

**NOTE CONCERNANT L'ÉLABORATION ÉVENTUELLE D'UN FORMULAIRE MODÈLE DE
CONSENTEMENT AU VOYAGE**

établie par le Bureau Permanent

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**NOTE ON THE POSSIBLE DEVELOPMENT
OF A MODEL CONSENT TO TRAVEL FORM**

drawn up by the Permanent Bureau

*Document préliminaire No 15 de janvier 2012 à l'intention de la
Commission spéciale de janvier 2012 sur le fonctionnement pratique de la
Convention Enlèvement d'enfants de 1980 et de la
Convention Protection des enfants de 1996*

*Preliminary Document No 15 of January 2012 for the attention of the
Special Commission of January 2012 on the practical operation of the
1980 Hague Child Abduction Convention and the
1996 Hague Child Protection Convention*

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INTRODUCTION

1. It has long been recognised that in relation to international child abduction, “prevention is better than cure”: that is, to prevent child abduction occurring is far better than to have to seek a child’s return following abduction.¹ It was with this in mind that the 2002 Special Commission meeting concerning the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*² (27 September – 1 October 2002) recommended that the Permanent Bureau “gather information concerning the measures adopted in different Contracting States to prevent abductions from taking place” with a view to the development of a Guide to Good Practice on Preventive Measures.

2. In 2003, in response to this recommendation, the Permanent Bureau drafted a Background Document and Questionnaire which were circulated to all States Parties seeking information on practices in relation to preventive measures.³ A number of State responses⁴ to the Questionnaire highlighted that a useful tool in preventing international child abduction is the imposition of a requirement that the consent of both parents⁵ be obtained before a child is allowed to leave the jurisdiction.⁶ However, as was subsequently noted in the Guide to Good Practice on Preventive Measures:

“Amongst the States that require parental consent before a child may leave the jurisdiction, the rules governing such consent vary. For example, it may be that the consent of both parents (irrespective of whether or not they are married, separated or divorced and whether or not one has sole custody) is required before a child may lawfully leave the jurisdiction. In other States, only a parent (or parents) with custody rights will need to consent to a child leaving the jurisdiction, usually by written authorisation, which must in some circumstances be notarised.”⁷

¹ See the Guide to Good Practice under the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* – Part III – Preventive Measures (hereinafter, the “Guide to Good Practice on Preventive Measures”), at p. vi. The Guide was published in 2005 and is available in English, French and Spanish on the Hague Conference website at < www.hcch.net > under “Child Abduction Section” then “Guides to Good Practice”.

² Hereinafter the “1980 Hague Child Abduction Convention”.

³ The Background Document and Questionnaire are available on the Hague Conference website at < www.hcch.net > under “Child Abduction Section” then “Questionnaires and responses” and “2003 Questionnaire” or “Background Document”.

⁴ Available, *ibid.*, under “Responses”. Responses were received from Argentina, Austria, Canada, Croatia, Denmark, Estonia, Finland, Germany, Hong Kong, Iceland, Israel, Italy, Malta, New Zealand, Panama, Poland, United Kingdom (Scotland), Slovakia, Sweden, Switzerland and the International Center for Missing and Exploited Children. It should be noted that these responses were provided in 2003 and that relevant domestic law provisions may have subsequently changed.

⁵ Whilst the term “parent” is used throughout this paper in the context of the requirement for consent to be given in order that a child be permitted to leave (or in some cases, enter) a jurisdiction when not accompanied by both parents, it should be noted that, in some States, the consent of other persons with responsibility for a child may also (or instead) be required for the child in question to leave / enter the jurisdiction (e.g., legal guardian(s) or other person(s) with rights of custody in respect of the child). This will depend on the relevant domestic law.

⁶ See the Guide to Good Practice on Preventive Measures, *supra*, note 1, at p. 10 and the 2003 responses of Argentina, Canada (Central Authority for Quebec), China (Hong Kong SAR), Denmark, Estonia, Israel and Poland. In some States there is no requirement for parental consent (whether written, or otherwise) prior to international travel with a child. In many of these States the requirement for parental consent is confined to the issuing of travel documentation for international travel (e.g., the grant of a passport or visa to the child). It is assumed by these States that parental consent to the issuing of travel documentation includes consent to the subsequent utilisation of the documentation.

