

The Judges' Newsletter on International Child Protection

* Volume XVII | Spring 2011

A publication of the Hague
Conference on Private
International Law


Special Focus

Special Commission on the practical
operation of the Hague Convention of
29 May 1993 on Protection of Children and
Co-operation in Respect of Intercountry
Adoption, June 2010

Case Comments and Perspectives

> *Abbott v. Abbott*, Supreme Court of
the United States of America



Pour la version française, retourner la Lettre 

INTERNATIONAL BOARD OF JUDICIAL ADVISERS

- H.E. Justice Antonio Boggiano; former President of the Supreme Court of Argentina
- The Honourable Judge Peter Boshier; Principal Family Court Judge, New Zealand
- The Honourable Judge Eberhard Carl, Judge at the Regional Superior Court at Frankfurt/Main, Germany
- The Honourable Justice Jacques Chamberland; Court of Appeal of Quebec, Canada
- The Honourable Justice James Garbolino; former Presiding Judge of the Superior Court of California, United States of America
- Ms Catherine Gaudet Bossard; Honouree Judge, former *Conseiller* to the Court of Appeal of Bourges, France
- The Honourable Mrs Justice Catherine McGuinness; former Judge of the Supreme Court of Ireland
- The Honourable Dr Katalin Murányi; Chairperson of the Civil College, Budapest, Hungary
- The Honourable Elisa Pérez-Vera; Constitutional Court of Spain
- The Honourable Judge Adel Omar Sherif; Deputy Chief Justice, Supreme Constitutional Court, Cairo, Egypt
- The Right Honourable Lord Justice Mathew Thorpe; Head of International Family Justice, England and Wales

The Judges' Newsletter is published biannually by the Hague Conference on Private International Law under the supervision of William Duncan, Deputy Secretary General, with the assistance of Nicolas Sauvage, Legal Officer. This journal is written by and for judges with the aim of exchanging the information necessary for efficient judicial co-operation in the field of international child protection.

We would like to thank Irène Rognier for her translations.

Contact details for the Permanent Bureau of the Hague Conference on Private International Law are as follows:

Hague Conference on Private International Law
Permanent Bureau
Scheveningseweg 6
2517 KT The Hague
The Netherlands
Tel: +31 (70) 363.3303
Fax: +31 (70) 360.4867
E-mail: TheJudgesNewsletter@hcch.nl
secretariat@hcch.net
Website: <http://www.hcch.net>

Copyright© 2011 Hague Conference on Private International Law

All rights reserved. Articles contained herein may be reproduced for educational purposes. No part may, however, be reproduced for commercial purposes without the express written consent of the Permanent Bureau of the Hague Conference on Private International Law.

Table of contents

Special Focus

The Third Meeting of the Special Commission on the practical operation of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*, 17-25 June 2010

Theme I | Report, by Jennifer DEGELING and Sandrine PÉPIT 2

Theme II | Conclusions and Recommendations 11

Theme III | List of Preliminary Documents 14

Case Comments and Perspectives

- *Abbott v. Abbott* (2010), Supreme Court of the United States of America, Professor Barbara STARK 15
- The United States Supreme Court Rules in Its First Case Interpreting The 1980 Convention, *The Honourable Justice James GARBOLINO* 15
- *Abbott v. Abbott* (2010), Supreme Court of the United States of America, Professor Peter MCELEAVY 16

Judicial Communications

- Reflections regarding the operation of instruments for the international return of children – Strengths and weaknesses and challenges, Judge Graciela TAGLE 18

International Child Protection Conferences and Seminars

- International Symposium on Child Abduction (Berlin), *Chairman's Statement* (4 December 2009) 21
- Cross-Frontier Child Protection in the Southern and Eastern African Region: The Role of the Hague Children's Conventions (22-25 February 2010) 22
- Washington International Judicial Conference on Cross-Border Family Relocation (23-25 March 2010) 25
- Nordic Baltic Seminar on International Child Abduction (10-11 June 2010) 27
- London Conference on International Child Abduction, Forced Marriage and Relocation (30 June – 2 July 2010) 27
- Morocco Judicial Seminar on Cross-Border Protection of Children and Families (13-15 December 2010) 31
- Training of Moroccan judges on the 1980 Hague Child Abduction Convention (15-17 December 2010) 34
- Inter-American Experts Meeting on International Child Abduction (23-25 February 2011) 35

Hague Conference update

- The International Protection of Children - Launch of the Incadat Funding Campaign 36
- Upcoming Special Commission on the 1980 and 1996 Hague Conventions 37
- Developments regarding the Guides to Good Practice under the 1980 Hague Child Abduction Convention 37
- Latest developments in Latin America 38

Hague Children's Conventions Status 39

Members of the International Hague Network of Judges 40

Personal Note 43

* Special Focus *

The Third Meeting of the Special Commission on the practical operation of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*, 17-25 June 2010

Theme I: Report of the meeting

Jennifer DEGELING

Secretary of the Hague Conference on Private international Law
and

Sandrine PÉPIT

Legal Officer, Hague Conference on Private International Law

Introduction

The Third Meeting of the Special Commission on the practical operation of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (hereinafter the “1993 Hague Intercountry Adoption Convention”) took place from 17 to 25 June 2010 in The Hague.

This was the largest meeting ever organised by the Hague Conference on Private International Law, with over 250 experts from 86 countries and 13 international and non-governmental organisations attending. As is customary, invitations were sent to the Member States of the Hague Conference, to States Parties to the 1993 Hague Intercountry Adoption Convention and to non-Member States that participated in the negotiation of the Convention, but also to certain non-Member States that have demonstrated a keen interest in the Convention. Of the 86 States represented at the Special Commission, 66 were Parties to the 1993 Hague Intercountry Adoption Convention (19 of which were not Members of the Hague Conference), and seven were Members of the Hague Conference but not Parties to the Convention. A further 13 States that were neither Members of the Hague Conference nor Parties to the Convention were represented as Observers. Twenty States in total (11 Contracting and nine non-Contracting) and four organisations (two intergovernmental and two non-governmental) participated for the first time in the Special Commission. Ms Marie Riendeau (Canada) was elected Chair of the Special Commission along with five Vice-Chairs: Mr Stephansen (Norway), Ms Sloth-Neilson (South Africa), Ms Morales Ibáñez (Chile), Ms Abejo (Philippines) and Ms Bond (United States of America).

Five Preliminary Documents drawn up by the Permanent Bureau were transmitted to participants prior to the Special Commission.¹ The most important of these Preliminary Documents was the draft Guide to Good Practice No 2,

“Accreditation and Adoption Accredited Bodies: General Principles and Guide to Good Practice”, which the Special Commission reviewed in detail over the course of one and a half days.

The agenda of the Special Commission followed a number of specific themes which stimulated a detailed discussion on a range of current issues. The highlights of those discussions are mentioned in this Report. The Special Commission themes were:

1. abduction, sale and traffic in children in the context of intercountry adoption;
2. applying the safeguards of the Convention;
3. co-operation issues;
4. issues concerning Convention procedures;
5. learning from experience;
6. draft Guide to Good Practice on Accreditation.

The following members of the Permanent Bureau were involved in the preparation of the Special Commission: Mr William Duncan (Deputy Secretary General), Ms Jennifer Degeling (Secretary), Ms Laura Martínez-Mora (Adoption Programme Co-ordinator), Ms Trinidad Crespo Ruiz (Adoption Programme Consultant), Ms Sandrine Pépit (Legal Officer), Mr Stuart Hawkins (Administrative Assistant for the Adoption Programme), Ms Laura Molenaar (Head of Administration ad interim) and Mr Alexander Kunzelmann (Intern).

1. Abduction, sale and traffic in children in the context of adoption

Recalling that one of the objects of the 1993 Hague Intercountry Adoption Convention² is to prevent the abduction, sale and traffic in children, the Special Commission meeting of June 2010 provided the opportunity for a full day of presentations and discussions to consider the extent of the problem at the present time. This special day was made possible by a generous grant from the Government of Australia.

A global perspective of the issues was given by Professor David Smolin. An African perspective was given by Dr Ben Mezmur. A documentary film entitled “Paper Orphans” was introduced by Joseph Aguetant of the Terre des hommes Nepal office. The International Social Service presented findings of their research on the grey areas of intercountry adoption.³

Each of these presentations made clear that the illicit procurement of children for intercountry adoption is not uncommon. This view contrasts with the official information from most States that there is no abduction, sale or traffic in children in the context of adoption or that cases are very rare. The tendency of many receiving States has been, up till now, to accept at face value the paper work presented by a State

Notes

¹ Available on the website of the Hague Conference at < www.hcch.net > under “Intercountry Adoption Section” then “Special Commissions”.

² Art. 1.

³ Most of these papers can be found on the Hague Conference website at < www.hcch.net >.

of origin for each child to be adopted. This is evident from the country responses to a questionnaire on trafficking, one of the preliminary documents of the Special Commission.⁴

There is confusion concerning the term “trafficking”. It has connections with human trafficking and exploitation, whereas in the context of intercountry adoption, it was taken to mean the illicit procurement of children or “child laundering”. The falsification of documents is one method of facilitating the illicit procurement of children (this was the subject of the film “Paper Orphans”).

In its Conclusions and Recommendations, the Special Commission proposed some essential features of a well-regulated intercountry adoption system. Recommendation No 1 of the Special Commission states:

“1. Concerned to prevent, in the context of intercountry adoption, the abduction, sale and traffic in children and their illicit procurement, the Special Commission draws the attention of States to the following as essential features of a well regulated system:

- a) effective application of Hague Convention procedures and safeguards including, as far as practicable, in relation to non-Convention adoptions;
- b) independent and transparent procedures for determining adoptability and for making decisions on the placement of a child for adoption;
- c) strict adherence to the requirements of free and informed consent to adoption;
- d) strict accreditation and authorisation of agencies, and in accordance with criteria focussing on child protection;
- e) adequate penalties and effective prosecution, through the appropriate public authorities, to suppress illegal activities;
- f) properly trained judges, officials and other relevant actors;
- g) prohibition on private and independent adoptions;
- h) clear separation of intercountry adoption from contributions, donations and development aid;
- i) regulated, reasonable and transparent fees and charges;
- j) effective co-operation and communication between relevant authorities both nationally and internationally;
- k) implementation of other relevant international instruments to which States are parties;
- l) public awareness of the issues.”



Participants to the Third Special Commission on the practical operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption.

Notes

⁴ “Questionnaire on the abduction, sale of, or traffic in children and some aspects of the practical operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-Operation in Respect of Intercountry Adoption”, Prel. Doc. No 4 of April 2010 for the attention of the Special Commission of June 2010 on the practical

operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption. The questionnaire and responses are available on the website of the Hague Conference at < www.hcch.net > under “Intercountry Adoption Section” then “Special Commissions”.

In addition, it was agreed that "An informal group co-ordinated by the Australian Central Authority with the participation of the Permanent Bureau will consider the development of more effective and practical forms of co-operation between States to prevent and address specific instances of abuse. The result of this work will be circulated by the Permanent Bureau for consideration by Contracting States."⁵

2. Applying the safeguards of the Convention

The establishment of a system of safeguards is the first stated object of the Convention in Article 1. The meeting focussed on some of the procedures required to maintain a comprehensive system of safeguards, in particular, applying the principle of subsidiarity,⁶ establishing whether a child is genuinely adoptable,⁷ obtaining informed consents to the adoption,⁸ careful selection and preparation of prospective adoptive parents,⁹ review of documents and procedures before agreements are given under Article 17, and control of financial aspects of intercountry adoption.¹⁰ Some of these procedures need to be applied in the State of origin, and some need to be applied in the receiving State. Recommendation No 1 mentioned above refers to those safeguards as some of the essential features of a well-regulated adoption system.

a) Subsidiarity

The subsidiarity principle is a cornerstone of the United Nations Convention of 1989 on the Rights of the Child (Art. 21) and the 1993 Hague Intercountry Adoption Convention. It requires that States Party to the Convention recognise that a child should be raised by his or her birth family or extended family whenever possible. If that is not possible or practicable, other forms of permanent family care in the country of origin should be considered. Only after due consideration has been given to national solutions should intercountry adoption be considered, and then only if it is in the child's best interests.

The Special Commission debate highlighted different issues including the necessity of having a separate authority responsible for examining alternative care options for the child and in charge of adoptions. Additionally, practices supporting the family and community in finding solutions, better co-ordination between national authorities, and attention to the needs of the child with respect to time are important in applying the principle of subsidiarity (a child's perception of time differs from an adult's perception).

The best interests of the child is the overriding principle. It should be the ultimate safeguard for the person making the final adoption decision. That person has the possibility to refuse any adoption that is not in a child's best interests, including an adoption in which the essential safeguards were not followed.

b) Exercising financial control

Improper financial gain from adoption is prohibited by the Convention (Art. 32). Article 32 puts into practice Article 21 d) of the Convention on the Rights of the Child to "Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it."

In this context, improper means illegal, excessive or unreasonable material benefit. Accredited bodies (licensed adoption agencies) must be non-profit organisations (Art. 11). However, a person or body may charge reasonable fees to cover their costs for providing an adoption service.

The Special Commission recommended, as a new approach to the issue, that the Permanent Bureau examine the feasibility of posting on the Hague Conference website tables indicating the costs associated with intercountry adoption and the charges imposed on prospective adoptive parents for each Contracting State.

Effective regulation of the financial aspects of adoption can be achieved with more transparency of costs; better accountability of service providers; and criminal penalties for persons making improper financial gain. Effective regulation also requires co-operation between States of origin and receiving States to exchange information about costs so as to establish reasonable fees and prevent improper financial gain. These factors are emphasised in the draft Guide to Good Practice No 2 (see section 6 below).

3. Co-operation issues

The 1993 Hague Intercountry Adoption Convention is a Convention based on co-operation, and its importance is recognised by the inclusion of the term in the title of the Convention. As there are no sanctions or penalties in the Convention for non-compliance, it is essential to have good co-operation, communication and networking between Convention States and their Central Authorities, as well as other authorities and bodies involved in the intercountry adoption procedures. The Special Commission discussed the importance of co-operation between States of origin and receiving States highlighting issues such as improving the exchange of information, co-operation to achieve good practices especially with respect to dealing with pressure on States of origin from receiving States, and the need to break the link between co-operation projects and intercountry adoption. Among the other matters discussed, two are particularly important as current challenges: intercountry adoption in the context of globalisation and international mobility; and setting the limits of ethical activity in co-operation (development aid) projects.

Notes

⁵ See Recommendation No 2 of the « Conclusions and Recommendations of the Special Commission on the practical operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (17-25 June 2010) », available on the website of the Hague Conference, < www.hcch.net >, then « Intercountry Adoption Section » then « Special Commissions ».

⁶ Art. 4 b).

⁷ Art. 4 a).

⁸ Art. 4 c) and d).

⁹ Arts 5 a), 5 b), 9 c), 15(1), 16(1) d), 17 d).

¹⁰ Arts 8, 11, 32.

a) Intercountry adoption in the context of globalisation and international mobility

The modern phenomena of globalisation and international mobility, brought about by the ease of travel, ease of finding information and communicating through different technologies, the possibility or the need to live and work in different countries, has thrown up particular problems for the regulation of intercountry adoption.

It is evident that the 1993 Hague Intercountry Adoption Convention is often not applied in relevant cases, or it is applied to which it should not be. Article 2 of the Convention fixes its scope, and the relevance of habitual residence of the parties.¹¹ There are two main categories of intercountry adoptions when the Convention should be applied and often is not: “intra-family” or “relative” adoptions; and adoption by persons who are nationals of the State of origin but habitually resident in another Convention State.

There are also cases of adoption by persons who are temporarily resident in a State of origin which are treated as national adoptions when they should be intercountry adoptions. Some prospective adopters may attempt to obtain a national adoption in a State of origin when they have not been approved to adopt by their own State.

A separate ethical problem concerns private and independent adoptions. These are permitted by some receiving States and States of origin. In these cases, prospective adopters may or may not be officially approved to adopt, and often they go to the State of origin to find a child to adopt. These adoptions come within the scope of the 1993 Hague Intercountry Adoption Convention but all the safeguards of the Convention are not being applied. Training is needed for judges in States of origin to recognise when the Convention should apply and to stop procedural abuses when they occur.

Several problem situations were discussed can create difficulty and require for their resolution co-operation between countries. These include cases when the prospective adoptive parents have made a valid application but change their place of residence during the adoption procedure; adoption by persons who are habitually resident in, but not nationals of, the State of origin (and national adoption by foreigners is not permitted); adoption by persons who are resident in, but not nationals of, the receiving State, and the nationality of the receiving State is a requirement to adopt; adoption by persons who are nationals of a third State (neither the State of origin nor the receiving State). In many of the situations described, the risks to the child's rights and the rights of the birth family are significant. For the prospective adopters, the practical and legal problems are also important as some receiving States will not permit the child to enter the country because the Convention procedures were not followed.



