely to show that The Hague Convention requires to be analyzed taking other relevant rules of international law into account.

In consequence, it is possible to reaffirm that private international law is a subsystem of international law and that the distinction between public and private reflects a tradition reinforced by legal education, rather than a fundamental difference between both disciplines. Further this distinction has isolated private international law. But this subsystem is not entirely self-contained, as this articles proposes several ways to apply other relevant rules of international law.

B. Human rights law, private international law and The Hague Convention of 1980

As it was previously stated The Hague Convention of 1980 was unprecedented since it came to regulate a very complex family affair: a dispute of custody. However,

[90] Bruno Simma & Dirk Pulkowski, *Leges Speciales and self-contained regimes*, THE LAW OF INTERNATIONAL RESPONSIBILITY (2010).

circumstances involving child abductions as the Losice case has shown, go far beyond a conflict of family law. The judicial cases of child abductions deal with the rights of children and as it has been argued, they also have a great impact in the rights of women. It must be emphasized again, that more than half of the requests of international restitution of children are against women. Here again, we can evidence the phenomenon of fragmentation, this time between private international law and human rights, more specifically between The Hague Convention of 1980 and the international legal frameworks regarding the protection women and children. The question posed in this section is whether there is a common framework of human rights law applicable to private international law? I will first address this question by discussing the universality of human rights law. Further, I will refer to the relation between human rights law and private international law. Finally, I will describe the mechanism by which the influence of human rights law towards private international law is unavoidable.

The UN High Commissioner on Human Rights has defined human rights as being inherent to all human beings, whatever the nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status; these rights are all interrelated, interdependent and indivisible and are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law.[91] This concept of human rights may be approached from a critical perspective and in many ways it is undebatable that there are legitimate concerns on the political ideology behind this concept.[92] Even more, when using the term “universality” it is unavoidable to enter into a discussion about multiculturalism.[93] But for the purposes of this text and taking the controversy

[91] United Nations High Comissioner for Human Rights, *What are human rights?*, *available at* http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx.

[92] MAKAU MUTUA, HUMAN RIGHTS: A POLITICAL AND CULTURAL CRITIQUE (University of Pennsylvania Press. 2013);Monisha Bajaj, *Human rights education: Ideology, location, and approaches*, 33 HUMAN RIGHTS QUARTERLY (2011).

[93] ABDULLAHI AHMED AN-NA'IM, HUMAN RIGHTS IN CROSS-CULTURAL PERSPECTIVES: A QUEST FOR CONSENSUS (University of Pennsylvania Press. 2010);Abdullahi A An-Na'im & Louis Henkin, Islam and human rights: Beyond

aside, its undisputed how the idea of “human rights” has become a constant component of legal reasoning.

Henkin was right at pointing out that despite philosophical and anthropological concerns, the political universality of human rights is virtually undeniable.[94] In order to make this assertion, Henkin described the multiple global and diverse instances in which States have committed to the concept of human rights through conferences, treaties and even by domestic law.[95] To illustrate further Henkin refers to how the Universal Declaration of Human Rights of 1948 was accepted by almost all States in the world.[96] Hence, it is possible to conclude that human rights are in fact universal. It is very important to clarify, that the universality of human rights does not result in establishing their hierarchy over other norms. Instead, the universality of human rights sets a common ground that results to be transversal in every issue dealing with an individual. This common ground is extended to the issues regulated by private international law. Consequently, The Hague Convention of 1980 dealing with children and their parents cannot avoid the universality of human rights and the common ground it has established.

Both Human rights law and private international law are subsystems within international law. Both of these subsystems are built up on the same sources (treaties, custom, principles) as laid out previously. But there is a substantial difference in the way both systems address the issues they have set out to regulate. Human rights law recognizes the contributions of both global and regional tribunals/bodies that make legal contributions towards the protection of rights. On the other hand, The Hague Conference does not serve as a body entrusted with the

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the universality debate (JSTOR 2000);Jack Donnelly, *The relative universality of human rights*, 29 HUMAN RIGHTS QUARTERLY (2007).

[94] Louis Henkin, *The universality of the concept of human rights*, 506 THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE (1989).

[95] Id. at.

[96] Id. at.

interpretation of the conventions of private international law and when it delivers a guide of good practices these documents are not mandatory.[97] Private international law does not use or makes reference to sources outside of the system restrictively delimitated by The Hague Conference. Hence, it works as a self-contained system, pretending to find all answers and solutions within. This is perhaps the fundamental problem of The Hague Convention of 1980 in dealing with the cases of international child abductions that involve domestic violence: It has limited resources to address the allegations of violence against women and taking into account it is isolated from the human rights law framework it's just insufficient.

Despite the isolation of private international law there are two mechanisms by which human rights law may still shape the provisions of The Hague Convention of 1980. First, the existence of *jus cogens* norms sets forward a hierarchy within the system of norms of international law. This entails that no rule under international may contravene a *jus cogens* norm.[98] Even the first instance judge in the Losice case recognized how *jus cogens* were to be taken into consideration. Second, through the application of article 31 of the Vienna Convention of the Law of Treaties (hereinafter "VCLT), the provisions of The Hague Convention of 1980 may be interpreted taking into consideration other rules under international law applicable. These mechanisms will play a crucial role in the Constitutional Court's ruling and certainly are key in order to address the problematic of domestic violence. The subsequent subsections will address the scope and content of the legal framework for the protection of women's and children rights.

1. Women's rights, gender perspective and international law

Ivette the mother of the Losice girl, whose case is going to be reviewed by the Constitutional Court later this year, faced three different judicial instances where

[97] De Almeida, et al., REVISTA BRASILEIRA DE DIREITO, (2017).; Law. 2003;Van Loon, HAGUE JUSTICE JOURNAL, (2007).

[98] Vienna Convention on the Law of Treaties, 23 May 1969, 1155 U.N.T.S. 33130, art. 53

without exception judges failed or omitted to recognize or address the events of domestic violence that she had alleged. Further the first instance judge that ruled in her favor did it on the basis that Ivette as a mother would be at home, taking care of Losice. While the father who had to work full time, could not take care of the girl. The Losice case is an example of why it's necessary to bring women's rights into play, when dealing with cases of international child abductions, since many of these decisions are reproducing gender stereotypes that inflict and violate human rights. I will first describe the general contents and status of women's rights under international law. Second, I will examine the prohibition of discrimination against women. Finally, this will lead to an argument on gender perspective and treaty interpretation.