⁷ See the Guide to Good Practice on Preventive Measures, *ibid.*, para. 1.2.2.

3. Research revealed that in States where this requirement for written authorisation existed, often no particular form was provided for individuals to complete and there was little guidance as to what details the written authorisation should contain. Further, where forms were provided they varied from State to State such that, "if a child who is not accompanied by both parents journeys across more than one State, it is conceivable that a different form of consent could be required in each jurisdiction traversed".⁸

4. As a result of these consultations, the Guide to Good Practice on Preventive Measures states that, "it has been suggested that the introduction of a generally applicable requirement to obtain the consent of both parents before allowing a child to leave a State would greatly assist in preventing abduction".⁹ Where such a requirement exists, the Guide recommends that States consider "requiring proof that consent has been given, where necessary, prior to permitting a child to leave a jurisdiction".¹⁰ In this regard, the Guide states:

"There may be benefit in agreeing a single standardised consent form (in several languages) which would assist those operating border controls so that they would be able to ascertain swiftly if the authorisation to travel has been granted (and in particular that any necessary evidentiary requirements in respect of such authorisation have been satisfied). Moreover, a standardised form of consent would make the consent procedure less burdensome for travellers. [...] A standardised consent form would ensure certainty and consistency."¹¹

5. Prior to the Fifth Meeting of the Special Commission to review the operation of the 1980 Hague Child Abduction Convention (30 October – 9 November 2006) (hereinafter "the Fifth Meeting of the Special Commission") States Parties to the Convention were asked for their views regarding the desirability of developing such a standardised or recommended consent to travel form.¹² The States that responded generally agreed that there was value in continuing to explore the development of such a form.¹³ Following discussion at the Special Commission meeting, it was therefore recommended that:

"1.2.3. The Permanent Bureau is requested to continue to explore the feasibility and the development of a standardised or recommended permission form in consultation with Contracting States and in co-operation with relevant international organisations which regulate international travel. The Special Commission recognises that it is necessary to have regard in the first instance to the purpose and content of the form. It was agreed that such a form would not be designed to introduce any new substantive rules but rather to operate within existing systems. The form would be non-binding and non-obligatory."¹⁴

6. The Permanent Bureau has subsequently undertaken research on desirability and feasibility issues related to the development of a model consent to travel form and

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² "Questionnaire concerning the practical operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction", Prel. Doc. No 1 of April 2006 for the attention of the Special Commission of October / November 2006 on the Civil Aspects of International Child Abduction, available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Questionnaires and responses", at question 45.

¹³ Positive responses to question 45 of Prel. Doc. No 1 of April 2006, *ibid.*, concerning continuing the exploration of the possible development of a recommended model consent to travel form were received from Argentina, Australia, Austria, Canada (Saskatchewan, Quebec, Nova Scotia), Chile, China (Hong Kong SAR and Macao SAR), Colombia, Costa Rica, El Salvador, Finland, Ireland, Israel, Latvia, Lithuania, Malta, Netherlands, New Zealand, Nicaragua, Panama, Poland, Portugal.

¹⁴ Conclusions and Recommendations of the Fifth Meeting of the Special Commission on the operation of the 1980 Hague Child Abduction Convention; available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings".

engaged in some informal consultations with the International Civil Aviation Organisation¹⁵ (see paras 21 *et seq. infra*).