*Mr Ignacio Goicoechea, Liaison Legal Officer for Latin America, Permanent Bureau,
Mrs Laura Martínez-Mora, Adoption Technical Assistance Programme Co-ordinator, Permanent Bureau,
M. Hans van Loon, Secretary General, Hague Conference, Ms Marie Riendeau, Chair of the Special Commission
(Canada), Ms Jennifer Degeling, Secretary, Hague Conference,
Mr William Duncan, Deputy Secretary General, Hague Conference*

Notes

¹¹ Art. 2(1): “The Convention shall apply where a child habitually resident in one Contracting State (“the State of origin”) has been, is being, or is to be moved to another Contracting State (“the receiving State”)

either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.”

The Special Commission adopted the following Recommendations to address these issues:

“Where the habitual residence of the prospective adoptive parents is uncertain the concerned Central Authority should provide advice on their particular situation before they proceed with an adoption application.”¹²

“Central Authorities should co-operate in the completion of any formalities necessary for the acquisition by the child of the nationality, where appropriate, either of the receiving State or of an adoptive parent.”¹³

“The question of whether nationality will be granted to the child may, where appropriate, be a relevant factor when a State of origin is considering co-operation with a particular receiving State.”¹⁴

“Adoptions which are arranged directly between birth parents and adoptive parents (*i.e.*, private adoptions) are not compatible with the Convention.”¹⁵

“Independent adoptions, in which the adoptive parent is approved to adopt in the receiving State and, in the State of origin, locates a child without the intervention of a Central Authority or accredited body in the State of origin, are also not compatible with the Convention.”¹⁶

“It was strongly recommended that training be provided for judges and other authorities or persons exercising functions under the Convention. This training should address in particular the problems surrounding private and independent adoptions, as well as other possible ways of circumventing the procedures and safeguards of the Convention.”¹⁷

b) Co-operation and development aid

The provision of development aid to States of origin by adoption agencies of receiving States has become a challenging ethical issue in intercountry adoption. Some States of origin require this aid to be given by a receiving State as a condition of allowing intercountry adoptions with that State. These arrangements result in an unhealthy dependence on intercountry adoption money. The challenge is to provide the necessary aid for capacity building and training and to help poor countries build up their services for children and families, but in a way which does not compromise the integrity of the adoption process.

The Special Commission noted that a clear delineation between humanitarian aid and intercountry adoption is difficult but emphasised the necessity of monitoring humanitarian projects, ensuring that there is transparency and independence with intercountry adoptions.

Notes

¹² Recommendation No 13.

¹³ Recommendation No 20.

¹⁴ Recommendation No 21.

¹⁵ Recommendation No 22.

¹⁶ Recommendation No 23.

¹⁷ Recommendation No 24.

In relation to the issue of co-operation (development aid) projects, the 2010 Special Commission made the following recommendation:

“The Special Commission emphasised the need to establish, in all cases, a clear separation of intercountry adoption from contributions, donations and development aid.”¹⁸

4. Issues concerning convention procedures

a) Certificate of conformity under Article 23

A number of procedural problems were discussed in the Special Commission. The Article 23 certificate is essential to allow automatic recognition of adoptions made in accordance with the Convention. However, some Contracting States have not designated an authority pursuant to Article 23(2) of the 1993 Hague Intercountry Adoption Convention to issue the certificate; sometimes an Article 23 certificate is difficult or impossible to obtain; some certificates are not in conformity with the Convention, and are incomplete or incorrect; Article 23 certificates have been issued for adoptions which were not made in accordance with the Convention; in some countries the legislation does not refer to an Article 23 certificate and no certificate is issued.

The Special Commission emphasised the obligatory nature of issuing an Article 23 certificate, and the importance of all Contracting States fulfilling this obligation in order to allow the adoption to be completed and then recognised in all Contracting States.

b) International surrogacy and intercountry adoption

Surrogacy can easily be arranged via the Internet. It is becoming a problem now because it is being used as an alternative to intercountry adoption, but without the safeguards. Intending parents can avoid having to obtain approval to adopt and can avoid the long waiting lists. On the other hand, when problems arise with the surrogacy arrangement, there have been attempts to use the Convention to resolve the surrogacy problems.

For several reasons, the 1993 Hague Intercountry Adoption Convention is not the appropriate answer for surrogacy problems: many of the safeguards of the Convention procedure cannot be applied; the surrogacy arrangements are usually private contracts where the birth mother is acting for reward; the intending parents are not assessed in any way. A serious concern is that there are often conflicting rules about the status of the child which may render him stateless: the country of the intending parents may regard the child as the legal child of the birth mother; the country of birth may consider the child as the legal child of the intending parents.

The Conclusions and Recommendations of the Special Commission of June 2010 stated the following:

Notes

¹⁸ Recommendation No 14.

“The Special Commission noted that the number of international surrogacy arrangements is increasing rapidly. It expressed concern over the uncertainty surrounding the status of many of the children who are born as a result of these arrangements. It viewed as inappropriate the use of the Convention in cases of international surrogacy.”¹⁹

“The Special Commission recommended that the Hague Conference should carry out further study of the legal, especially private international law, issues surrounding international surrogacy.”²⁰

5. Learning from experience

a) Statistics

With the support of Contracting States, the Permanent Bureau has taken on the task of co-ordinating and standardising the collection of intercountry adoption statistics under the 1993 Hague Intercountry Adoption Convention.

At an administrative level, the collection and exchange of statistics is used as a means to promote co-operation between Contracting States. On an operational level, recording data on adoptions provides a source for verifying that Convention safeguards directed towards the best interests of the child have been met, and facilitates the provision of post-adoption services. Collecting adoption statistics may help a State to develop policies which meet the needs of its children, and assist in providing a comprehensive picture of the state of national child care and protection.

During the Special Commission, the importance and the relevance of the collection of statistics was confirmed by the presentation of an expert, Professor Peter Selman. This presentation noted the main receiving States (United States of America, Italy, France and Spain) in 2009 and the main States of origin (China, the Russian Federation, Guatemala and Ethiopia) in 2008. The statistical analysis also pointed out trends such as the decline in the number of intercountry adoptions since 2004 and the fact that most adoptions are still from non-Convention States.

b) Response to disaster situations: the example of Haiti

The earthquake in Haiti on 12 January 2010 caused the deaths of over 200,000 people. The loss of life is comparable to the Asian tsunami of 26 December 2004. In both situations there was interest, mainly from receiving countries, in adopting children affected by these disasters. According to Professor Selman, there were no intercountry adoptions from affected countries following the tsunami.²¹ In Haiti, the opposite has occurred.²²

Haiti had a population of 9.2 million in 2009 and is one of the poorest countries in the world. It has 80% of its people living under the poverty line and 54% in “abject poverty”. UNICEF estimates that there were approximately 4.2 million children of whom 1.25 million were under 5 years old in 2007. UNICEF statistics from 2007 indicate that only 82% of children born in Haiti are registered. The intercountry adoption process in Haiti is well known for its systemic abuses, corruption, lack of transparency and a non-existent monitoring system. In its earthquake affected state, the system seriously deteriorated even further.²³



*Mrs Hanne Kristin Bratlie, Norway,
Mr Morten Stephansen, Norway, Ms Marie Riendeau, Chair
of the Special Commission, Canada, Ms Michele Bond,
United States of America*

Soon after the earthquake, the main international organisations concerned with child protection such as UNICEF, Save the Children, HCCH and ISS made similar statements warning against premature adoptions as a solution for children affected by the earthquake.²⁴ The first concern was to provide for the health and safety of children, and then to establish their identity and reunite them with family members if possible. While the primary concern was the safety of these children, some consideration had to be given to the possible need for evacuation. However, any decision to evacuate a child following a disaster should be based on considerations of the child's safety and should not be confused with the adoption process.

In relation to adoption, the principal concern of aid agencies should be the protection of children and their families against the risks of illegal, irregular, premature or ill-prepared adoptions abroad. A humanitarian disaster such as the earthquake should not be the reason for by-passing essential safeguards for safe adoption.

Notes

¹⁹ Recommendation No 25.

²⁰ Recommendation No 26.

²¹ Statement made by Profesor Selman at Special Commission June 2010, Presentation “Setting the scene – current trends and statistics in intercountry adoption”.

Notes

²² M. Dambach and C. Baglietto: *HAITI: “Expediting” intercountry adoptions in the aftermath of a natural disaster: preventing future harm*. International Social Service, Geneva, May 2010.

²³ *Ibid.*, pp. 10-11.

²⁴ See for example, the website of the Hague Conference < www.hcch.net > under “Intercountry Adoption Section” for the Haiti statement.

The ISS research estimates that as of 30 May 2010, at least 2,107 pipeline cases were processed following the earthquake on 12 January 2010, almost doubling the total number of Haitian children adopted in 2009. The USA accounted for approximately 1,200 cases whereas France, Canada, the Netherlands and Germany arranged the transfer of approximately 850 children. Approximately 50 children were sent to Switzerland, Belgium and Luxembourg.²⁵ In some cases the final adoption decree had already been granted by an Haitian Court before the earthquake.²⁶ Other receiving countries decided that the situation was too unstable to allow adoptions.

The Conclusions and Recommendations of the Special Commission on the subject of the response to disaster situations were as follows:

"The Special Commission recognised that, in a disaster situation, efforts to reunite a displaced child with his or her parents or family members must take priority. Premature and unregulated attempts to organise the adoption of such a child abroad should be avoided and resisted."²⁷

"No new adoption applications should be considered in the period after the disaster or before the authorities in that State are in a position to apply the necessary safeguards."²⁸

"The Special Commission also recognised the need for a common approach on the part of Central Authorities in dealing with such situations and for Central Authorities to discuss and review actions taken in response to, and lessons learned from, disaster situations."²⁹

It was noted that had the 1996 Convention on Protection of Children³⁰ been in force between Haiti and the receiving countries, it would have been possible to use the procedures of that Convention to have Haitian children temporarily fostered in other countries while the situation in Haiti was improved.

c) Technical assistance and the need for capacity building in countries of origin

One of the challenges in implementing the Convention effectively, particularly in some States of origin, is the lack of resources and expertise. It is an essential Convention obligation for each country to establish a Central Authority as the contact point and to perform certain Convention obligations. The Central Authority should be professional, independent and ethical and there should be training for the key players, including the judiciary.

Unfortunately, some countries join the Convention without understanding either their obligations or the Convention procedures. As a result, children, birth families and the prospective adopters may not receive the necessary protections offered by the Convention. As part of their preparations to join the Convention, it is recommended that States of origin develop a realistic national child care and protection policy in which intercountry adoption may be considered as one of the possible solutions for a child in need of a family.

States of origin also need to have in place appropriate measures for controlling the activities of intermediaries, and regulating the activities of accredited bodies. They also need to be able to manage pressures from receiving countries and demands for more adoptable children.

Finally, political will is necessary to prevent corruption and abuses in their intercountry adoption procedures and evasion of their Convention obligations and responsibilities.

The Special Commission noted the importance of the Permanent Bureau's role in providing technical assistance, the benefits of horizontal co-operation (assistance from one State of origin to another), co-ordinating approaches and sharing the expertise of adoption actors such as, inter alia, accredited bodies, regional organisations and judiciary.

The Hague Conference Intercountry Adoption Technical Assistance Programme (ICATAP) aims to help States of origin to achieve a safe adoption system and to join the 1993 Convention. Major origin countries such as Ethiopia, Haiti, Korea, the Russian Federation, Ukraine and Vietnam are still not parties to the Convention, and the percentage of non-Convention adoptions is still higher than Convention adoptions.

However, the view was expressed that the simple fact of having more countries join the Convention is not, by itself, the answer to improving procedures for ethical adoptions. It is merely the necessary starting point. The challenges already mentioned indicate that countries which join the Convention must have the commitment to improve their procedures, the resources and knowledge to implement them effectively, and respect for the rights of the parties to the adoption, especially the rights of the child as set out in the Convention on the Rights of the Child.

It was also suggested that countries of origin which join the Convention should be supported by receiving States

Notes

²⁵ M. Dambach and C. Baglietto, note 22, pp. 10-11.

²⁶ This was the case for approximately 350 adoptions to France.

²⁷ Recommendation No 38.

²⁸ Recommendation No 39.

²⁹ Recommendation No 40.

³⁰ *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.*

Notes

³¹ "Accreditation and adoption accredited bodies: General principles and guide to good practice – Draft Guide No 2 under the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption", Prel. Doc. No 2 of May 2010 for the attention of the Special Commission of June 2010 on the practical operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, available on the website of the Hague Conference at < www.hcch.net > under "Intercountry Adoption Section" then "Special Commissions".

to undertake the necessary reforms. Countries which join the Convention to give the appearance of respectability to intercountry adoptions without undertaking necessary reforms should be encouraged to take an ethical approach. Receiving States should play their part by acting responsibly towards States of origin and accepting fully the principle of shared responsibility.

6. Draft Guide to Good Practice on Accreditation³¹

During the preparations for the previous Special Commission meeting in 2005, information from Contracting States indicated that the issue of accreditation and accredited bodies was of the greatest concern. “Accreditation” is the process of licensing adoption agencies according to Convention standards.

As accreditation practice differs widely, the understanding and implementation of the Convention’s obligations and terminology varies greatly; and there is a lack of consistency in the quality and professionalism of accredited bodies, not

only between Contracting States but also between agencies in the same State. The concerns are justified because of the reliance of States of origin on the decisions of receiving States which grant accreditation to adoption bodies.

A questionnaire on accreditation³² was circulated in August 2009 to obtain information for the Guide, in particular the valuable examples of current practice from many countries. The drafting was shared between the Permanent Bureau and the Central Authority of Quebec who generously offered their assistance in this project. Assistance was also received from Adoptionscentrum, an accredited body of Sweden

The Guide recognises and supports the key role played by accredited bodies. However, it is recognised that there is an urgent need to bring some common or shared understanding about accredited bodies, and to achieve greater consistency in their operation. There is a diverse range of actors in intercountry adoptions – many professions are involved, with many different levels of professionalism and expertise. The Guide recognises and supports the key role played by accredited bodies.



Experts of the delegations of Angola, Burkina Faso, Burundi, Cap Verde, Ivory Coast, Ghana, Kenya, Malawi, Mali, Namibia, Uganda, Republic of de Guinea, Democratic Republic of Congo, Swaziland, Togo and Mr William Duncan, Deputy Secretary General, Permanent Bureau, Ms Jennifer Degeling, Secretary, Permanent Bureau, Mrs Laura Martínez-Mora, Adoption Technical Assistance Programme Co-ordinator, Permanent Bureau

Notes

³² “Questionnaire on accredited bodies in the framework of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption”, Prel. Doc. No 1 of August 2009 for the attention of the Special Commission of June 2010 on the practical operation of the Hague Convention of

29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, available on the website of the Hague Conference at < www.hcch.net > under “Intercountry Adoption Section” then “Special Commissions”.

The purpose of the Guide is therefore to create an accessible resource, expressed in plain language, which is available to Contracting States, accredited bodies and all those other actors involved in intercountry adoption. The Guide aims to:

- emphasise that the principles and obligations of the Convention apply to all actors and participants in Hague Convention intercountry adoptions;
- clarify the Convention obligations and standards for the establishment and operation of accredited bodies;
- encourage acceptance of higher standards than the minimum standards of the Convention;
- identify good practices to implement those obligations and standards;
- propose a set of model accreditation criteria which will assist Contracting States to achieve greater consistency in the professional standards and practices of their accredited bodies.”

It is hoped that this Guide will assist the accrediting and supervising authorities in the Contracting States to perform their obligations more comprehensively at the national level, and thereby achieve more consistency at the international level.

It is also hoped that the Guide will assist accredited bodies (or those seeking accreditation) to obtain the best possible understanding of their legal and ethical responsibilities under the Convention. Prospective adoptive parents might also be assisted to know what could be expected of a professional, competent and experienced accredited body.

The main elements of the Guide to Good Practice No 2 are:

- a) the need for a system of accreditation;
- b) general principles of accreditation;
- c) general policy considerations;
- d) the relationship between accreditation and authorisation;
- e) the functions of accredited bodies;
- f) procedures for accreditation, supervision and review of accredited bodies;
- g) the costs of intercountry adoption: transparency and accountability of accredited bodies;
- h) co-operation, co-responsibility and development aid;
- i) perspectives from States of origin and receiving States.