The United Nations Charter in 1945 provided under article 1 to promote respect for human rights and fundamental freedoms "without distinction as to race, sex, language or religion."[99] In 1948, the Universal Declaration of Human Rights proclaimed the protection of equal rights for women and men.[100] Later in the 1960's the international covenants on political and economic rights reaffirmed equal treatment of women and men without distinction.[101] In I979, the General Assembly of the UN recognized that despite the existence of other instruments, women still do not enjoy equal rights with men. Consequently, the Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women.[102] Further, regional instruments of human rights also incorporated the provision of guaranteeing equal rights between women and men, as is the case of the European Convention on Human Rights and Fundamental Freedoms in 1953,[103] the American

[99] United Nations Charter, 24 October 1945, 1 U.N.T.S XVI, article 1

[100] G.A. Res.217A (III) (1948) Universal Declaration on Human Rights

[101] International Covenant on Civil and Political Rights, 16 December 1966, 999 U.N.T.S. 17; International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 U.N.T.S. 3

[102] Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, 1249 U.N.T.S. 13.

[103] European Convention of Human Rights, 4 November 1950, 213 U.N.T.S. 222

Convention on Human Rights in 1969,[104] the African Charter on Human and Peoples' Rights in 1981.[105] Moreover, the OAS adopted the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará Convention) in 1994.[106] In 2011, the Council of Europe adopted a new Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).[107] As it can be observed there are both global and regional instruments that have created a legal framework establishing that States must guarantee equal rights to women. Hillary Clinton famously said back in 1995 before the United Nations World Conference on Women that "*women's rights are human rights,"*[108] These words perfectly characterize the importance of women's rights within human rights law.

The previous paragraph laid out the normative background supporting the protection of women's rights. In that sense, the prohibition of discrimination is central in protecting women's rights.[109] The CEDAW has defined discrimination as any restriction which has the effect of nullifying or impairing the enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life of women.[110] Discrimination can be direct or indirect. Indirect discrimination refers to those measures that are apparently gender neutral but have a disproportionate impact on women, limiting

[104] American Convention on Human Rights, 18 July 1978, 1144 U.N.T.S. 123

[105] African Charter on Human and Peoples' Rights, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982)

[106] Organization of American States (OAS), Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belem do Para"), 9 June 1994, available at: http://www.refworld.org/docid/3ae6b38b1c.html [accessed 15 May 2018]

[107] Council of Europe, The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence , November 2014, ISBN 978-92-871-7990-6, available at: http://www.refworld.org/docid/548165c94.html [accessed 15 May 2018]

[108] Hillary Rodham Clinton, *Womens' rights are human rights*, 61 VITAL SPEECHES OF THE DAY (1995).

[109] Lisa Baldez, *The UN Convention to Eliminate All Forms of Discrimination Against Women (CEDAW): A new way to measure women's interests*, 7 POLITICS & GENDER (2011).

[110] Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, 1249 U.N.T.S. 13, art. 1.

their exercise of human rights.[111] Further the prohibition on discrimination is argued to be a *jus cogens* norm under international law.[112] There are several scholars that are very critical to the idea of suddenly establishing that certain rules bear a peremptory character, because it affects the functioning of international law.[113] Having that said, in the case of the prohibition of discrimination it was the Interamerican Court of Human Rights who recognized through an advisory opinion that the prohibition against discrimination was a *jus cogens* norm. This issue will be retaken on the review of the Losice case, since it could be crucial on analyzing the application of article 13 of The Hague Convention of 1980.

A part from being able to argue that the prohibition of discrimination against women is in fact a *jus cogens* norm under international law, there is another important aspect to be taken into consideration when taking upon international child abductions: gender perspective. Discrimination against women is recognized as being the result of how society has constructed gender relations. Gender refers to socially constructed identities, attributes and roles for women and men.[114] Society's social construction of gender creates hierarchical relationships between women and men. To be conscious of gender allows us to understand how women and men experience

[111] Leonid Raihman v. Latvia, Communication, U.N. Doc. CCPR/C/100/D/1621/2007, ¶8.4; Cecilia Derksen v. Netherlands, Communication, UN Doc. CCPR/C/80/D/976/2001, ¶9.3; CESCR, General Comment No. 20, *Non-Discrimination in Economic, Social and Cultural Rights*, UN Doc. E/C.12/GC/20 (2009), ¶10(b); HRC, General Comment No. 18, *Non-Discrimination*, UN Doc. HRI/GEN/1/Rev.1 (1994), ¶12; CERD, General Recommendation No. 14, *Definition of Discrimination*, UN Doc. A/48/18 (1993), ¶1.

[112]Juridical Condition and Rights of Undocumented Migrants, Advisory Opinion, 2003 IACHR ¶¶97-101; GA Res. 47/135 (XLVII) (1992), *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*; UN ILC, DRAFT ARTICLES ON THE RESPONSIBILITY OF STATES FOR INTERNATIONALLY WRONGFUL ACTS WITH COMMENTARIES, UN DOC. A/56/10 (2001), art. 53 ["ARSIWA"].

[113] Andrea Bianchi, *Human rights and the magic of jus cogens*, 19 EUROPEAN JOURNAL OF INTERNATIONAL LAW (2008);Anthony D'amato, *It's a bird, it's a plane, it's jus cogens*, 6 CONN. J. INT'L L. (1990);Bruno Simma & Philip Alston, *The sources of human rights law: custom, jus cogens, and general principles*, 12 AUST. YBIL (1988).

[114] RG Biholar, Transforming discriminatory sex roles and gender stereotyping: the implementation of Article 5 (a) CEDAW for the realisation of women's right to be free from gender-based violence in Jamaica (Utrecht University. 2013).; World Health Organization, Preventing gender-biased sex selection: an interagency statement-OHCHR, UNFPA, UNICEF, UN Women and WHO, (2011).; International Commission of Jurists (ICJ), Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity, March 2007, available at:http://www.refworld.org/docid/48244e602.html [accessed 15 May 2018]

human rights violations differently.[115] This consciousness about gender was in fact recognized during the 10th meeting of persons chairing human rights treaty bodies in 1998 before the UN.[116] During this meeting, the participants agreed to integrate the gender perspective into the work of United Nations human rights treaty bodies.

This integration is often called gender mainstreaming, which is the process of assessing the implications for women and men of any planned action, including judicial decisions, legislation, policies or programs, in all areas and at all levels.[117] It's important to clarify that gender mainstreaming also recognizes the different intersections of ethnicity, nationality, sexual orientation, age and disability that may take place.[118] Hence, under the legal framework to protect human rights the decisions and policies of States must consider how will those actions affect women.

In conclusion, the international legal framework for the protection of women's rights sets forward to important elements that might shape the interpretation of article 13 of Hague Convention of 1980: First, the prohibition against discrimination is considered to be a jus cogens norm under international law. Second, human rights treaties must be interpreted according to gender perspective. How does gender perspective affect treaty interpretation in general? Does it modify article 31 of the Vienna Convention of the law of treaties? These questions will be addressed in the next section, when addressing the Constitutional Court's review of the Losice case.

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[115] Mary Daly, *Gender mainstreaming in theory and practice*, 12 SOCIAL POLITICS: INTERNATIONAL STUDIES IN GENDER, STATE & SOCIETY (2005).

