

REGIONAL MEETING

INTERNATIONAL FAMILY LAW, LEGAL CO-OPERATION AND COMMERCE: PROMOTING HUMAN RIGHTS AND CROSS-BORDER TRADE IN THE CARIBBEAN THROUGH THE HAGUE CONVENTIONS

15 – 17 June 2015

Port of Spain, Trinidad and Tobago

CONCLUSIONS AND RECOMMENDATIONS

One Hundred and Six participants including: representatives from The Bahamas, Belize, Bermuda, Cayman Islands, Grenada, Guadeloupe, Guyana, Jamaica, Trinidad and Tobago, Turks and Caicos Islands; members of the judiciary, including from the Judiciary of Trinidad and Tobago, the Eastern Caribbean Supreme Court (Saint Lucia), the Caribbean Court of Justice (Trinidad and Tobago) and the Supreme Court of Jamaica; expert speakers from Costa Rica, Dominican Republic, Mexico and the United States of America; and members of the Permanent Bureau of the Hague Conference (Permanent Bureau), and of the Commonwealth Secretariat, assisted by Sir Mathew Thorpe, met in Port of Spain, the Republic of Trinidad and Tobago, from 15 to 17 June 2015.

The objective of the meeting was to increase the knowledge of the participants of the work of the Hague Conference on Private International Law (the Hague Conference), and of the multilateral treaties and other instruments (Hague Conventions) concluded under its auspices, and to discuss the relevance of the Hague Conventions to the Caribbean Region (hereinafter “the Region”).

The Commonwealth Secretariat and the Permanent Bureau of the Hague Conference (Permanent Bureau), with the generous support of the Ministry of the Attorney General, Trinidad and Tobago (MOAG), organised this meeting in accordance with the:

- Conclusions and Recommendations agreed at the Regional Seminar that took place in Bermuda on 21-24 May 2012; and
- Mandate given to the Commonwealth Secretariat by the Commonwealth Law Ministers at their meeting in Gaborone, Botswana in 2014.

The meeting covered each of the main areas of private international law addressed by Hague Conventions, namely (i) child protection, family and property relations; (ii) legal co-operation and litigation; and (iii) commercial law.

PREAMBLE

NOTING the diversity of legal traditions in the Region;

RECOGNISING that greater economic and social integration in the Region has led to a rise in cross-border transactions and cross-border movements of families and children, resulting in increased interactions between legal systems;

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

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

RECOGNISING that 12 of the 15 Caribbean Community (CARICOM) Member States are members of the Commonwealth and that the Commonwealth Secretariat has made resources available to this meeting in:

- recognition of the present limited number of accessions to the Hague Conventions in the Caribbean region; and
- pursuant to its commitment to strengthen accessions to the Hague Conventions;

COGNISCANT particularly of the Commonwealth having recorded in paragraph 26 of the Law Ministers Communiqué of 2014 (Communiqué) its commitment to increase:

- accessions of States within the region to the Hague Conventions in the area of child protection, family and property relations (Hague Family Conventions); and
- nomination of judges to the International Hague Network of Judges (IHNJ);

RECALLING that the Communiqué of the Law Ministers Meeting of 2014 also invited Commonwealth Member States which were not already parties to the Hague Conventions on Service Abroad, on Taking Evidence Abroad and on the Abolition of Legalisation (Apostille), to consider taking steps to have possible accession to those Conventions (paragraph 8 (a) of the Communiqué);

Further recalling that the Law Ministers mandated the Commonwealth Secretariat to undertake a programme of work, in collaboration with other relevant organisations, in order to increase participation of Commonwealth judges in the International Hague Network of Judges and the proposed network of judges of Commonwealth and common law jurisdictions as well as provide assistance upon request to countries regarding accession to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction;

NOTING the Commonwealth draft Model Law on the Recognition and Enforcement of Foreign Judgments, and acknowledging that that draft Model Law draws on the work done by the Hague Conference on Private International Law (paragraph 9 of the Communiqué), while recognising that there are other options with which States might improve the means of recognition and enforcement of judgments of other States, including through the Hague Convention on Choice of Court Agreements;

RECOGNISING the valuable opportunity that the meeting afforded the 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 further, similar meetings to be convened in the Region on a regular basis.

THE PARTICIPANTS

1. Encouraged all jurisdictions to consider actively the merits of accession to the 1961 Convention Abolishing the Requirement of Legalisation for Foreign Public Documents; the 1965 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters; the 1970 Convention on the Taking of Evidence Abroad in Civil or Commercial Matters; the 1980 Convention on the Civil Aspects of International Child Abduction; the 1993 Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption; the 1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children; the 2005 Convention on Choice of Court Agreements; the 2007 Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and the 2007 Protocol to that Convention; and the 2015 Principles on Choice of Law in International Commercial Contracts;
2. Encouraged Contracting States, as well as overseas territories to which Conventions apply, to share their experiences with the Conventions and to take steps to harmonise the operation of these Conventions, with a view to further increasing their efficiency.

In relation to the Hague Conference:

3. Recommended that each State in the Region consider becoming a Member State of the Hague Conference;
4. 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;
5. Expressed their appreciation for the support provided by the Permanent Bureau's Latin American Regional Office to the Caribbean Region (Regional Office), and underlined the importance of having included that region in the Regional Office's remit.
6. Recommended that efforts should be undertaken to enable the Regional Office to increase its visibility and assistance in the region.