The Special Commission debated the content of the Guide to Good Practice No 2 and gave its approval in principle, and recommended that a number of revisions be made. Following the completion of revisions, a final consultation with States will occur before the Guide is published. Publication is expected in late 2011.

Theme II: Special Commission on the practical operation of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (17-25 June 2010)

CONCLUSIONS AND RECOMMENDATIONS

Adopted by the Special Commission

Abduction, sale and traffic in children and their illicit procurement in the context of intercountry adoption

1. Concerned to prevent, in the context of intercountry adoption, the abduction, sale and traffic in children and their illicit procurement, the Special Commission draws the attention of States to the following as essential features of a well regulated system:
 - a) effective application of Hague Convention procedures and safeguards including, as far as practicable, in relation to non-Convention adoptions;
 - b) independent and transparent procedures for determining adoptability and for making decisions on the placement of a child for adoption;
 - c) strict adherence to the requirements of free and informed consent to adoption;
 - d) strict accreditation and authorisation of agencies, and in accordance with criteria focussing on child protection;
 - e) adequate penalties and effective prosecution, through the appropriate public authorities, to suppress illegal activities;
 - f) properly trained judges, officials and other relevant actors;
 - g) prohibition on private and independent adoptions;
 - h) clear separation of intercountry adoption from contributions, donations and development aid;
 - i) regulated, reasonable and transparent fees and charges;
 - j) effective co-operation and communication between relevant authorities both nationally and internationally;
 - k) implementation of other relevant international instruments to which States are parties;
 - l) public awareness of the issues.
2. The Special Commission acknowledged the generous contribution of the Government of Australia for making possible the special day on the abduction, sale and traffic in children and their illicit procurement, which raised awareness of the nature and extent of the problem. An informal group co-ordinated by the Australian Central Authority with the participation of the Permanent Bureau will consider the development of more effective and practical forms of co-operation between States to prevent and address specific instances of abuse. The result of this work will be circulated by the Permanent Bureau for consideration by Contracting States.

Draft guide to good practice on accreditation

3. The Special Commission gave its general endorsement to the draft Guide to Good Practice No 2 entitled *Accreditation and Adoption Accredited Bodies: General Principles and Guide to Good Practice* (hereinafter the draft Guide to Good Practice No 2) prepared by the Permanent Bureau. The Special Commission requested the Permanent Bureau to make revisions to the text, in particular Chapters 9 and 10, in the light of discussions within the Special Commission. This will include revision of the summaries of each chapter, some re-ordering of material (e.g., to avoid repetition), a check on correspondence between English and French texts as well as on the Spanish text, and the drawing up, on the basis of the text, of accreditation criteria. This work will be carried out in consultation with the Chair and Vice-Chairs of the Special Commission and the Working Group which assisted the Permanent Bureau in preparing the draft Guide. The revised text will be circulated to all Contracting States, Members of the Hague Conference and States and organisations represented at the Special Commission for their comments. The final version will then be prepared for publication by the Permanent Bureau.
4. The Special Commission recommended that the Permanent Bureau examine the feasibility of posting on the Hague Conference website tables indicating for each Contracting State the costs associated with intercountry adoption and the charges imposed on prospective adoptive parents (see table 1 and table 2 of Annex 9B of the draft Guide to Good Practice No 2).

Review of the practical operation of the convention

Guide to Good Practice No 1

5. The Special Commission underlined the value of the Guide to Good Practice No 1 entitled *The Implementation and Operation of the 1993 Hague Intercountry Adoption Convention to existing and future Contracting States*.

Mutual support and assistance in applying the safeguards of the Convention

6. Receiving States are encouraged to consider ways in which to assist and support States of origin in the performance of their functions and in the application of safeguards under the Convention, including by means of capacity-building and other programmes.
7. States of origin and receiving States are encouraged to provide each other with a full description of the manner in which they apply the safeguards under Articles 4 and 5 respectively. This information should also be included in their Country Profile posted on the website of the Hague Conference. States are encouraged to update this information regularly.

Selection, counselling and preparation of the prospective adoptive parents

8. States of origin may assist receiving States in establishing their criteria for the selection of prospective adoptive parents by providing information about the characteristics and needs of adoptable children. This information will also contribute to the development of preparation materials on intercountry adoption directed to prospective adoptive parents, and to the management of their expectations.
9. The Special Commission emphasised the need for country specific preparation and for prospective adoptive parents to have some knowledge of the culture of the child and his or her language in order to communicate with the child from the matching stage.
10. The Special Commission recommended that the Permanent Bureau, in consultation with Contracting States and non-governmental organisations, collect information on the selection, counselling and preparation of prospective adoptive parents, with a view to the possible development of the Guide to Good Practice No 3. This may include a discussion on good practices in dealing with failed adoptions and the period of validity of the "home study" report.

Scope of the Convention

11. The Special Commission emphasised that all intercountry adoptions falling within the scope of the Convention under Article 2(1), including in-family adoptions and adoptions by nationals of the State of origin, are subject to Convention procedures and safeguards.
12. Where an adoption falling within the scope of the Convention has been processed in a Contracting State as a non-Convention adoption, the Central Authorities concerned are strongly recommended to co-operate in efforts to address the situation in a manner which respects Convention procedures and safeguards, and to prevent these situations from recurring.

Co-operation issues

Intercountry adoption in the context of globalisation and international mobility

13. Where the habitual residence of the prospective adoptive parents is uncertain the concerned Central Authority should provide advice on their particular situation before they proceed with an adoption application.

Co-operation (development aid) projects

14. The Special Commission emphasised the need to establish, in all cases, a clear separation of intercountry adoption from contributions, donations and development aid.

Issues concerning Convention procedures

Certificate of conformity under Article 23

15. The Special Commission noted with concern the high number of States that have not designated a competent authority for the purpose of issuing a certificate of

conformity under Article 23.

16. The Article 23 certificate is essential to allow the automatic recognition of adoptions made under the Convention and should be issued promptly where the requirements of the Convention have been met.
17. Where a certificate under Article 23 is incomplete or defective, States should co-operate to regularise the situation.

Recognition and effects of adoption (Arts 23 and 24)

18. The Special Commission underlined that no additional procedure may be imposed as a condition of recognition.
19. The Special Commission reaffirmed Recommendation No 17 of the Meeting of the Special Commission of September 2005:

"17. The Special Commission recommends that the child be accorded automatically the nationality of one of the adoptive parents or of the receiving State, without the need to rely on any action of the adoptive parents. Where this is not possible, the receiving States are encouraged to provide the necessary assistance to ensure the child obtains such citizenship. The policy of Contracting States regarding the nationality of the child should be guided by the overriding importance of avoiding a situation in which an adopted child is stateless."

20. Central Authorities should co-operate in the completion of any formalities necessary for the acquisition by the child of the nationality, where appropriate, either of the receiving State or of an adoptive parent.
21. The question of whether nationality will be granted to the child may, where appropriate, be a relevant factor when a State of origin is considering co-operation with a particular receiving State.

Private and independent adoptions

22. Adoptions which are arranged directly between birth parents and adoptive parents (i.e., private adoptions) are not compatible with the Convention.
23. Independent adoptions, in which the adoptive parent is approved to adopt in the receiving State and, in the State of origin, locates a child without the intervention of a Central Authority or accredited body in the State of origin, are also not compatible with the Convention.
24. It was strongly recommended that training be provided for judges and other authorities or persons exercising functions under the Convention. This training should address in particular the problems surrounding private and independent adoptions, as well as other possible ways in which the procedures and safeguards of the Convention are circumvented.

International surrogacy and intercountry adoption

25. The Special Commission noted that the number of international surrogacy arrangements is increasing rapidly. It expressed concern over the uncertainty surrounding the status of many of the children who are born as a result of these arrangements. It viewed as inappropriate the use of the Convention in cases of international surrogacy.

26. The Special Commission recommended that the Hague Conference should carry out further study of the legal, especially private international law, issues surrounding international surrogacy.

Learning from experience

Post-adoption issues

27. The Special Commission reaffirmed Recommendation No 18 of the Meeting of the Special Commission of September 2005:

“18. The Special Commission recommends to receiving States to encourage compliance with post-adoption reporting requirements of States of origin; a model form might be developed for this purpose. Similarly, the Special Commission recommends to States of origin to limit the period in which they require post-adoption reporting in recognition of the mutual confidence which provides the framework for co-operation under the Convention.”

28. It was recommended that receiving States and States of origin preserve adoption records in perpetuity. The record must contain the information referred to in Article 16 and, to the extent possible, any other information or personal items relating to the child or his or her birth family.
29. It was recommended that receiving States and States of origin provide different forms of assistance and counselling for different stages of the child's development to adulthood, including preparation for origin searches and reunions of the adoptees with members of their biological families.

Statistics

30. The Special Commission underlined the importance for States Parties of submitting general statistics on an annual basis to the Permanent Bureau using the forms contained in Preliminary Document No 5 of April 2010.
31. It was recommended that consultations should continue on options for the future collection of statistical data by the Permanent Bureau.

Technical assistance programme and other training programmes

32. The Special Commission recognised the great value of the Inter-country Adoption Technical Assistance Programme (ICATAP), which has already provided technical assistance and training for several States.
33. The Special Commission acknowledged the limited resources available to the Permanent Bureau to maintain ICATAP and urged all States to consider making financial and / or in-kind contributions to secure the continuity of the programme.
34. Contributions of some States and international organisations, such as UNICEF, have been crucial to

the success of ICATAP. In this regard, the horizontal co-operation between States of origin is particularly beneficial.

35. The work undertaken to support the effective implementation of the Convention under the aegis of the International Centre for Judicial Studies and Technical Assistance should be regarded as essential for the proper functioning of the Convention.

Dealing with non-Convention countries

36. The Special Commission reiterated the recommendation that Contracting States, in their relations with non-Contracting States, should apply as far as practicable the standards and safeguards of the Convention.
37. For this purpose attention is drawn in particular to:
- Articles 4, 5 and 17;
 - the requirements of Chapter III of the Convention;
 - the guarantees concerning recognition;
 - the child's right to enter and reside in the receiving State; and,
 - the requirements concerning the suppression of improper financial or other gain.

Response to disaster situations

38. The Special Commission recognised that, in a disaster situation, efforts to reunite a displaced child with his or her parents or family members must take priority. Premature and unregulated attempts to organise the adoption of such a child abroad should be avoided and resisted.
39. No new adoption applications should be considered in the period after the disaster or before the authorities in that State are in a position to apply the necessary safeguards.
40. The Special Commission also recognised the need for a common approach on the part of Central Authorities in dealing with such situations and for Central Authorities to discuss and review actions taken in response to, and lessons learned from, disaster situations.

The 1996 Convention on Protection of Children

41. The Special Commission reiterated the value of the 1996 Convention on the International Protection of Children in the context of cross-border placement of children as well as other international child protection situations.

The 1961 Apostille Convention

42. The Special Commission stressed the usefulness of linking the application of the Hague Adoption Convention of 1993 to the *Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (the Apostille Convention). In the light of the high number of public documents included in a typical adoption procedure, the Special Commission recommended that States Parties to the Adoption Convention but not to the Apostille Convention consider the possibility of becoming a party to the latter.

Theme III: List of preliminary documents and information documents published by the Permanent Bureau

Preliminary Document No 1:

Questionnaire on accredited bodies in the framework of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* – August 2009

Preliminary Document No 2:

Accreditation and adoption accredited bodies: General principles and guide to good practice – Draft Guide No 2 under the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* – May 2010

Preliminary Document No 3 A:

Country Profile for intercountry adoption – State of origin – March 2010

Preliminary Document No 3 B:

Country Profile for intercountry adoption – receiving State – March 2010

Preliminary Document No 4:

Questionnaire on the abduction, sale of, or traffic in children and some aspects of the practical operation of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* – April 2010

Preliminary Document No 5:

Annual Adoption Statistics forms – April 2010

Information Document No 1:

Abduction, sale and traffic in children in the context of intercountry adoption, by David M. Smolin

Information Document No 2:

“The sins of the ‘saviours’ “: child trafficking in the context of intercountry adoption in Africa, by Benyam D. Mezmur

Information Document No 4:

Haiti: ‘Expediting’ intercountry adoptions in the aftermath of a natural disaster ..., by International Social Service

Case Comments and Perspectives

Abbott v. Abbott (2010), Supreme Court of the United States Of America

Professor Barbara STARK

Professor of Law and John DeWitt Gregory
Research Scholar, Hofstra Law School, United
States of America

The issue in *Abbott v. Abbott*, decided May 17, 2010, was whether a *ne exeat* right was a right of custody under the Hague Convention on International Child Abduction. The British father and American mother moved to Chile with their son in 2002. In 2003, the parties separated and the Chilean court granted the mother sole custody and the father visitation. Under Chilean law, once visitation was awarded, the father's authorization was automatically required before the child could be taken out of the country.

In 2005, while litigation was pending, the mother took her son to Texas, where she filed for divorce in state Court. The father filed suit in federal Court, seeking the return of his son under the Convention and the implementing legislation. The District Court denied relief, holding that a *ne exeat* right was not a right of custody and the Fifth Circuit Court of Appeals affirmed. Three other Circuit Courts agreed, but the Eleventh Circuit did not. The Supreme Court granted certiorari to resolve the issue.

The Court looked to the text of the Convention, the views of the State Department, decisions of foreign courts, and the purposes of the Convention to conclude that a *ne exeat* right constituted a right of custody. Since custody, as defined under the Convention, includes the right to determine the child's place of residence, the Court reasoned that the *ne exeat* right, which gave the father a veto, amounted to "decisionmaking authority regarding a child's relocation" and was thus a right of custody.

International lawyers were pleased with the decision. In an ASIL *Insight*, Paul Stephan noted with approval that, "the majority [...] emphasizes the systemic interests of treaty partners, as expressed through foreign court decisions, scholarly work organized by international bodies, and the views of the U.S. Department of State."

Family lawyers, however, were dismayed. As set out in the Amicus Brief of Eleven Law Professors (Amicus Brief), the majority conflated a right of visitation, which is all the father had, with a right of custody, which is required before return is possible under the Convention. By holding that a parent with the right of visitation had a right of return, the Court ordered the return of the child to a country where he had no custodial parent.

Professor Stephan characterized the dispute between the Abbott majority and the dissent as a conflict between

"international cooperation" and "national sovereignty." The family law professors characterized it as a dispute between a father and a mother.

The United States Supreme Court rules in its first case interpreting the 1980 Convention

The Honourable Justice James GARBOLINO

Former Presiding Judge, Superior Court of
California, Roseville, United States of America

The conference room was in a small, aging hotel just one block from the White House. The room was filled with judges and Central Authority representatives engaged in lively discussion concerning the 1980 Convention. The names of some of the participants included those whose work became iconic: Thorpe, Butler-Sloss, Nicholls, Kay, Chamberland, Diamond, McGuiness, Mahony, Bonomy, Lowe, Hilton, Silberman, Duncan, and Dyer. In addition to the common law country participants,³³ observers from twenty other nations were also in attendance. The date was September 20, 2000.

News of the 2nd Circuit Court of Appeals decision in *Croll v. Croll*³⁴ swept through the room. The court had - that day - held that a *ne exeat* order issued by a Hong Kong court did not confer rights of custody on a father who also had liberal rights of visitation. I overheard one distinguished jurist speaking to another in a stage whisper, "The Americans got it wrong."

The only bright light in the news was that there was a spirited dissent to the Croll decision by a well-respected jurist, Judge Sonia Sotomayor. Her dissent noted that:

*"In light of the Convention's broad purpose, the concept of 'wrongful removal' clearly must encompass violations of ne exeat rights. When a parent takes a child abroad in violation of ne exeat rights granted to the other parent by an order from the country of habitual residence, she nullifies that country's custody law as effectively as does the parent who kidnaps a child in violation of the rights of the parent with physical custody of that child. Moreover, where, as here, the parent seeks a custody order in the new country, she seeks to legitimize the very action - removal of the child - that the home country, through its custody order, sought to prevent. To read the Convention so narrowly as to exclude the return remedy in such a situation would allow such parents to undermine the very purpose of the Convention."*³⁵

Notes

³³ The event was the Common Law Judicial Conference on International Child Custody, hosted by the U.S. Department of State, September 17-21, 2000, Washington, D.C.

³⁴ *Croll v. Croll*, 229 F.3d 133 (2nd Cir. 2000).

³⁵ *Id.* at 147.

The Croll decision gained traction among a number, but not all of the federal and state courts in the United States.³⁶ But on June 29, 2009, the U.S. Supreme Court granted certiorari to hear a decision out of the 5th U.S. Circuit Court of appeals in Texas, in *Abbott v. Abbott*³⁷ which followed Croll's treatment of a ne exeat order.

