

**Judicial Seminar for French-speaking African Countries
on the principal Hague Conventions on International Child Protection,
International Judicial and Administrative Co-operation
and International Litigation**

CONCLUSIONS AND RECOMMENDATIONS

From 27 to 31 August 2007 Chief Justices and judges¹ of the high jurisdictions of Benin, Burkina Faso, Cameroon, Chad, Congo, Côte d'Ivoire, Egypt, Gabon, Guinea, Guinea-Bissau, Madagascar, Mali, Morocco, Mauritius, Mauritania, Niger, Rwanda, Senegal, Togo and Tunisia, the *Association Africaine des Hautes Juridictions Francophones (AA-HJF)* and the *Association des Hautes juridictions de cassation des pays ayant en partage l'usage de français (AHJUCAF)*, and experts from the United Nations Committee on the Rights of the Child, the *Organisation internationale de la Francophonie (OIF)*, the *Organisation pour l'harmonisation en Afrique du droit des affaires (OHADA)*, the African Committee of Experts on the Rights and Welfare of the Child of the African Union (ACERWCAU) and the International Union of Judicial Officers (*UIHJ*) as well as judges from Belgium and France and Liaison Judges from Canada and the Netherlands, met at the Permanent Bureau of the Hague Conference on Private International Law to discuss the benefits of implementing the Hague Conventions on International Child Protection and International Judicial and Administrative Co-operation on the one hand, and, on the other, of promoting the work of the Hague Conference on Private International Law, as vehicles offering solutions to complex cross-border issues in the majority of the French-speaking African countries.

The judges and experts attending the seminar agreed unanimously on the following points:

1. The Seminar was an important event in strengthening mutual understanding, respect, trust and solidarity between judges in the various countries – crucial factors in improving cross-border judicial and administrative cooperation, in particular for child protection, and in general, in promoting the work of the Hague Conference on Private International Law in the region.
2. The participants acknowledged the benefit for the French-speaking countries of Africa to become parties to the Hague Conventions on International Child Protection and on International Judicial and Administrative Co-operation which offer solutions sensitive to the various legal traditions and national bodies of law.

¹ See the annexed list of participants.

INTERNATIONAL CHILD PROTECTION

3. The principles established by or inherent in the *African Charter on the Rights and Welfare of the Child* and in the *United Nations Convention on the Rights of the Child* which are reflected in the Hague Children's Conventions are reaffirmed, and in particular:

- a) the best interests of the child are of paramount importance in the field of international child protection;
- b) States have a duty to take measures to:
 - i) co-operate in relation to intercountry adoption;
 - ii) protect refugee children;
 - iii) combat the sexual exploitation, sale, trafficking and abduction of children;
 - iv) combat the wrongful removal and retention abroad of children;
 - v) recover child maintenance payments;
- c) a child whose parents live in different countries is entitled to have personal relations and regular direct contact with both parents, save in exceptional circumstances.

1993 Convention on Intercountry Adoption

4. It was recognised that the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption* is an essential component of any strategy seeking to protect children who are abducted or trafficked and those who are vulnerable as the result in particular of poverty and the HIV/AIDS pandemic. It was stressed that it is extremely important for the French-speaking African countries involved in intercountry adoption to become parties to this Convention which affords the best legal and administrative framework for protecting children liable to be adopted. It was noted that countries contemplating becoming parties or which are parties to the Convention can request the assistance offered by the Hague Conference International Centre for Judicial Studies and Technical Assistance in implementing the Convention.

1996 Convention on the International Protection of Children

5. Attention was drawn to the considerable advantages which would be derived from the French-speaking African States adopting 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*. Those advantages would be, in particular:

- the Convention would play a significant role in establishing intercountry co-operation with a view to protecting vulnerable unaccompanied minors and child victims of trafficking, in particular the increasing number of children exposed to mistreatment or sexual abuse and refugee children displaced by conflict or natural disaster;
- the Convention provides for cooperation between States in regulating intercountry placements of children (that is to say, those not covered by the 1993 Hague Convention);
- the Convention offers a flexible system of rules on jurisdiction which prevents the risk of conflicting decisions on child protection made in different countries;

- the provisions of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* would be supplemented and strengthened in cases concerning the wrongful removal and retention abroad of children by a parent.