THE DESIRABILITY AND FEASIBILITY OF DEVELOPING A MODEL CONSENT TO TRAVEL FORM

Purpose of a model consent to travel form

7. There are various circumstances under which a parent may need to provide written consent to enable a child to travel internationally. For example:

- a) As mentioned above, in some States domestic law requires written parental consents to be in place before a child will be permitted to leave the jurisdiction without either one, or both, of his / her parents.¹⁶
- b) Some States also require written parental consents in order that a child be permitted to enter the jurisdiction.¹⁷
- c) Further, some transport providers, such as airlines and cruise lines, have adopted a policy of strongly recommending to parents that proof of parental consent to travel be carried at all times when a child is to travel with only one parent or without his or her parents.¹⁸
- d) Lastly, even where no legal requirement for providing written consent exists, it may be good practice, where one parent is travelling alone with a child and shares custody or parental responsibility / authority with the other parent, to carry written authorisation for the travel to prevent unexpected difficulties.

8. The current situation regarding consent requirements and, in particular, the forms for the giving of consent, can be confusing and burdensome for families. Where written consent is required, the form of consent may vary from State to State or, more commonly, no guidance is provided at all regarding the form the written consent should take. Free sample forms are readily available on the Internet but the content of such forms varies and it may be very confusing for parents to ascertain whether the content of the free sample form matches their needs.

¹⁵ The International Civil Aviation Organisation (hereinafter "ICAO"), a specialised agency of the United Nations, was established in 1944 by the Convention on International Civil Aviation, signed at Chicago, on 7 December 1944 (the "Chicago Convention"). Full text available at < <http://www.icao.int/icaonet/dcs/7300.html> > (last consulted 6 December 2011).

¹⁶ *E.g.*, Argentina (2003 and 2006 Questionnaire responses), Canada (only required when travelling to the USA but strongly recommends that children carry such a written, notarised consent in all cases when they are travelling with one parent alone), Chile (2006 Questionnaire response), Estonia (2003 Questionnaire response), Portugal (2006 Questionnaire response), Saudi Arabia (children require the consent of their father or male guardian to leave the jurisdiction). It should be noted that in these States the requirement to provide written consent to travel may depend upon, for example, the nationality or residence of the child / family. In the 2003 responses of Denmark, Iceland and the United Kingdom (Scotland), it was stated that in certain situations the consent of a non-travelling parent was required for the child to leave the jurisdiction but it was not made clear whether that consent had to be evidenced in writing for the child to be able to leave the jurisdiction.

¹⁷ *E.g.*, Algeria (if the child is an Algerian national and is accompanied by only his / her mother or neither parent, the father's written, notarised consent required), Chile (minors travelling alone require written notarised authorisation from their legal representatives both to enter and leave Chile).

¹⁸ *E.g.*, preliminary research has revealed that the websites of the following transport providers either require or recommend parents travelling alone with a child to carry written authorisation from the non-travelling parent: Aerolineas Argentinas, Air Canada, Jetblue, Norfolk Line, Finn Air and Air New Zealand.

Content of a model consent to travel form and related legal issues

9. In previous consultations, States have raised a number of points regarding the possible content of a model consent to travel form.¹⁹ Some of the key points are outlined briefly in the following paragraphs.

Scope of the form

10. An issue raised by a number of States²⁰ in response to the 2006 Questionnaire was that it should be clear from the form that consent for the child to leave the jurisdiction is only granted for temporary travel and that this consent in no way represents consent to a permanent removal of the child from the jurisdiction.

11. Another issue to consider in relation to the scope of any form is whether it should cover only single journeys or whether it could be used for unlimited travel over a specified period of time (e.g., one year, two years, for as long as the passport of the child is valid). It may be overly burdensome for families to be required to complete a separate form for each international journey particularly where the children travel internationally on a frequent basis accompanied by only one parent. On the other hand, some parents (e.g., those who are separated or divorced) may be reluctant to provide consent to all short-term international travel over a lengthy period, preferring to consent only to specific, discussed and agreed journeys.

Consent and related matters

12. In their 2006 responses, two States²¹ raised concerns regarding the possibility of a party being either unduly influenced or coerced into signing a consent form, or misrepresentations being made to procure consent.²² There is, unfortunately, no definitive way to prevent such practices occurring. However, at the current time the safeguards in place for parents vary from State to State. Adopting and implementing a model form which incorporates certain safeguards may minimise the opportunity for such practices. Further, the requirement that a form be witnessed or notarised (see para. 13 *infra*) may provide additional safeguards in this respect.