Five weeks later, the U.S. Senate voted to confirm President Obama's nomination of Judge Sonia Sotomayor to the U.S. Supreme Court.

On May 17, 2010, in a 6-3 decision, the United States Supreme Court in *Abbott*³⁸ held that a ne exeat order confers a right of custody for a left behind parent, entitling that parent to maintain an action under the 1980 Convention.³⁹ In reaching their decision, the court looked for guidance not only to the purposes and text of the Convention itself, but gave significance to the interpretation of the Convention by the U.S. State Department, Office of Children's Issues, which acts as the U.S. Central Authority. In its Amicus Curiae brief, the State Department argued that it "has long understood the Convention as including ne exeat rights among the protected 'rights of custody'."⁴⁰

Significantly, the Supreme Court focused upon the decisions of Hague partner countries, and found that there was "broad acceptance" of the principle that ne exeat rights conferred rights of custody enforceable under the Convention. Citing decisions on both sides of the question from the United Kingdom,⁴¹ Israel,⁴² Austria,⁴³ South Africa,⁴⁴ Germany,⁴⁵ Australia,⁴⁶ Scotland,⁴⁷ Canada⁴⁸ and France,⁴⁹ the court found that there was an "emerging international consensus that ne exeat rights are rights of custody, even if that view

was not generally formulated when the Convention was drafted in 1980".⁵⁰

The court reasoned that requiring the return of a child where a parent has a ne exeat right reflects the Convention's purpose in deterring future abductions.

Reaching back ten years into the past, the opinion then quoted from Judge Sotomayor's prescient dissent in Croll, that:

"Denying a return remedy for the violation of such rights would 'legitimize the very action -removal of the child- that the home country, through its custody order . . . sought to prevent' and would allow 'parents to undermine the very purpose of the Convention'."

It may have taken a few years, but it now appears that "The Americans got it right."

Abbott v. Abbott (2010), Supreme Court of the United States of America

Professor Peter McLEAVY

Professor of Law, University of Dundee, United Kingdom

The drafters of the Hague Convention over 30 years ago could scarcely have envisaged the complexities which have come to bedevil 'rights of custody', the legal concept upon which the instrument's summary return mechanism is built. At that time the Convention remedy was expected to benefit applicants who were primary carers and who therefore enjoyed the full range of custodial rights. Passing reference was made to the potential consequences for the instrument where an applicant possessed merely a right to control residence, but this was not recorded as having been subjected to detailed scrutiny. And so courts in the ever increasing network of Contracting States were left to resolve the issue for themselves, an issue which acquired increasing significance as courts, as well as legislators, made greater use of ne exeat or veto clauses in the construction of custody orders and family law statutes.

Creditable reasons can be advanced on both sides of the argument as to how a bare right of veto should be classified, and whether it should suffice for the purposes of activating the Convention's return remedy. The prospect of applicants with limited rights being entitled to secure the return of children and in this be supported, often generously so, in their endeavours, will be considered objectionable by some. Nevertheless there is a principled and irreproachable rationale underpinning the stream of appellate case law from the decision of the English Court of Appeal in *C. v. C. (Abduction: Rights of Custody)* [1989] 1 W.L.R. 654 to the United States Supreme Court in *Abbott v. Abbott* 130 S. Ct. 1983 (2010) in

Notes

³⁶ The Croll rationale was followed in *Fawcett v. McRoberts*, 326 F.3d 491 (4th Cir 2003), *Gonzales v. Gutierrez*, 311 F.3d 942 (9th Cir. 2002), *Ish-Shalom v. Wittman*, 797 N.Y.S.2d 111, N.Y.A.D. 2 Dept., 2005; *Welsh v. Lewis* 740 N.Y.S.3d 3355, N.Y.A.D. 2 Dept., 2002. However, the U.S. 11th Circuit came to a contrary conclusion in *Furnes v. Reeves*, 362 F.3d 702 (11th Cir. 2004).

³⁷ *Abbott v. Abbott*, 542 F.3d 1081 (5th Cir. 2008).

³⁸ *Abbott v. Abbott*, 560 U.S. (2010), 130 S.Ct. 1983.

³⁹ The majority opinion was written by Justice Anthony Kennedy, in which five other justices joined, including, of course, Justice Sonia Sotomayor.

⁴⁰ *Id.*, 130 S.Ct. 1983, at 1993.

⁴¹ *In re D (A Child)*, [2007] 1 A.C. 619, 628, 633, 635 (2006).

⁴² *CA 5271/92 Foxman v. Foxman*, [1992], §§ 3(D), 4.

⁴³ *Oberster Gerichtshof [O.G.H.] [Supreme Court]* Feb. 5, 1992, 2 Ob 596/91.

⁴⁴ *Sonderup v. Tondelli*, 2001(1) SA 1171, 1183 (Constitutional Ct. of South Africa 2000).

⁴⁵ 2 BvR 1126/97.

⁴⁶ *In the Marriage of Resina* [1991] FamCA 33 (Austl., May 22, 1991).

⁴⁷ *A.J. v. F. J.*, [2005] CSIH 36, 2005 1 S.C. 428, 435-436.

⁴⁸ *Thomson v. Thomson*, [1994] 3 S.C.R. 551, 589-590, 119 D.L.R. (4th) 253.

⁴⁹ *Public Ministry v. M. B.*, [CA] Aix-en-Provence, 6e ch., Mar. 23, 1989; *Attorney for the Republic at Périgueux v. Mrs. S.*, [T.G.I.] Périgueux, Mar. 17, 1992.

Notes

⁵⁰ *Abbott*, *supra*, at 1994.

which a *ne exeat* clause has been deemed to amount to an actionable right of custody for Convention purposes. That rationale is centred on the child and his right not to be subjected to a unilateral removal or retention where a court or a legislator has so provided, whether in a court order or more generally in a statute.

A unilateral removal or retention from a home environment will ordinarily produce harmful effects for the child concerned. It is entirely appropriate therefore that such actions should be deterred and made subject to an effective judicial remedy in as broad a spectrum of family situations as possible. Each element of Article 3, the enabling clause for the summary return mechanism, is drafted in the widest

possible terms in its reliance on custody rights, whether as regards who might possess such rights, allowing for *renvoi*, or the unlimited sources of origin for such rights. The partial definition of custody rights, with the specific reference to the right to determine the child's place of residence, must be seen against this background. A right of veto is ultimately protecting the child's interests and seeks to ensure that there is judicial supervision of any decision concerning international relocation. For this reason, in the context of the concept's material scope, there should be a broad interpretation of Convention custody rights. And in this the decision of the Supreme Court to follow the overwhelming body of international appellate case law on the issue is to be warmly welcomed.

Judicial Communications

Reflections regarding the operation of instruments for the international return of children – strengths and weaknesses and challenges

Judge Graciela TAGLE

Magistrate of the City of Cordoba (*Juez de la Ciudad de Córdoba*), Córdoba, Argentina
Member of the International Hague Network of Judges

1. Introduction

This article examines the work programme which has been followed by the judges who attended the first meeting of Latin American Judges in Monterrey in 2004. It reveals the progress made since that first meeting, it indicates how we have trained, it displays the results achieved through profound, systematic work, and proposes that we should continue our professional development. Using official statistics, it highlights the reality of the Argentine Republic with regard to the average duration of cases, which is replicated throughout Latin America. It points to what I consider to be the weaknesses observed in the operation of the return instruments. It poses the need for the “Model Law on procedure norms in cases of international abduction of children” to continue to be analysed by the different Latin American Member States that have as yet not passed legislation in this matter. It refers to the new tools such as direct judicial communications, their objectives and operation, and to the National Network of the Argentine Republic and its future expansion. It proposes to continue in the making of a Latin American Network of Liaison Judges which will strengthen the region and position it towards the fulfilment of a wish: the construction of a Great American Network.

2. Reflecting on the beginnings

Six years have passed since the First Seminar of Latin American Judges on the 1980 Hague Convention on the Civil Aspects of International Abduction of Children held in Monterrey, Mexico. I reflect upon the progress made since then. If we go over the events, we may remember that during the first meeting, the biggest challenge was to establish the boundaries of the return instruments. Today, through *The Judges' Newsletter*, we observe the experiences of liaison judges, i.e., those judges who must resolve international return cases within their jurisdictions and we proudly observe that it is these judges, who are members of the network, who advise and inform on the procedure to be followed and what Convention to apply, and who explain the scope of the key concepts. The specialization we have achieved with the efforts of the Hague Conference, the Inter-American Child Institute and the collaboration of the European Union, we have positioned ourselves at the level of the Member States who have been effectively applying said Conventions for years.

The training given in different seminars has helped us grow, but fundamentally the spirit with which we have become committed to the cause allows us to overcome difficulties and consolidate our accomplishments. To train effectively was, and continues to be, the great challenge posed to us by the Hague Conference; we can now appreciate the expected results.

The purpose of applications for the international return of children involves appropriately trained judges and procedures appropriate to the characteristics of these cases. It is also necessary for all judicial operators involved to receive appropriate training.

I have remarked upon the training of judges. I have likewise noticed that few lawyers have any experience in the application of international return instruments, a topic by no means small that must be addressed in forthcoming training programmes.

3. Operation of the instruments on the international return of children in the Argentine Republic – Statistical Analysis in the Argentine Republic. Latin America and Proposals for the Future

A quick look at the Latin American reality shows us that the cases last way beyond the timeframes laid down by both the 1980 Hague and the 1989 Montevideo Agreements. This is why we propose a challenge: to shorten the average duration of the cases.

If we take a look at the latest official statistics put forward by the Argentinean Central Authority in relation to the multilateral agreements in the matter of international abduction of children, we see that with regard to the average duration of the procedures within the framework of the Hague Convention: of the 63 applications initiated in 2007, 13 cases were decided within the year, 9 were decided between the months of January and September 2008, 39 are still pending ruling and in 2 cases the children were not found. Of the 53 applications initiated based on the Inter-American Convention, 14 were resolved during 2007, 9 between the months of January and September 2008, 30 were pending resolution and in one case the child has not been found. It follows from an analysis of this that the average duration of Hague Convention cases is 26 months, and 64% of cases are still not concluded 32 months after the filing of an application, 15% have been resolved in 21 months and 21% in 12 months. In Inter-American Convention cases the average duration is 24.85 months, 57% of cases are still pending 32 months after the filing of an application, 17% have been resolved in 21 months and 26% in 12 months.⁵¹

This reality, recurrent throughout Latin America, should concern and fundamentally occupy us, since in every case there is a child who has been abruptly separated from the person or institution that cared for and sheltered him or

Notes

⁵¹ These statistics can be found published on the official website of the Foreign Office of the Argentine Republic < <http://www.menores.gov.ar> >.

her, with the resulting loss of stability that is contrary to the principle of “the child’s best interests”, a guiding principle in the Hague Convention’s Preamble. So the first thing to do is to determine the problem: save in exceptional cases, cases are not resolved in the timeframe set down in the 1980 Convention. This is related to the lack of training of Judges and judicial operators and the lack of an adequate procedure. The urgency is called for because the timeframe of a process is established in relation to the complexity of the issues being debated in the action and in these procedures the judge must determine whether the return is appropriate or not, postponing all treatment of the fundamental issue regarding the child’s custody, which will be posed before the jurisdictional judge corresponding to the child’s habitual place of residence. However, resolving a case urgently ought not to mean forgoing procedural principles such as the principle of bilateralism, contradiction, defence in court, or the principle of respect for the guarantee of people’s equality before the law and the procedure. The importance of what has been said should be noted: In a recent case between Argentina and the U.S., the Supreme Court of Justice of the Province of Buenos Aires declared *ex officio* the nullity of all proceedings based on the following: “Whatever the appropriate channel, and regardless of the speed and urgency that should be granted to the process, the need for a process is evident” ... “the sheer denial of the evidence offered is a flagrant violation of defence guarantees and the due legal process, as well as having kept the opponent from access to effective judicial protection by arbitrarily denying them the chance to produce evidence”.⁵² An analysis of the ruling quoted above shows firstly that the required training involves all the legal operators: that is to say, judges, lawyers as well as technical teams.

Secondly, the ruling also reveals the need for there to be a specific procedure since the Hague Convention does not have procedural norms and the Inter-American Convention only has Article 12 which provides for a term of eight days for the opposition to be filed. This, added to inadequate procedures, causes delay and lack of juridical predictability, which results in juridical insecurity. This is undoubtedly one of the challenges facing signatory Latin American States that have as yet not passed a procedural law for its treatment. The Republic of Chile has the Auto Acordado (self agreement) of the Supreme Court of Justice from 3rd November 1998; the Dominican Republic has the Act 480/2008 of the Supreme Court of Justice; Panama with the Executive Decree 222/2001; Ecuador has a good practices guide developed on the basis of the Model Law; Guatemala has a draft bill based on the Model Law; Mexico is working on a Federal norm; Peru is discussing the Childhood Code and expects to incorporate the Model Law; Uruguay has made a lot of progress and is awaiting approval from the Senate; and Argentina is holding preliminary discussions for the Model Law on procedural norms in cases of international abduction of children which are being analyzed by specialists in matters of procedure and private international law and by member judges of the National Network.

This continued concern to have a legal instrument has prompted the advances that we see today in the region, namely, the “Model Law on procedure norms in cases of international abduction of children” among others that are under analysis.

However, use of direct judicial communications and liaison judges i.e. the members of the International Hague Network of Judges, constitutes another way to facilitate procedures, besides international co-operation and mediation.

4. Direct Judicial Communications – International Hague Network of Judges – Overview of outstanding cases in 2009

I shall refer to my experience during 2009. In a case with Norway, I acted as Liaison Judge on a request of the Argentinean Central Authority. In this function I contacted the magistrate and expressed the need to facilitate the procedure. For the interview I had to request the intervention of the National Network of Judges which was launched in October 2008. I did this so that the network judge in the jurisdiction of the case should intervene and overcome the obstacles present at the level of the Court’s Secretary. The hearing with the magistrate was extremely revealing since he was not familiar with the Convention and knew nothing of the figure of the Liaison Judge. The resolution for the return was passed two months after this intervention.

In a case with Mexico, I worked closely with the Liaison Judge, not just to facilitate the process but to focus on aspects regarding the content of the resolution passed by the Appeals Court, denying the return ordered in the first instance. In a case with Australia, intense work was done at different levels to secure a prompt resolution, which was passed by the Supreme Court of Justice of the Nation without delay. In a case with the USA on access arrangements, it was possible to get the intervening magistrate to urge the procedure by appealing to the principle of expeditiousness which comprises that of *ex officio*. Thus the terms were resumed and the parties presented an agreement that put an end to the trial. On another occasion in a case with Brazil, the judge in Argentina was informed of the scope of Article 16 to let his Brazilian counterpart, before whom the child’s mother had requested custody, know that he should not decide on the issue of custody in the state of refuge until the child’s return had been resolved. In another case, the procedure was facilitated and the magistrate informed of issues related to the problem under debate. All this activity has undoubtedly benefited the children.

In all the cases mentioned, as with other cases which I have omitted for the sake of brevity, I have advised, informed and collaborated with my jurisdictional colleagues, on request of the Central Authority, regarding the instrument to be applied, its practice, the criteria to follow as to the key concept, providing jurisprudence or doctrine on the matter.

With regard to the Central Authority

The Argentinean experience indicates that a close link between the Central Authority and the Liaison Judge smoothes the progress of the task of co-operation within the Inter-American environment and that of the Hague Convention. A very interesting experience was the First Conference of Judges and Specialists held in August 2009 to analyze the “Model Law on procedural norms for the application of the agreements on the international abduction of children” organized jointly with the Argentinean Central Authority. Note should be taken of the importance of pooling efforts in search of greater benefits and achievements. Today the analysis of the draft bill for the Procedural Law in Argentina is a reality rewarding the joint efforts of the Central Authority and the Liaison Judge along with the members of the National Network.

In the international environment

With regard to the international environment, I have answered questions from foreign judges and Central Authorities regarding legislation on the matter, I have contributed to *The Judges' Newsletter* and I have reviewed the jurisprudence in control cases of international abduction of children in my country, thus contributing to the INCADAT database.

5. Consolidation and Implementation of the National Network

The National Network of Expert Judges in the Argentine Republic was launched in 2008 and currently is in full operation. A description of how this network is organized was

published in *The Judges' Newsletter* Volume No. XV in autumn 2009 (page 142). The current challenge is to encourage other countries to set up their own national networks and to co-operate with them in the region, as in the cases of Mexico and Nicaragua, for example.