1980 Convention on International Child Abduction

6. Implementation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* was strongly encouraged in order to combat the wrongful removal abroad and retention of children by a parent.

Contribution of the African Union

7. It was pointed out that the ACERWCAU, one of whose objectives is to promote and protect the rights of the child on the African continent, would be able to raise awareness in the States in the African Union about the importance of the Hague Conventions on Child Protection, whose provisions reinforce those of the *African Charter on the Rights and Welfare of the Child* and the *UN Convention on the Rights of the Child*. It was also noted that the African Union is in a position to mobilise regional and international efforts in support of child protection.

INTERNATIONAL JUDICIAL AND ADMINISTRATIVE CO-OPERATION AND INTERNATIONAL LITIGATION

International Judicial and Administrative Co-operation

8. The participants acknowledged and highlighted the great advantages of the channels for service and other simple effective procedures set up by the Hague Conventions on International Judicial and Administrative Co-operation, namely: the *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (the Apostille Convention), the *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, the *Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters* and the *Convention of 25 October 1980 on International Access to Justice*. With a view to enabling both private individuals and traders and businesses to exercise their international rights and carry on their cross-border activities fairly and efficiently, they must be given access to an effective, worldwide and affordable framework of judicial and administrative co-operation. Such a framework is an integral part of a modern legal system. It was acknowledged that the Conventions studied fully satisfy this requirement.

9. The participants drew particular attention to the great advantages of the principal channel and alternative channels for transmission available under the Service Convention, and noted the particularly efficient method of direct service between officials and judicial officers (Art. 10 *b*). The participants also noted the importance of Articles 15 and 16 of that Convention, intended to protect the defendant at the time of an appearance and where judgment has been entered in default, whilst having regard for the interests of the claimant.

10. The efficiency of the procedure put in place by the Apostille Convention was also highlighted. The benefits afforded by the electronic Apostille Pilot Programme (e-APP), designed to enable electronic Apostilles to be issued and the setting up of electronic registers, were noted with great interest.

11. The participants undertook to continue to examine the relevance of the Conventions on International Judicial and Administrative Co-operation, in consultation with the competent authorities in their countries, and to encourage their States to adhere to these instruments. The Permanent Bureau, so far as its resources allow, offered support in that examination.

International Litigation

12. The participants recognised the benefits to their countries of the *Hague Convention of 30 June 2005 on Choice of Court Agreements* which is a supplementary instrument to the widely-ratified *1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*. It was also acknowledged that the 2005 Convention, in common with the other Hague Conventions discussed during the Seminar, was in line with the regional instruments on the subject.

The OHADA's contribution

13. The participants acknowledged that it would be useful to explore the possibility that the competent authorities of regional organisations such as the OHADA might adopt recommendations in favour of the Conventions on International Judicial and Administrative Co-operation and International Litigation.

THE WORK OF THE HAGUE CONFERENCE

14. The French-speaking African States were encouraged to become Members of the Hague Conference on Private International Law in order to derive full benefit from its work and to be able to influence the Conference's work programme in order to take the issues and their needs more closely into consideration.

15. The participants noted with satisfaction the creation of a fund to enable non-member States to participate in the work of the Conference.

The role of the Permanent Bureau

16. The participants acknowledged the significant role of the Permanent Bureau in monitoring the operation of the Hague Conventions on Children and on Judicial and Administrative Co-operation, in producing tools (such as INCADAT, *The Judges' Newsletter on International Child Protection*, the Guides to Good Practice and the Practical Handbooks) providing a valuable aid to judges and the Central Authorities in applying the Conventions, and in facilitating the organisation of judicial conferences and seminars. They also recognised the importance attached by the Permanent Bureau to monitoring and examining the practical operation of the Hague Conventions.

The Hague Conference website (www.hcch.net)

17. The participants acknowledged that the contents of the Hague Conference website (www.hcch.net), including free access to INCADAT (the International Child Abduction Database) and to *The Judges' Newsletter* as well as the various "areas" devoted to the Conventions studied at the Seminar, represents a resource which contributes significantly to disseminating and broadening knowledge about implementation of the Hague Conventions, and a means of promoting application and a coherent interpretation of the Conventions internationally.

