



Organización de los
Estados Americanos

INTER-AMERICAN MEETING OF INTERNATIONAL HAGUE NETWORK JUDGES AND CENTRAL AUTHORITIES ON INTERNATIONAL CHILD ABDUCTION

23-25 February 2011, Mexico City

co-organised by
Hague Conference on Private International Law
Inter-American Children's Institute (specialized organization of the OAS)
Ministry of Foreign Affairs of Mexico

On 23-25 February 2011, seventy-three Judges, Central Authority officials, and other experts from Argentina, Bahamas, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, Spain, United States of America, Uruguay, and Venezuela, and from the Organization of American States (OAS), IberRed, the Inter-American Children's Institute (IIN), the Ministry of Foreign Affairs of Mexico, as well as the Hague Conference on Private International Law, met in Mexico City to discuss how to improve, among the countries represented, the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (the 1980 Hague Child Abduction Convention) and the *Montevideo Convention of 15 July 1989 on the International Return of Children* (the 1989 Inter-American Convention) and 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 Hague Child Protection Convention).

Participants welcomed the following achievements and agreement was reached on the following Conclusions and Recommendations:

Achievements made in the Inter-American region since the Monterrey December 2004 Judicial Seminar

Examples of achievements relating to the judiciary

1. An impressive number of regional designations to the International Hague Network of Judges was recognised. Almost all States in the Inter-American region are represented on the Hague Network.
2. A regional Model Law on Procedure for the Application of the Conventions on International Child Abduction was developed by a group of experts gathered by the Hague Conference on Private International Law and the Inter-American Children's Institute (IIN) from 19 to 21 September 2007.

3. Several States in the region have implemented the Model Law on Procedure for the Application of the Conventions on International Child Abduction.
4. Rules of procedures have been amended in a number of States with a view to increase the speed of procedures. In some cases, grounds for appeal have been limited. In some States the number of hearings for a return application has been reduced to a single hearing, where possible.
5. Concentration of jurisdiction has been achieved in a number of jurisdictions.
6. National networks of judges have been established or are being established in a number of States that, among other things, will support the Hague International Network of Judges and / or IberRed.
7. Direct judicial communications in specific cases have increased. The recent use in a small number of States of secured videoconferencing to facilitate such communications was welcomed.
8. Judicial seminars and conferences have been organised nationally and regionally in order to disseminate information, increase awareness, and provide training to judges.

Examples of achievements relating to Central Authorities

9. A number of initiatives to promote agreed and amicable solutions were highlighted.
10. Efforts to increase communications and synergies between national actors responsible for the implementation and operation of both the 1980 Hague Child Abduction Convention and the 1989 Inter-American Convention were welcomed.
11. One Central Authority is in the process of implementing the iChild case management software provided for free by WorldReach Software in co-operation with the Government of Canada.
12. One Central Authority has significantly increased its human resources to deal with its high volume of cases.
13. One Central Authority has conducted a national statistical survey on international child abduction in order to respond better to current and future pressures on the child protection system.
14. One Central Authority systematically sends a follow-up reminder letter to judges seized of return applications after six weeks.
15. A practice by a Central Authority of identifying the member of the International Hague Network of Judges in its State when forwarding the application to the court, was noted.

Other examples of achievements

16. Full support and recognition were expressed for the Liaison Legal Officer for Latin America established in 2005 and for the recent addition of a part-time assistant to the Liaison Legal Officer.
17. The recent development of the Spanish webpage of the Hague Conference and the availability of the INCADAT database in Spanish were underlined as essential tools for the region.
18. The publication in Spanish of Guides to Good Practice on Central Authority Practice, Implementing Measures, Preventive Measures and Enforcement under the 1980 Hague Child Abduction Convention and Trans-frontier Contact concerning Children were applauded and continued support was expressed for the publication in Spanish of the Judges' Newsletter.
19. The recent development of secured communication systems such as the secured communication system offered by the Organisation of American State (OAS) and the IIN, and the Iber@ system offered by IberRed, were welcomed. Continued efforts to promote the implementation and the use of iChild and the INCASTAT database were also welcomed.