[116] UN/ HRI/MC/1998/6 International Human Rights Instruments: Integrating the gender perspective into the work of United Nations human rights treaty bodies, Report by the Secretary-General (1998)

[117] Caroline Moser & Annalise Moser, *Gender mainstreaming since Beijing: a review of success and limitations in international institutions*, 13 GENDER & DEVELOPMENT (2005).

[118] Hans-Joachim Bürkner, *Intersectionality: How gender studies might inspire the analysis of social inequality among migrants*, 18 POPULATION, SPACE AND PLACE (2012);Kimberle Crenshaw, *Intersectionality and identity politics: Learning from violence against women of color*, (1997);Mieke Verloo, *Multiple inequalities, intersectionality and the European Union*, 13 EUROPEAN JOURNAL OF WOMEN'S STUDIES (2006).

2. The supremacy of Children's rights under international law

The Hague Convention of 1980 was created to protect children internationally from the harmful effects of their wrongful removal or retention. In the Losice case it is evidenced how on one side the Colombian Central Authority and the Argentinian government want to protect the Losice girl from being illegally retained and on the other side her mother is trying to protect her from returning to a home where she could be a victim of domestic violence. The central question addressed by the three judicial instances that took the case, was regarding the that decision would be better in order to guarantee the rights of the Losice girl. This section will first dwell on the international legal framework for the protection of children and the I will address the best interest principle and its interactions with other rules under international law.

The Convention on the Rights of the Child of 1989 is the legal cornerstone to understand the rights of children.[119] As recognized by UNICEF, this Convention provides the rights that must be realized for children to develop their full potential, protecting them from hunger, abandonment, neglect and abuse.[120] Further, this Convention created a change on the legal status of children everywhere by rejecting former conceptions of children being property of their parents or as helpless objects of charity.[121] This new legal framework provided that children are human beings and are the subject of their own rights.

Article 3 of the Convention on the Rights of the Child establishes that the *best interests of the child* shall be a primary consideration in all actions affecting children.[122] Although the Convention does not provide an specific definition, the

[119] Convention on the Rights of the Child, 20 November 1989, 1577 U.N.T.S. 3.

[120] UNICEF, THE STATE OF THE WORLD'S CHILDREN-SPECIAL EDITION: CELEBRATING 20 YEARS ON THE CONVENTION ON THE RIGHTS OF THE CHILD: EXECUTIVE SUMMARY (Unicef. 2009).

[121] UNICEF, *Understanding th CRC*(2011), *available at* https://www.unicef.org/malaysia/UNICEF_FS_-_Understanding_the_CRC.pdf.

[122] Convention on the Rights of the Child, 20 November 1989, 1577 U.N.T.S. 3.

Committee on the Rights of Children,[123] and several scholars establish that the best interest of the child refers to the guaranteeing his/her well-being.[124] Well-being is determined by a variety of individual circumstances, such as the age, the level of maturity of the child, the presence or absence of parents, the child's environment and experiences.[125] Furthermore, it has also been recognized that this rule is also applicable to international child abduction cases.[126]

As it can be observed Children have a special status of protection within international law. Under the international framework for the protection of children's rights States are obliged to apply the best interest principle by which every action involving children must be valued to see whether or not it guarantees their wellbeing.

In conclusion, despite the fact that private international is isolated, human rights law can still impact the Constitutional Court's review of article 13 of The Hague Convention of 1980. Jus cogens norms and the general rule of interpretation of treaties are mechanisms under which article 13 will be tested, taking into consideration the international legal frameworks for the protection of women and children.

IV. LEGAL ANALYSIS OF THE *LOSICE* CASE: INTERPRETING ARTICLE 13(B)

Colombia's Constitutional Court will have a unique opportunity to address and review many of the issues mentioned before throughout this text. The Court will probably receive arguments from the ICBF (The Central Authority) and Judge Jaime Londoño

[123] UN Committee on the Rights of the Child (CRC), General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, CRC /C/GC/14

[124] MICHAEL DA FREEMAN & ANDRÉ ALEN, ARTICLE 3: THE BEST INTERESTS OF THE CHILD § 1 (Martinus Nijhoff Leiden. 2007);Andrew Schepard, *Best Interests of the Child*, CHILD CUSTODY PROJECT (2014);Jean Zermatten, Best interests of the child (BRILL 2015).

[125] FREEMAN & ALEN. 2007;Jean Zermatten, *The best interests of the child principle: Literal analysis and function*, 18 THE INTERNATIONAL JOURNAL OF CHILDREN'S RIGHTS (2010).

[126] Hannah Loo, *In the Child's Best Interests: Examining International Child Abduction, Adoption and Asylum*, 17 CHI. J. INT'L L. (2016).

persuading the high tribunal to reject Ivette's constitutional legal action. And as stated before the first instance decision is not very favorable to Ivette since the decision completely disregarded the provisions of The Hague Convention of 1980.

Despite the fact that Ivette's constitutional remedy was raised under the argument that the second instance decision violated her right of due process, the Court will still have to review the allegations of domestic violence and how this circumstance affects the application of article 13 (b), which states that:

> *"(…) the judicial or administrative authority of the requested State is not bound to order the return of the child if there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation."*[127]

The Constitutional Court may rely on several sources both from domestic law and international law to address this issue, however if the purpose is to interpret such provision, it must abide by the application of the general rule of interpretation of treaties. This section will analyze the interpretation of the term "grave risk" in application of the Vienna Convention of the law of the treaties, to finally conclude that domestic violence is in fact included under article 13 (b). Article 31 of the Vienna Convention on the Law of treaties provides that a treaty must be interpreted in good faith in accordance with the ordinary meaning[128] to be given to the terms of the treaty in their context and in light of its object and purpose.[129] I will examine each of the abovementioned requirements.

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[127] Hague Convention on the Civil Aspects of International Child Abduction. 25 October 1980.

[128] *Case Concerning The Arbitral Award of 31 July 1989*, (Guinea-Bissau v. Senegal), Judgment, 1990 ICJ, ¶48.

[129] VCLT, art. 31; *Aguas del Tunari,* S.A v. Republic of Bolivia*,* ICSID Case No.ARB/02/3, Arbitral Award, 2005 ¶91.

A. Ordinary meaning of the term "Grave Risk"

Dictionaries are widely used by international tribunals to ascertain the ordinary meaning of a term.[130] "Grave" means "urgent and very bad"[131], "serious"[132] and "risk" refers to "danger, or the possibility of danger, defeat, or loss."[133] None of these terms are conclusive, nor do they provide sufficient content of what circumstances may represent a grave risk to children. Hence, it is necessary to recur to the context and object and purpose of The Hague Convention of 1980.

B. The term "Grave Risk" in context does include domestic violence

The context serves as a qualifier of the ordinary meaning[134] and it refers to the text of the whole treaty, including its preamble and annexes.[135] Further article 31 provides that together with the context, it shall be taken into account:

> *"(..) (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;*
>
> *(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;*
>
> *(c) any relevant rules of international law applicable in the relations between the parties*."

