

INTERNATIONAL JUDICIAL SEMINAR ON THE 1980 HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

**De Ruwenberg Conference Centre, Netherlands
(20-23 October 2001)**

Conclusions and Recommendations

Introduction

The international judicial seminar was an initiative of Germany and the United States of America. This was the third international judicial seminar to be held at De Ruwenberg facilitated by the Permanent Bureau of the Hague Conference on Private International Law. The seminar was attended by thirty-one judges from seven jurisdictions (England and Wales (2), France (3), Germany (15), Netherlands (2), Scotland (1), Sweden (3), United States of America (5)), thirteen experts from Central Authorities and Ministries and four members of the Permanent Bureau. (The Conclusions and Recommendations set out below, which were agreed unanimously, are those of the thirty-one judges.)

1. Concentration of jurisdiction and judicial training

The considerable advantages to be gained in Hague Convention cases by a concentration of jurisdiction within a limited number of courts is re-emphasised.

The progress in this direction already made in certain Contracting States is welcomed; so too is the consideration being given to this matter in other States.

It is particularly important that judges concerned in Hague proceedings be offered appropriate training or briefing.

2. Securing the voluntary return of the child

Measures employed to assist in securing the voluntary return of the child or to bring about an amicable resolution of the issues are encouraged but should not result in any undue delay in return proceedings.

3. Speed of Hague procedures, including appeals

The judges present endorse the Conclusions and Recommendations of the March 2001 Fourth Meeting of the Special Commission to Review the Operation of the 1980 Convention:

- underscoring the obligation (Article 11) of Contracting States to process return applications expeditiously, and that this obligation extends also to appeal procedures;
- 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.

4. Article 13, paragraph 1 b)

The "grave risk" defence in Article 13 1 b) of the Convention has generally been narrowly construed. It is in keeping with the objectives of the Convention, as confirmed in the Explanatory Report by Elisa Pérez-Vera, to interpret this defence in a restrictive fashion.

A refusal to return a child on the basis of Article 13 1 b) should not be contemplated unless all the available alternative methods of protecting the child have been considered by the court and found to be inadequate.

5. Protection of the returning child

When considering measures to protect a child who is the subject of a return order (and where appropriate an accompanying parent), a court should have regard to the enforceability of those measures within the country to which the child is to be returned. In this context, attention is drawn to the value of safe-return orders (including "mirror" orders) made in that country before the child's return.

6. Follow-up studies

More "follow-up" research, tracking the course of events following the making of return orders would be of great value to the judiciary.

7. Interim jurisdiction to make contact/access orders

A court having jurisdiction to deal with an application for the return of a child should also have authority to consider an interim application for contact/access pending the determination of the return proceedings. In this context the potential advantages of the 1996 Hague Convention on Child Protection, as an adjunct to the 1980 Hague Convention, are recognised.

8. Liaison Judges

The growth of the network of liaison judges is noted as a significant aid to international judicial communication, collaboration and understanding.

9. INCADAT

The establishment of INCADAT and its free availability on the internet 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. States Parties are encouraged to collaborate with the Permanent Bureau to explore possible sources of funding or material assistance to assist in the completion of INCADAT and to secure its position for the future.

10. The Judges' Newsletter on International Child Protection

The establishment of the Judges' Newsletter on International Child Protection as a biannual publication is welcomed. Liaison and other

recipient judges will ensure circulation to the specialist judiciary in their respective jurisdictions.

11. Consulting the judiciary on changes in the law

Legislative processes, which concern the international protection of children, including those within the European Union, should be structured in a way, which allows for timely and appropriate consultation with those elements of the judiciary with experience in the field who will have the responsibility of applying new laws or regulations.

12. International Judicial Seminars

The De Ruwenberg seminar has offered an opportunity for judges and experts from seven jurisdictions to explain and compare the operation of the 1980 Hague Convention in their countries, to share experiences and to develop the mutual confidence necessary for the operation of international instruments of this kind. The Hague Conference is invited to facilitate more international judicial conferences of this nature. States Parties are asked to recognise the importance of such events in reinforcing the international protection of their children, and to make available the necessary funding.

13. Dissemination of the work of this seminar

Acknowledging the great value of this seminar to all delegates, each participating jurisdiction will take appropriate steps to disseminate its conclusions domestically.

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