

## Hague Conference Update: Permanent Bureau of the Hague Conference on Private International Law

### International Conferences

The beginning of 2010 has been a busy and fruitful period at the Hague Conference on Private International Law. Two important conferences have taken place, both resulting in a broad consensus reflected in the conclusions and recommendations and declaration referenced below. The period has also seen the first North-African State, Morocco, accede to Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereinafter, the '1980 Hague Child Abduction Convention'). Furthermore, the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (hereinafter, the '1996 Hague Child Protection Convention') has entered into force in another two States, namely, Croatia and Uruguay.

The year does not look to be slowing down as we move into summer. From 17–25 June 2010 the Third Meeting of the Special Commission to review the practical operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, will be held in The Hague. It is intended that the Special Commission will provide the opportunity for States Parties to the Convention (as well as States which are considering or preparing for ratification or accession) to exchange information and experiences on the operation of the Convention, to compare practices, and to discuss any difficulties in respect of the implementation and practical operation of the Convention.

Please visit our website [www.hcch.net](http://www.hcch.net) for further information on Hague Conference matters.

### International Child Protection Conferences and Seminars

#### ***Cross-Frontier Child Protection in the Southern and Eastern African Region: the Role of the Hague Children's Conventions***

The Seminar on Cross-Frontier Child Protection in the Southern and Eastern African Region was held from 22 to 25 February 2010 in Pretoria, South Africa. The Seminar, which was organised by the Hague Conference on Private International Law in co-operation with the Government of the Republic of South Africa and with the support of UNICEF, was attended by high officials, judges, academics, researchers and other experts from Angola, Botswana, Ghana, Kenya, Madagascar, Malawi, Mauritius, Namibia, South Africa, Swaziland, Uganda, Zambia

and Zimbabwe, as well as the African Committee on the Rights and Welfare of the Child, UNICEF and the Permanent Bureau of the Hague Conference. Following the Conference, Professor William Duncan, Deputy Secretary General of the Hague Conference, wrote a Post-Conference Opinion:

'The African child is the Continent's most precious resource. Many African countries are reforming their national systems of child care and protection. However, because of the increasing movement of families and children across borders, the protection of the child can no longer be secured by national action alone. Concerted action by two or more States, or even on a regional level, may be needed to protect children who are the victims of sale, trafficking or abduction, unaccompanied minors who in large numbers are crossing country borders, children affected by international parental disputes, children who are the subject of unregulated intercountry adoption, Kafalah or similar placements abroad, as well as refugee or internationally displaced children. In all these cases inter-State co-operation is needed to track, find, protect and in some cases repatriate vulnerable children.

This need for inter-State co-operation was addressed by the 65 High Officials, Judges, Academics, and other experts from 13 countries who attended the Pretoria Seminar on Cross-Frontier Child Protection in the Southern and Eastern African Region . . . The recent movement of large numbers of unaccompanied minors between Zimbabwe, South Africa and other States in the Region, with the prospect of further movements around the football world cup, underlined the urgency of the situation. There was a call for co-operation Protocols among the States in the Region which will facilitate, through designated authorities, exchange of information, mutual assistance, collaboration, co-ordination of efforts and sharing of expertise. In the longer term it was recognised that the Hague Convention of 19 October 1996 on the Protection of Children has the potential for providing within the Southern and Eastern African Region a general framework for co-operation between judicial and child protection authorities in the different countries.

Africa is becoming the "new frontier" for intercountry adoption with increasing pressures

from other parts of the globe on African countries to make children available for adoption abroad. The situation in Ethiopia where many hundreds of children are the subject of inadequately regulated intercountry adoption rings a warning bell for the rest of the Continent. There is now almost universal recognition that the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, which accords with the general principles set out in the African Charter on the Rights and Welfare of the Child, as well as the UN Convention on the Rights of the Child, provides the appropriate legal, administrative and regulatory framework to guarantee the child's best interests in intercountry adoption. It is a Convention which empowers countries of origin to retain control over the adoption process, as well as the level of intercountry adoption. It also supports the crucial principle of subsidiarity which requires that, before intercountry adoption is contemplated, (in the words chosen by the African experts) "full and proper consideration has been given to national solutions" for the child's care. So far 11 African countries have joined the Convention. Many others are now considering implementing the Convention, but it must be emphasised that many of the States require capacity building, and technical and training assistance to help ensure that the Convention works effectively.