Authentication²³ of the form

13. In their 2006 responses, several States²⁴ suggested that any model form should have an express requirement that it be witnessed. However, it should be noted that there may be different requirements in States regarding how such a consent form must be authenticated (e.g., in some States witnessing may be sufficient, in other States it is clear that any such consent form must be notarised²⁵).

¹⁹ *Supra*, notes 12 and 13.

²⁰ Australia, Canada (Manitoba) and China (Hong Kong SAR).

²¹ Israel and the United Kingdom (England and Wales and Scotland).

²² If undue influence, coercion, or misrepresentation is alleged to have occurred to procure consent, it will be a matter for the State in which the issue arises to determine the legal effect of these matters on the consent apparently given on the face of any form.

²³ It should be noted that "authentication" in this context is used to refer to the witnessing or notarisation of the form rather than any subsequent processes which may be required (e.g., the issuance of an Apostille).

²⁴ Israel, Slovakia, Sweden and the United Kingdom (England and Wales and Scotland).

²⁵ Preliminary research suggests that this appears to be a requirement in some Latin American States, e.g., Argentina and Chile.

Accompanying documents

14. A requirement could be imposed for a number of documents to be attached to any model form, e.g., (1) a certified copy of the child's birth certificate²⁶ (identifying the child's parents, where possible); (2) where the birth certificate does not do so, documentation evidencing the status of the person giving consent in relation to the child (e.g., a court order, formalised agreement, etc.); and (3) documentation identifying the person(s) giving consent and the person(s) accompanying the child (e.g., passport, identity card, driving licence).

*Effect of the form on pre-existing "stop orders"*²⁷

15. In its 2006 response, one State²⁸ noted that it must be ensured that the form does not contradict existing court orders to prevent the removal of a child from the jurisdiction. This is an important issue. A model form could deal with this issue by stating explicitly on the form that it does not affect any existing court orders, including those that restrict travel of the child outside the jurisdiction. Where such court orders are in place, the parties should seek legal advice regarding any proposed travel outside the jurisdiction.

Amendment of the form, including the revocation of consent

16. One response²⁹ to the 2006 Questionnaire rightly indicated that the form cannot be made irrevocable.³⁰ In relation to the wish of a parent prior to travel to extend their travel or change travel dates or otherwise amend the form, it seems that the most practicable solution is to require that a new form be completed. In relation to the desire of a parent to revoke consent previously given prior to the travel of the child,³¹ the recommended approach would be for the parent to: (1) revoke its consent in writing, clearly communicating this to the other parent; and (2) consult a lawyer to obtain legal advice on whether further steps should be taken to prevent a possible removal of the child from the jurisdiction without their consent such as obtaining a "stop order".

Legal effect of the form and the interrelationship with the 1980 Hague Child Abduction Convention

17. As indicated above, any form could not override a pre-existing "stop order". In a similar way, it could not alter the attribution or existence of any rights of custody in relation to the child.³² The legal effect of any form would be confined to giving consent to the temporary international travel of a child. The use of any form would be open not only to States Parties to the 1980 Hague Child Abduction Convention but to any State.

18. Whilst any model form would have no legal effect on the operation of the 1980 Hague Child Abduction Convention, it could prove of use to authorities determining an application for the return of the child and grappling with questions such as consent to or acquiescence in an alleged wrongful removal / retention. Further, its deterrent effect to

²⁶ This appears to be a requirement in Chile and Mexico.

²⁷ The term "stop order" is used in this document to denote a court order which prohibits the removal of the child from the jurisdiction.

²⁸ Israel.

²⁹ Austria.

³⁰ Particularly in relation to children, circumstances change and the ability of a parent to react to such changes should not be constrained.

³¹ An issue raised by four States: Australia, Austria, Sweden and the United Kingdom (Scotland).