6. Conclusion

These are the most relevant tasks fulfilled so far, among others of no less importance. Through this work I wish to stress the importance of the function of the Liaison Judge and everything that may be achieved through his or her timely and dedicated mission. Through it I also wish to encourage those who have recently joined to act. Today, after having earnestly committed ourselves to the defence of childhood rights by integrating the International Hague Network of Judges, we face great challenges ahead: 1) To continue training Judges who have jurisdiction in these applications; 2) To further the training of the other legal operators intervening in these processes; 3) To work on analyzing the “Projected Model Law on procedural norms for the application of the agreements on the international abduction of children” in the remaining Latin American countries, adapting the regional project in accordance with each State's legal traditions and our national law in order to make the procedural law in the international return of children a reality in each Latin American Member State; 4) Increase the practice of direct judicial communications; 5) Expand the Argentinean National Network and build national networks in other Latin American countries; and 6) Continue with the construction of the Latin American Network of Liaison Judges with the ultimate aim of establishing a Great American Network.

International Child Protection Conferences and Seminars

International Symposium on Child Abduction, *Chairman's statement*

Berlin, Germany, 4 December 2009

1. Cases under the Hague Convention of 1980 on the Civil Aspects of International Child Abduction

Court proceedings in Hague return cases should be quick, also at the appellate level: "Justice delayed is justice denied." An immediate return should always be our main goal and is one of the cornerstones of the Hague Convention.

Direct and professional contact between our "Central Authorities" is equally important.

Depending on the legal system, concentration of jurisdiction for cases under the Hague Convention on a limited number of specialized courts and judges can be a means for ensuring rapid procedures and coherent case law.

The International Hague Network of Judges should be further expanded.

Further, I welcome in particular:

- The elaboration by Brazil of a bill which will regulate the application of the Convention, with a view to adjusting the judicial procedure.
- The involvement in Mexico of the Federal Ministerial Police to help localize the child better and faster and the Mexican measures to expedite court proceedings.
- The Canadian initiative of September 2006 to establish a "Special Committee on International Parental Child Abduction" as an example for initiating a network of Hague Liaison Judges.

2. Future Member States to the Hague Child Abduction Convention

Future Member States should ensure appropriate domestic structures are in place before the Hague Convention enters into force, including a Central Authority and the necessary implementing provisions.

Further, I welcome in particular:

- The steps Russia has undertaken to accede to the Convention.
- The current decision-making process in Japan regarding this matter. While still a non-Member, Japan offers legal remedies in child abduction cases such as the habeas corpus proceedings and applications for a court order for the recovery of the child.

- The very recent decision by Morocco to join the Hague Convention, the first Islamic country to do so, deserves particular credit and appreciation.

The participants in the symposium continue to encourage other countries to join the Convention.

3. Cases outside the Hague Convention

Outside the Hague Convention, many significant measures to facilitate the return of abducted children also deserve particular recognition:

- The ongoing Malta Process for dialogue between Hague and non-Hague countries.
- Non-Hague countries in the Mediterranean region are in process of significantly reforming their family laws.
- The very successful mediation procedures in many non-Hague countries.
- The forming of a Department of International and Cultural Cooperation within the Ministry of Justice in Egypt, which acts in many ways just like a Central Authority in the Hague system.
- The 3rd Meeting of the Working Party on Mediation in the Context of the Malta Conference in Gatineau/Canada on May 11 and 12 regarding mediation in child abduction cases and the resulting proposal that a central point of contact for mediation be created in each country.

4. Coordination of domestic actors

Finally, all domestic actors need to further improve the coordination of their efforts. These actors include family judges, youth welfare officers, public prosecutors and the police, but also non-governmental organizations and individuals including lawyers.

The establishment of a non-governmental central information point – as, for example, initiated by Land Bremen at the Conference of Interior Ministers in Germany – could be a very helpful step forward.

The activities of such a non-governmental central information point should include:

- information of prospective parents about relevant legal provisions and cultural differences,
- information about the scope of preventive measures,
- counselling about the different aspects (socio-psychological and legal) of international family conflicts and their resolution, including the different means to deal with a conflict (e.g., mediation), focusing on the best interests of the child and its right of access with both parents,
- listening to and accompanying parents throughout the procedure,
- liaisoning like a case-manager between parents, governmental and non-governmental entities,
- contacting working partners abroad.



Cross-frontier Child Protection in the Southern and Eastern African region: The Role of the Hague Children's Conventions

Pretoria, South Africa, 22-25 February 2010

CONCLUSIONS AND RECOMMENDATIONS

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.

The participants,

recognising the need for closer inter-State co-operation for the protection of children across frontiers, in particular children who are the victims of sale, trafficking or abduction, unaccompanied minors, children affected by international parental disputes, children who are the subject of irregular intercountry adoption or other placements abroad, refugee or internationally displaced children,

affirming their commitment to the principles enshrined in the *African Charter on the Rights and Welfare of the Child* (1990) and the *United Nations Convention on the Rights of the Child* (1989),

agree upon the following:

1. Regional Co-operation

1.1 Effective inter-State co-operation is essential for the protection of vulnerable children in cross-frontier situations. Such co-operation is especially important today in the Southern and Eastern African Region. There is an urgent need to establish co-operation protocols among the States in the Region which will facilitate through designated authorities the exchange of information,

mutual assistance, collaboration, co-ordination of efforts and sharing of expertise. There is a need for fluid communications between and regular meetings among child protection agencies in order to develop effective child protection mechanisms.

2. *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of intercountry adoption*

2.1 The 1993 Convention provides the appropriate and internationally accepted legal, administrative and regulatory framework to guarantee the child's best interest in intercountry adoption.

2.2 The implementation of the 1993 Convention should not occur in isolation but within the framework of an integrated national child care and protection system which strengthens capacities for family-based and locally-based solutions.

Subsidiarity

2.3 Subsidiarity means that a child should be raised by his or her birth family or extended family (kinship group) whenever possible. If that is not possible or practical, other forms of permanent family care in the country of origin should be considered. Only after full and proper consideration has been given to national solutions should intercountry adoption be considered, and then only if it is in the child's best interest. The subsidiarity principle should not be applied inflexibly and at the expense of the child's best interests.

2.4 Efforts should be undertaken in the countries in the Region to encourage, through awareness campaigns, more domestic adoptions which in turn would facilitate the implementation of the principle of subsidiarity.

Additional benefits of the 1993 Convention

2.5 The flexible language and structure of the Convention permits Contracting States to retain control over the adoption process and the level of adoptions, to select preferred partner countries and to decide on the extent, if any, to which adoption agencies (accredited bodies) should operate on their territory.

2.6 Further benefits of the Convention include participation in a global network of Central Authorities, providing the opportunity to share international experience and expertise, to develop and implement best practices and a common understanding of the minimum standards required by the Convention.

Notes

- * ICATAP is a programme supported by the Hague Conference's International Centre for Judicial Studies and Technical Assistance.

2.7 The Convention provides for the automatic recognition in all Contracting States of adoptions made under the Convention, thereby eliminating the need for further procedures for recognition of the adoption or re-adoption of the child in the receiving country.

2.8 Countries preparing to join the Convention and those already Parties may benefit from the Permanent Bureau's Intercountry Adoption Technical Assistance Programme (ICATAP).*

Post-adoption follow-up

2.9 It is possible for countries of origin within the framework of the Convention to require post-adoption reports. The laws of States of origin frequently require the provision of such reports.

Control of adoption costs and fees

2.10 The issue of regulating adoption costs and fees is important in order to eliminate abuses. Receiving countries and countries of origin should co-operate in the exchange of information about the actual costs involved in processing an adoption. This information should be transparent and publicly available to all stakeholders in the adoption process.

Social work capacity

2.11 The involvement, in the adoption process, of social services professionals and para-professionals who are part of the child protection system is essential for the best interests of children. Efforts within the Region to develop social work capacity are strongly encouraged and should be supported.

3. *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*

3.1 The value for countries in the Region of the 1980 Convention is recognised. The Convention protects children from the harmful effects of their unlawful removal or retention across frontiers. It is noted that the Convention provides a firm basis for encouraging agreement, through mediation and other similar means, between parents concerning the exercise of their parental rights and responsibilities.

3.2 There was recognition that States in the Region are likely to derive maximum benefit from the Convention if all of them become parties to the Convention.

3.3 For the Convention to work effectively, Contracting States must establish Central Authorities which have adequate resources, which deal quickly with requests and other communications and whose contact details are regularly updated and made known to the Permanent Bureau.

3.4 Experience among Contracting States has shown that the provision of training for judges, Central Authority personnel and lawyers is essential if the Convention is to

operate efficiently and to be interpreted consistently. The efforts of the Permanent Bureau to provide or facilitate judicial training should be supported.

4. *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*

4.1 Attention was drawn to the considerable advantages of the 1996 Convention and to its 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.

5. *Hague Convention of 23 November 2007 on the International Recovery of Child Support and other forms of Family Maintenance*

5.1 The completion of the new global Convention on the international recovery of child support of 2007 was recognised as a significant event and States in the Region are urged to consider the benefits of joining the Convention. Particular emphasis was placed on the need to introduce effective measures for the enforcement of child support orders. There is a need for many countries in the Region to review their current domestic procedures for the recovery of child support in order to make them swift, accessible and cost effective. This will also facilitate the international recovery of child support.

6. *Free Circulation of Foreign Public Documents*

6.1 States in the Region are urged to consider joining the *Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (the Apostille Convention) as it will facilitate the free circulation of public documents in relation to children.

7. *Law Reform*

7.1 The current law reform efforts that are taking place in the Region offer a good opportunity for States to incorporate within their laws the four modern Hague Children's Conventions. It was recognised that the development of model implementing legislation could facilitate the implementation of the Conventions.

7.2 All African States involved, or considering involvement, in the Hague Conventions should take ownership and responsibility for initiating processes and structures that support the Hague Conventions.

8. *Co-operation with Regional Institutions*

8.1 It is important to involve the relevant regional bodies (the African Union, the African Committee of Experts on the Rights and Welfare of the Child, the Southern African Development Community (SADC) and the East African Community (EAC)), UNICEF and the civil societies in the Region in efforts to improve the cross-border protection

of children and to elicit their support in having cross-border issues on the protection of children placed high on the political agenda.

9. Capacity Building

- 9.1 States in the Region urgently need assistance to develop the capacity to engage effectively in cross-border co-operation for the protection of children. In particular, support is needed in developing the centralised authorities which will support co-operation within the Region, as well as the implementation of the Hague Children's Conventions. Many States in the Region require technical assistance in preparing to implement the Conventions, and training facilities for those (for example, judges, social workers and Central Authority personnel) responsible for operating the Conventions. The efforts being made by the Hague Conference and UNICEF to support capacity-building are welcome and should be intensified.

10. Cultural Sensitivity

- 10.1 It was noted with concern that negative perceptions in certain parts of the world about African culture and systems subsist and undermines effective co-operation, implementation and integrity of the Hague Conventions. It was therefore recommended that all parties to Hague Conventions, at both State and judicial levels, should receive training on cultural sensitivity and technical competence.
- 10.2 All Members and States Parties to Hague Conventions should recognise the cultural identities of the countries they engage with and fully commit to the enforcement of orders arising from the Conventions.

11. Hague Conference Presence in the Region

- 11.1 The Permanent Bureau is encouraged to consider ways in which its presence in the Region might be strengthened.

12. Follow-up Seminar

- 12.1 It was agreed that a follow up seminar should take place in the Region within the next two years. An appeal was made for a State to host the next meeting.

Acknowledgements

The Government of the Republic of South Africa, in particular the Department of International Relations and Co-operation, is thanked for their support for the Seminar.

Other Governments were thanked for facilitating the attendance at the Seminar of high officials and other experts from their States.

The participants expressed their gratitude to those who contributed financially to the Seminar, in particular the Government of Ireland, the Government of the Netherlands and the Hague Forum for Judicial Expertise, the contributions of the latter two were facilitated by the Hague Conference's International Centre for Judicial Studies and Technical Assistance.

Particular thanks are expressed to UNICEF for their practical and financial support for the Seminar.

Pretoria, 25 February 2010



Participants to the Seminar on the Cross-Frontier Child Protection in the Southern and Eastern African Region, Pretoria, South Africa.



International Judicial Conference on Cross-border Family Relocation, Washington, D.C., United States of America

23-25 March 2010

co-organised by the Hague Conference on Private International Law and the International Centre for Missing and Exploited Children, with the support of the United States Department of State

A few months ago the Hague Conference was delighted to publish, with the International Centre for Missing and Exploited Children (ICMEC), the first Special Edition of *The Judge's Newsletter* (in English only) featuring the proceedings of the Washington Conference on Cross-Border Family Relocation. Publication of this Special Edition in English was made possible thanks to the generous financial support of ICMEC.⁵³

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.

Notes

⁵³ Any financial assistance for publication of the full proceedings in French would be welcome.

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.

Erratum

Please note that the Special Edition of the Judges' Newsletter on the Washington Conference reflects on its page 51 "The Honourable Mr Justice Vikramajit Sen, District Court of Delhi, India" but should have been read "The Honourable Mr Justice Vikramajit Sen, Delhi High Court, India".



Participants to the International Judicial Conference on Cross-border Family Relocation, Washington, D.C., United States of America.

Nordic Baltic Seminar on International Child Abduction

Estonia, 10-11 June 2010

Kristin Ugstad STEINREM and Ingrid MIDTGAARD

Advisers, the Royal Ministry of Justice and the Police, Department of Civil Affairs, Norway

With the support of the Nordic Council of Ministers, the Estonian Ministry of Justice and the Norwegian Ministry of Justice and the Police had the pleasure of inviting judges and representatives from the Central Authorities in the Nordic and Baltic countries to a seminar in Estonia on the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* in June.

We were honoured that the Seminar was chaired by Mr William Duncan, Deputy Secretary General of the Hague Conference, who opened proceedings by presenting the Bureau's main focus areas at present, and the current trends in this field of law. The following presentations were given by eminent speakers such as the Norwegian Judge/PhD Ms Torunn Kvisberg, who spoke of the principle and concepts of the Convention, exceptions from return, and human rights, the child's best interests. Mr. Örjan Landelius, Director of the Department for Consular Affairs and Civil Law, the Swedish Ministry for Foreign Affairs, delivered a very interesting speech on the role of the Central Authority. Finally, Ms Tiina Mare Hiob, an Estonian attorney of law, shared her experiences on the increasingly relevant issue of mediation in child abduction cases. Her views on mediation in these cases were most interesting, as the court procedures in child abduction cases, including mediation, vary between the Contracting States.

Additionally, the seminar included a workshop mostly based on actual child abduction cases which addressed several complicated issues. It included *inter alia* a case where the abductor argued that it would be in the abducted child's best interest not to return to its habitual residence, as the left-behind parent had a history of being violent towards the abductor. However, the Court granted the application for return. It acknowledged that the conflict between the parents could involve a certain risk of mental harm, but stated that the risk could not be characterised as "serious", which is the criterion of Article 13 b). Further, the Court said that "*what would be the best care solution for [the child] in the future is not relevant to the question of return. The question of return is, on the other hand, a question of where [the child] shall be while his future care is being decided, and thereby also which country's authorities are to make that decision.*" The introduction of this case was followed by a group discussion on the understanding of Article 13 b) in which the participants for the most part agreed with the Court's decision.

Another topic addressed in the workshop was the concept of habitual residence (Article 3 in the Convention). The question arises especially when parents commute between two countries, and when they have no agreement on the

length of their stay in either of the countries. When one of the parents later states that his or her home country is the child's habitual residence, problems with interpreting this term may arise. As this issue has occurred in some of our cases recently, it was valuable to get viewpoints from the participants on this particular question.

Further, Article 16 of the Convention was addressed, including problems with decisions being taken in custody cases in the requested State, after receiving notice of a child abduction.

We found the seminar to be most useful, as it contributed to a broader understanding of the countries' handling of these cases, bringing out both similarities and differences between the countries' practices and experiences. Hence, such seminars may result in new ways to look at one's own handling of international child abduction cases, both for Central Authorities and for courts. And even if no changes are made, knowledge of other Contracting States' practices alongside having built a network of Central Authorities and judges, is of great importance when dealing with such cases. We would therefore like to thank the participants of the Nordic and Baltic countries for their valuable contributions to this seminar, and encourage others to arrange similar seminars in order to improve the practical operation of the Convention.

Conference on International Child Abduction, Forced Marriage and Relocation

London, England, 30 June – 2 July 2010

Organised by the Centre for Family Law and Practice, London Metropolitan University

The London Conclusions and Resolutions:

Between 30th June and 2nd July 2010 over 150 specialists including judges, lawyers, psychologists, academics, researchers, mediators, NGOs, support groups, government representatives, and victims met in London to discuss the three conference themes of International Child Abduction, Relocation and Forced Marriage.