In relation to the Commonwealth Secretariat:

7. Invited 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.

In relation to the Hague Family Conventions:

8. Recognised that the four Hague Family Conventions are a means to make the relevant aspirations of the United Nations Convention on the Rights of the Child of 1989 a reality in their respective field;
9. Reaffirmed the relevance of these Conventions in the Region and the importance of international co-operation for the protection of children moving across borders;
10. With respect to the 1980 Child Abduction Convention:
 - a) emphasised the need for swift proceedings in order to meet the Convention's objectives and ensure the safe return of children; and
 - b) encouraged the Central Authorities in States party to the 1980 Hague Child Abduction Convention to interact with relevant authorities in States not party to this Convention to share best practices on the Convention's implementation;
11. With respect to the 1996 Child Protection Convention, acknowledged the complementary nature of this instrument to the 1980 Child Abduction Convention;
12. With respect to the 1993 Inter-country Adoption Convention, noted the outcomes of the recent Special Commission concerning that Convention and acknowledged its importance as the appropriate legal and administrative framework for inter-country adoption;
13. With respect to the 2007 Maintenance Convention, 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.

In relation to the 1961 Apostille Convention:

14. Recognised that the 1961 Apostille Convention greatly facilitates the fast and efficient authentication of public documents emanating from one Contracting State to be produced in another Contracting State;
15. 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 Group; and
16. Recognised the increasing 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 programme as a means to enhance further the secure and effective operation of the Convention.

In relation to the 1965 Service of Process Convention and the 1970 Taking of Evidence Convention:

17. Noted that the 1965 Service of Process Convention and the 1970 Taking of Evidence Convention greatly simplify and expedite the transmission of requests for the service of process and the taking of evidence abroad, and that the Conventions facilitate the prompt execution of those requests;
18. With respect to the 1970 Taking of Evidence Convention, expressed the wish that relevant formalities be completed to bring the Convention into effect in all overseas territories of the Contracting States; and
19. Recognised that the designation of Central Authorities is critical to the smooth and effective operation of each Convention.

In relation to the 2005 Choice of Court Convention:

20. Acknowledged the benefits to cross-border business of respecting agreements to resolve disputes, which arise from international commercial transactions, before the court selected by the parties.
21. Acknowledged the importance of the 2005 Choice of Court Convention as an instrument to reinforce the international litigation system, including as a viable alternative to the international arbitration system, in particular the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

In relation to the 2015 Hague Principles on Choice of Law in International Commercial Contracts:

22. Acknowledged the importance of promoting party autonomy and the promissory role that the 2015 Hague Principles on Choice of Law in International Commercial Contracts (2015 Hague Principles) would play in this regard; and
23. Encouraged the wide dissemination of the Principles, including the circulation of pertinent and comprehensive information on the Principles within the region.

In relation to the ongoing Project on the Recognition and Enforcement of Foreign Judgments (the Judgments Project):

24. Recognised the value of having harmonised rules on the recognition and enforcement of foreign judgments, at the regional and global level; and
25. Welcomed the work being carried out by the Hague Conference and the progress that has been made in relation to the Judgments Project.

Action Items

Participants asked the Permanent Bureau and the Commonwealth Secretariat to:

26. Share within the Region, information obtained from this meeting, including by engaging with:
 - a) relevant authorities of the States;
 - b) members of the judiciary and other judicial officers;
 - c) regional and international organisations; and
 - d) professional associations and practitioners.
27. Seek ways and means of assisting States within the Region in implementing the Hague Conventions in a timely manner.
28. Consider the organisation of a third Caribbean meeting in due time.

In relation to the Hague Family Conventions:

29. Endeavour to support States within the region in providing appropriate training for relevant actors (such as judicial officers, administrative officers and practitioners) in relation to the Hague Family Conventions, including the identification of suitable trainers (for example, drawn from

organisations such as Central American and Caribbean Academy on Private International Law and the IHNJ);

30. Engage with a range of actors, including NGOs, media and other relevant specialists, to raise public awareness of the risk of injustice and harm to adults and children resulting from the absence of Convention remedies;
31. Co-ordinate the gathering of information from States within the region with a view to strengthening understanding of factors that may affect decisions regarding the ratification of, and accession to, the Hague Family Conventions;
32. Identify jurisdictions that are interested in, or are already working on, the implementation of the Hague Family Conventions and to offer support in this respect, including through the Regional Office;
33. Encourage the designation of members of the IHNJ, with a view to facilitating the practical operation of the Hague Family Conventions, in particular the 1980 Child Abduction Convention and the 1996 Child Protection Convention;
34. Invite the Secretaries-General of the Hague Conference and of the Commonwealth Secretariat to explore the possibility of inviting CARICOM to promote accessions to the Hague Conventions among its members; and
35. Encourage CARICOM to strengthen its engagement with the Hague Conference work.

In relation to legal co-operation, litigation and commercial law:

36. Strengthen ties with relevant organisations within the region, including the Organization for the Harmonization of Business Law in the Caribbean (OHADAC) and the Central American and Caribbean Academy on Private International Law;
37. Invite the Secretaries-General of the Hague Conference and of the Commonwealth Secretariat to explore the possibility of inviting CARICOM and OHADAC to promote accessions to the legal co-operation, litigation and commercial law Conventions and the implementation of the 2015 Hague Principles among its members;
38. Identify jurisdictions that require assistance with the proper designation of Central Authorities under the 1965 Service and the 1970 Evidence Conventions, and explore ways and means by which such assistance may be provided;
39. Invite the Secretaries-General of the Hague Conference and of the Commonwealth Secretariat to write to relevant government ministers, outlining the benefits of the various Hague Conventions in these fields and the 2015 Hague Principles, and the positive effect all these instruments have on trade, commerce and investment and, thus, overall prosperity within the region.

The participants warmly thanked the Ministry of the Office of the Attorney General, the Chief Justice and other judges of the Republic of Trinidad and Tobago, the Permanent Bureau, and the Commonwealth Secretariat for their generosity in staging this important and significant event.