The Seminar also discussed the potential benefits of the Hague Convention of 1980 on the Civil Aspects of International Child Abduction and the Hague Convention of 2007 on the International Recovery of Child Support and recognised their value for the Region.

The Seminar was an important beginning but will need follow-up at the national and regional levels if the spirit of co-operation demonstrated by the participants is to be translated into permanent and workable structures, through the Hague Conventions and by other means, for inter-State co-operation in child protection. Individual States will need assistance in developing central authorities to support co-operation. Technical assistance in implementing the Conventions, and training of the personnel, including Judges, responsible for applying the Conventions will also be essential.

It will be important also to seek support for these developments from regional bodies such as the African Union, the East African Community and the Southern African Development Community. The Hague Conference and UNICEF will work together to give support where it is needed.'

The Conclusions and Recommendations of the Seminar can be found at:  
<http://www.hcch.net/upload/afrsem2010concl.pdf>.

## ***International Judicial Conference on Cross-Border Family Relocation***

The International Judicial Conference on Cross-Border Family Relocation took place in Washington D.C. on 23–25 March 2010. The Conference was co-organised by the Hague Conference on Private International Law and the International Centre for Missing and Exploited Children ('ICMEC'), with the support of the United States Department of State. The participants at the Conference were primarily judges with experience in international family law and, in particular, international family relocation. There were also a number of representatives of Central Authorities, academics and experts from the Permanent Bureau of the Hague Conference and ICMEC.

The Conference was convened in recognition of the fact that international family relocation has become a focus of concern within the international family law community. The ease of travel and communications in the modern world have increased the international mobility of individuals and families and increased the likelihood of such issues coming before the courts. However, different jurisdictions have adopted a variety of approaches to the issues surrounding relocation and hence custodial parents may be treated differently depending from what State they wish to relocate.

As was recognised by the Conference, international relocation is inextricably linked with the issues dealt with in both the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention (see para 7 of the final Washington Declaration). The Declaration urged the States that have not already done so to join these Conventions. The Washington Declaration sets out the agreement reached between participants on issues related to international relocation. The full text of the Declaration is set out below:



## INTERNATIONAL JUDICIAL CONFERENCE ON CROSS-BORDER FAMILY RELOCATION

WASHINGTON, D.C., UNITED STATES OF AMERICA  
23-25 MARCH 2010

co-organised by  
Hague Conference on Private International Law  
International Centre for Missing and Exploited Children

with the support of  
United States Department of State

## WASHINGTON DECLARATION ON INTERNATIONAL FAMILY RELOCATION

On 23-25 March 2010, more than 50 judges and other experts from Argentina, Australia, Brazil, Canada, France, Egypt, Germany, India, Mexico, New Zealand, Pakistan, Spain, United Kingdom and the United States of America, including experts from the Hague Conference on Private International Law and the International Centre for Missing and Exploited Children, met in Washington, D.C. to discuss cross-border family relocation. They agreed on the following:

### Availability of Legal Procedures Concerning International Relocation

1. States should ensure that legal procedures are available to apply to the competent authority for the right to relocate with the child. Parties should be strongly encouraged to use the legal procedures and not to act unilaterally.

## **Reasonable Notice of International Relocation**

2. The person who intends to apply for international relocation with the child should, in the best interests of the child, provide reasonable notice of his or her intention before commencing proceedings or, where proceedings are unnecessary, before relocation occurs.