Taking into consideration the multiple elements contained within this step of the general rule of interpretation of treaties, I will first apply the *chapeaux* of article 31(2).

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[130] *Canada- Measures Affecting the Export of Civilian Aircraft,* (Brazil v. Canada), 1992 WTO Appellate Body Report,¶154; *United States Measures Affecting the Cross-Border Supply of Gambling and Betting Services* (Antigua and Barbuda v. USA), 2013 WTO Appellate Body, ¶¶164-165; *United States- Final Dumping Determination on Softwood Lumber from Canada* (Canada v. USA), 2006 WTO Appellate Body Report, ¶59.

[131] Cambridge Dictionary, Cambridge dictionaries online (Cambridge University Press, Cambridge, UK 2015).

[132] Id. at.

[133] Id. at.

[134] RICHARD K GARDINER, TREATY INTERPRETATION (Oxford University Press, USA. 2015)..

[135] Ibid.

Second, I will examine clause (c) wish refers to relevant rules of international law applicable to the context. Third, I will address how relevant rules of international law applicable to the context may in fact collide and I will propose a solution. I will refrain from referring to (a) and (b) since there are no subsequent agreements to The Hague Convention of 1980, nor consistent practice, between Colombia and Argentina, which are the two States involved.

1. *The text of Hague Convention of 1980 gives a restrictive view of the exceptions of article 13(b)*

In this section in order to apply the chapeaux of article 31(2), I must refer to both the wording or article 13 and the rest of the text of The Hague Convention of 1980. First, the text of article 13 of The Hague Convention of 1980 prioritizes the well-being of the Children. And not whether the return would place another party's safety at grave risk.[136] Second, the wording of article 13(b) conditions the exception of "grave risk" to specific circumstances that will likely take place in the future. Consequently, when assessing the existence of a "great risk" the analysis of facts must not be limited to those that existed prior to or at the time of the wrongful removal or retention. Instead, it requires a look to the circumstances as they would be if the child is returned. Further article 13 contains three different categories of risk: physical harm, psychological harm and to place the child in an intolerable situation. These categories are often argued individually or as being intertwined. The specific circumstances included within these categories depend of a case by case analysis.

Second, a complete revision of the text of The Hague Convention of 1980, allow us to conclude that the wrongful removal or retention of a child is generally prejudicial to the child's well-being and that, in the majority of cases, it will be in the best interests of the child to return to the State of habitual residence. When comparing article, 13 and other provisions, this article reflects an exceptional character. This conclusion is supported by the Explanatory Report of The Hague Convention of 1980

[136] Law. 2017.

published by The Hague Conference, affirming that the exceptions "must be applied only so far as they go but no further", thus "in a restrictive fashion if the Convention is not to become a dead letter."[137]

After this initial analysis is possible to conclude that an argument of domestic violence is difficult to trigger the "grave risk" exception of article 13(b), for three main reasons: First, the restrictive character of this provision does not favor a more extensive understanding of domestic violence as a grave risk. Second, the wording of article 13 omits to take into consideration the abductor parent, which in cases of domestic violence is essential. Third, the condition of having to look at future events to ascertain the circumstances of risk in a certain way diminishes the past events that a woman victim of domestic violence could have alleged.

Hence, domestic violence is difficult to argue but not impossible and it will depend on the circumstances presented case by case. Now the purpose of this analysis is to present different legal resources that could reduce and limit the difficulties women victims of domestic violence may face when arguing an exception to the international restitution of their children.

2. *By virtue of article 31.2(c) of the VCLT, article 13(b) of The Hague Convention of 1980 is more flexible and allows a wider interpretation*

Article 31.2(b) of the VCLT establishes the context must be taken into account with any relevant rules of international law applicable in the relations between the parties. The term "relevant" makes reference to the rules that relate to the same subject matter of the provisions being interpreted.[138] Which rules under international law relate to international child abductions? Without a question the rules governing the protection of children as contained under the Convention on the Rights of the Child (1989) are applicable. This issue cannot be debated as recognized by The Hague

[137] Vera-Pérez. 1982.

[138] Campbell McLachlan, *The principle of systemic integration and article 31 (3)(c) of the Vienna Convention*, 54 INTERNATIONAL & COMPARATIVE LAW QUARTERLY (2005).

Conference.[139] Now the question is on whether the provisions related to the protection of women's rights are applicable?

Article 13 of The Hague Convention of 1980 prioritizes the protection of children. But it does not completely exclude relevant considerations involving the parents, more specifically in this case mothers. In addition, as mentioned before in this text, the majority of cases of international child restitutions are brought against women. Women's rights have resulted to be directly compromised in these proceedings.

In consequence, although it can be argued that children rights have a priority, it's impossible to affirm that rules related to the protection of women's rights are not applicable to the interpretation of the term "grave risk" of article 13(b).

3. Private international law, women's rights, children's rights and article 13(b): The collision of rules and the solution proposal

As it was concluded in the previous section, the interpretation of the term "grave risk" and the inclusion of domestic violence, may take into consideration provisions coming from the legal frameworks directed to the protection of women's and children's rights. But it is not that simple because these interactions present other challenges, unavoidably these interactions create an uncomfortable discussion to define which set of rules holds supremacy over the other. In this section I will first refer to a preliminary consideration on the status of private international law and the review of the Constitutional Court. Second, I will describe the apparent collisions between the rights of the children and the rights of women. Third, I will present a possible way to solve the conflict arising from these collisions.

i. <u>The distinction of private and public international is irrelevant for the purposes of the interpretation of article 13(b)</u>

[139] Vera-Pérez. 1982.

The Constitutional Court will first have to address how to solve the distinction of private international law and other branches of international law. Colombia embraced monism with its Constitution of 1991.[140] In Colombia, certain rules of international law have constitutional rank as being part of the "*bloque de constitucionalidad."*[141] In this sense, Colombia's Constitutional Court has acknowledged that treaties regulating the protection of human rights are vested with a constitutional rank.[142] In the case of The Hague Convention of 1980, Colombia has granted this instrument a constitutional rank as it seeks to protect the rights of children.[143] In that sense for Colombia the distinction between public and private does not impact the application of the rules that are subject of the discussion, in this text since they all share the same status as having a constitutional rank.

ii. <u>The best interest principle interest v. the protection of women victims of domestic violence</u>

Now following the previous conclusion, we could argue that the norms subject of this analysis have the same hierarchy. In that sense the conflict is more complex, because it would suppose the existence of three equally standing fronts: a) the rights of the child, b) the rights of the mother and c) the compliance to The Hague Convention of 1980. Both the UN Convention of the rights of the Child and The Hague Convention of 1980 share and favor the application of the best interest of the child principle. This principle would suppose an interpretation of the term "grave risk" prioritizing the welfare of the child. On the other side mothers have a right to be

[140] Julián Huertas-Cárdenas, *Monismo moderado colombiano: examen a la teoría oficial de la Corte Constitucional desde la obra de Alfred Verdross*, VNIVERSITAS (2016).; Corte Constitucional de Colombia, *Sentencia C-582 de 1999*, (1999).

