



GOVERNMENT OF BERMUDA



THE WORK OF THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW AND ITS RELEVANCE FOR THE CARIBBEAN REGION AND BERMUDA

Regional Seminar

Hamilton, Bermuda

21-24 May 2012

CONCLUSIONS AND RECOMMENDATIONS

From 21 to 24 May 2012, 125 representatives from more than 20 States and overseas territories, international organisations as well as members of the Permanent Bureau of the Hague Conference on Private International Law (the Hague Conference) met in Bermuda to learn about the Hague Conference in general and some of the multilateral treaties that have been concluded under its auspices (Hague Conventions), as well as to discuss the relevance of these instruments to the Caribbean Region and Bermuda.

The seminar was organised by the Government of Bermuda, in collaboration with the Permanent Bureau, and with the support of the Commonwealth Secretariat.

The seminar covered each of the main areas of private international law addressed by Hague Conventions, namely (i) child protection, family and property relations, (ii) legal cooperation and litigation, and (iii) commercial, torts and financial law.¹

¹ The following Conventions were discussed: *Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions* (Form of Wills Convention); *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (Apostille Convention); *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (Service of Process Convention); *Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters* (Taking of Evidence Convention); *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (Child Abduction Convention); *Convention of 25 October 1980 on International Access to Justice* (Access to Justice Convention); *Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition* (Trust Convention); *Convention of 1 August 1989 on the Law Applicable to Succession to the Estates of Deceased Persons* (Succession Convention); *Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (Intercountry Adoption Convention); *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* (Child Protection Convention); *Convention of 5 July 2006 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary* (Securities Convention); *Convention of 30 June 2005 on Choice of Court Agreements* (Choice of Court Convention); *Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* (Child Support Convention); and the *Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations* (Protocol to the Child Support Convention).

NOTING the diversity of legal traditions in the Region;

RECOGNISING that greater economic and social integration in the Region has led to an increase in cross-border transactions and cross-border movements of families and children in particular, as well as the resulting interactions between legal systems;

RECOGNISING that the Hague Conventions reinforce legal certainty and predictability, as well as the protection of individual rights and legitimate commercial interests;

RECOGNISING that 12 of the 16 Caribbean Community (CARICOM) jurisdictions are members of the Commonwealth, the participants invite the Commonwealth Secretariat to assist and support networking between the Commonwealth jurisdictions in the region in order to facilitate the cross border protection of children and families, to promote legal certainty and predictability in commercial and financial matters, and to encourage judicial and administrative co-operation through the Hague Conventions;

ACKNOWLEDGING the great benefit of co-operation between the Hague Conference and the Commonwealth in areas of common interest, as confirmed by the present seminar;

RECOGNISING the valuable opportunity that the seminar afforded to participants to:

- a) gain a better understanding of the Hague Conventions and their relevance, implementation and practical operation in the Region;
- b) appreciate how the Hague Conventions serve as a basis for furthering co-operation, communication and co-ordination between legal systems;
- c) understand the interactions between the Hague Conventions and the implementation of international human rights, as well as the promotion and facilitation of international trade and investment;
- d) exchange experiences and ideas with respect to the Hague Conventions and their relevance in the region; and

EXPRESSING the wish for similar seminars to be convened in the Region on a regular basis in the future;

THE PARTICIPANTS

In relation to the Seminar and the Hague Conference in general:

1. Resolved to share information obtained from the Bermuda Conference with the relevant authorities of the States in the Region, as well as regional and international organisations and professional associations;
2. Recommended that each State in the Region consider becoming a member of the Hague Conference;
3. Acknowledged that membership greatly enhances the possibility of receiving technical assistance from the Permanent Bureau in relation to the implementation and practical operation of the Hague Conventions;
4. Welcomed the fact that a number of States in the Region have already become Contracting States to various Hague Conventions, and that a number of these Conventions apply to overseas territories in the Region by way of extension;
5. With respect to Conventions which are not yet applicable, encouraged each jurisdiction to actively consider the merits and assess the means of joining the Conventions by way of ratification or accession, or by having them extended to the jurisdiction, and in that respect were pleased to hear that a number of States are in the process of finalising internal procedures to join some of the Conventions discussed;
6. Encouraged each State in the Region that is a Contracting State to a Hague Convention to promote the acceptance of that Convention among other States in

- the Region, and, where applicable, to co-operate with the Hague Conference in its periodic reviews of the Conventions' practical operation; and
7. Encouraged Contracting States, as well as overseas territories to which Conventions apply, to share experience and harmonise the operation of these Conventions, with a view to further increasing their efficiency.

In relation to the Child Abduction Convention and Child Protection Convention:

8. Reaffirmed the relevance of these Conventions in the Region and the importance of international co-operation for the protection of children moving across borders;
9. With respect to the Child Abduction Convention, emphasised the need for swift proceedings in order to meet the Convention's objectives and ensure the safe return of children;
10. With respect to the Child Protection Convention, acknowledged the complementary nature of this instrument to the Child Abduction Convention; and
11. Recognised the value of the Hague International Network of Judges in facilitating the practical operation of both Conventions, and encouraged States and territories which have not yet done so to designate members of the Network; in this respect, the participants were delighted to hear about the upcoming formal designation of the Hon. Mrs. Justice Norma Wade-Miller of the Supreme Court of Bermuda and President of the Commonwealth Magistrates' and Judges' Association, as member of the Network; participants also encouraged direct judicial communication among courts in the Region to the furthest possible extent.