The conference delegates were from the following 18 jurisdictions: Australia, Austria, Canada, Egypt, France, Germany, Hong Kong, India, Israel, Japan, New Zealand, Norway, Singapore, South Africa, Sweden, The Netherlands, The United Kingdom (England and Wales, Northern Ireland and Scotland), and The United States of America.

The conference discussion groups were chaired by:

(1) International Child Abduction: Professor William Duncan (The Hague Conference on Private International Law); Professor Jane Fortin (England and Wales); and Professor Philip Leach (England and Wales) (2) Relocation: Professor

Mark Henaghan (New Zealand); Professor Patrick Parkinson (Australia); His Honour Judge Peter Boshier (New Zealand) (3) Forced Marriage: Professor Judith Masson (England and Wales); David Hodson (England and Wales); Mr. Justice Singer (England and Wales).

The rapporteurs for the conference groups were as follows:

(1) International Child Abduction: The Hon. Justice John Faulks, Deputy Chief Justice, Family Court of Australia
(2) Relocation: Judge Mary O'Dwyer, Family Court, New Zealand
(3) Forced Marriage: (i) Lord Justice Munby, Court of Appeal, England and Wales (ii) Lady Justice Black, Court of Appeal, England and Wales (iii) Mr. Justice Baker, High Court, England and Wales.

The following provisions were agreed at a meeting of rapporteurs and others reporting on the outcomes of the conference sessions:

International Relocation of Children

The London Conference, in addition to considering the issues of International Child Abduction and Forced Marriage, has been the third phase in an ongoing effort to achieve greater international consistency in the approach to cross-border relocation disputes: the first phase being The International Family Justice Judicial Conference for Common Law and Commonwealth Jurisdictions, Cumberland Lodge, Windsor, England, 4th to 8th August 2009; and the second The International Judicial Conference on Cross-Border Family Relocation, Washington D.C., United States of America, 23rd to 25th March 2010.

Common International Framework

1. We endorse the approach recorded in the Washington Declaration on International Family Relocation, March 2010, and agree that in all applications concerning international relocation the best interests of the child should be the paramount (primary) consideration and determinations should be made without any presumption for or against relocation.
2. We accept that an unfettered discretion in the judiciary leads to unpredictability and a lack of uniformity in decision-making and we support the development of a common international framework to guide the exercise of judicial discretion.
3. We would like to see proposed and debated at the sixth meeting of the Special Commission to review the operation of the 1980 Child Abduction Convention (the Abduction Convention) and the 1996 Hague Child Protection Convention the introduction by International Instrument or otherwise of a common framework for resolving disputes relating to the international relocation of children.

The Voice of the Child

4. We agree that in reaching decisions regarding the international relocation of children, the child's voice must be heard, taken into account, and given appropriate weight.

Enforcement of Orders

5. Provisions contained in an order permitting relocation which are designed to sustain the relationship between a child and a parent should be respected in the destination country.

Mediation

6. The voluntary settlement of international relocation disputes, achieved where necessary with the assistance of skilled professionals, should be promoted.

Research

7. Having regard to the pressing need to guide and inform families, policy makers and judges, this conference endorses the resolutions of both the Windsor Conference (August 2009) and the Washington Declaration on International Family Relocation (March 2010) that additional research in the area of relocation is necessary to analyse trends and outcomes in relocation cases.

International Child Abduction

Having engaged in wide-ranging discussion, the London Conference noted the following specific issues and concluded as follows:

Interpretation of the Abduction Convention

1. We recognise that the Abduction Convention adopts certain autonomous concepts to address the problem of international child abduction. We urge States Parties to strive for uniform interpretation of those concepts and to avoid conflating such international concepts with their own domestic custody law.

International Relocation

2. We are aware that restrictions on international relocation can sometimes be a significant factor in international child abductions. We believe that international cooperation on a relocation framework, whether by International Instrument or otherwise, may alleviate some harms associated with international child abductions.

Voice of the Child

3. The right of the child to be heard in proceedings affecting the child, set out in Article 12 of the UNCRC, should be regarded as extending also to proceedings concerning international child abduction. We accept that different jurisdictions will ascertain the child's views through a variety of methods.

Safeguards for Return of the Child

4. We understand the need for procedures to ensure the safe return of a child pursuant to the Abduction Convention. Appropriate arrangements, whether by way of undertakings, or where possible by judicial orders, should be made when necessary to ensure the safety and protection of both child and parent upon their return to the State of habitual residence. We recognise the value of the 1996 Hague Child Protection Convention in providing for the enforcement of emergency protective orders in the State of habitual residence until such time as the authorities in that State are able to put in place the necessary protections.

Access to Justice

5. We endorse the need for prompt resolution of disputed welfare issues relating to an abducted child following return to the State of habitual residence, including consideration of potential applications for a relocation of a parent and child. In addition, we recognise the problems parents may encounter in obtaining adequate representation for custody and / or relocation proceedings in the country to which the child is returned.

Mediation

6. We recognise that in abduction cases mediation may be an important and effective tool to resolve disputes relating to the child's best interests, whether directed to facilitating the return of the child, or to resolving broader parenting issues including the option of relocation.

Research

7. We support and endorse the need for further research relating to harm and outcomes (including long-term outcomes) in cases of international child abduction.

Possible Protocol

8. We support the idea of exploring the possibility of a Protocol to the Abduction Convention. A Protocol might address issues such as the enforcement of rights of access, the use of protective orders, direct cross-jurisdiction judicial communication, and the use of mediation. However, there was no general consensus about the desirability of a Protocol.

Forced Marriage

The presentations and discussions at the London Conference covered numerous facets of the phenomenon of forced marriage and related forms of abuse. The most significant issues and concerns are here highlighted.

Terminology

1. We recall that:

"Marriage shall be entered into only with the free and full consent of the intending spouses." (The Universal Declaration of Human Rights 1948, Article 16(2))

And

"No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnise the marriage and of witnesses, as prescribed by law." (United Nations Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1964, Article 1(1))

2. Forced marriage is the term used to describe a marriage in which one or both of the parties is married without his or her consent or against his or her will. For present purposes and by way of expanded description we refer to a forced marriage as a marriage that is performed under duress and without the full and informed consent or free will of both parties. Being under duress includes feeling subject to physical and / or emotional and / or psychological pressure.

3. Victims falling prey to forced marriage typically encounter one or a combination of deception, abduction, assault (which may include rape), imprisonment within a household or country, coercion, fear, inducements, and cultural community and / or family expectations.

4. Forced marriage is a gross abuse of the human rights of the individual or individuals concerned and constitutes a distinct form of domestic abuse.

5. An arranged marriage is inherently distinct from a forced marriage, and the distinction must be recognised and respected. In an arranged marriage both parties consent to the assistance of their parents or of a third party (such as a matchmaker) to identify a spouse. Arranged marriages have been a successful traditional aspect of family life in many cultures for many years. In some cases however the two may be less easy to differentiate.

International Perspectives and Objectives

6. We underline that no State's laws nor any recognised religion's precepts condone forced marriage.
7. We urge governments and lawmakers, faith leaders, and all relevant professionals and fieldworkers to recognise and react to the phenomenon of forced marriage if prevalent and in any event whenever encountered in their community.
8. To this end we emphasise the need, globally and within each community, to raise awareness of forced marriage at all levels and in all contexts by the implementation and pursuit of programmes and initiatives directed (in no order of importance, and amongst others) at:

- politicians, policymakers and legislators
- community and faith leaders
- journalists and others working in the media
- NGOs
- parents
- young persons and young adults in schools, colleges and institutes of higher learning
- teachers and other educators
- public bodies such as local authorities and in particular those responsible locally and nationally for education, housing, health and social welfare
- social work and health (including mental health) practitioners active in the community
- police personnel and immigration and border control officials
- mediators
- judicial officers and court staff and the legal professions generally.

Legislative initiatives and beyond

9. We recognise the innovative initiatives implemented in England and Wales by the Forced Marriage (Civil Protection) Act 2007 (and in Northern Ireland by equivalent legislation) and the potential of its injunctive remedies to deter and to prevent the risk of forced marriage and to assist its victims and potential victims.
10. We therefore invite other States to consider the introduction of analogous provisions appropriate to their domestic circumstances.
11. We stress however that the problems for victims cannot be resolved by court involvement and protection only, but that their aftercare within their society is key.
12. We draw attention to the often linked phenomenon of spouses abandoned or stranded in their country of origin without recourse to the means and / or documentation to return to the State where they have lived during marriage (and where their children may still live separated from them) and invite compassionate consideration and cooperation in such cases from the relevant immigration and border control agencies.
13. We invite States to allocate resources sufficient to provide effective services for the young persons and adults involved, to include:
 - establishing dedicated information and support services (such as the Forced Marriage Unit in the United Kingdom)
 - telephone helplines
 - the option of counselling and (if appropriate) safeguarded mediation with their family
 - providing accommodation (including safe refuges)
 - educational and vocational support and opportunities
 - support for the specialist NGOs and refuges offering assistance to victims
 - other facilities specifically tailored to their particular vulnerability
 - research
14. There is a need for focussed research into many aspects of forced marriage from a number of perspectives, including (but not limited to):
 - cultural expectations within relevant communities
 - the significance of immigration considerations
 - the interrelationship with so-called 'honour' crimes
 - the interrelationship with child betrothal, under-age marriage and child (and adult) trafficking
 - the appropriateness and sensitivity in this context of prevailing law and practice concerning divorce nullity and declaratory relief
 - the availability and effectiveness of current responses and support within environments where forced marriage is likely to be reported, such as schools and universities
 - the effective provision of follow-up services
 - outcomes for victims and their families
 - the prevalence of the practice.

Frances Burton, John Faulks, Marilyn Freeman, Anita Guha, David Hodson, Mary O'Dwyer, Linda Silberman, Peter Singer, Nicola Taylor, Mathew Thorpe (and with acknowledgement of the much appreciated comments in the drafting process of William Duncan and Anne-Marie Hutchinson).

London, 3rd July 2010



Morocco Judicial Seminar on Cross-border Protection of Children and Families

Rabat, Morocco, 13-15 December 2010

hosted by the Supreme Court of the Kingdom of Morocco with the Hague Conference on Private International Law and TAIEX

CONCLUSIONS

From 13 to 15 December 2010, judges and experts from Belgium, Egypt, France, Germany, Jordan, Lebanon, Morocco, the Netherlands, Spain, Switzerland, Tunisia, Turkey, the United Kingdom, the European Commission, Unicef, the League of Arab States, and the International Social Service, as well as the Hague Conference on Private International Law, met in Rabat, Morocco, within the framework of the Malta Process, to discuss cross-border protection of children and families and, in particular, 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).

The participating judges and other experts noted the progress made following the First, Second and Third Malta Declarations (see Annex), including the ratification by Morocco of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*⁵⁴ (hereinafter, the 1980 Hague Child Abduction Convention) and the ratification by an increasing number of States of the 1996 Hague Child Protection Convention.

In the light of the hypothetical cases studied, the judges and other experts recognised the utility of finding solutions to the difficulties encountered in the area of international child protection through reinforced international co-operation.

Guided by the principles set out in the United Nations Convention on the Rights of the Child of 1989, the participants agreed the following on the understanding that the conclusions are not binding on the States from which the judges and experts are drawn:

1. The Conclusions and Recommendations set out in the First, Second and Third Malta Declarations are re-affirmed.

Notes

⁵⁴ The Convention deals with the wrongful removal and retention of children (see Art. 3).

Co-operation between States and establishment of Central Authorities

2. Continuing efforts should be made, in the interests of international child protection, to improve co-operation at the judicial and administrative levels between States. States should encourage and assist each other in developing the capacities and structures (including Central Authorities) which enable such co-operation to take place. Continuing efforts should also be made to develop the mutual trust and understanding between State authorities which is a prerequisite for successful international legal co-operation.

The Central Authority is an essential structure in each State to facilitate effective access to legal, administrative and mediation procedures for parents and children affected by cross-border family disputes. The Central Authority develops expertise and has experience in managing cross-border family law cases. The Central Authority is the first point of contact for co-operation and for the exchange of information between States and national authorities. The Central Authority is also the first point of contact for parents needing information, advice and assistance in cross-border disputes.

The benefits of co-operating within a global network of Central Authorities such as the one of the Conventions of the Hague Conference on Private International Law are emphasised.

The Technical Assistance Programme of the Hague Conference on Private International Law, offered through its Centre for Judicial Studies and Technical Assistance, may be able to provide advice and assistance to States wishing to establish and consolidate their Central Authorities. In addition, TAIEX may offer financial assistance for the organisation of training sessions and technical missions in that respect.

1996 Hague Child Protection Convention

3. Understanding the benefits of a legal framework for the resolution of international disputes concerning custody and the contact of children with their parents, and for the protection of children at risk in cross-border situations, the participants invited States to study the Convention further.

Scope and object of the 1996 Hague Child Protection Convention

- a. Participants noted that the scope of the 1996 Hague Child Protection Convention is very broad as it covers a very wide range of civil measures of protection concerning children, from orders concerning parental

responsibility and contact to public measures of protection or care, and from matters of representation to the protection of children's property.

The function of the Convention is to avoid legal and administrative conflicts and to build a structure for effective international co-operation in child protection matters between different systems. In this respect, the Convention builds bridges between legal systems having diverse cultural or religious backgrounds. It is of great significance that the first State to sign the Convention and one of the first States to ratify it was Morocco, whose legal system is set in the Islamic tradition.

The ideal basis for international legal co-operation in child protection matters is the mutual recognition of decisions based on common grounds of jurisdiction such as the ones set out in the Convention. These rules of jurisdiction, which avoid the possibility of conflicting decisions, give the primary responsibility to the authorities of the State where the child has his or her habitual residence, but also allow any

State where the child is present to take necessary emergency or provisional measures of protection. The Convention also determines which State's laws are to be applied. In addition, the co-operation provisions of the Convention provide the basic framework for the exchange of information and for the necessary degree of collaboration between administrative (child protection) authorities in the different Contracting States. The participants noted that the Convention is particularly helpful in the following areas:

Parental disputes over custody and contact

- b. The Convention provides a structure for the resolution of issues of custody and contact which may arise when parents are separated and living in different States. The Convention avoids the problems that may arise if the courts in more than one State are competent to decide these matters. The recognition and enforcement provisions avoid the need for re-litigating custody and contact issues and ensure that decisions taken by the competent authorities are respected in other Contracting States. The co-operation provisions provide for any necessary exchange of information and offer a structure through which, by mediation or other means, agreed solutions may be found.

In this respect, participants welcomed the publication in Arabic, English, French and Spanish by the Permanent Bureau of the *General Principles and Guide to Good Practice on Transfrontier Contact Concerning Children*.⁵⁵ The Guide provides guidance relevant to States which are, as well as States which are not, Parties to the 1996 Hague Child Protection Convention and the 1980 Hague Child Abduction Convention. Particular attention is

drawn to the importance for courts to have at their disposal "a flexible range of measures which create a legal environment in which both parents feel a sense of security that contact arrangements will not be abused".

Unaccompanied minors

- c. The co-operation procedures within the 1996 Hague Child Protection Convention can be helpful in the increasing number of circumstances in which unaccompanied minors (e.g., a refugee, an asylum seeker, a displaced person or a teenage runaway) cross borders and find themselves in vulnerable situations in which they may be subject to exploitation and other risks. The Convention assists by providing for co-operation in locating the child, by determining which State's authorities are competent to take any necessary measures of protection, and by providing for co-operation between national authorities in the receiving State and State of origin in exchanging necessary information and in the institution of any necessary protective measures.

Cross-frontier placements of children

- d. The Convention provides for co-operation between States in relation to the growing number of cases in which children are being placed in alternative care across frontiers, for example under fostering or other long-term arrangements falling short of adoption. This includes arrangements made by way of the Islamic law institution of kafala, which falls outside the scope of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption.

1980 Hague Child Abduction Convention

4. Understanding the benefits of a legal framework for the resolution of international child abductions and disputes concerning custody and the contact of children with their parents, the participants invited States to study the Convention further.

The 1996 Hague Child Protection Convention reinforces the 1980 Hague Child Abduction Convention by underlining the primary role played by the authorities of the child's habitual residence in deciding upon any measures which may be needed to protect the child in the long term. It also adds to the efficacy of any temporary protective measures ordered by a judge when returning a child to the State from which the child was taken, by making such orders enforceable in that State until such time as the authorities there are able themselves to put in place necessary protections.

Mediation

5. In the light of the growing importance of mediation in resolving family conflicts, the participants welcomed the work of the Hague Conference to promote the development of structures and methods for mediation, where appropriate, to resolve cross-frontier disputes related to the protection of

Notes

⁵⁵ Available on the Hague Conference website at < www.hcch.net >.

children. They welcomed the publication of the Principles for the Establishment of Mediation Structures in the context of the Malta Process and the work carried out regarding the future Guide to Good Practice on Mediation under the 1980 Hague Child Abduction Convention.