³² Whether obtained *ex lege*, by court order, agreement or any other means.

international abduction should not be underestimated. If a parent is aware that there is a notarised document which clearly states the dates of their travel with the child, it is possible that they will be deterred from retaining the child contrary to the stated intention on the form since they will be aware that the form may be used as evidence against them in any subsequent proceedings.

Limitations of a model consent to travel form

19. In circumstances where there is a requirement for an individual to obtain certain consents prior to international travel with a child, as well as a requirement for written proof of such consent and policing of such a requirement at the border, there may well be significant practical problems with promoting the use of a model form. For example, it would appear to be very cumbersome for immigration officers and / or travel providers at an exit point to verify the authenticity of a form, as well as to ensure that all the legal requirements of the State from which the child is departing are met. This may have a serious impact on delays at the border. Moreover, even if immigration officers and / or travel providers at the exit point are comfortable processing travel forms originating from the State from which the child is departing, the processing of travel forms originating from other States (which may have different legal requirements and may be completed in a different language) may be much more difficult. This latter situation would be equally true for immigration officers that have to process such forms at an entry point.

20. Furthermore, a model consent to travel form would have a limited effect if it were not checked at the border. It is a well known fact that the level of border controls at the exit and / or entry point vary greatly from one State to another according to the method of transportation used, possibly the nationality of the traveller and often the State of destination not to mention the States where there is no immigration control. It is hoped that if any model form or similar document is developed to prevent child abduction it will be kept simple and effective so as to encourage its implementation by States which are not already making these controls.

CONSULTATIONS WITH ICAO

21. In light of the analysis above illustrating: (1) the potential need for assistance to be provided to families to facilitate international travel with children; (2) the need for such assistance to strengthen, as opposed to weaken, any controls put in place by States to prevent international child abduction; and (3) the limitations of developing a simple paper model form for consent to travel, the Permanent Bureau has consulted ICAO (see para. 6 *supra*). Over the years, ICAO has played an important role in regulating international travel by air.³³

The Facilitation Programme of ICAO

22. ICAO is the global forum for co-operation in international civil aviation and currently has 191 Member States. Of particular relevance to this note, ICAO operates a "Facilitation Programme" which deals with, amongst other matters, the standardisation of travel documentation.³⁴ Facilitation, in the context of civil aviation, refers to a wide range of issues and activities, as well as the development of international Standards, in connection with the clearance of aircraft, people and goods through the formalities required at international borders. ICAO Facilitation Programme is based on Articles 10,

³³ It is true, of course, that international travel of children may take other forms of travel. However, travel by air lends itself, by its nature, to swift movements of children over long distances, thereby creating a specifically serious risk of abduction. This is why regulating this type of travel may be particularly important.

³⁴ It is important to note that this standardisation affects, in practice, not only civil aviation but all modes of international travel.

13, 14, 22, 23, 24, 29, 35, 37 and 38 of the Chicago Convention.³⁵ Annex 9 of the Chicago Convention embodies the Standards and Recommended Practices (SARPs) pertaining to facilitation of border control formalities (*i.e.*, immigration, customs, health and quarantine).³⁶ The Standards are binding on States unless “differences” are submitted by States. Annex 9 specifies procedures for carrying out clearance operations, with the twin objectives of effective compliance with national laws and the productivity of operators, airport and government inspection agencies involved.³⁷

23. ICAO has been involved in standardising passports since 1968 when the international civil aviation community expressed interest in developing recommendations on machine readable passports in the form of a book or card, aimed at accelerating the clearance of passengers through border controls. It was in the context of its Facilitation Programme that, in 2002, ICAO adopted the “one passport, one person” policy to end the practice of entering dependents in “family passports” and to ensure that each child is issued with an individual passport.³⁸ One factor supporting the adoption of this standard was concern about child trafficking and international child abduction.³⁹ Furthermore, ICAO is involved in a number of initiatives regarding travel documentation / information which aim to use modern technology to facilitate safe international travel (*e.g.*, the requirement for its Member States to only issue machine readable passports as from 1 April 2010⁴⁰ and recommendations regarding “Advance Passenger Information”⁴¹).

