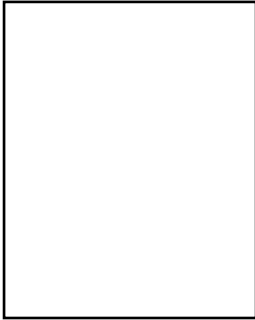




## THE INTERNATIONAL LEGAL REGULATION OF MARITAL RELATIONS AND DETERMINATION OF CHILDREN'S CITIZENSHIP



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**Annotation:** This paper examines the current state of international legal regulation in these areas, focusing on the interplay between traditional conflict-of-laws principles and modern family law developments. It highlights the gaps in existing legal frameworks, and explores how international conventions, such as those established by the Hague Conference on Private International Law, have contributed to addressing cross-border family law disputes. Finally, it offers recommendations for creating a more effective and inclusive framework for regulating marital relations and determining children's citizenship in the globalized era.

**Keywords:** Private international law, international marriage, parental rights, child custody disputes, cross-border adoption, citizenship, jurisdiction in family law, family disputes, nationality, transnational family dynamics, human rights, stateless children, legal protection, Hague Conference on Private International Law.

In today's interconnected world, family structures and relationships increasingly transcend national boundaries. The legal regulation of marital relations and the determination of children's citizenship have become prominent topics in international law, reflecting the growing complexity of cross-border families. These issues involve overlapping areas of public and private international law, making it essential for legal systems to adapt to new challenges arising from globalization, migration, and cultural diversity.

The movement of individuals across borders, whether for work, education, or family reunification, has increased the prevalence of cross-border marriages and multinational families. These families often face unique legal issues, such as the recognition of foreign marriages, enforcement of divorce agreements, and questions about the nationality and legal status of children born to parents from different jurisdictions. The current legal frameworks in many countries are ill-equipped to handle these challenges comprehensively, leading to uncertainty and inconsistencies in outcomes.

This paper examines the current state of international legal regulation in these areas, focusing on the interplay between traditional conflict-of-laws principles and modern family law developments. It highlights the gaps in existing legal frameworks, and explores how international conventions, such as those established by the Hague Conference on Private International Law, have contributed to addressing cross-border family law disputes. Finally, it offers recommendations for creating a more

effective and inclusive framework for regulating marital relations and determining children's citizenship in the globalized era.

Public policies with respect to marriage have been a concern of international human rights law since at least 1948, when the Universal Declaration of Human Rights was adopted, including this language in Article 16: “Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage, and at its dissolution.”<sup>1</sup> The Declaration also stated that “marriages shall be entered into only with the free and full consent of the intending spouses.” These principles were carried forward and elaborated in the 1962 United Nations Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages, the International Covenant on Civil and Political Rights (“ICCPR”), and the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”).

International conflict-of-laws principles, including the Hague Marriage Convention, clearly authorize states to implement these policies by denying recognition of marriages entered into without consent or by a party who has not reached the minimum age. International human rights instruments including CEDAW and the ICCPR also seek to prevent coerced marriages and child marriage.<sup>2</sup> The same principle is reflected in state family laws, which set minimum marriage ages and allow for annulment of marriages entered into under duress. But forced marriage remains a significant global problem and could present conflicts questions with recognition or annulment of foreign marriages

**The Globalization of Family Life.** Globalization has significantly transformed the nature of marriage and family life. As individuals and families move across borders, they bring with them diverse cultural, legal, and social practices that often clash with the norms of their host countries. This has led to an increasing number of cases where courts must navigate conflicting legal systems to resolve family disputes. In many respects, family law litigation resembles other types of civil dispute resolution. Cross-border disputes over marriage, divorce, and parental responsibilities include many of the standard problems of international civil litigation, often in circumstances in which the parties’ resources are severely limited.<sup>3</sup> With family members located in different countries, lawyers may face challenges with serving process<sup>4</sup> and obtaining evidence. In establishing the validity of a foreign marriage or divorce, issues arise regarding document authentication and pleading or proof of foreign law. When parallel proceedings unfold in different jurisdictions, courts wrestle with issues related to forum inconvenience and injunctive relief. Beyond and beneath all of these issues are questions of how judicial jurisdiction should be defined in international cases, and problems for recognition and enforcement of judgments.

For example, a couple married in one country may find their marriage unrecognized in another due to differences in legal definitions of marriage, such as those involving same-sex unions or religious requirements. Similarly, divorced spouses may face challenges enforcing foreign judgments on child support or custody, especially in jurisdictions with differing legal standards or procedures.