In relation to the Intercountry Adoption Convention:

12. Recognised that intercountry adoption should only occur in accordance with the subsidiarity principle and only in the best interests of the child, and be seen as a shared responsibility of the 'States of Origin' and the 'Receiving States', to ensure the successful operation of the Convention;
13. Noted the importance of the Convention in combating the abduction, sale, and trafficking of children; and
14. Acknowledged the importance of the Convention as the appropriate legal and administrative framework for intercountry adoption.

In relation to the Child Support Convention and its Protocol:

15. Recognised the importance of the Convention as the appropriate administrative and legal framework for the recovery of child support and other forms of family maintenance; and
16. Acknowledged the role of the Convention in inviting reforms to existing systems for the recovery of child support and other forms of family maintenance.

In relation to the Form of Wills Convention:

17. Acknowledged that the Convention helpfully provides for rules favourable to upholding the formal validity of wills (*favor testamenti*) and that it enables a testator to dispose of his/her estate in a single will (*i.e.* avoiding the need to execute multiple wills depending on the location of property);
18. Also acknowledged that the Convention addresses the need for uniformity in decisions on the formal validity of wills across different States; and
19. Recognised the importance of the Convention as an important and relevant treaty in international estate planning.

In relation to the Succession Convention:

20. Recognised that the Convention represents an important international and mutual accommodation of both civil law and common law and practice, and that it offers pragmatic and workable solutions; and
21. Recognised that the Convention allows for effective succession planning.

In relation to the Apostille Convention:

22. Recognised that the Convention greatly facilitates the fast and efficient authentication of public documents emanating from one Contracting State to be produced in another Contracting State;
23. Recognised the role of the Convention in establishing a regulatory environment that is more conducive to foreign direct investment, as highlighted by the World Bank;
24. Recognised the increasing acceptance and use of electronic Apostilles (e-Apostilles) and electronic registers of Apostilles (e-Registers) as part of the electronic Apostille Program (e-APP), and encouraged newly acceding States as well as other Contracting States to implement this program as a means to further enhance the secure and effective operation of the Convention; and
25. Encouraged Contracting States as well as other interested States in the Region to participate in the next meeting of the Special Commission on the practical operation of the Apostille Convention, which is scheduled for 6-9 November 2012.

In relation to the Service of Process Convention and Taking of Evidence Convention:

26. Noted that these Conventions greatly simplify and expedite the transmission of requests for service of process and taking of evidence abroad, and facilitate the prompt execution of those requests;
27. With respect to the Taking of Evidence Convention, expressed the wish that relevant formalities be completed to bring the Convention into effect in all overseas territories of Contracting States; and
28. Recognised that the designation of Central Authorities is critical to the smooth and effective operation of each Convention.

In relation to the Access to Justice Convention:

29. Noted with interest the importance and broad application of the Convention to cross-border matters, including equal treatment of nationals and residents of Contracting States in respect of legal aid, security for costs, and the enforcement of cost orders.

In relation to the Trust Convention:

30. Acknowledged the importance of the Convention as an effective means to have both commercial and family trusts recognised abroad, in particular in jurisdictions where the concept of trusts is not part of domestic legislation.

In relation to the Choice of Court Convention and ongoing work on the recognition and enforcement of foreign judgments:

31. Acknowledged the benefits to cross-border business of respecting agreements to settle disputes, which arise from international commercial transactions, before the court chosen by the parties;
32. Acknowledged the importance of the Convention as an instrument to reinforce the international litigation system, in parallel to the international arbitration system, in particular the *1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*;

33. Acknowledged the importance of harmonised rules on the recognition and enforcement of foreign judgments, at the regional and global level; and
34. Welcomed the decision to resume work at the Hague Conference towards common solutions on the recognition and enforcement of foreign judgments, and encouraged States in the Region to engage in this work to the furthest possible extent.

In relation to the Securities Convention:

35. Recognised the need for uniform conflict of laws rules that comport with the reality of how securities are held and transferred today (*i.e.*, by electronic book-entry debits and credits to securities accounts);
36. Recognised further that the legal uncertainty as to the law governing the perfection, priority and other effects of transfers imposes significant friction costs on even routine transactions and operates as an important constraint on desirable reductions in credit and liquidity exposures; and
37. Acknowledged that the Convention reflects a pragmatic approach and provides legal certainty and predictability for cross-border securities transactions, thus facilitating the international flow of – and access to – capital.

The participants of the Bermuda Seminar recognised the event's success and acknowledged the exceptional organisation of the Seminar by the Government of Bermuda, in particular the Parliamentary Registry. They warmly thanked the Bermuda Government, the Permanent Bureau, and the Commonwealth Secretariat for their generosity and efficiency in staging this important and significant event. The participants also thanked the administrative and support staff for their untiring work and invaluable contribution to the success of this Seminar.