18. With that aim, inclusion of a link to the *OIF's "droit francophone"* website would allow greater visibility and dissemination of the Hague Conventions and the work of the Conference.

Judges' Networks

19. It was agreed to continue the development of international judicial co-operation already under way in the region under the auspices of the *AA-HJF* and the *AHJUCAF* more particularly in the field of child protection in order to foster communication, collaboration and understanding between judges internationally. The participants supported the idea of appointing within the various jurisdictions one or more judges whose task would be to facilitate international communication between judges and, especially, to act as intermediaries between their national colleagues and other judges in the Hague International Judges' Network.

Ongoing dialogue

20. The judges emphasised the importance of continuing, with the active assistance of the Permanent Bureau, the existing dialogue on issues of cross-border child protection and international judicial and administrative co-operation in the region, of keeping each other informed of training initiatives in their countries and of alerting the Permanent Bureau to those initiatives.

Seminar and training for judges

21. The concept behind the seminar, which included numerous discussions between judges from different countries on the basis of case studies, was shown to be useful and could be the basis for the organisation of similar seminars in the future.

22. There was recognition of the great importance of training and of raising the awareness of judges to international child protection and to international judicial and administrative co-operation. Training sessions should be provided at national, regional and international levels.

23. Attention was drawn to the importance of holding national and regional seminars, of co-ordinating with other actors involved in child protection and international judicial and administrative cooperation and of encouraging co-ordination and communication between judges in the region.

24. The necessary efforts should be made to raise the resources to enable technical assistance and training for that purpose in each State. The participants welcomed the efforts leading to the creation within the Permanent Bureau, with the aid of voluntary contributions, of the Hague Conference International Centre for Judicial Studies and Technical Assistance which can assist States which are considering becoming parties or which are parties to the Hague Conventions.

PARTNERSHIPS

25. The creation of partnerships between the Hague Conference, the *OIF*, *ACERWCAU*, *AA-HJF*, *AHJUCAF* and *UIHJ* with a view to organising seminars and helping to raise awareness and train judges was strongly encouraged.

DISSEMINATION AND FOLLOW-UP OF THE WORK OF THE SEMINAR

26. Acknowledging the contribution made by the seminar, the participants were invited to take the necessary steps to ensure that its conclusions were disseminated to their national colleagues and governments in order to raise their awareness of the work of the Hague Conference.

27. The participants called on the Hague Conference to arrange a similar meeting to be held in two years' time, to follow up these Conclusions and Recommendations, and to examine in accordance with an order of priorities the practical issues relating to implementation of the Conventions, including the establishment of competent authorities under them.

ACKNOWLEDGEMENTS

28. Thanks were given to the following:

- the Hague Forum for Judicial Expertise, the *Institut Français des Pays-Bas* and the *OIF* for their assistance in organising this Seminar;
- the Ambassador of Canada, the French Embassy and the President of the *Hoge Raad* (Supreme Court of the Netherlands) for hosting the receptions.

The Hague, 31 August 2007

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At the Permanent Bureau of the Hague Conference on Private International Law
(Scheveningseweg 6)

The Hague, Netherlands

27 to 31 August 2007

**List of participants
(Final)**

Belgium, Philippe CLAEYS BOUUAERT, *Conseiller*, judge at the Juvenile Court of Appeal, Brussels

Benin, Saliou ABOUDOU, Chief Justice, Supreme Court (*Honorary Chair of the Seminar*)

Burkina Faso, Cheick Dimkinedo OUEDRAOGO, Chief Justice, Supreme Court (*Chair of Seminar sessions on Judicial and Administrative Co-operation and International Litigation*)

Cameroon, Alexis DIPANDA MOUELLE, Chief Justice, Supreme Court

Canada, Jacques CHAMBERLAND, Justice, Court of Appeal of Quebec

Chad, Bireme Hamid ABDERAHIM, Chief Justice, Supreme Court

Congo, Placide LENGA, Chief Justice, Supreme Court

Côte d'Ivoire, Koudou Joseph-Désiré GAUDJI, Justice, Administrative Division, Supreme Court