The participants recognised the importance of rendering mediated agreements binding and enforceable in conformity with domestic law in all the legal systems concerned and noted, for States Parties, the utility of the 1996 Hague Child Protection Convention in this regard.

Direct judicial communications and designation of International Hague Network Judges

6. The participants emphasised the value of direct judicial communications in international child protection cases.

States that have not designated International Hague Network Judges are strongly encouraged to do so whether they are Parties to Hague Conventions or not. Where needed, States may seek the assistance of the Permanent Bureau in making their designation.

Judges designated should be sitting judges with appropriate authority and experience in the area of international child protection.

The process for the designation of International Hague Network Judges should respect the independence of the judiciary.

Central Authorities are encouraged to facilitate judicial communications. Furthermore, it is recognised that the relationship between judges and Central Authorities can take different forms. Successful working relationships depend on the development of mutual trust and confidence between judges and Central Authorities.

Training programmes

7. Judges and other professionals dealing with international family disputes and child protection matters should have opportunities to increase their knowledge and understanding of the relevant international instruments and procedures through:

- information sessions;
- seminars and conferences;
- receiving The Judges' Newsletter on International Child Protection.⁵⁶

The Permanent Bureau of the Hague Conference on Private International Law offers its expertise to participate or assist in any such training programmes. The assistance offered by TAIEX is also recognised.



Participants to the Morocco Judicial Seminar on Cross-Border Protection of Children and Families, Rabat, Morocco.

Notes

- ⁵⁶ Published by the Permanent Bureau and available on the Hague Conference website at < www.hcch.net >.

Case law database

8. Judges and other professionals emphasised the importance of consistent interpretation of the 1996 Hague Child Protection Convention and to this end recommended the establishment of a case law database for the purpose of this Convention.

Sixth Meeting of the Special Commission to review the practical operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention

9. States represented at this seminar that are not Parties to the 1980 Hague Child Abduction Convention and 1996 Hague Child Protection Convention are invited to attend the Sixth Meeting of the Special Commission to review the practical operation of the 1980 Hague Child Abduction

Convention and the 1996 Hague Child Protection Convention, the first part of which will be held in The Hague from 1 to 10 June 2011. All appropriate measures will be taken in order to ensure their participation.

Issuing of visas

10. Participants recognised the importance of the question of the issuance of visas to enable a parent to have contact with his or her child and invited the relevant competent authorities to discuss this issue further in order to find solutions.

Thanks are extended to the Kingdom of the Netherlands and to TAIEX for their financial support for this seminar, and to the Government and judiciary of Morocco for their role in promoting and providing an ideal setting for successful dialogue.

15 December 2010

Training of Moroccan Judges on the 1980 Hague Child Abduction Convention

Rabat, Morocco, 15-17 December 2010

Following the International Judicial Seminar on cross-border protection of children and families that took place in Rabat, Morocco (see Conclusions of the Seminar on pp. 31 to 34.), members of the Permanent Bureau, in collaboration with the Supreme Court of Morocco and TAIEX, remained in Rabat

from 15 to 17 December 2010 for a further two and a half days to undertake a training of 50 Moroccan family judges regarding the practical operation of the 1980 Hague Child Abduction Convention, entered into force in Morocco on 1 June 2010. A French honouree family judge joined the Permanent Bureau for this training. Participants were introduced to the main judicial issues in relation to the application of the Convention through hypothetical case studies. Participants showed a great interest in the proper operation of the 1980 Convention and expressed their support for the designation of a Moroccan Hague Network Judge. They also looked forward to taking their acquired knowledge back to their courts.



Participants to the judicial training on the 1980 Hague Child Abduction Convention in Rabat, Morocco

Inter-American Experts meeting on International Child Abduction

México City, Mexico, 23-25 February 2011

The Hague Conference on Private International Law and the Inter-American Children's Institute (IIN) recently organised an Inter-American Experts Meeting on International Child Abduction, that took place from 23 to 25 February 2011, in México City, Mexico (the "DF Experts Meeting") with the support of the Mexican Ministry of Foreign Affairs, the Tribunal Superior de Justicia del Distrito Federal and the Governments of Canada, Germany, the Netherlands and the United States of America.

This Expert Meeting brought together members of Central Authorities designated under the 1980 Hague Child Abduction Convention in the region and / or the 1989 *Inter-American Convention on the International Return of Children*, and Members of the International Hague Network of Judges designated by States in the region.

The aims of the DF Experts Meeting were to: consolidate the operation of the International Hague Network of Judges in the Americas (to develop and promote judicial communications and networking among Judges); improve co-operation among Central Authorities; eliminate unnecessary delays and ensure that judicial and administrative authorities act expeditiously in proceedings for the return of children; identify and discuss current challenges in the operation of the Conventions in the region; review the implementation of the SIM Programme;⁵⁷ and to prepare for the Sixth Meeting of the Special Commission to review the operation of the 1980 and 1996 Hague Conventions, to take place in The Hague from 1 to 10 June 2011 and in January/February 2012, tentative.

We will report further on the event in our next edition. More information is available on the website of the Hague Conference at < www.hcch.net >, under "News and Events" then "2011".



Participants to the inter-American experts meeting on International Child Abduction, México City, Mexico.

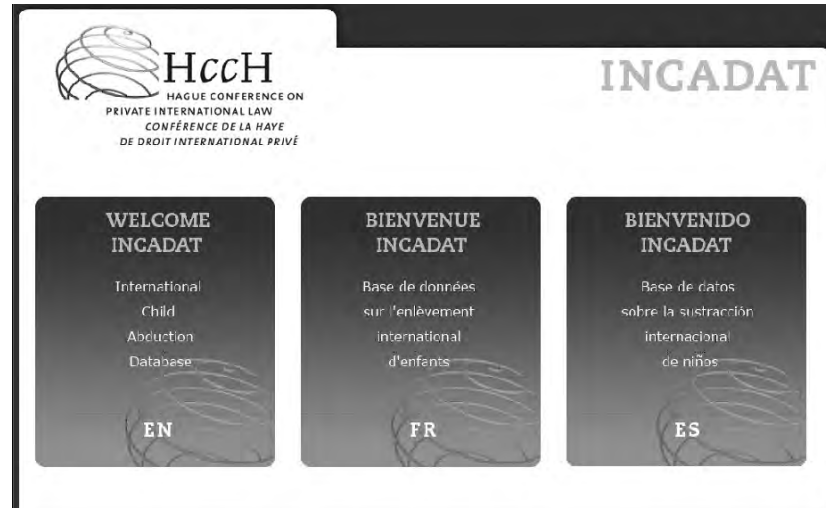
Notes

- ⁵⁷ Inter-American Program of Cooperation to Prevent and Remedy Cases of International Abduction of Children by One of Their Parents (AG/RES. 2028 (XXXIV-0/04).

Hague Conference Update

The International Protection of Children Launch of the Incadat Funding Campaign

www.incadat.com



In Spring 2011, the Permanent Bureau is launching a funding campaign for the International Child Abduction Database – INCADAT addressing particularly law firms and other legal organisations or legal practitioners who benefit from the use of the database.

INCADAT was established in 1999 to make publicly available leading decisions rendered by national courts in respect of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and has over the past decade contributed considerably to the effective operation of the Convention by promoting mutual understanding and consistent interpretation.

Today INCADAT contains summaries of more than 900 decisions from 40 jurisdictions in English, French and to a great extent in Spanish. Since the complete revision of the INCADAT database and website, finalised in 2010, INCADAT also contains a “Case Law Analysis” Section making accessible a comparative case law commentary on key provisions of the Convention.

Why is funding needed for INCADAT?

The daily administration which INCADAT requires is growing at a rapid pace. This is due both to the expansion of the database, which needs to include an increasing number of cases from a growing number of Contracting States, as well as to the database’s increased sophistication

Since its establishment INCADAT has had to rely mainly on the voluntary funding of Hague Conference’s Members. The Permanent Bureau is extremely grateful for the voluntary support that has been received. However, INCADAT has been under-funded for a number of years. This has caused a backlog in work.

The lack of resources is also holding back the further development of the database.

What will the funding be used for?

The Permanent Bureau is seeking funding to enable it to recruit a full-time staff member to be solely responsible for maintaining and administering INCADAT. Funds are also required to enable the Permanent Bureau to continue to employ a legal consultant to assist with the maintenance of the database.

Furthermore, the Permanent Bureau is seeking funds to enable it: (a) to translate the considerable backlog of summaries which are currently uploaded onto the INCADAT site but are unavailable in one or more of the three language(s); and (b) to translate all new summaries promptly into all three languages on an ongoing basis.

Finally, funds raised will be used to assist with the development and maintenance of the correspondents’ network.

What about the future?

The Permanent Bureau recognises that seeking private funding for INCADAT is a temporary solution for the difficulties the database faces. However, its aim is to secure immediate funding to ensure that the urgent situation can be overcome and the database can continue to function.

In the future the Permanent Bureau aims to secure regular funding for INCADAT from its Member States.

What will the sponsors get in return?

An INCADAT which has a complete set of the existing case summaries in all three languages, including recent developments in further Contracting States to the 1980 Hague Child Abduction Convention.



In addition, those contributing to INCADAT will be identified on the website, on our to-be-created **Sponsors' page**. Regular updates as to how the funds are being used will be provided in the Judges' Newsletter.

The ultimate beneficiaries of the contributions will be the children whose rights and welfare are at risk as a result of international family disputes.

For further details please see the INCADAT webpage:
< <http://www.incadat.com> >

If you have any queries regarding the INCADAT Funding Campaign and / or INCADAT generally, please do not hesitate to contact:

Juliane Hirsch, Legal Officer, Hague Conference on Private International Law, E-mail: < jh@hcch.nl >, Tel: +31 70 363 3303 or;

Hannah Baker, Legal Officer, Hague Conference on Private International Law, E-mail: < hb@hcch.nl >, Tel: +31 70 363 3303.

Upcoming Special Commission on the 1980 and 1996 Hague Conventions

Five meetings of the Special Commission to review the practical operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (the "1980 Convention") have been held, in 1989, 1993, 1997, 2001 and 2006 respectively. The Fifth Meeting included a review of the implementation of 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* (the "1996 Convention").

It is planned to hold the Sixth Meeting of the Special Commission in two parts. The first part is to take place in The Hague from 1 to 10 June 2011, with the second part to be held in The Hague, tentatively in January/February 2012, and to last for a period of approximately eight days.

It is intended that the Sixth Meeting of the Special Commission will again include a review of the implementation of the 1996 Convention and, for the first time, it will include a review of the operation of the 1996 Convention.

The need to hold the Special Commission meeting in two parts arises from the heavy agenda anticipated. Apart from

the general review of the practical operation of the two Conventions, the Special Commission will be considering, in particular, the following matters:

- A draft of the Guide to Good Practice on Mediation under the 1980 Convention;
- A draft Practical Handbook on the Operation of the 1996 Convention;
- Draft General Principles for Judicial Communications;
- A report on consultations concerning the feasibility and desirability of a protocol to the 1980 Convention;
- A statistical analysis of applications made in 2008 under the 1980 Convention;
- International family relocation;
- The future of the "Malta Process", including consideration of the "Principles for the Establishment of Mediation Structures in the context of the Malta Process", and the accompanying Explanatory Memorandum;
- The role of the Permanent Bureau in monitoring and supporting the two Conventions.

The Questionnaire concerning the practical operation of the 1980 Convention and the 1996 Convention as well as the Questionnaire on the desirability and feasibility of a protocol to the 1980 Convention have been submitted to Members of the Hague Conference and States Parties to at least one of the Conventions and are now available on the website of the Hague Conference < www.hcch.net >, in the "Child Abduction Section", then "Special Commission meetings on the practical operation of the Convention".

We will report further the preparation of the Special Commission in our next edition.

Developments regarding the Guides to Good Practice under the 1980 Hague Child Abduction Convention

a) Publication of the Guide to Good Practice on the Enforcement of Return Orders

The Guide to Good Practice under the 1980 *Hague Child Abduction Convention on Enforcement* was published in October 2010. This Guide is based upon the principles of good practice presented to, and supported by, the Fifth Meeting of the Special Commission to review the operation of the 1980 Hague Child Abduction Convention (30 October - 9 November 2006). The Permanent Bureau hopes that this Guide will assist all States, *i.e.*, States Parties and those States considering becoming Party to the Convention, to implement an efficient system to enforce Hague return orders in the best interests of the children concerned.

A copy of this Guide has been sent to all National Organs of the Hague Conference, Central Authorities designated under the 1980 Hague Child Abduction Convention and

to the Members of the International Hague Network of Judges. The Guide is also available to the public to download on the Hague Conference's website (click on Child Abduction Section → Guides to Good Practice.).

b) Expert Group meeting regarding the Guide to Good Practice on Mediation

The Permanent Bureau is currently preparing the Guide to Good Practice under the 1980 Hague Child Abduction Convention on the subject of Mediation. The mandate for the development of this Guide was given by the Council on General Affairs and Policy of the Hague Conference in 2008. In accordance with this mandate, a group of independent experts from different Contracting States was invited to assist with the preparation of the Guide. The Permanent Bureau has circulated to the Expert Group the first complete draft of the Guide in January 2011. The experts reviewed this draft Guide during the in-person meeting of the Expert Group held in The Hague on 17 and 18 February 2011.

Following an in-depth discussion of the draft Guide by the experts, a revised version of the draft Guide will be prepared by the Permanent Bureau for circulation to the Members of the Hague Conference and Contracting States to the 1980 Hague Child Abduction Convention in advance of the first part of the Sixth Meeting of the Special Commission to review the practical operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention in June 2011.

Latest developments in Latin America

Permanent Bureau

The most significant activity of the last year in the international adoption field was the "Meeting of the Latin American Central Authorities of States of Origin, in the framework of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Inter-country Adoption*", held in Santiago, Chile, on April 29-30, 2010. It was attended by participants from: Brazil, Chile, Colombia, Dominican Republic, Ecuador, Guatemala, Mexico, Uruguay and experts from the Hague Conference.

The aims of the meeting were mainly i) to create a working group among the Latin American Central Authorities, in order to improve co-operation and communication between them regarding their role as States of origin and their adoption procedures, and ii) to prepare common proposals to be submitted to the Third Meeting of the Special Commission to review the practical operation of the Hague Convention of 29 May 1993.

The meeting was very useful since it facilitated a very rich exchange of information and helped to identify the main obstacles the Central Authorities of origin face in their relationships with receiving States. The aim of developing a common proposal of the States of the region to be submitted

to the Third Meeting of The Special Commission (The Hague, June 17-25, 2010) was also achieved. This proposal then became Work. Doc. No 1, which reflected the position of the Latin American delegations.

The Latin American participation in the Third Meeting of the Special Commission was very active and reflected the advantages of having worked in advance at the preparatory meeting held in Santiago. This work enriched the debates and conclusions reached in the Third Meeting.

In the child abduction field, the main event was the "*Fifth Meeting of Central Authorities and Contact Points of IberRed on international child abduction*", held in Cartagena de Indias, Colombia, on July 21-23, 2010. Central Authorities from Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru, Portugal, Puerto Rico, Spain, Uruguay and Venezuela attended the meeting. The Hague Conference participated actively in the meeting through its Liaison Legal Officer for Latin America.

As a result of fruitful debates on the child abduction Conventions (1980 Hague Convention and 1989 Inter-American Convention) interesting conclusions were reached. The following conclusions can be highlighted:

- i) **Contact rights:** it was agreed that "the existence of a wrongful removal or retention; or the existence of a contact agreement previously established" are not previous and necessary requirements to process a contact application through the Conventions;
- ii) **Communications among Central Authorities:** concrete deadlines were agreed in order to speed up communications among Central Authorities. Besides, IberRed made available to Central Authorities a new tool called "extranet", with the purpose of facilitating their communications;
- iii) **Procedural Regulations for Child abduction Conventions:** it was stressed that States should enact specific procedural laws to make the application of the Conventions possible within the short timeframes established in their texts (6 weeks and 60 days, respectively). In this regard, the value of the Inter-American Model Law as a reference tool was recognized;
- iv) **Direct Judicial Communications and Networks Judges:** it was considered necessary to promote the best coordination possible between IberRed contact points and the judges already designated for the International Hague Network of Judges;
- v) **Co-operation between the Hague Conference and IberRed:** it was considered convenient that the two organizations make their best efforts to coordinate and generate synergies in the actions they develop in this field.