[141] Rodrigo Uprimny, *Bloque de constitucionalidad, derechos humanos y nuevo procedimiento penal*, RECUPERADO DE HTTP://WWW. WCL. AMERICAN. EDU/HUMRIGHT/HRACADEMY/DOCUMENTS/CLAS 1LECTURA3BLOQUEDECONSTITUCIONALIDAD. PDF (2006).

[142] Mónica Arango Olaya, *El bloque de constitucionalidad en la jurisprudencia de la Corte Constitucional Colombiana*, PRECEDENTE. REVISTA JURÍDICA (2004).

[143] Corte Constitucional de Colombia, *Sentencia C-239 de 2014,* (2014)

effectively protected from domestic violence and not to be punished by having to return their children.

The practice on the application of The Hague Convention of 1980 demonstrates that in favor of protecting the rights of children and of guaranteeing the best interest principle, the protection of the rights of women may be neglected.[144] Whenever these types of normative collisions occur and in the absence of a clear set of rules that may solve it, courts and tribunals may place both conflicting rights upon a balance to determine which of them may be given greater weight.[145]

And it seems that the best interest of the child principle solves this test very easily. But performing this simple exercise results bittersweet and uncomfortable and it clearly undermines the whole idea of protecting human rights. I refuse to accept that this is the best of solving the contradiction between rules.

iii. The prohibition against discrimination as an orienting source for the interpretation of article 13(b).

In that sense, in order to solve this apparent contradiction between the application of these rules and article 13(b) a starting point must be established, having clarity over what is at stake. Instead of debating whether the rights of children have a greater hierarchy over the rights of women under international law, this issue may be resolved by starting to recognize from the very start that transversal to the application of The Hague Convention of 1980 is the prohibition of discrimination in all its forms. My proposal consists in placing the prohibition against discrimination in the interpretation of article 13(b) as starting point. Now I understand this affirmation

[144] Brian Quillen, The New Face of International Child Abduction: Domestic-Violence Victims and Their Treatment Under the Hague Convention on the Civil Aspects of International Child Abduction, 49 Tex. Int'l LJ (2014).

[145] Julian Rivers, *Proportionality and variable intensity of review*, 65 THE CAMBRIDGE LAW JOURNAL (2006);Alec Stone Sweet & Jud Mathews, *Proportionality balancing and global constitutionalism*, 47 COLUM. J. TRANSNAT'L L. (2008).

may raise several concerns. In practice how would this work and what would the result?

First, I will begin by establishing that The Hague Convention is gender neutral; it never refers to the specific genders of the parents. This measure is very positive since it indirectly recognizes the possibility that same-sex couples are also included. In fact, in 2015 4 cases of international child restitution were registered, involving same-sex couples.[146] If this is happening, then why begin with the prohibition on discrimination as a guide to interpret article 13(b)?

The problematic that has been denounced thorough out the text, showing how The Hague Convention disregards the rights of women victims of domestic violence is in fact a case of indirect discrimination against women. The Convention as it stands today and bearing in mind the restrictiveness of its interpretation does have a disproportionate impact on women that have been victims of domestic violence. The CEDAW has firmly denounced that women face more challenges and difficulties pursuing justice and protection when they are victims of domestic violence.[147] The Hague Convention of 1980 must take this information into account or otherwise it would punishing women who are pursuing protection outside their country of habitual residence.

I am aware that suggesting to apply the prohibition on discrimination as a guiding rule for the interpretation of article 13(b), to avoid incurring in a violation of this prohibition is probably not sufficient. However, I would like to add another aspect of this argument which is relevant to Colombia. The Interamerican Court of Human Rights the prohibition against discrimination is *jus cogens* norm under international law.[148] Colombia's Constitutional Court has even gone as far to acknowledge that

[146] Nigel Lowe, A statistical analysis of applications made in 2015 under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. 2017.

[147] (CEDAW).

[148] Juridical Condition and Rights of Undocumented Migrants, Advisory Opinion, 2003 IACHR ¶¶97-101;

the decisions of the IACH whether contentious or as advisory opinions are mandatory and part of the “bloque de constitucionalidad.”[149]

In, conclusion, the interpretation of article 13(b) may be restrictive, but it cannot violate the prohibition against discrimination. This does not mean that I am suggesting that judges should favor women in order not to inflict an indirect discrimination. My argument is that the circumstances of domestic violence must be carefully taken into consideration in application of The Hague Convention of 1980, reviewing each fact with a gender perspective analyzing how the decision would impact women in particular. Having developed this argument, it seems as if I had neglected to refer again to the best interest of the child, since I only addressed the prohibition against discrimination of women. However, I will address this issue in the next section, aligning both legal frameworks.

C. The inclusion of domestic violence under the term “grave risk” of article 13 is consistent with the Object and Purpose of The Hague Convention of 1980

The object and purpose of The Hague Convention of 1980 is to deter both wrongful "removals" of a child from one country to another and wrongful "retentions", assuring the prompt return of the children to their place of origin. This convention seeks to protect the welfare of the child. There is extensive evidence on how domestic violence creates unhealthy psychological consequences to children.[150] There is however a concern on how to justify that events of domestic violence affect a child on its possible return. One could argue that if domestic violence occurred when both of the spouses were together, once they are separated then the events of domestic violence would not occur again. This assumption isolated from other components of article 13(b) would not be completely inaccurate. But observing closely the object and purpose of The Hague Convention of 1980 it would not result in the best interest

[149] Corte Constitucional de Colombia, Sentencia T-524 del 2005, (2005)

[150] FREEMAN. 2006.

of the child. The sole precedent of violence represents a grave risk for the child. Violence is cyclical and it may tend to repeat itself.[151]In that sense, to interpret the inclusion of domestic violence under the term “grave risk” of article 13(b) is consistent with the object and purpose of the Convention. As this interpretation defends children from risk and upholds their rights.

Ivette’s argument before the first instance judge relied on the affirmation that under article 13(b) her daughter should not be returned to Argentina since she was a victim of domestic violence. In accordance with this exercise of interpretation the Constitutional Court will find that it may not order the restitution of the Losice girl since not only it’s in the best interest of the girl, but also because the experience faced by Ivette is relevant and it is another element that cannot be avoided in the Constitutional Court’s review.

IV. CONCLUSION

International child abduction became part of private international law because of the historic intent of this discipline to regulate international family affairs. This unprecedented event has been mark by the fact that the complexity of family conflict, the well-being of the children and the occurrence of domestic violence, put private international law to test. Private international law is a subsystem of international law that is often perceived as being self-contained. But in practice it does not have all the answers to solve the issues that might rise, such as the problematic of domestic violence. These conceptual issues have bear a great impact upon the development and application of The Hague Convention of 1980 in relation to cases involving domestic violence.