Future challenges in the Inter-American region

Participants identified the following future challenges:

20. Efforts should continue to increase the number of State Parties to the 1980 Hague Child Abduction Convention and the 1989 Inter-American Convention.
21. It was recognised that additional work needs to be undertaken both at the judicial and Central Authority levels with a view to increase the speed of return proceedings.
22. It was underlined that improvement of processes alone are not sufficient to face the recent increase of applications under the 1980 Hague Child Abduction Convention and the 1989 Inter-American Convention but that additional resources are needed for national actors.
23. The use of information technology to manage cases and to facilitate communications among Central Authorities on the one hand, and between judges on the other, with a view to increase the speed of treatment of applications under the 1980 Hague Child Abduction Convention and the 1989 Inter-American Convention, was emphasized.
24. It was underlined that additional training of national actors responsible for the implementation and operation of the 1980 Hague Child Abduction and the 1989 Inter-American Convention was needed, with a view to increase communication, co-operation and synergies among these actors, and that funding should be made available to carry such activities.
25. Efforts should continue to consolidate the interaction between the International Hague Network of Judges and IberRed. IberRed Member States which have not

designated a specialist family judge as a contact point but have designated a judge to the Hague Network are invited to consider the designation of the same judge or judges as contact points within IberRed.

26. Efforts should continue to consolidate the interaction between the Hague Network of Central Authorities for the Hague Child Protection Conventions and the OAS Network of Hemispheric Legal Cooperation in the Area of Family and Child Law, coordinated by the Secretariat for Legal Affairs and the IIN, as representatives of the OAS Network.
27. Participants recognised the importance of the question of issuance of visas to enable a parent to have contact with his or her child or to return to the State of habitual residence with the child and invited the relevant competent authorities to discuss this issue further in order to find solutions.

Conclusions and recommendations relating to judicial matters

Members of the International Hague Network of Judges from the Inter-American region agreed as follows:

Inter-American Model Law

28. States from the Inter-American region are invited to implement the Inter-American Model Law.

Increasing the speed of Hague procedures

29. Following the wording of the Inter-American Model Law, it is recommended, where possible, and while respecting due process, to amend rules of procedures with the aim of increasing the speed of proceedings, for example by limiting the grounds of appeal and reducing the number of hearings.

Judicial communications

30. Members of the International Hague Network of Judges emphasised the importance of both general judicial communications and direct judicial communications in specific cases.
31. States that have not designated a Hague Network judge are strongly encouraged to do so.
32. Members of the Hague Network ratified the Montevideo Declaration, on the scope and content of judicial communications, adopted at the meeting of the Inter-American Network of December 2009.
33. The Emerging Rules regarding the Development of the International Hague Network of Judges and the Draft General Principles for Judicial Communications, including Commonly Accepted Safeguards for Direct Judicial Communications in Specific Cases, within the Context of the International Hague Network of Judge as they will be presented to the Sixth Meeting of the Special Commission to Review the Practical Operation of the 1980 and 1996 Conventions (1-10 June 2011), were endorsed.

34. Members of the Hague Network underlined the importance of having, as soon as possible, a legal basis to carry out direct judicial communications in specific cases. It was suggested that States and / or competent authorities be invited to provide for such a legal basis, where necessary. Such legal basis could be found in Guidelines issued by national judicial councils, Rules of Court, the Inter-American Model Law or domestic law. It is hoped that the endorsement of the Draft General Principles for Judicial Communications by the Sixth Meeting of the Special Commission of June 2011 will assist in that respect.
35. Efforts should be made within States of the region to promote the appropriate use of direct judicial communications, for example by the development of national rules of conduct to govern the use of direct judicial communications at the domestic level between the Member of the Hague Network and his or her colleagues within the jurisdiction, and to increase awareness of the existence and role of Network judges.
36. The development of national networks in support of the international and regional networks should continue to be advanced.

Voice of the child

37. When hearing the child, it is desirable that the person interviewing the child should be properly trained and experienced and should shield the child from the burden of decision-making. It was noted that there are differences in approaches taken to the interviewing of the child concerned.

Articles 14 and 7 d)

38. The benefits of Article 14 to take notice directly of the law, and of judicial or administrative decisions of the State of the habitual residence of the child, to ascertain whether there has been a wrongful removal or retention, were recalled. When required by specific circumstances, recourse can be made to Article 7 d) in order to obtain information relating to the social background of the child.

Practical handbook for judges

39. It was proposed to develop a practical handbook for judges under the 1980 Hague Child Abduction Convention taking into account existing good practices, training material, and national handbooks.

Maintenance of statistics

40. Judges are encouraged to maintain statistics concerning the cases dealt with by them under the 1980 Hague Child Abduction Convention and the 1989 Inter-American Convention.

IT tools

41. Members of the Hague Network emphasised the importance of implementing as soon as possible, under the auspices of the Hague Conference, Internet-based secured means of communications such as secured e-mail and videoconferencing systems with a view to facilitate networking and reduce the costs of telephone communications.

