

Presentation on 5 May 2015 at Malta IV on “The Path to Practical Implementation of the 1980 Hague Children’s Convention”

1 Singapore and Malta are both island states with small populations. Unlike Malta with a 7,000 year history dating back to 5,000 BC, Singapore's recent recorded history dates back to 1819.

2 Singapore is an open globalised economy with Singaporeans working and living abroad. Singapore also hosts foreign companies and nationals working and living in Singapore. The number of marriages between Singaporeans and foreign nationals is increasing.

3 Singapore has a population of around 5.7 million people. The number of foreign nationals, who come to study or work and live in Singapore, do so for varying periods of time in various jobs. They cut across all economic strata.

4 Singapore acceded to the 1980 Hague Convention on Child Abduction on 28 December 2010. Our International Child Abduction Act came into force on 1 March 2011. Thus far, 41 states have accepted Singapore's accession, the most recent being the United Kingdom on 12 April 2014.

5 In the pre-Convention and earlier days it had been observed that there was a tendency for Singaporean women to marry men from Hague Convention countries and for Singaporean men to marry women from non-Hague convention countries. This is changing and will change as more countries accept Singapore's accession.

6 Before acceding to the 1980 Hague Convention on Child Abduction, there might have been concerns as to how the Convention would operate in relation to Singapore and whether there could be more requests for children to be returned to other contracting states than requests for children to be returned to Singapore.

7 When compared to other countries, Singapore has a lower volume of cases because of our smaller population base. Singapore is also geographically smaller in area.

8 As at end April 2016, the Singapore Central Authority had handled thirty one (31) cases for the return of children claimed to have been wrongfully removed to or retained in Singapore (under section 6 of the International Child Abduction Act). Twenty one (21) cases were outgoing cases whilst 10 were incoming cases. The ratio of outgoing to incoming cases was 2:1. The Singapore Central Authority handled 7 access cases (under section 7 of the International Child Abduction Act) - 3 outgoing and 4 incoming cases.

9 Most applicants and their children were foreign nationals. Countries involved included Australia, France, Germany, Japan, the Hong Kong Special Administrative Region, Malta, New Zealand, Switzerland and the United States of America.

10 Malta accepted Singapore's accession in March 2012. In November 2013, there was a case from Malta referred to the Singapore Central authority involving a British and Maltese national Father, who sought access to his 3 children living with their Singaporean Mother in Singapore. When contacted by the Central Authority, the Mother had no objection to the father having access as per a Singapore court order.

11 The Singapore courts have dealt with 6 cases for the return of a child claimed to have been wrongfully removed to or retained in Singapore. The cases were from Germany, the United States of America, Switzerland, Australia and the Hong Kong Special Administrative Region. All the case involved Singaporean mothers. The number of cases handled by the Singapore courts is small and rightly so, as the courts should always be a last resort. A central authority should ideally be the first, last and only touch point for child abduction cases. This saves parties much expense and anguish.

12 The presentation yesterday by the delegate from Japan on the path to implementation of the 1980 Hague Convention on Child Abduction covered a number of points common to Singapore, such as the need for a dedicated pool of judges, expedited case management and nomination of International Hague Network judges. Singapore has nominated two International Hague Network Judges. The protocol for direct judicial communications is included in the Family Justice Court's Practice Directions (January 2015).

13 The criteria for grant of legal aid for child abduction cases is consistent with how legal aid is accorded to Singaporeans. Legal Aid is given to applicants and respondents for incoming return applications and applicants for outgoing applications (only for obtaining a court declaration) subject to a means and merits test administered by the Legal Aid Bureau. Legal advice is available for parties in Singapore.

14 Consistent with the longer term interests of the parties and the child, the Family Justice Rules empower the court, if it considers it to be in the interests of a child, to direct parties to attend mediation and also direct parties or the child or both to attend counselling. The mediation or counselling is conducted by a person appointed by the court. Court annexed mediation and counselling have been integral to the Family Justice Court since the 1990s. With a proven record, it is logical to extend these services to child abduction cases, that come before a court. People, who have not had the experience of having a dispute or problem mediated, may not understand or appreciate what is mediation and may be fearful, especially if they feel that they may not be articulate or comfortable in the presence of the other parent. Mediation in the hands of an experienced mediator, albeit by court direction, affords a much more pleasant and mutually beneficial option for parties to talk and narrow or resolve the issue and their differences.

15 Proceedings in the Family Justice Courts, now include more judge-led aspects in case management and court management. This process is extended to child abduction cases.

16 In implementing the International Child Abduction Act, the Singapore courts worked with the Singapore Central Authority to build awareness and knowledge of the law on child abduction amongst legal and relevant professionals. They are usually the first point of contact with such cases. With the right advice and with a gentle pointer in the right direction for parties, family members and friends early on in a case, the matter will be better resolved by managing expectations, with less expense and pain and without court proceedings.

17 I remember a story told by a Hong Kong Special Administrative Region Central Authority officer on how their officers, upon being alerted to a parent travelling to Hong Kong with a child, had gone to the airport to meet the arriving parent and child. I understand that the mother agreed to return with her child to the other contracting state. This story illustrates the need to move upstream and deal early with such matters.

18 Child abduction tends to be a highly emotive issue not only for the family but also for the community. There is a need to build public awareness and knowledge of the operation of the 1980 Hague Convention on Child Abduction - that the Convention operates to serve the best interests of a

child as it enables a state with which a child has the closest connection, to decide on matters concerning the child. A court decision is made only after hearing and considering the views of both parents. This process supports family relationships and is in the long term best interests of a child. A community that understands the rationale for and the actual operation of the Convention, will support and help in the practical operation of the Convention.

19 Singapore has a parallel system of personal family law. About 15% of our population are Muslims, many of whom are Malays. The Singapore Syariah court jurisdiction includes issues relating to Muslim marriages and divorces of Muslim marriages and related child custody matters.

20 In a child abduction case and where there are pending Syariah court divorce proceedings involving child custody of children, the latter proceedings will be stayed pending a decision by the Family Justice Court on the application for return of the child from Singapore. If it is decided that the child's habitual residence is in Singapore, the case before the Syariah court on child custody will continue.

21 If there are no such pending proceedings before a Syariah court and if the Family Justice Court decides that the child's habitual residence is in Singapore, the issue of custody will be decided by the Family Court in accordance with the Guardianship of Infants Act, applying the principle of the best interests of the child.

22 I understand that Muslim Lawyers, who practise in the Syariah Court and in the Family Justice court, see that, in effect in most cases, there is not much difference between the law applied under the Guardianship of Infants Act and the Syariah Court as the principle of the best interests of the child is applied based on the specific facts and circumstances of each case.

23 I thank the organisers, the Government of Malta and The Hague Conference on Private International Law for the kind invitation and privilege to be part of Malta IV and to contribute by making a presentation. Thank you too everyone for the opportunity to learn from you.

Foo Tuat Yien