The Constitutional Court has unique opportunity to balance and correct a situation that has long affected the rights of women who have been victims of domestic

[151] Dallan F Flake & Renata Forste, *Fighting families: family characteristics associated with domestic violence in five Latin American countries*, 21 JOURNAL OF FAMILY VIOLENCE (2006).; Jeffrey L Edleson, *Children's witnessing of adult domestic violence*, 14 JOURNAL OF INTERPERSONAL VIOLENCE (1999).

violence, who are obliged to give up their children. The Losice case is just one example of the crisis many women suffer trying to find protection against violence and abuse. This text dwelled with the question of interpretation of article 13 of The Hague Convention and whether domestic violence is included under the term “grave risk.” It was possible to conclude that domestic violence is difficult to argue as an exception contained under article 13(b), due to the fact that its interpretation must be restrictive. For that reason, it was necessary to look for other ways in which the application of article 13 could be more flexible, introducing relevant rules of international law. These relevant rules of international come from the legal frameworks for the protection of women’s and children’s rights. Now the application of these rules proved to bring more complexity, since it resulted in a balancing of both. My proposal to solve this apparent conflict consists in starting the interpretation by acknowledging the prohibition against discrimination. This acknowledgement leads to an application of gender perspective to examine how certain decisions could affect women during the restitution process. And finally, in light of the object and purpose of the Convention and in order to align these first steps with the best interests of the child principle, an examination must be made of the events of domestic violence and the impact these events have on children. This proposal contributes to have better legal arguments when facing cases of The Hague Convention of 1980 and it brings a plausible method that could help the flexibilization of article 13.

Women fleeing domestic violence and the problematic caused by the application of The Hague Convention of 1980 is not a new, since the 90s women have stood up to denounce the operation of this convention. Unfortunately, it is still a problematic that is overlooked. For that reason, this text brought forward an issue that requires more attention and action from the perspective of civil society and governmental authorities. Further it is undeniable that we live in particular moment in time, where society demands an unequivocal commitment to defend and protect the rights of women in all possible scenarios. The women’s march of 2016 and the #Metoo

movement have sparked a concern in every industry regarding the treatment of women and the pursuit for equality. Although these events seem to be limited mainstream media, we should not underestimate its impact. Popular culture has established a space for women to come forward denouncing violence in all its forms. As every field and industry reviews the state of women's rights in their respective areas, it's necessary to look into international law and analyze how women's rights are being upheld or whether there are still vacuums that need to be filled. The Hague Conventions of 1980 needs to address this issue more actively and a take stand against domestic violence. There is so much work that still needs to be done from all of the actors involved. The Hague Convention of 1980 cannot continue to be complicit in punishing women for struggling to survive.

"We shine a light on domestic abuse. It is a complicated, insidious disease that exists far more than we allow ourselves to know."[152]

V. BIBLIOGRAPHY

Treaties and Conventions

- African Charter on Human and Peoples' Rights, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982)
- American Convention on Human Rights, 18 July 1978, 1144 U.N.T.S. 123
- Convention of 1902 relating to the settlement of guardianship of minors (Hague Conference on Private International law ed., 1902).
- Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, 1249 U.N.T.S. 13
- Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, 1249 U.N.T.S. 13.
- Convention on the Rights of the Child, 20 November 1989, 1577 U.N.T.S. 3.

[152] Nicole Kidman (2017)

- Europe Convention on Preventing and Combating Violence against Women and Domestic Violence , November 2014, ISBN 978-92-871-7990-6, available at: http://www.refworld.org/docid/548165c94.html [accessed 15 May 2018]
- European Convention of Human Rights, 4 November 1950, 213 U.N.T.S. 222
- Hague Conference on Private International Law, The Hague Convention of 1961 on the Protection of Minors § UNTS 1969, pp. 145 ff (Hague Conference on Private International Law ed., 5 October 1961).
- Hague Convention on the Civil Aspects of International Child Abduction (25 October 1980).
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belem do Para"), 9 June 1994, available at: http://www.refworld.org/docid/3ae6b38b1c.html [accessed 15 May 2018]
- International Covenant on Civil and Political Rights, 16 December 1966, 999 U.N.T.S. 17
- International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 U.N.T.S. 3
- United Nations Charter, 24 October 1945, 1 U.N.T.S XVI, article 1
- Vienna Convention on the Law of Treaties, 23 May 1969, 1155 U.N.T.S. 33130

Domestic law and Regulations

- Código de Infancia y Adolescencia Ley 1098 (2006).
- Decreto 0987 (2012).
- ICBF, Cuestionario sobre el funcionamiento práctico del Convenio de La Haya de 1980 sobre los Aspectos Civiles de la Sustracción Internacional de Menores (2017)
- Instituto Colombiano de Bienestar Familiar, Anexo 1: Restablecimiento internacional de derechos de niñas, niños y adolescentes en el marco de tratados y convenios internacionales del Lineamiento Técnico Administrativo de Ruta de Actuaciones para el Restablecimientoi de Derechos de Niños, Niñas y

Adolescentes con sus Derechos Inobservados, Amenazados o Vulnerados (ICBF 2016).

- Ley 173 de 1994. Congreso de la República de Colombia
- Resolución 1399 de 1998

Case Law

- Acción de Tutela - STC9528-2017, (Corte Suprema de Justicia de Colombia, 2017).
- Corte Constitucional de Colombia, *Sentencia C-239 de 2014,* (2014)
- Corte Constitucional de Colombia, Sentencia T-524 del 2005, (2005)
- Fallo de Apelación Proceso RN:73001311004, (Tribunal Superior Distrito Judicial Ibagué, Sala Civil, 2017).
- Proceso RN:73001311004, (Juzgado Cuarto de Familia del Circuito de Ibagué, 2016).

UN Documents

- G.A. Res.217A (III) (1948) Universal Declaration on Human Rights
- Martti Koskenniemi, Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law. Report of the Study Group of the International Law Commission. (International Law Comission 2006).
- UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 33 Women's access to Justice (2015)
- UN Committee on the Elimination of Discrimination Against Women (CEDAW), UN Committee on the Elimination of Discrimination against Women: State Party Report, Argentina, 11 February 2002, CEDAW/C/ARG/5, available at: http://www.refworld.org/docid/3d638fce4.html [accessed 14 May 2018]
- UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations*, 1994, available at: http://www.refworld.org/docid/48abd52c0.html [accessed 14 May 2018]

- UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 19: Violence against women*, 1992, available at: http://www.refworld.org/docid/52d920c54.html [accessed 14 May 2018]