The principle of marriage validation (“favor matrimonii”) applies almost universally in conflict of laws and is particularly powerful in the United States. Many family law doctrines reflect these policies, including the recognition of “common law marriage” in many states. The U.S. Supreme Court has found a fundamental right to marry, protected by the Due Process and Equal Protection clauses. Broad recognition for marriage is important. In addition, the rise of dual citizenship and multicultural households has introduced new complexities into family law. Parents from different nationalities often struggle with decisions about their children's citizenship, custody, and upbringing, particularly when their home countries have conflicting legal traditions. These disputes are further complicated when

<sup>1</sup> ( . Art. 16, G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948)

<sup>2</sup> See ICCPR, supra note 56, art. 23; CEDAW, supra note 57, art. 16(1)(b) and 16(2); see also G.A. Res. 2018, at 36, U.N. Recommendation on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages

<sup>3</sup> See Estin, supra note 1, at 1–6

<sup>4</sup> See, e.g., Wood v. Wood, 647 N.Y.S.2d 830 (N.Y. App. Div. 1996); Collins v. Collins, 844 N.E.2d 910 (Ohio Ct. App. 2006); Saysavanh v. Saysavanh, 145 P.3d 1166 (Utah Ct. App. 2006).

parents relocate internationally, leading to jurisdictional conflicts over custody or abduction claims under instruments like the Hague Convention on Child Abduction.

For cases involving a marriage concluded abroad, followed by long term cohabitation as a married couple, courts may uphold the marriage even when there are questions about its validity under the local law. For example, in *Xiong v. Xiong*<sup>5</sup> the court treated as valid the marriage of a couple in a traditional Hmong ceremony in Laos near the end of the Vietnam War that did not conform to the requirements of Laotian law—a fact pattern that echoes a number of marriage validation cases decided after World War II. Ironically, although upholding a marriage is often important in such a situation to protect parties' justified expectations, the family in *Xiong* argued against the validity of the marriage, and the court's ruling precluded the couple's children from bringing a wrongful death action after their mother's death in a car accident where their father was driving.

Following the recommendations of Hans Baade, and the principle reflected in Article 13 of the Hague Marriage Convention<sup>6</sup>, the challenge going forward is to craft marriage recognition rules that can travel well across international borders. There are strong arguments for extending comity to foreign marriage celebrations, to protect parties' reasonable expectations and limit the circumstances in which a marriage is valid in some places and invalid in others.

**Citizenship and Children's Rights in Cross-Border Families.** Children in cross-border families often find themselves navigating a legal no-man's-land, where nationality laws, custody rights, and access to services clash. Consider the story of a child born to migrant parents in a host country that doesn't grant citizenship by birth. If the parents' country of origin requires bureaucratic hurdles they can't meet—such as presenting official documents they lost while fleeing—this child could become stateless. Without nationality, basic rights like education and healthcare become inaccessible, leaving the child vulnerable to marginalization and poverty.

The complications don't end with citizenship. Cross-border custody disputes are another common challenge. If one parent takes a child to another country after a divorce, the lack of uniform legal frameworks often leaves the child stranded between two legal systems. For instance, one country might prioritize the child's connection to a parent, while another focuses on their habitual residence, leading to protracted legal battles that disrupt the child's stability. Moreover, even children with legal citizenship face difficulties when social and political biases come into play. Discrimination against families with mixed nationalities or refugee backgrounds can hinder children from fully accessing their rights. This creates a dual burden of navigating both legal and societal barriers.

International frameworks, such as the UN Convention on the Rights of the Child (CRC), have established principles like the right to nationality and protection from statelessness. Yet, gaps in implementation mean that families must often rely on complex and inconsistent national laws. Organizations and legal clinics play a vital role in advocating for children's rights, but systemic change is needed to harmonize international laws with domestic policies. Addressing these issues calls for more than legal reforms. Governments must commit to creating pathways to citizenship for stateless children, improving cross-border cooperation on family disputes, and ensuring that every child, regardless of their circumstances, has the tools they need to thrive in an increasingly interconnected world.

*Let's look some case examples:* A child born to Rohingya parents in Malaysia is at risk of statelessness. Malaysia does not provide citizenship by birth (*jus soli*), and Myanmar, the parents' country of origin, denies Rohingya people citizenship under its 1982 Citizenship Law. As a result, the child remains undocumented, unable to access basic rights like education and healthcare, and is subject to detention or deportation.

<sup>5</sup> 648 N.W.2d 900 (Wis. Ct. App. 2002).

<sup>6</sup> The Hague Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages

**Relevant Legal Frameworks:**

- **UN Convention on the Rights of the Child (CRC):** Article 7 states every child has the right to acquire a nationality.
- **1961 Convention on the Reduction of Statelessness:** Encourages states to grant citizenship to children born on their territory who would otherwise be stateless.

Another case example is: Many Syrian children born in refugee camps in Lebanon are undocumented because their births are not registered with Syrian authorities or the Lebanese government. Without birth certificates, these children cannot claim Syrian citizenship or obtain residency in Lebanon, effectively leaving them stateless.