Conclusions and recommendations relating to Central Authority matters

Central Authorities from the Inter-American region agreed as follows:

Co-operation between Central Authorities

42. Maximum efforts should be undertaken to improve cooperation between Central Authorities.

Timeframes for responses between Central Authorities

43. Commitments agreed to in the Conclusions and Recommendations of the Inter-American Expert Meeting on International Child Abduction co-organized by the Inter-American Children's Institute and the Hague Conference on Private International Law, held in The Hague on 10 November 2006, were recalled and reaffirmed.

“Central Authorities – Fluency in communications

1. Central Authorities should comply with the following time periods in their communications related to cases under the Child Abduction Conventions:

a) New return or access applications: Once a new return or access application has been received the requested Central Authority should, within one week, acknowledge receipt of the application to the requesting Central Authority stating whether the received documentation is sufficient to initiate the procedure or whether further documentation / information is needed. This first communication has to do with the preliminary review performed by the requested Central Authority and does not comprise the subsequent review that may be performed by the Authority or professional who should file the case before the Court.

b) Follow up of proceedings: The requested Central Authority has the duty to keep the requesting Central Authority informed about the development of proceedings and to respond to all the information requests addressed by such Authority. The use of e-mail is encouraged as a mean of swift communication between Central Authorities. In this regard, it is advisable to use an e-mail address, which is checked on a daily basis, regardless of the absence or replacement of competent officers. Central Authorities should respond to requests received by e-mail within 48 hours from receipt. Communications received by fax or ordinary mail should be responded to within 72 hours.”

Communication of judgments and decisions

44. After the requested Central Authority takes note of a judgment or decision made in return or access proceedings it should communicate the judgment or decision to the requesting Central Authority with maximum urgency, mentioning the timeframes the applicant has to file an appeal.

Rapid means of communication

45. Central Authorities should avoid, as much as possible, formalities in their communications. The use of modern means of communication was encouraged, in order to make gains in speed and efficiency, privileging the direct communications between Central Authorities.

IT tools

46. The advantages of using IT tools were highlighted. It was recommended that Central Authorities assess the implementation of the secured communication system offered by the OAS and the IIN, and the Iber@ system, offered by IberRed.
47. The advantages of using IT tools to improve case management and the generation of statistics were also acknowledged. Using these tools should result in the saving of substantial time and resources and in efficiency gains for Central Authority operations. Central Authorities agreed to assess the possible implementation of the iChild solution, offered for free by WorldReach and the Government of Canada, and the use of INCASTAT.

Amicable solutions and mediation

48. States are invited to promote and facilitate the use of mediation, conciliation or similar means to bring about amicable solutions to child abduction cases, and to establish the necessary legal framework to ensure the recognition and enforcement of amicable solutions, including mediation agreements. In that respect, participants welcomed the development of a Guide to Good Practice on Mediation in the context of the 1980 Hague Child Abduction Convention.

Trans-frontier contact

49. Central Authorities noted point 4.6 of the Guide to Good Practice on Trans-frontier Contact that states:

"The Central Authority should make its services available in all circumstances where cross-frontier contact rights of parents and their children are in issue. This includes cases where a foreign parent seeks to establish a contact order, as well as cases in which the application is to give effect to an existing contact order made abroad.

In the context of abduction or alleged abduction, this includes cases where an interim order for contact is sought by an applicant pending a decision on the return of the child, as well as cases in which contact arrangements are sought (for example, by the abducting parent) in the country to which the child has been returned or, where return is refused, in the country to which the child has been taken."

Control of the application

50. The requesting Central Authority shall verify that the requirements of Article 8 of the 1980 Hague Child Abduction Convention are met and in particular provide maximum clarity in explaining the facts and basis of law upon which the

application is founded. Likewise, it is recommended that any other complementary information that may facilitate the assessment and resolution of the case accompany the application.

51. In turn, the review of the application performed by the requested Central Authority and / or the institution in charge of filing the application in Court should not generate unnecessary delays in the proceedings.
52. Central Authorities recommended as good practice that States complete the Country Profile under the 1980 Hague Child Abduction Convention with a view to provide information as to the requirements necessary to make an application.

Localisation of the child and taking parent

53. The existence of severe problems in localisation procedures were noted, both before proceedings are initiated and at the enforcement stage. Central Authorities agreed that they should strive to develop the best possible co-operation with institutions responsible for localisation. In relation with the enforcement phase, the use and promotion of the Guide to Good Practice on Enforcement prepared by the Hague Conference, with special attention paid to the logistical and migratory issues necessary for the return of the child, was emphasised.
54. It is recommended that requesting Central Authorities should strive to provide as much information as possible that might facilitate localisation in the requested State.

