

**THE LATIN AMERICAN JUDGES' SEMINAR ON
THE 1980 HAGUE CONVENTION ON THE CIVIL ASPECTS OF
INTERNATIONAL CHILD ABDUCTION**

co-organized by

Hague Conference on Private International Law
United States Department of State (Office of Children's Issues)
Law School of Instituto Tecnológico y de Estudios Superiores de Monterrey
Organization of American States
American Bar Association Latin American Law Initiative Council
Texas-Mexico Bar Association
International Centre for Missing and Exploited Children

On 1-4 December 2004, ninety Judges, Central Authority officials and other experts from Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru, Spain, United States of America, Uruguay, and Venezuela and the following Organizations: Organization of American States - Inter-American Children's Institute, International Centre for Missing and Exploited Children, American Bar Association - Latin American Law Initiative Council, Texas-Mexico Bar Association and the Law School of Instituto Tecnológico y de Estudios Superiores de Monterrey met in Monterrey, Mexico, to discuss how to improve, among the countries represented, the operation of *the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*.

Agreement was reached on the following Conclusions and Recommendations:

International Cooperation

1. The effective functioning of the Hague Convention of 1980 in the interests of children depends on close co-operation among the Judges and among the Central Authorities of the 75 Contracting States. 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 Convention to work well.

A follow-up Seminar should be held in approximately two years. In the meantime, further initiatives should be pursued to encourage more frequent meetings and contacts, including the establishment of a website for this purpose.

Speed in Hague Proceedings, including appeal procedures

2. 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.

The Pérez-Vera Report

3. Attention is drawn to the value of the Explanatory Report on the 1980 Convention, drawn up by Elisa Pérez-Vera, as an aide to the interpretation and understanding of the Convention.

Exceptional Nature of Defenses

4. The exceptional nature of the defenses under Articles 13 and 20 of the Convention is emphasized. The "grave risk" defense under Article 13(1)(b) should, in keeping with the Pérez-Vera Report, be narrowly interpreted. Any tendency to give a broad interpretation to that Article undermines the operation of the Convention.

Nature of Hague Proceedings

5. The clear distinction should be maintained by Judges between proceedings for the return of a child under the Hague Convention and a hearing on the merits in relation to custody and access. The hearing on the merits of custody and access should be conducted by the courts of the country in which the child has his / her habitual residence and to which the child is returned.

Statistics

6. Contracting States in the region should maintain up-to-date statistics concerning the volume, the outcome and the profile of Hague cases. They should transmit these annually to the Permanent Bureau in accordance with the approved statistical forms. They should also co-operate in the special survey which is being undertaken of all Hague cases commenced in 2003.

Judicial Reference Materials

7. Consideration should be given to the development by a group of experts mainly constituted of Judges, with the support of the Permanent Bureau of the Hague Conference, of Judicial Reference Materials containing a broad range of examples from Contracting States of practices and procedures which have proved to be useful.

The Judges' Newsletter

8. 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.

Implementing Measures

9. Contracting States in the region are encouraged to consider the value of enacting laws and taking other measures to ensure that the Hague Convention will operate effectively. In this respect, attention is drawn to the *Guide to Good Practice on Implementing Measures*.

Publicity

10. Contracting States in the region are encouraged, by all available means, including by the establishment of Central Authority websites, to publicize in the national languages the existence and provisions of the 1980 Hague Convention as well as on the procedures and measures giving effect to the Convention in the respective States.

Effective Access to the Courts

11. The importance is emphasized of giving parents effective access to the courts. This applies both to a parent who is seeking a return or access order under the Convention and to a parent who is involved in proceedings concerning custody in the country to which the child is returned.

Acceptances of Accessions

12. Concern is expressed that, in respect of some States which have acceded to the Hague Convention in recent years, there have been delays on the part of other States in accepting those accessions. The attention of acceding States is drawn to the value of completing the Standard Hague Questionnaire as a means of providing information so as to facilitate acceptance of their accessions by other States.

Safe Return and Protective Measures

13. For the purpose of effecting the safe return of the child, Contracting States should consider the provision of procedures for obtaining, in the jurisdiction to which the child is to be returned, any necessary provisional protective measures prior to the return of the child, or for facilitating the recognition of protective measures ordered in the country from which the child is returned. Central Authorities should make every effort to provide information on, and access to, available protective measures.

Training Programs

14. Contracting States in the region should promote and facilitate the establishment of national training programs concerning the 1980 Hague Convention for Judges, Central Authority personnel and practitioners.

Liaison Judges

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

International Child Abduction Database (INCADAT)

16. 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. 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.

Inter-relationship with other Instruments

17. It is 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 principles and 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.
18. Judges and Central Authorities are encouraged to become familiar with the Inter-American Program on Co-operation to Prevent and Remedy Cases of International Abduction of Children by One of their Parents, approved by the General Assembly of the Organization of American States by Resolution AG/Res. 2028, and, consistently with the terms and objectives of the 1980 Hague Convention, to make use of this instrument where appropriate to facilitating the return of children.

Preventive Measures

19. Greater efforts should be made to develop and apply judicial, administrative and other measures aimed at preventing abductions from taking place. The forthcoming publication by the Hague Conference of a Guide to Good Practice on Preventive Measures is welcomed.

Hague Convention of 1996 on International Child Protection

20. The potential advantages 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*, as an adjunct to the 1980 Convention, are recognized. States in the region are encouraged to consider its ratification or accession.