



**MEETING OF GOVERNMENT EXPERTS ON THE INTERNATIONAL
ABDUCTION OF MINORS BY ONE OF THEIR PARENTS**

12-13 August, 2002
Montevideo, Uruguay

HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

1927 – 75th Anniversary of the Inter-American Children's Institute - 2002

Av. 8 de Octubre 2904, Montevideo (11600), Uruguay – Tel. (5982) 487 2150 Fax: (5982) 487 3242
Dirección electrónica : iin@redfacil.com.uy – Sitio Web: www.iin.org.uy

CONFÉRENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVÉ HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

N° 19572(02)WD/LJM

Mr. Alejandro Bonasso
Director General
Inter-American Children's Institute
(Instituto Interamericano del Niño)
Avda. 8 de Octubre 2904
Casilla de Correo 16212
MONTEVIDEO
Uruguay

Dear Mr Bonasso,

Thank you for your letter of 1 July 2002 to Hans van Loon with the Kind invitation to the Hague Conference to participate in the Experts' Meeting on the International Abduction of Minors, convened by the Inter-American Children's Institute, mandate by the General Assembly of the OAS and to be held in Montevideo, Uruguay on 12 and 13 August of this year.

We regret very much that it is not possible at this late stage to make arrangement for any member of the Permanent Bureau to be present at this important meeting, I regret, are already full for August. I myself will be returning at that time from meeting in New Orleans and Washington. As the member of Permanent Bureau with responsibility for the *Hague Convention of 25 October 1980 on the Civil of International Child Abduction*, it is a great disappointment to me not to be able to attend a meeting which has great potential inter alia to support and improve the operation of the 1980 Hague Convention in the many OAS countries which are now Contracting States.

I have read the documentation accompanying the invitation, in particular the Report on International Abduction of Minors in the Americas by one of their Parents. In the spirit of cooperation, and in order to provide some further information concerning the operation of the Hague Convention of 1980 from the perspective of the Permanent Bureau, I would like to bring to your attention a number of points;

1 States Parties to the Hague Convention of 1980 now number 72. The statement which appears in paragraph 19 of the Report, listing Member countries of the OAS "which have not signed" the Hague Convention, is not accurate. All the 17 States mentioned therein, plus Guatemala, are now States Parties to the Convention. As "*acceding*" (rather than "*ratifying*") States it is the case that the Convention only operates as between those States and the existing States Parties which have accepted these accessions (Article 38). A chart showing the full list of ratifications, accessions and acceptances of accessions is appended for your information.

One of the issues that might profitably be discussed at the meeting is how to achieve wider coverage of the 1980 Convention among the OAS States. This might involve encouragement of the remaining 13

1927 – 75th Anniversary of the Inter-American Children's Institute - 2002

Member States of the OAS to accede to this Convention. It might also involve discussion of ways in which acceptances of existing accessions may be accelerated. These are matters which are of close interest to the Permanent Bureau and the other Contracting States. Indeed, this matter was discussed during the Fourth Meeting of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* held at the Hague in March 2001.

The following recommendation of that Special Commission meeting, endorsed by the 200 experts present from 60 countries, is of relevance:

“2.2 In order to assist newly- acceding States to implement the Convention effectively, and to provide relevant information to existing Contracting States in considering whether to accept accessions in accordance with Article 38 of the Convention, the Special Commission gives its approval to a questionnaire to be addressed to newly acceding States, on the following understandings:

a that the Permanent Bureau would make the questionnaire available on the Hague Conference website and draw it to the attention of States which are known to be considering accession or which have acceded to the Convention;

b that it should be made clear that the provision of a response to the questionnaire is not compulsory but is recommended;

c that it would be for the State addressed to decide whether to communicate any response it makes through the Permanent Bureau to other Contracting States, or directly to such States as it may choose;

d that existing Contracting States which have already acceded to the Convention might also use this facility, if they so wish, as a possible means of expediting the process of acceptance in their case.

2.3 The approved questionnaire is as follows:

I Implementing legislation

(a) Is implementing legislation necessary to bring Convention into force in domestic law?

(b) If so, has the necessary legislation been enacted, and is it in force? (Please provide a copy or indicate where copies of the legislation may be obtained.)

II Locating children

Please indicate the agencies involved and the processes available for the location of missing children in your country.

III Central Authority

(a) The designation and contact details of the Central Authority.

(b) Contact persons within the Central Authority, languages spoken, contact details for each.

1927 – 75th Anniversary of the Inter-American Children’s Institute - 2002

- (c) *Please indicate measure taken to ensure that the Central Authority is in a position to carry out the functions set out in Article 7 of the Convention?*

IV *Judicial procedures*

- (a) *Which courts/administrative bodies within your system have been given jurisdiction to consider application for return orders (and questions of access) under the Convention?*
- (c) *What measures exist to ensure that return applications will be dealt with expeditiously at first instance and on appeal?*
- (c) *What facilities are available to foreign applicants to assist them in bringing their applications before the courts, and in particular is legal aid available and, if so, on what condition?*

V *Enforcement procedures*

What procedures and measures exist for the enforcement of:

- (a) *a return order?*
- (b) *a contact/access order?*

VI *Substantive law*

- (a) *what are the legal criteria by which custody and contact determinations are made?*
- (b) *Is there a difference in the legal status of mothers and fathers in custody or contact cases?*

VII *Social services and child protection services*

Please describe the services which exist for the assessment, care and protection of children in the context of international child abduction.

Please indicate the services available for the protection (if necessary) of returning children, as well as the services available (including legal advice and representation) to a parent accompanying the child on return.