Ways forward – working with ICAO

24. As a result of informal consultations with ICAO, it would appear that it may be possible to develop, under ICAO’s Machine Readable Travel Document (MRTD), a travel document specifically for children indicating with which parent(s) the child is permitted to travel (and if the child may travel as an “unaccompanied minor”) and for which period of time (short or long-term). This travel document could be developed in the same form as some visas,⁴² *i.e.*, as a “sticker” which could be affixed to the passport of the child.

25. As with the issuance of passports and visas, the verification of all the legal requirements for the issuance of such a travel document would rest with domestic authorities from the State whose legal requirements would have to be complied with.⁴³ If verification is done prior to travel, the authorities would have sufficient time to make all the appropriate checks. As with passports and visas, the travel document authorising the child to travel could be “machine readable”, therefore alleviating language difficulties and allowing effective “stop order” procedures.

³⁵ See, *supra*, note 15.

³⁶ See ICAO, “The Facilitation Manual”, Doc. 9957, First Edition – 2011, approved by the Secretary General and published under his authority. An introduction to the SARPs of Annex 9 can be read at pp. 1-1 to 1-9 of the Facilitation Manual.

³⁷ See, *ibid.*, para. 1.2.1 at p. 1-1.

³⁸ See, *ibid.*, para. 3.4 at pp. 3-6.

³⁹ See, *ibid.*, paras 3.4.25 to 3.4.41 at pp. 3-10 to 3-14

⁴⁰ See, *ibid.*, para. 3.10 at pp. 3-22 to 3-29.

⁴¹ See the Standard concerning Advance Passenger Information (or “API”) at para. 3.47 of Annex 9 to the Chicago Convention. In 2010, ICAO, the International Aviation Transport Association (“IATA”) and the World Customs Organisation (“WCO”) adopted Guidelines on Advance Passenger Information. These may be found on the ICAO Public Website at <http://www2.icao.int/en/AVSEC/FAL/Pages/Publications.aspx>

⁴² See ICAO, “The Facilitation Manual”, *supra*, note 36, p. 3-12.

⁴³ Generally this authority would be from the State of habitual residence of the child. However, it is important to note, depending on the circumstances, that the attribution or extinction of parental responsibility could be governed by the law of another State (*e.g.*, the law of the State where an agreement or unilateral act concerning the attribution or extinction of parental responsibility took effect).

26. The travel document would have no impact on domestic law.⁴⁴ It would be non-obligatory and non-binding⁴⁵ and could be revocable at any time subject to the legal requirements of the State of issuance of the document.

27. The development and implementation by ICAO of a document authorising the child to travel could:

- a) increase certainty for those travelling with children, as well as those verifying consents (*e.g.*, immigration officers and travel providers) at the border;
- b) increase consistency so that individuals travelling across a number of jurisdictions would not need to provide a different consent form for each jurisdiction; and
- c) deter parents from taking children across borders without the prior consent of the other parent.

28. In this way, the travel document may enhance the operability and effectiveness of any requirement for consent which States may have; an important tool in the prevention of international child abduction.

CONCLUSION

29. The Sixth Meeting of the Special Commission Part II (25-31 January 2012) may wish to recommend that the Hague Conference on Private International Law approaches ICAO with a view to inviting it to consider the possibility of starting work, in consultation with the Hague Conference in relation to the possible development of a travel document as set out above and as framed in Conclusion and Recommendation No 1.2.3 of the Fifth Meeting of the Special Commission.

⁴⁴ As stated clearly in the 2006 recommendation, under para. 5 *supra*, such a travel document authorising the child to travel “would not be designed to introduce any new substantive rules but rather to operate within existing systems.” This new travel document would not therefore affect the status quo regarding the differing domestic laws across States with regard to international travel with children. It will not impose a consent requirement where such consent is not already required by the domestic law of a State. Further, in those States where a consent requirement does exist, it will not impose an obligation to request proof of consent at the border (*i.e.*, written authorisation).

⁴⁵ This would be in the same spirit as the SARPs described in para. 22 *supra*.