Books

- ABDULLAHI AHMED AN-NA'IM, HUMAN RIGHTS IN CROSS-CULTURAL PERSPECTIVES: A QUEST FOR CONSENSUS (University of Pennsylvania Press. 2010).
- ALEJANDRO ALVAREZ, INTERNATIONAL LAW AND RELATED SUBJECTS FROM THE POINT OF VIEW OF THE AMERICAN CONTINENT: A REPORT ON LECTURES DELIVERED IN THE UNIVERSITIES OF THE UNITED STATES, 1916-1918, UNDER THE AUSPICES OF THE CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, INCLUDING A COMPARATIVE STUDY OF THE UNIVERSITIES OF LATIN AMRICA AND THE UNITED STATES (The Endowment. 1922).
- Cambridge Dictionary, Cambridge dictionaries online (Cambridge University Press, Cambridge, UK 2015).
- EUGEEN VERHELLEN, CONVENTION ON THE RIGHTS OF THE CHILD: BACKGROUND, MOTIVATION, STRATEGIES, MAIN THEMES (ERIC. 2000).
- JAMES CRAWFORD, BROWNLIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW (Oxford University Press. 2012).
- JAMES J FAWCETT & JANEEN M CARRUTHERS, CHESHIRE, NORTH & FAWCETT PRIVATE INTERNATIONAL LAW § 14 (Oxford University Press Oxford. 2008).
- MAKAU MUTUA, HUMAN RIGHTS: A POLITICAL AND CULTURAL CRITIQUE (University of Pennsylvania Press. 2013).
- MARILYN FREEMAN, INTERNATIONAL CHILD ABDUCTION: THE EFFECTS (Reunite International Child Abduction Centre. 2006).
- MICHAEL DA FREEMAN & ANDRÉ ALEN, ARTICLE 3: THE BEST INTERESTS OF THE CHILD § 1 (Martinus Nijhoff Leiden. 2007).
- PAUL REID BEAUMONT & PETER EUGENE MCELEAVY, THE HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION (Oxford University Press. 1999).

- PAULA S FASS, KIDNAPPED: CHILD ABDUCTION IN AMERICA (Oxford University Press on Demand. 1997).
- RG BIHOLAR, TRANSFORMING DISCRIMINATORY SEX ROLES AND GENDER STEREOTYPING: THE IMPLEMENTATION OF ARTICLE 5 (A) CEDAW FOR THE REALISATION OF WOMEN'S RIGHT TO BE FREE FROM GENDER-BASED VIOLENCE IN JAMAICA (Utrecht University. 2013).
- RICHARD K GARDINER, TREATY INTERPRETATION (Oxford University Press, USA. 2015).
- SALLY ENGLE MERRY, HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE (University of Chicago Press. 2009).
- UNICEF, THE STATE OF THE WORLD'S CHILDREN-SPECIAL EDITION: CELEBRATING 20 YEARS ON THE CONVENTION ON THE RIGHTS OF THE CHILD: EXECUTIVE SUMMARY (Unicef. 2009).

Journals

- Abdullahi A An-Na'im & Louis Henkin, Islam and human rights: Beyond the universality debate (JSTOR 2000).
- Alec Stone Sweet & Jud Mathews, *Proportionality balancing and global constitutionalism*, 47 COLUM. J. TRANSNAT'L L. (2008).
- Alejandro Alvarez, *Latin America and international law*, 3 AMERICAN JOURNAL OF INTERNATIONAL LAW (1909).
- Andrea Bianchi, *Human rights and the magic of jus cogens*, 19 EUROPEAN JOURNAL OF INTERNATIONAL LAW (2008).
- Andrew Schepard, *Best Interests of the Child*, CHILD CUSTODY PROJECT (2014).
- Anthony D'amato, *It's a bird, it's a plane, it's jus cogens*, 6 CONN. J. INT'L L. (1990).
- Brenda Hale, *Taking Flight—Domestic Violence and Child Abduction*, 70 CURRENT LEGAL PROBLEMS (2017).
- Brian Quillen, *The New Face of International Child Abduction: Domestic-Violence Victims and Their Treatment Under the Hague Convention on the Civil Aspects of International Child Abduction*, 49 TEX. INT'L LJ (2014).

- Bruno Simma & Dirk Pulkowski, *Leges Speciales and self-contained regimes*, THE LAW OF INTERNATIONAL RESPONSIBILITY (2010).
- Bruno Simma & Philip Alston, *The sources of human rights law: custom, jus cogens, and general principles*, 12 AUST. YBIL (1988).
- Campbell McLachlan, *The principle of systemic integration and article 31 (3)(c) of the Vienna Convention*, 54 INTERNATIONAL & COMPARATIVE LAW QUARTERLY (2005).
- Carol S Bruch, *The unmet needs of domestic violence victims and their children in Hague child abduction convention cases*, 38 FAMILY LAW QUARTERLY (2004).
- Caroline Moser & Annalise Moser, *Gender mainstreaming since Beijing: a review of success and limitations in international institutions*, 13 GENDER & DEVELOPMENT (2005).
- Claudia Garcia-Moreno, et al., *Prevalence of intimate partner violence: findings from the WHO multi-country study on women's health and domestic violence*, 368 THE LANCET (2006).
- Corte Constitucional de Colombia, *Sentencia C-582 de 1999*, (1999).
- Dallan F Flake & Renata Forste, *Fighting families: family characteristics associated with domestic violence in five Latin American countries*, 21 JOURNAL OF FAMILY VIOLENCE (2006).
- Dirk Pulkowski, *Narratives of fragmentation: International law between unity and multiplicity*, ESIL AGORA PAPER (3) (2005).
- Ernest G Lorenzen, *Pan-American Code of Private International Law*, 4 TUL. L. REV. (1929).
- George AL Droz & Adair Dyer, *The Hague Conference and the Main Issues of Private International Law for the Eighties*, 3 NW. J. INT'L L. & BUS. (1981).
- Hannah Loo, *In the Child's Best Interests: Examining International Child Abduction, Adoption and Asylum*, 17 CHI. J. INT'L L. (2016).
- Hans Van Loon, *The Hague Conference on Private International Law*, 2 HAGUE JUSTICE JOURNAL (2007).

- Hans-Joachim Bürkner, *Intersectionality: How gender studies might inspire the analysis of social inequality among migrants*, 18 POPULATION, SPACE AND PLACE (2012).
- Harold G Maier, *Extraterritorial jurisdiction at a crossroads: An intersection between public and private international law*, 76 AMERICAN JOURNAL OF INTERNATIONAL LAW (1982).
- Hessel E Yntema, *The Historic Bases of Private International Law*, THE AMERICAN JOURNAL OF COMPARATIVE LAW (1953).
- Hillary Rodham Clinton, *Womens' rights are human rights*, 61 VITAL SPEECHES OF THE DAY (1995).
- Jack Donnelly, *The relative universality of human rights*, 29 HUMAN RIGHTS QUARTERLY (2007).
- Janet R Johnston & Linda K Girdner, *Early identification of parents at risk for custody violations and prevention of child abductions*, 36 FAMILY COURT REVIEW (1998).
- Jean Zermatten, Best interests of the child (BRILL 2015).
- Jean Zermatten, *The best interests of the child principle: Literal analysis and function*, 18 THE INTERNATIONAL JOURNAL OF CHILDREN'S RIGHTS (2010).
- Jeffrey L Edleson & Taryn Lindhorst, *Multiple perspectives on battered mothers and their children fleeing to the United States for safety*, (2010).
- Jeffrey L Edleson, *Children's witnessing of adult domestic violence*, 14 JOURNAL OF INTERPERSONAL VIOLENCE (1999).
- Joel R Paul, *The isolation of private international law*, 7 WIS. INT'L LJ (1988).
- John R Stevenson, *The Relationship of Private International Law to Public International Law*, 52 COLUMBIA LAW REVIEW (1952).
- Joost Pauwelyn, *Bridging fragmentation and unity: International law as a universe of inter-connected islands*, 25 MICH. J. INT'L L. (2003).