Egypt, Kamal El Din Mohamed El Sayed SOUDEY, Vice-president, Department of Judicial Inspection, Justice, Court of Appeal, Attaché at the office of the Minister of Justice, Ministry of Justice

France, Michel RISPE, Judge, Director of the Office for International Co-operation in Civil and Commercial Matters, Ministry of Justice

Gabon, Jean Pierre SOBOTCHOU, Justice, Supreme Court

Guinea, Lamine SIDIMÉ, Chief Justice, Supreme Court (*Acting Chair of Seminar sessions on International Child Protection*)

Guinea-Bissau, Maria D.C. SILVA MONTEIRO, Chief Justice, Supreme Court
(*linguistic assistance: Augusto Mendes, Justice, Supreme Court*)

Madagascar, Nelly RAKOTOBÉ, Chief Justice, Supreme Court

Mali, DIARRA Afoussatou THIERO, Justice, Supreme Court

Mauritania, Mohamed Ould HANNANI, Chief Justice, Supreme Court

Mauritius, Asraf Ally CAUNHYE, Justice, Supreme Court

Morocco, Saâd MOUMMI, Justice, Supreme Court

Niger, Dillé RABO, Deputy Chief Justice, Supreme Court

Rwanda, KAYITESI Emily RUSERA, Justice, Supreme Court

Senegal, Aminata FALL CISSÉ, Justice, State Council

Togo, Tété Théodose TEKOE, Chief Justice, Supreme Court

Tunisia, Jaouida GUIGA, Justice, Supreme Court

Association Africaine des Hautes Juridictions Francophones, Victor D. ADOSSOU, Secretary General

Association des Hautes juridictions de cassation des pays ayant en partage l'usage du français, Reginaldo EGIDO PANADES, Justice, Supreme Court of Equatorial Guinea, AHJUCAF representative

United Nations Committee on the Rights of the Child, H.E. Moushira KHATTAB, Ambassador; Secretary General of the National Council for Childhood and Motherhood of Egypt; Expert, Committee on the Rights of the Child (**Chair of Seminar sessions on International Child Protection**)

Organisation pour l'Harmonisation en Afrique du Droit des Affaires, Ndongo FALL, Chief Justice, Common Court of Justice and Arbitration

African Union, Jean-Baptiste ZOUNGRANA, Chair, African Committee of Experts on the Rights and Welfare of the Child

International Union of Judicial Officers, Jacques ISNARD, Chair

International Union of Judicial Officers, Leo NETTEN, First Vice-chair

Partner organisations:

The Hague Forum for Judicial Expertise

Hans de WIT, Director

Ed MAAN, Secretary of the Hague Academic Coalition

Janna van der MEULEN, Project Director

Tanya MEHRA, Project Director

Institut français des Pays-Bas

Michèle DUBROCARD, Legal adviser, French Embassy at The Hague

Organisation internationale de la Francophonie

Amadou DIALLO, Project Director of the *Délégation à la paix, à la démocratie et aux droits de l'homme*

Hague Conference on Private International Law

Hans van LOON, Secretary General

William DUNCAN, Deputy Secretary General

Christophe BERNASCONI, First Secretary

Philippe LORTIE, First Secretary

Jennifer DEGELING, Principal Legal Officer

Ivana RADIĆ, Legal Officer

Mayela CELIS AGUILAR, Legal Officer

Sandrine ALEXANDRE Legal Officer

Laura MARTINEZ-MORA, Intercountry Adoption Programme Co-ordinator

Suzy LUNIANGA MBADU, Lawyer at the Kinshasa Bar, intern at the Swiss Institute of Comparative Law, invited by the Permanent Bureau

Sandra SEIDL, intern

Céline CHATEAU, Senior Administrator

Corinne HEINRICH, Administrative assistant

Sophie MOLINA, Administrative assistant

Mathilde WASZINK PRÉNAS, Administrative assistant

Willem van der ENDT, General Services Officer