Finally, it should be mentioned that the Hague Conference Office in Buenos Aires keeps consolidating and widening its work. Nowadays, it has become a permanent resource of information and support for Administrative and Judicial Authorities, academics and other operators of the child protection system. The Council of General Affairs and

Policy that met in 2010 gave a strong support to the work that is being carried out in Latin America. Furthermore, the Argentine Government has committed to provide further office facilities. This should allow the Office in Buenos Aires to work with and/or receive students, professors, judges and researchers willing to work on topics within the remit of The Hague Conference related to Latin America.

The Hague Children's Conventions Status

The status of all the Hague Conventions is available on the website of the Hague Conference < www.hcch.net >, under "Conventions", then under the Convention in question, click "Status".

1980 Hague Child Abduction Convention

The Hague Conference is delighted to report the accession of **Singapore, Gabon and Andorra** to the 1980 Hague Child Abduction Convention. The Convention entered into force in both States on 1 March 2011. The Standard Questionnaire for Newly Acceding States has already been completed by Singapore and their response can be found on the Hague Conference website (see: Child Abduction Section → Questionnaires and responses → Standard Questionnaire for newly acceding States – responses).

The Convention has therefore today 85 Contracting States. To check whether the Convention has entered into force between specific Contracting States, we invite you to consult the "Child Abduction Section", then "Contracting States" on the website of the Hague Conference < www.hcch.net >.

1996 Hague Child Protection Convention

The number of Contracting States to the 1996 Hague Child Protection Convention continues to grow rapidly. The Hague Conference welcome the recent entry into force of the Convention in **Austria** (1 April 2011), **Dominican Republic** (1 October 2010), **Cyprus** (1 November 2010), **Luxembourg** (1 December 2010), **France** (1 February 2011), **Finland** (1 March 2011), **Germany** (1 January 2011), **Ireland** (1 January 2011), **Poland** (1 November 2010), **Romania** (1 January 2011)

and **Spain** (1 January 2011). The Convention will enter into force very soon in the **Netherlands** (from 1 May 2011).

The 1996 Convention will be soon in force between the following 30 States: Albania, Armenia, Australia, Austria (from 1 April 2010), Bulgaria, Croatia, Cyprus, Czech Republic, Dominican Republic, Ecuador, Estonia, Finland, France, Germany, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Monaco, Morocco, the Netherlands (from 1 May 2011), Poland, Romania, Slovakia, Slovenia, Spain, Switzerland, Ukraine and Uruguay.

Furthermore, the 1996 Convention has been signed by the following States of the European Union: Belgium, Denmark, Greece, Italy, Portugal, Sweden and the United Kingdom. Finally, the USA signed the 1996 Convention on 22 October 2010.

1993 Hague Intercountry Adoption Convention

The Hague Conference is very pleased to announce that **Vietnam** signed the *Hague Convention of 29 May 1993 on the Protection of Children and Co-operation in Respect of Intercountry Adoption* on 7 December 2010. This is the first Hague Convention which Vietnam has signed, making Vietnam the 137th State to be "connected" to the Hague Conference. In addition, the Convention also entered into force in **Ireland**, in 1 November 2010 which means the all the European Union States are now Parties to this Convention. Finally, it entered also into force in **Kazakhstan** on the same date.

83 States are today Parties to the Convention. To check whether the Convention has entered into force between specific Contracting States, we invite you to consult the "Intercountry Adoption Section", then "Contracting States" on the website of the Hague Conference < www.hcch.net >.

2007 Child Support Convention

The Hague Conference is very pleased to announce that on 6 April 2011, Norway ratified the *Hague Convention on the International Recovery of Child Support and other Forms of Family Maintenance 2007*. The Convention, which was adopted on 23 November 2007, and signed by the United States on the same date. The approval of the U.S. Senate is an important step towards the U.S.A.'s ratification of this Convention.

Members of the International Hague Network of Judges

With 41 jurisdictions represented by 60 judges, the International Hague Network of Judges is constantly growing. We are delighted to inform you that judges from the following countries have recently been designated as members of the Network: Belgium, El Salvador, France, Honduras, Paraguay and Sweden.

List as of 7 March 2011

ARGENTINA

Judge Graciela TAGLE, Judge of the City of Cordoba (*Juez de la Ciudad de Córdoba*), Córdoba

AUSTRALIA

The Honourable Chief Justice Diana BRYANT, Appeal Division, Family Court of Australia, Melbourne (alternate contact)

The Honourable Justice Victoria BENNETT, Family Court of Australia, Commonwealth Law Courts, Melbourne (primary contact)

BELGIUM

Ms Myriam DE HEMPTINNE, Magistrate of the Court of Appeals of Brussels (*Conseiller à la Cour d'appel de Bruxelles*), Brussels

BRAZIL

Judge Mônica Jacqueline SIFUENTES PACHECO DE MEDEIROS, Federal Judge – Federal Court of Appeals (*Juiz Federal – Tribunal Federal de Apelações*), Brasília

With geographical responsibility for: the Federal District of Brasília and the Federal States of Acre, Amapá, Amazonas, Bahia, Goiás, Maranhão, Mato Grosso, Minas Gerais, Pará, Piauí, Rondônia, Roraima, Tocantins, São Paulo and Mato Grosso do Sul.

Judge Jorge Antonio MAURIQUE, Federal Judge – Regional Federal Court of the Fourth Region (*Juiz Federal – Tribunal Regional Federal da 4ª Região*), Porto Alegre, Rio Grande do Sul

With geographical responsibility for: Rio Grande do Sul, Santa Catarina and Paraná.

CANADA

The Honourable Justice Jacques CHAMBERLAND, Court of Appeal of Quebec (*Cour d'appel du Québec*), Montreal (Civil Law)

The Honourable Justice Robyn M. DIAMOND, Court of Queen's Bench of Manitoba, Winnipeg (Common Law)

CHILE

Judge Hernán Gonzalo LÓPEZ BARRIENTOS, Judge of the Family Court of Pudahuel (*Juez titular del Juzgado de Familia de Pudahuel*), Santiago de Chile

CHINA (Hong Kong, Special Administrative Region)

The Honourable Mr Michael HARTMANN, Justice of Appeal of the Court of Appeal of the High Court, High Court, Hong Kong Special Administrative Region

COSTA RICA

Mag. Diego BENAVIDES SANTOS, Judge of the Family Tribunal, First Judicial Circuit (*Juez del Tribunal de Familia, Primer Circuito Judicial*), San José

CYPRUS

The Honourable Justice George A. SERGHIDES, Doctor at law, President of the Family Court of Nicosia-Kyrenia, Nicosia

CZECH REPUBLIC

Judge Lubomir PTÁČEK, Regional Court *Ústí nad Labem*, Branch Office in Liberec, Liberec

DENMARK

Judge Bodil TOFTMANN, City Court of Copenhagen (*Københavns Byret*), Copenhagen

DOMINICAN REPUBLIC

Judge Antonia Josefina GRULLÓN BLANDINO, Court of Children and Adolescents, National District, Civil Chamber (*Tribunal de Niños, Niñas y Adolescentes, Distrito Nacional Sala Civil*), Santo Domingo

ECUADOR

Dr Arturo MÁRQUEZ MATAMOROS, Provincial Judge of the Court of Appeal of El Oro (*Juez Provincial de la Corte de Apelaciones de Justicia de El Oro*), Machala

EL SALVADOR

Lic. Evelyn Roxana NUÑEZ FRANCO, Magistrate of the Administrative Litigation Chamber of the Supreme Court of Justice (*Magistrada de la Sala de lo Contencioso Administrativo de la Corte Suprema de Justicia*), San Salvador

Lic. Ana Guadalupe ZELEDON VILLALTA, Fourth Family Court of San Salvador, Integrated Judicial Centre of Private and Social Law (*Juzgado 4 de Familia de San Salvador, Centro Judicial Integrado de Derecho Privado y Social*), San Salvador

FINLAND

Justice Elisabeth BYGGLIN, Helsinki Court of Appeal (*Helsingin Hovioikeus*), Helsinki

FRANCE

Ms Bénédicte VASSALLO, Deputy Judge of the First Chamber of the Court of Cassation (*conseiller référendaire à la première chambre de la Cour de cassation*), Paris

GABON (State Party to the 1980 Convention as of 1 March 2011)

Judge Jean-Pierre SOBOTCHOU, Presiding Judge, *Cour de Cassation du Gabon*, Libreville

GERMANY

Judge Martina ERB-KLÜNEMANN, Judge of the District Court of Hamm (*Richterin am Amtsgericht, Amtsgericht Hamm*), Hamm

HONDURAS

Judge Belia Olmeda TORRES MERLO, Judge of First Instance for Children, Children's Court of First Instance of San Pedro Sula (*Jueza de Letras de la Niñez, Juzgado de Letras Primero de la Niñez San Pedro Sula*), San Pedro Sula

Judge Anny Belinda OCHOA MEDRANO, Judge of First Instance for Children, Second Children's Court of First Instance for the Department of Francisco Morazán (*Jueza de Letras de la Niñez, Juzgado de Letras Segundo de la Niñez, del Departamento de Francisco Morazán*), Tegucigalpa

ICELAND

Judge Jónas JOHANSSON, Judge of the Reykjavík District Court (*Héradsdómur Reykjavíkur*), Reykjavík

IRELAND

The Honourable Ms Justice Mary FINLAY GEOGHEGAN, The High Court, Dublin

ISRAEL

The Honourable Judge Neal HENDEL, Vice President, District Court of Be'er Sheva, Be'er Sheva

KENYA (Non-State Party to the 1980 Convention)

The Honourable Lady Justice Martha KOOME, The High Court, Nairobi

LUXEMBOURG

Ms Christiane BISENIUS, Public Prosecutor, Public Prosecutor Department (*avocat général, Parquet général*), Luxembourg

MALTA

The Hon. Mr Justice Noel CUSCHIERI, President, Family Section of the Civil Court, Courts of Justice, Valletta

MEXICO

Lic. Adriana CANALES PÉREZ, Magistrate of the Third Family Chamber, Superior Court of Justice of the Federal District (*Magistrada de la Tercera Sala Familiar, Tribunal Superior de Justicia del Distrito Federal*), Mexico D.F.

Lic. Dionisio NÚÑEZ VERDIN, Judge of First Instance in Family Law (*Juez de Primera Instancia en materia familiar*), Jalisco

Dr Lázaro TENORIO GODÍNEZ, Judge of the First Family Chamber, Superior Court of Justice of the Federal District (*Magistrado de la Primera Sala Familiar, Tribunal Superior de Justicia del Distrito Federal*), Mexico D.F.

Lic. Oscar Gregorio CERVERA RIVERO, President of the Second Family Chamber, Superior Court of Justice of the Federal District (*Presidente de la Segunda Sala Familiar, Tribunal Superior de Justicia del Distrito Federal*), Mexico D.F.

NETHERLANDS

Judge Robine DE LANGE-TEGELAAR, President of the Family and Youth Sector, Court of The Hague, The Hague (primary contact)

Judge Jacques M.J. KELTJENS, Vice-President, Court of The Hague, The Hague (alternate contact)

NEW ZEALAND

His Honour Judge Peter BOSHIER, Principal Family Court Judge, Chief Judge's Chambers, Wellington

NICARAGUA

Mag. María José ARÁUZ HENRÍQUEZ, First Family District Judge (*Juez Primero de Distrito de Familia*), Managua

NORWAY

Judge Anne Marie SELVAAG, Trondheim District Court, Trondheim

Judge Torunn Elise KVISBERG, PhD, Sør – Gudbrandsdal District Court, Lillehammer

PANAMA

Lic. Edgar TORRES SAMUDIO, Court of Children and Adolescents of the Chiriquí Judicial Circuit (*Juzgado de Niñez y Adolescencia del Circuito Judicial de Chiriquí*), Chiriquí

Lic. Delia CEDEÑO P., Judge of Children and Adolescents of the First Judicial Circuit of Panama (*Jueza de Niñez y Adolescencia del Primer Circuito Judicial de Panamá*), Panama City

PARAGUAY

Professor Dr Irma ALFONSO DE BOGARÍN, Magistrate of the Criminal Court of Appeals for Adolescents, Capital District (*Magistrada del Tribunal de Apelaciones en lo Penal de la Adolescencia de la Capital*), Asunción

PERU

Dra. Luz María CAPUÑAY CHÁVEZ, Superior Judge, First Family Chamber of the Superior Court of Justice (*Vocal Superior de la Corte Superior de Justicia, Sala de Familia, Poder Judicial*), Lima

ROMANIA

Judge Andreea Florina MATEESCU, Bucharest Tribunal, Vth Civil Section, Bucharest (primary contact)

Judge Anca Magda VLAICU, Bucharest Tribunal, IVth Civil Section, Bucharest (alternate contact)

SOUTH AFRICA

The Honourable Mrs Justice Belinda VAN HEERDEN, Supreme Court of Appeal, Bloemfontein

SPAIN

The Honourable Judge Francisco Javier FORCADA MIRANDA, Family Court of First Instance No 6 (*Juzgado de Primera Instancia N° 6 de Zaragoza*), Saragossa

SWEDEN

The Honourable Judge Ann-Sofie BROQVIST, Stockholm District Court (*Stockholms Tingsrätt*), Stockholm

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

For England and Wales

The Right Honourable Lord Justice Mathew THORPE, Judge of the Court of Appeal, Head of International Family Justice, The Royal Courts of Justice, London

For Northern Ireland

The Honourable Mr Justice Ben STEPHENS, The Royal Courts of Justice, Belfast

For Scotland

The Honourable Lord WOOLMAN (Stephen), Supreme Court, Edinburgh

Sheriff Deirdre MACNEILL, Sheriff Court House, Edinburgh

UNITED STATES OF AMERICA

The Honourable Justice James GARBOLINO, Former Presiding Judge, Superior Court of California, Roseville

The Honourable Judith L. KREEGER, Circuit Judge, Eleventh Judicial Circuit of Florida, Miami

The Honourable Peter J. MESSITTE, United States Federal District Judge, US District Court for the District of Maryland, Greenbelt

The Honourable Mary W. SHEFFIELD, Presiding Judge, Circuit Court, Rolla

URUGUAY

The Honourable Judge Ricardo C. PÉREZ MANRIQUE, Magistrate of the Second Session of the Court of Appeal of Family Affairs (*Ministro del Tribunal de Apelaciones de Familia de 2° Turno de Montevideo*), Montevideo

VENEZUELA

Dra. Rosa Isabel REYES REBOLLEDO, President of the Judicial Circuit of for the Protection of Children and Adolescents for the Judicial District of the Caracas Metropolitan Area and National Co ordinator of International Adoption (*Presidente del Circuito de Protección de Niños, Niñas y Adolescentes de la Circunscripción Judicial del Área Metropolitana de Caracas y Coordinador Nacional de Adopción Internacional*), Caracas

Personal Note



William Duncan, Deputy Secretary General of the Hague Conference on Private International Law, Professor emeritus, Trinity College, Dublin, will retire on 30 June 2011 after almost 14 years at the Permanent Bureau.

Appointed to the Permanent Bureau in 1997 as a First Secretary, he became Deputy

Secretary General in 2002. Through his vision, intellect, imagination, sensitivity and integrity, he has made an invaluable contribution to the work of the Hague Conference, particularly in relation to the Children's Conventions. Mr Duncan initiated several new programmes to develop the broad range of services now provided by the Permanent Bureau to support Contracting States in the effective implementation and operation of these Treaties. These include INCADAT, the Judges' Newsletter, and the Guides to Good Practice.

Among many other Permanent Bureau activities, he led the Permanent Bureau team during the negotiations on the *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance*, and its *Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations*. He was also responsible for the "Malta Process", a dialogue across the Mediterranean and beyond concerning cross-border family problems.

Before joining the Permanent Bureau, Professor Duncan was the lead Irish delegate to the Hague Conference between 1989 and 1997 and, as such, played a key role in the Drafting Committee for the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption* and was Chair of the Drafting Committee for 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*.

His former professional activities include: Professor of Law and Jurisprudence (1993-1997), Trinity College, University of Dublin; Irish Law Reform Commissioner (1986-1996); Member of EU Consultative Commission on Racism and Xenophobia and the European Monitoring Centre on Racism and Xenophobia, (1994-2001); Former Vice-President and former Treasurer, International Society of Family Law. Former *Rapporteur* and Chairman of the International Family Law Committee of the International Law Association.

William Duncan's colleagues will miss him tremendously. His expertise, his wisdom, his diplomacy and his warm, modest personality have made him a trusted and dear colleague to all who work at the Permanent Bureau. We have learned a great deal from him and we acknowledge his departure with enormous regret. However, we are very happy that he is to remain in the city of The Hague for the time being and we very much hope that he will continue to lend his expertise to Hague Conference projects from time-to-time. In the meantime, we wish him a very happy and relaxing retirement.