Additional information to the competent Court

55. It is recommended that when forwarding the application to the court, or as soon as it becomes possible, the requested Central Authority informs the competent court in every case about the existence of the International Hague Network Judge and the INCADAT database in order to raise awareness about these helpful means / tools that are at the disposal of the judge seized.

Prevention

56. The importance of the Guide to Good Practice on Preventive Measures in raising awareness among the various actors who play a role in international child abduction proceedings was underlined, and it was agreed to promote the use and distribution of this Guide.

Inter-American Children's Institute - SIM Programme

57. The importance of implementation of the Inter-American Programme of Cooperation to Prevent and Remedy International Parental Child Abduction Cases (SIM) was highlighted and Central Authorities agreed to the working programme proposed by the IIN in order to continue with the implementation of this Programme.

Future work

58. Central Authorities invited the Hague Conference and the IIN to consider developing:

- a glossary of the key terms included in both the 1980 Hague Child Abduction Convention and the 1989 Inter-American Convention;
- an online training course specifically designed for Central Authority officers;
- an online training course specifically designed for Judges; and
- a tool kit for Central Authority operators.

1996 Hague Child Protection Convention

59. 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 from the Inter-American Region to study the 1996 Hague Child Protection Convention with a view to future implementation.

Scope and object of the 1996 Hague Child Protection Convention

60. 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.
61. 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 jurisdictions. In this respect, the Convention builds bridges between legal systems having diverse cultural or religious backgrounds.
62. 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 those 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 third 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: (1) parental disputes over custody and contact; (2) unaccompanied minors; (3) cross-frontier placements of children; and (4) international child abduction, as a complement to and reinforcement of the 1980 Hague Child Abduction Convention and the 1989 Inter-American Convention.¹
63. The participants noted, through hypothetical cases, the following benefits for the Latin American region in relation to the 1996 Convention:

¹ See Art. 34 of the 1980 Hague Child Abduction Convention, Art. 35 of the 1989 Inter-American Convention and Art. 50 of the 1996 Hague Child Protection Convention.

- The 1996 Convention reinforces Article 16 of the 1980 Hague Child Abduction Convention.
 - The 1996 Convention provides for very useful urgent measures of protection, in the case of a return application under the 1980 Hague Child Abduction Convention, which have effect in all States Parties to the 1996 Convention.
 - Urgent measures ordered upon the return of the child to the State of habitual residence will be automatically recognized and enforced, thus avoiding the need to organise mirror orders in both jurisdictions concerned.
 - The 1996 Convention reinforces Article 21 of the 1980 Hague Child Abduction Convention by providing clear rules regarding the law applicable, jurisdiction, recognition and enforcement and co-operation in relation to custody and contact right issues.
 - The 1996 Convention provides, under Article 26, for a system of declaration of enforceability and registration for the purpose of swift enforcement in States Parties to the Convention of measures of protection enforceable in one Contracting State, such as measures that could be included in a mediation agreement having the force of law.
 - The 1996 Convention provides for a novel international procedure for dealing with formalities for access requests that significantly promotes access to justice by the party requesting access rights.
 - The 1996 Convention includes jurisdiction rules to order measures of protection for children that are the subject of trafficking activities.
64. The participants recognised the importance of developing mechanisms to facilitate direct judicial communications, more specifically in relation to Articles 8 and 9 of the 1996 Convention.
65. Finally, participants concluded that:
- States Parties to the 1993 Hague Inter-country Adoption Convention consider becoming Parties to the 1996 Convention in order to provide cross-border foster care for children not covered by the 1993 Convention.
 - Dissemination of information and training of judges are essential to raise awareness to the 1996 Convention.

Preparations for the Sixth Meeting of the Special Commission of June 2011

66. Participants welcomed the opportunity to discuss the preparations for the Sixth Meeting of the Special Commission to Review the Practical Operation of the 1980 and 1996 Conventions, to be held in June 2011.
67. Efforts to co-ordinate the views and input of the region in preparation of the Sixth Meeting of the Special Commission through the Liaison Legal Officer for Latin America were welcomed.

68. Voluntary contributions from States in the region to provide for Spanish translation of documents for, and interpretation during, the Sixth Meeting of the Special Commission, were encouraged. Participants welcomed the voluntary contributions made by Argentina and Spain.
69. States were encouraged to submit their statistics for the year 2008 for the Professor Nigel Lowe study as soon as possible in preparation for the Sixth Meeting of the Special Commission.