VIII *Information and training*

What measures are being taken to ensure that persons responsible for implementing the Convention (e.g judges and Central Authority personnel) have received appropriate information and training? (Note: the Permanent Bureau may be contacted for information in relation to forms of assistance which may available for this purpose.)”

The Permanent Bureau is convinced that use of the questionnaire by newly-acceding States offers a useful means of accelerating the acceptance of accessions by other States Parties. The Permanent Bureau is

1927 – 75th Anniversary of the Inter-American Children’s Institute - 2002

ready to provide any advice which may be sought in relation to the questionnaire and, if requested to do so, to circulate among States Parties completed questionnaires in order to facilitate the process of acceptances of accessions.

- 2 You will be aware that the Permanent Bureau carries out various activities in order to promote the effective implementation of the Convention in the Contracting States and to encourage best and consistent practices and interpretation among Central Authorities appointed under the Convention, and within the courts having jurisdiction under the Convention. We also, as you know, organise 4- years reviews of the operation of the Convention the last of which took place in March 2001. In order to provide further information on these matters I would like to draw your attention to a number of documents which you may find of value. All of these are to be found on the Hague Conference website at www.hcch.net. We have no objections, if you so wish, to copies being made of any of these documents for circulation among delegates at your meeting.
- Information concerning the fourth Special Commission meeting (22-28 March 2001) and Questionnaire concerning the operation of the Convention (Prel. Doc. N°1)
 - Statistical Analysis of Applications made in 1999 under 1980 Convention (revised version of November 2001) (Pre. Doc N° 3 March 2001 for the attention of the Special Commission of March 2001)
 - Part I-Overall Report
 - Part II-National Reports: Australia/Austria/Belgium/Bosnia & Herzegovina/Canada/Chile/China (HKSAR)/Colombia/Czech Republic/Denmark/Finland/France/Germany/Hungary/Iceland/Israel/Italy/Mexico/Netherlands/New Zealand /Norway/Panama /Portugal/Romania/Spain/Sweden/Switzerland/United Kingdom/UK Cayman Island/UK England & Wales/ UK Northern Ireland / UK Scotland/United States of America
 - Transfrontier Access/Contact and the Hague Convention of 25 October 1980 on the Civil Aspect of International Child Abduction. A Preliminary Report (Prel. Doc. N°4 of February 2001 for the attention of the Special Commission of March 2001)
 - Checklist of issues raised and recommendation made in response to the Questionnaire concerning the practical operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (Prel. Doc. N°5 of March 2001 for the attention of the Special Commission of March 2001)
 - The Hague Conference on Private International Law International Child Abduction Database (INCADAT) (Prel. Doc. N°7 of March 2001 for the attention of the Special Commission of March 2001)
 - Conclusions and Recommendations of the Fourth Meeting of the Special Commission to Review the Operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (22-28 March 2001)

1927 – 75th Anniversary of the Inter-American Children’s Institute - 2002

- 3 Your report mentions some statistics concerning the operation of the 1980 Convention. For a comprehensive statistical analysis of cases dealt with under the 1980 Convention in the year 1999, please refer to Preliminary Document N°3, cited above. The General Report on the 1999 cases has now been translated into Spanish, and will be posted on our website within a short time.
- 4 The next Special Commission concerning the 1980 Convention is to take place at The Hague from 27 September –1 October. Three preliminary documents for this meeting are already available on our website (<http://www.hcch.net/e/convention/reports28e.html>), viz
- Consultation Paper on Transfrontier Access/Contact (Prel. Doc. N°1 of January 2002 for the attention of the Special Commission of September /October 2002)
 - Questionnaire concerning practical mechanisms for facilitating direct international judicial communications in the context of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (Prel. Doc. N°2 of January 2002 for the attention of the Special Commission of September / October 2002)
 - Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part I – Central Authority practices (Prel. Doc. N°3 of June 2002 for the attention of the Special Commission of September/October 2002)

I am also attaching a copy of the letter of convocation for that meeting addressed to yourself which gives a brief statement of the agenda

We have made particular effort to secure funding to enable translation into Spanish of all preliminary documents for this meeting. The Spanish translations will be posted on our website as soon as they become available.

- 5 I am also attaching for your information a draft of the latest edition of the Judges' Newsletter on International Child Protection which we now publish twice a year. The publication of this latest edition is expected within a few weeks. The Newsletter provides a good deal of helpful information about international developments, seminars, conferences, etc. surrounding the 1980 Convention. It also offers judges a forum for the exchange of information and opinion. At present the Newsletter is distributed among about 300 judges (as well as Central Authorities). We would very much to include more judge from the OAS countries on our circulation list (There is not charge)
- 6 Finally, may I draw your attention to INCADAT- the database which we have established which contains judicial decision from around the world taken under the 1980 Convention. More information appears in Preliminary Document N°7, cited above. You may like to know that we are planning, subject to funding to make available Spanish translations of the summaries which, at the moment, appear only in English and French on the database.

I hope you have a very successful meeting and we would be most interested to receive all documentation relating to the meeting.

1927 – 75th Anniversary of the Inter-American Children's Institute - 2002

You might like to consider whether it would be appropriate to circulate this letter, for their information, among delegates attending the meeting. Please feel free to contact me about this or any other matter on which the Permanent Bureau might be of assistance

In order to keep our Member States informed, a copy of this letter is being sent to the National Organs of those of our Member States which are also Members of the OAS

Yours sincerely,

William Duncan
Deputy Secretary General

Attachments mentioned

cc: National Organs of the Member States of the Hague Conference which are also Members of the OAS

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