

**COMMON LAW JUDICIAL CONFERENCE ON
INTERNATIONAL PARENTAL CHILD ABDUCTION
WASHINGTON, D.C., 17-21 SEPTEMBER 2000**

From 17-21 September 2000 the U.S. State Department's Office of Children's Issues, the U.S. Central Authority for the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, hosted the Common Law Judicial Conference on *International Parental Child Abduction* with the aim of improving understanding and interpretation of the Convention. Judges representing six delegations (Australia, Canada, Ireland, New Zealand, the United Kingdom and the United States) made the following recommendations to improve operation of the 1980 Convention. The views expressed are those of the judicial members of the delegations, and do not necessarily reflect the official views of their countries or judiciaries.

1. This Conference supports the conclusions adopted at the analogous Judicial Seminar on the International Protection of Children at the Conference Centre De Ruwenberg, 3-6 June 2000, and adopts parallel resolutions, as follows:
 - a. Such conferences are important events in emphasising mutual understanding, respect and trust between the Judges from different countries- factors which are essential to the effective operation of international instruments concerned with the protection of children, and in particular, the Hague Child Abduction Convention.
 - b. The format adopted, involving intensive discussion among Judges, administrators, academics and practitioners from six common law countries (two of which are bi-jural) around a number of selected topics, has been a success and is a model for such conferences in the future. Differences of approach, where they exist, have been revealed and the way has been opened to greater consistency in interpretation and practice under the Hague Child Abduction Convention.
 - c. The Judges participating in the conference will endeavour to inform their colleagues in their respective jurisdictions about the conference and its outcome, and will in particular make available information about the International Child Abduction Database (<http://www.incadat.com>) and about the Special Commission on the practical operation of the Hague Child Abduction Convention, which is to be held at the Hague in March 2001.
 - d. It is recognised that, in cases involving the international abduction of children, considerable advantages are to be gained from a concentration of jurisdiction in a limited number of courts/tribunals. These advantages include accumulation of experience among the Judges and practitioners concerned and the development of greater mutual confidence between legal systems.
 - e. The need for more effective methods of international judicial co-operation in the field of child abduction is emphasised, as well as the necessity for direct communication between Judges in different jurisdictions in certain cases. The idea of the appointment of liaison Judges in the different jurisdictions, to act as channels of communication in international cases, is supported. Further exploration of the administrative and legal aspects of this concept should be carried out. The continued development of an international network of Judges in the field of international child abduction to promote personal contacts and the exchange of information is also supported.

2. Prompt decision-making under the Hague Child Abduction Convention serves the best interests of children. It is the responsibility of the judiciary at both the trial and appellate levels firmly to manage the progress of return cases under the Convention. Trial and appellate courts should set and adhere to timetables that ensure the expeditious determination of Hague applications.
3. Central Authorities likewise have a responsibility to process Hague applications expeditiously. Delays in the administrative process can adversely affect judicial return proceedings.
4. It is recommended that State parties ensure that there are simple and effective mechanisms to enforce orders for the return of children.
5. The Article 13(1)(b) 'grave risk' defence has generally been narrowly construed by courts in member states. It is in keeping with the objectives of the Hague Child Abduction Convention to construe the Article 13(1)(b) grave risk defence narrowly.
6. Courts in many jurisdictions regard the use of orders with varying names, e.g., stipulations, conditions, undertakings, as a useful tool to facilitate arrangements for return and/or alleviate Article 13(1)(b) concerns. Such orders, limited in scope and duration, addressing short-term issues and remaining in effect only until such time as a court in the country to which the child is returned takes control, are in keeping with the spirit of the Hague Child Abduction Convention.
7. Left-behind parents who seek a child's return under the Hague Child Abduction Convention need speedy and effective access to the courts. Lack of legal representation is a significant obstacle to invoking the Convention's remedies. To overcome this obstacle, left-behind parents should be provided promptly with experienced legal representation, where possible at the expense of the requested state.
8. It is widely agreed that the problem of enforcing access rights internationally, though intertwined with international child abduction cases, is not adequately addressed by the Hague Child Abduction Convention. Other legal and judicial solutions should be pursued, including prompt consideration of the 1996 Hague Convention on the Protection of Children (which provides, *inter alia*, a mechanism for handling international access cases), and court-referred mediation in appropriate cases (to help parents make their own arrangements for international access).
9. Courts take significantly different approaches to relocation cases, which are occurring with a frequency not contemplated in 1980 when the Hague Child Abduction Convention was drafted. Courts should be aware that highly restrictive approaches to relocation can adversely affect the operation of the Hague Child Abduction Convention.
10. Judges need to be alert to the possibility of international child abduction and can be instrumental in preventing abductions by entering and enforcing orders for appropriate safeguards.
11. Abductions to countries which are not parties to the Hague Child Abduction Convention pose serious obstacles for left-behind parents who seek return of, or access to, their children. Those government bodies responsible for foreign affairs might usefully explore the possibilities of treaty and bilateral approaches to resolve these cases, which approaches have already met with some success.

12. Given the vital role of Judges in the operation of the Hague Child Abduction Convention, each country participating in this conference should endeavour to have at least one Judge expert in the Convention in its delegation at the Fourth Special Commission meeting at the Hague in March 2001.

13. The support of the activities of the Permanent Bureau of the Hague Conference on Private International Law is critical to its role in co-ordinating and disseminating information to the international community. This support should extend to special projects and services provided by the Permanent Bureau, including the International Child Abduction Database ("INCADAT") developed by the Permanent Bureau, which will be of significant assistance to the judiciary, Central Authorities, legal profession, and the parties. The Judges at this Conference recognise the importance of the Permanent Bureau being adequately funded.