**Relevant Legal Frameworks:**

- **Global Compact on Refugees (2018):** Stresses the importance of civil documentation for refugees to reduce the risk of statelessness.
- **Lebanese Law:** Requires both parents to hold legal residency to register a child's birth—a requirement many refugees cannot meet.

**Gaps in Existing Legal Frameworks.** Despite its foundational importance, international law has notable gaps in addressing contemporary family law challenges. For instance, it lacks clear mechanisms for recognizing diverse family structures, such as same-sex unions or civil partnerships, which are increasingly common in cross-border families. These omissions create inconsistencies in legal outcomes and leave families vulnerable to legal uncertainties, especially when moving across jurisdictions with conflicting laws.

Similarly, national legal systems often fail to align with international conventions, resulting in fragmented enforcement of custody agreements, child citizenship claims, and marriage validation. These gaps highlight the urgent need for updated frameworks that account for the realities of globalized family life.

In many respects, family law litigation resembles other types of civil dispute resolution. Cross-border disputes over marriage, divorce, and parental responsibilities include many of the standard problems of international civil litigation, often in circumstances in which the parties' resources are severely limited. With family members located in different countries, lawyers may face challenges with serving process and obtaining evidence. In establishing the validity of a foreign marriage or divorce, issues arise regarding document authentication and pleading or proof of foreign law. When parallel proceedings unfold in different jurisdictions, courts wrestle with issues related to forum inconvenience and injunctive relief. Beyond and beneath all of these issues are questions of how judicial jurisdiction should be defined in international cases, and problems for recognition and enforcement of judgments. Even as family disputes share the complexities of other international litigation, they also involve special problems tracing back to the time when marriage was understood as a status relationship that could not be freely dissolved. Conflicting approaches of different states led to a complex set of jurisdictional and conflicts rules, well known to generations of scholars. Within the United States, rules for divorce jurisdiction and recognition of judgments presented an enormously difficult problem, from the mid nineteenth to mid-twentieth centuries. Based on the view that states have a special interest in marriage, the Supreme Court has also treated family litigation as falling outside the scope of its diversity jurisdiction, denying a federal forum to disputes that span different states or countries.

**Recommendations for a More Inclusive Framework.** To address these challenges, a new approach to regulating marital relations and determining children's citizenship is necessary. This framework should integrate traditional conflict-of-laws principles with modern family law developments, emphasizing international cooperation and the harmonization of domestic laws with global standards.

Key recommendations include:

- Expanding the scope of international conventions to cover alternative family structures such as civil unions and registered partnerships.

- Strengthening the enforcement mechanisms of international conventions to ensure consistent application across jurisdictions.
- Prioritizing the protection of children’s rights by creating pathways to citizenship for stateless children and improving cross-border cooperation in custody and child support disputes.

By adopting these measures, the legal regulation of family relations can better reflect the realities of an interconnected world, providing families with the stability and legal clarity they need.

**Conclusion:** The globalization of family life has brought both new opportunities and significant legal challenges, particularly in the regulation of marital relations and the determination of children’s citizenship. As families increasingly transcend borders, inconsistencies in legal systems, cultural differences, and gaps in international frameworks have left many individuals –especially children – vulnerable to statelessness, discrimination, and legal limbo. While international instruments like the Hague Conventions, the UN Convention on the Rights of the Child, and the Statelessness Conventions provide foundational principles for addressing these issues, gaps in implementation and enforcement continue to create barriers. The cases of stateless Rohingya children in Malaysia and undocumented Syrian children in Lebanon highlight the pressing need for comprehensive reforms that harmonize international and domestic laws.

Looking forward, policymakers must prioritize the protection of children’s rights and ensure fair and consistent recognition of marriages across borders. Greater international cooperation, innovative legal solutions, and a commitment to upholding fundamental human rights are essential to creating an inclusive and equitable framework for cross-border families. By addressing these challenges, we can ensure that families, regardless of their origin or circumstances, have access to the stability and protections they deserve in an increasingly interconnected world.

#### REFERENCES:

1. ( . Art. 16, G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948);
2. The Hague Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages;
3. See ICCPR, supra note 56, art. 23; CEDAW, supra note 57, art. 16(1)(b) and 16(2); see also G.A. Res. 2018, at 36, U.N. Recommendation on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages;
4. See Estin, supra note 1, at 1–6;
5. See, e.g., *Wood v. Wood*, 647 N.Y.S.2d 830 (N.Y. App. Div. 1996); *Collins v. Collins*, 844 N.E.2d 910 (Ohio Ct. App. 2006); *Saysavanh v. Saysavanh*, 145 P.3d 1166 (Utah Ct. App. 2006);
6. 648 N.W.2d 900 (Wis. Ct. App. 2002).