## **Factors Relevant to Decisions on International Relocation**

3. In all applications concerning international relocation the best interests of the child should be the paramount (primary) consideration. Therefore, determinations should be made without any presumptions for or against relocation.
4. In order to identify more clearly cases in which relocation should be granted or refused, and to promote a more uniform approach internationally, the exercise of judicial discretion should be guided in particular, but not exclusively, by the following factors listed in no order of priority. The weight to be given to any one factor will vary from case to case:
  - i) the right of the child separated from one parent to maintain personal relations and direct contact with both parents on a regular basis in a manner consistent with the child's development, except if the contact is contrary to the child's best interest;
  - ii) the views of the child having regard to the child's age and maturity;
  - iii) the parties' proposals for the practical arrangements for relocation, including accommodation, schooling and employment;
  - iv) where relevant to the determination of the outcome, the reasons for seeking or opposing the relocation;
  - v) any history of family violence or abuse, whether physical or psychological;
  - vi) the history of the family and particularly the continuity and quality of past and current care and contact arrangements;

- vii) pre-existing custody and access determinations;
- viii) the impact of grant or refusal on the child, in the context of his or her extended family, education and social life, and on the parties;
- ix) the nature of the inter-parental relationship and the commitment of the applicant to support and facilitate the relationship between the child and the respondent after the relocation;
- x) whether the parties' proposals for contact after relocation are realistic, having particular regard to the cost to the family and the burden to the child;
- xi) the enforceability of contact provisions ordered as a condition of relocation in the State of destination;
- xii) issues of mobility for family members; and
- xiii) any other circumstances deemed to be relevant by the judge.

5. While these factors may have application to domestic relocation they are primarily directed to international relocation and thus generally involve considerations of international family law.

6. The factors reflect research findings concerning children's needs and development in the context of relocation.

## **The Hague Conventions of 1980 on International Child Abduction and 1996 on International Child Protection**

7. It is recognised that the Hague Conventions of 1980 and 1996 provide a global framework for international co-operation in respect of cross-border family relocations. The 1980 Convention provides the principal remedy (the order for the return of the child) for unlawful relocations. The 1996 Convention allows for the establishment and (advance) recognition and enforcement of relocation orders and the conditions attached to them. It facilitates direct co-operation



between administrative and judicial authorities between the two States concerned, as well as the exchange of information relevant to the child's protection. With due regard to the domestic laws of the States, this framework should be seen as an integral part of the global system for the protection of children's rights. States that have not already done so are urged to join these Conventions.

## **Promoting Agreement**

8. The voluntary settlement of relocation disputes between parents should be a major goal. Mediation and similar facilities to encourage agreement between the parents should be promoted and made available both outside and in the context of court proceedings. The views of the child should be considered, having regard to the child's age and maturity, within the various processes.

## **Enforcement of Relocation Orders**

9. Orders for relocation and the conditions attached to them should be able to be enforced in the State of destination. Accordingly States of destination should consider making orders that reflect those made in the State of origin. Where such authority does not exist, States should consider the desirability of introducing appropriate enabling provisions in their domestic law to allow for the making of orders that reflect those made in the State of origin.

## **Modification of Contact Provisions**

10. Authorities in the State of destination should not terminate or reduce the left behind parent's contact unless substantial changes affecting the best interests of the child have occurred.

## **Direct Judicial Communications**

11. Direct judicial communications between judges in the affected jurisdictions are encouraged to help establish, recognise and enforce, replicate and modify, where necessary, relocation orders.

## **Research**

12. It is recognised that additional research in the area of relocation is necessary to analyse trends and outcomes in relocation cases.

## **Further Development and Promotion of Principles**

13. The Hague Conference on Private International Law, in co-operation with the International Centre for Missing and Exploited Children, is encouraged to pursue the further development of the principles set out in this Declaration and to consider the feasibility of embodying all or some of these principles in an international instrument. To this end, they are encouraged to promote international awareness of these principles, for example through judicial training and other capacity building programmes.