- Julián Huertas-Cárdenas, *Monismo moderado colombiano: examen a la teoría oficial de la Corte Constitucional desde la obra de Alfred Verdross*, VNIVERSITAS (2016).
- Julian Rivers, *Proportionality and variable intensity of review*, 65 THE CAMBRIDGE LAW JOURNAL (2006).
- Kimberle Crenshaw, *Intersectionality and identity politics: Learning from violence against women of color*, (1997).
- Linda Silberman & Karin Wolfe, *The Importance of Private International Law for Family Issues in an Era of Globalization: Two Case Studies-International Child Abduction and Same-Sex Unions*, 32 HOFSTRA L. REV. (2003).
- Linda Silberman, *Hague Convention on International Child Abduction: A Brief Overview and Case Law Analysis*, FAMILY LAW QUARTERLY (1994).
- Linda Silberman, *Hague International Child Abduction Convention: A Progress Report*, 57 LAW AND CONTEMPORARY PROBLEMS (1994).
- Lisa Baldez, *The UN Convention to Eliminate All Forms of Discrimination Against Women (CEDAW): A new way to measure women's interests*, 7 POLITICS & GENDER (2011).
- Louis Henkin, *The universality of the concept of human rights*, 506 THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE (1989).
- Manuel R Garcia-Mora, *The Calvo Clause in Latin American Constitutions and International Law*, 33 MARQ. L. REV. (1949).
- Mary Daly, *Gender mainstreaming in theory and practice*, 12 SOCIAL POLITICS: INTERNATIONAL STUDIES IN GENDER, STATE & SOCIETY (2005).
- Mary Ellsberg, et al., *Intimate partner violence and women's physical and mental health in the WHO multi-country study on women's health and domestic violence: an observational study*, 371 THE LANCET (2008).
- Matti Koskenniemi, *Fragmentation of international law: difficulties arising from the diversification and expansion of international law: Report of the study group of the international law commission*, (2014).

- Merle H Weiner, *Navigating the Road between Uniformity and Progress: The Need for Purposive Analysis of the Hague Convention on the Civil Aspects on International Child Abduction*, 33 COLUM. HUM. RTS. L. REV. (2001).
- Mieke Verloo, *Multiple inequalities, intersectionality and the European Union*, 13 EUROPEAN JOURNAL OF WOMEN'S STUDIES (2006).
- Mónica Arango Olaya, *El bloque de constitucionalidad en la jurisprudencia de la Corte Constitucional Colombiana*, PRECEDENTE. REVISTA JURÍDICA (2004).
- Monisha Bajaj, *Human rights education: Ideology, location, and approaches*, 33 HUMAN RIGHTS QUARTERLY (2011).
- Neil A Englehart, *CEDAW and Gender Violence: An Empirical Assessment*, MICH. ST. L. REV. (2014).
- Patricia M Hernandez, *The myth of machismo: An everyday reality for Latin American women*, 15. THOMAS L. REV. (2002).
- Rodrigo Uprimny, *Bloque de constitucionalidad, derechos humanos y nuevo procedimiento penal*, RECUPERADO DE http://www/. WCL. AMERICAN. EDU/HUMRIGHT/HRACADEMY/DOCUMENTS/CLAS 1LECTURA3BLOQUEDECONSTITUCIONALIDAD. PDF (2006).
- Sudha Shetty & Jeffrey L Edleson, *Adult domestic violence in cases of international parental child abduction*, 11 VIOLENCE AGAINST WOMEN (2005).
- Violeta Sara-Lafime, *Machismo in Latin America and the Caribbean*, WOMEN IN THE THIRD WORLD: AN ENCYCLOPEDIA OF CONTEMPORARY ISSUES (2014).
- Wilson de Jesus Beserra de Almeida, et al., *The limitations of the hague convention to solve conflicts arising out of international child kidnapping*, 13 REVISTA BRASILEIRA DE DIREITO (2017).
- World Health Organization, *Preventing gender-biased sex selection: an interagency statement-OHCHR, UNFPA, UNICEF, UN Women and WHO*, (2011).

Other documents

- 25 October 1980 on the Civil Aspects of International Child Abduction (2017).

- A statistical analysis of applications made in 2015 under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. (2017).
- Carol Malaver, *'Yo amo a mi hija y estoy haciendo lo que un buen padre haría'*, EL TIEMPO, 2017.
- EL TIEMPO, *Nuevo 'round' en caso de restitución internacional de menor colombiana*(2017), *available at* http://www.eltiempo.com/colombia/otras-ciudades/caso-de-nina-colombiana-envuelto-en-restitucion-internacional-de-menores-107888.
- Elisa Vera-Pérez, Explanatory Report on the 1980 Hague Child Abduction Convention § Tome III (The Hague Conference on Private International Law 1982).
- Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence. . (2013).
- Jorge Londoño Salazar, Solicitud de Escogencia y Revisión Tutelas 11001-02-03-000-2017 y 11001-02-03-000-2017-01469-01 restitución internacinal - Ivette Johana Nieto v. Tribuanal Superior de Ibagué (Corte Constitucional de Colombia ed., 2017).
- Mirela Iverac, *Protecting Kids: Rethinking the Hague Convention*, TIME 2010.
- Permanent Bureau - The Hague Conference on Private International Law, Draft Guide to Good Practice on Article 13(1)(b) of the Hague Convention of
- Prel. Doc. No 11 B of September 2017 - Part II — A statistical analysis of applications made in 2015 under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction — Regional report (Revised version, April 2018). (2018).
- The Goldman School of Public Policy - University of California Berkeley, *The Hague Domestic Violence Project*(2003), *available at* http://gspp.berkeley.edu/global/the-hague-domestic-violence-project.

- The Hague Conference on Private International Law, *List of Central Authorities* (2018), *available at* https://www.hcch.net/en/instruments/conventions/authorities1/?cid=24.
- The Hague Convention on Private International Law, Guide to Good Practice Child Abduction Convention: Part I - Central Authority Practice (The Hague Conference on Private International Law 2003).
- UNICEF, *Understanding th CRC*(2011), *available at* https://www.unicef.org/malaysia/UNICEF_FS_-_Understanding_the_CRC.pdf.
- United Nations High Comissioner for Human Rights, *What are human rights?*, *available at* http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx.