

**THE HAGUE PROJECT FOR INTERNATIONAL CO-OPERATION AND  
THE PROTECTION OF CHILDREN**

**OPERATION OF THE HAGUE CHILDREN'S CONVENTIONS  
AND CROSS-BORDER PROTECTION OF CHILDREN WITHIN  
LATIN AMERICA**

**28 NOVEMBER – 3 DECEMBER 2005, THE HAGUE**

**CONCLUSIONS AND RECOMMENDATIONS**

On 28 November - 3 December, 2005, 18 Judges, from Argentina, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Mexico, Panama, Paraguay, Peru, United States of America, Uruguay, and Venezuela met in The Hague, The Netherlands, to discuss how to improve, among the countries represented, the operation of the three modern Hague Children's Conventions addressing international child abduction, intercountry adoption, and matters of child protection,<sup>1</sup> as well as the ongoing discussions related to a worldwide Convention on international child support and other forms of family maintenance, and other Hague Conventions dealing with judicial and administrative co-operation in general.<sup>2</sup>

The Seminar consolidated the advances made by the 2004 Monterrey Seminar, and the network of Judges established in such Seminar who are committed to continued improvement in the operation of the Hague Child Abduction Convention in particular, but also more generally to international judicial and inter-State co-operation to improve international child protection.

Agreement was reached on the following Conclusions and Recommendations:

**International Cooperation**

1. The effective functioning of the Hague Children's Conventions depends on close co-operation among Judges and Central Authorities on internal and international levels.
2. Particularly, within the 1980 Convention, it was recognized that when deciding on a child abduction case, the requested Judge should trust that the Judicial Authorities of the requesting State will take care of the due protection of the child, and where necessary the accompanying parent, once the child is returned.

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<sup>1</sup> *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction; Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption; and 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.*

<sup>2</sup> *Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents; Hague Convention of 15 November 1965 on the Service Abroad of Extrajudicial Documents in Civil or Commercial Matters; Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters and the Hague Convention of 25 October 1980 on International Access to Justice.*

3. The Judicial Authorities of both States involved share the interest and responsibility of protecting the child against any kind of risk and should cooperate in protecting the best interest of the child.

#### **Judicial Communications and Liaison Judges**

4. Effective and fluent communications between Judges and Central Authorities should be encouraged, as a means of speeding procedures and achieving the necessary co-operation to give effective protection to the child in both States involved.
5. Strong support was expressed for the establishment of a network of Liaison Judges to promote and facilitate international judicial communications.
6. The Judges present undertook to explore in their own jurisdictions, with the support of the Permanent Bureau, the feasibility of designating a Liaison Judge.
7. It is important that Liaison Judges act in co-operation and co-ordination with Central Authorities.

#### **The Rights of the Child**

8. It was recognized that the 1980 Hague Convention, by facilitating the prompt return of children wrongfully removed from or retained outside their country of habitual residence, supports the fundamental rights of the child, including the child's right to maintain personal relations and direct contacts with both parents, as recognized in human rights instruments, in particular the *Convention on the Rights of the Child of 20 November 1989*. In applying the 1980 Hague Convention Judges are reminded that it serves as an instrument to give effect to those principles.

#### **Nature of Proceedings under the 1980 Hague Conventions**

9. The clear distinction should be maintained by Judges between proceedings for the return of a child under the Hague Convention and custody proceedings which should be conducted by the courts of the country in which the child has his/her habitual residence and to which the child is to be returned.
10. It was recognized that in a child abduction situation it is in the best interest of the child to return him/her to his/her habitual residence where the Judicial Authorities of such State should be able to decide in the child's best interest which party should exercise physical custody and which one access rights, and whether or not the child should be relocated.

#### **Expedition in Hague Proceedings, including Appeals**

11. The Judges present considered that urgency is of the essence in child abduction cases and that all efforts should be made to decide such cases within 6 weeks.
12. In case national procedural law of a Contracting State does not provide such an urgent procedure, it is highly recommended to such Contracting State to consider enacting a special procedure for international child abduction cases which might include provisions for resolving the case expeditiously at first instance in accordance with the spirit of the Convention and, where applicable, at appeal level.

13. Also endorsed were the Conclusions and Recommendations of the March 2001 Fourth Meeting of the Special Commission to Review the Operation of the 1980 Convention:
  - calling upon trial and appellate courts to set and adhere to timetables that ensure the speedy determination of return applications; and
  - calling for the firm management by Judges, both at trial and appellate levels, of the progress of return proceedings.

#### **Exceptional Nature of Defenses**

14. The exceptional nature of the defenses under the Convention was emphasized. The "grave risk" defense under Article 13(1) *b*) should be narrowly interpreted. Any tendency to give a broad interpretation to that Article undermines the operation of the Convention.
15. A clear distinction should be made between the views of the child concerning general issues of custody and contact and the objections of a child to return which are relevant in return proceedings.
16. The methods by which a court obtains the views of the child differ in different countries. It is essential to distinguish the child's own views from those which may have been induced by the abducting parent.

#### **Consistent Interpretation**

17. The free availability of INCADAT and its Spanish version are welcomed by Judges as an important contribution to the spread of knowledge about the Convention and as a means of promoting consistent interpretation of the Convention internationally. Contracting States in the region are encouraged to collaborate with the Permanent Bureau in ensuring the full representation on INCADAT of case law from the Latin American countries.
18. Judges and Central Authorities are encouraged to make use of *The Judges' Newsletter on International Child Protection* as a means of exchanging ideas and good practices, and to help promote consistent approaches to the interpretation and operation of the Convention

#### **Safe Return and Protective Measures**

19. It was recognized that in a majority of applications for return the abducting parent is the primary carer of the child and that in an increasing number of cases issues of domestic violence or child abuse are raised.
20. Where the proof of violence or abuse is not clear it may nevertheless be necessary, when ordering the return of the child, to ensure that the authorities in the requesting State are alerted to any risk to the child or the accompanying parent and that any necessary measures of protection are put in place in that country. This can sometimes be accomplished through the medium of the Central Authorities. A Liaison Judge may also play a co-ordinating role in such cases.
21. Where protective measures are ordered by the returning Judge in respect of the child or the accompanying parent they should be enforceable in the State of return.
22. The value of the Hague Convention of 1996 in this context was recognized.

### **Transfrontier Contact**

23. A court in which an application for return is pending should have jurisdiction to make provisional orders enabling the left-behind parent to have access to the child pending the decision on return.
24. Courts should make use of appropriate guarantees and safeguards to ensure that contact arrangements and conditions are respected by both parents.
25. Courts should respect contact arrangements ordered by a court of a country in which a child has his or her habitual residence. This is also the case where contact arrangements have been ordered in the context of a decision to allow one parent to relocate to another country with the child.
26. It was recognized that the Hague Convention of 1996 makes major improvements in the legal framework regulating cross-frontier contact or access.
27. Judges should encourage, promote and facilitate whenever possible the resolution by agreement of contact disputes.

### **Preventive Measures**

28. Greater efforts should be made to develop and apply judicial, administrative and other measures aimed at preventing abductions from taking place. *The Guide to Good Practice on Preventive Measures* recently published by the Permanent Bureau was welcomed by Judges who consider that Contracting States should promote its use and implement measures adapted to the needs of each jurisdiction.
29. In particular the importance was recognized of strengthening migration controls for children and promoting the correct identification of children through personal and travel documents.
30. Also recognized was need to publicize the 1980 Convention, so as to make the public and child care professionals aware of its existence as well as of the Central Authority to which they should report child abduction situations.

### **The Hague Convention of 1996 on International Child Protection**

31. Attention was drawn to the considerable advantages that will flow from the adoption in the Latin American States 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*. In particular:
  - the provisions of the 1980 Convention will be supplemented and strengthened in child abduction cases.
  - the shortcomings of the 1980 Convention in ensuring respect for rights of access will in several respects be redressed.
  - the Convention will play an important role in securing inter-State co-operation to protect vulnerable unaccompanied minors and children who are the subject of trafficking, including the increasing number of children who are at risk of physical or sexual abuse, and refugee children.

- the Convention provides for inter-State cooperation in the regulation of cross-border placements of children (*i.e.* those which fall short of adoption and are regulated by the 1993 Hague Convention).
- the Convention provides a flexible system of jurisdictional rules which avoid the risk of conflict between decisions on child protection made in different countries.

### **The Hague Convention of 1993 on Intercountry Adoption**

32. The importance was stressed of universal ratification of/accession to the Hague Convention of 1993 on Intercountry Adoption among Latin American States. The Convention is an essential component in any strategy to combat child trafficking.
33. A welcome was expressed for the efforts being made in Guatemala to improve the situation of intercountry adoption and to ensure the effective implementation of the Hague Convention of 1993.

### **International Recovery of Child Support and Other Forms of Family Maintenance**

34. The international machinery for the recovery of child support and other forms of family maintenance is not working well. Attention was drawn to the current negotiations within the Hague Conference on a new global instrument designed to achieve procedures which are speedy, efficient and cost-effective. The active participation of Latin American States in this process is crucial, due to the need for such instrument in the region.

### **The Hague Conventions on International Legal Co-operation**

35. Attention was drawn to the value for Latin American States of the Hague Conventions on Judicial and Administrative Co-operation *i.e.* Apostille, Service, Evidence and Access to Justice.<sup>3</sup> Wider ratification / accession would bring benefits in many areas of law and practice, including in the context of the international protection of children.

### **Judicial Seminars and Training**

36. Attention was drawn to the importance of convening national and regional seminars, coordinating with other actors involved in the protection of children, promoting co-ordination and communications among judiciary in the region; resources and networking among Judges and Central Authorities; development of an International Child Protection Network.
37. Regular international meetings and contacts among Judges and Central Authorities for the purpose of exchanging information, ideas and good practice are needed. These meetings and contacts help to develop and maintain the mutual understanding and trust necessary for the Conventions to work well.
38. Recognition was given to the extreme importance of judicial training in international child protection and other areas of private international law. Training courses should be provided at the national, regional and international levels.

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<sup>3</sup> *Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents; Hague Convention of 15 November 1965 on the Service Abroad of Extrajudicial Documents in Civil or Commercial Matters; Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters; and the Hague Convention of 25 October 1980 on International Access to Justice.*

39. Strong support was expressed for the efforts being undertaken by the Permanent Bureau to establish an International Institute for the training of Judges and other relevant professionals which would offer a systematic approach to training and ensure the effective implementation of Hague Conventions, especially, but not only, in newly Contracting States.
40. Attention was also drawn to the need to introduce courses in international child protection law at the academic level.

#### **The Role of the Permanent Bureau**

41. Appreciation was expressed for the role played by the Permanent Bureau in monitoring the operation of the Hague Children's Conventions, in developing tools (e.g. INCADAT, *The Judges' Newsletter on International Child Protection* and the Guides to Good Practice) which greatly assist Judges in applying the Convention, and in promoting and organizing judicial conferences and seminars.
42. The creation of the office of Legal Liaison Officer for Latin America and the increasing use of the Spanish language in the Hague Conference work was welcomed and has already made an important impact in promoting the effective operation of the Hague Conventions in the Region. A strong wish was expressed that this office should be established on a permanent basis.

#### **Information about National Laws**

43. It was recommended that the child protection laws of each State should be made available through the Hague Conference Child Abduction homepage.

#### **Continuing Dialogue among the Judges**

44. The Judges present committed themselves, with the active assistance of the Permanent Bureau, to a continuing dialogue in matters of cross-border child protection within the region, and to keeping each other and the Permanent Bureau informed concerning training initiatives in their countries.

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#### **Dissemination of Conclusions and Recommendations**

These Conclusions and Recommendations will be circulated to all national authorities including Central Authorities. Participating Judges will also circulate them within their respective judicial and legal communities. They will also appear on the Hague Conference website and be publicized in *The Judges' Newsletter on International Child Protection*.