

Session of Lisbonne - 1995

**Cooperation Between State Authorities Combatting
the Unlawful Displacement of Children**

(Thirteenth Commission, Rapporteur : Mr Franz Matscher)

(The French text is authoritative. The English text is a translation.)

The Institute of International Law,

Aware of the human and legal problems which affect an increasing number of family relations and the main victims of which are the children ;

Having regard to the fact that such problems occur in particular whenever the parents reside in different countries, or whenever one of the parents has moved abroad with the children or with one of them ;

Having regard to the fact that highly sensitive problems may also arise whenever the parents belong to different cultural backgrounds ;

Mindful of the need to propose regulations whereby objective, fair and effective solutions based on the interest of the child can be reached ;

Taking into account the international conventions already concluded on the subject, *i.e* :

- the European Convention on the Recognition and Enforcement of Decisions in matters of Custody of Children and Restoration of the Custody of Children, signed in Luxembourg on 20 May 1980 and entered into force on 1 September 1983,
- the Convention on Civil Aspects of International Child Abduction, signed in the Hague on 25 October 1980 and entered into force on 1st September 1983,
- the Inter-American Convention on the Return of Children, signed in Montevideo on 15 July 1989, not yet entered into force ;

Considering that these conventions allow the legal and practical problems relating to the restoration of custody in the event of wrongful retention or removal of children to be solved efficiently ;

Considering that the scope of these conventions should be extended as much as possible ;

Noting that there are also several bilateral conventions on this matter ;

Considering that the existence of "Central Authorities" as provided for by the European Convention and the Hague Convention is an important element for the proper operation of these conventions ;

Considering that, as shown by periodical reviews of the operation of these conventions, there still remain several problems, due in particular to the limited number of ratifications and to the defective application of these conventions by States ;

Whereas it would be useful to supplement these "basic" conventions with special conventions concluded between States in which such problems occur more frequently ;

Taking note of the United Nations Convention of 20 November 1989 on the Rights of Children ;

Taking note also of various initiatives on the protection of minors taken by the Hague Conference on Private International Law, the Council of Europe and other international organizations, such as the Organization of American States ;

Recalling the Resolution adopted by the Institute of International Law at its Helsinki Session (1985) on "The law applicable to certain effects of a marriage after its dissolution" ;

Desirous to make its contribution within the framework of international relations towards a better legal settlement of the problem of custody of children born of estranged parents,

Adopts the following Resolution :

1. The States concerned are requested to ratify as soon as possible the Hague Convention, the European Convention or the Inter-American Convention ; it would also be desirable that they extend the application of these conventions to facts prior to their entry into force.
2. States parties to the Hague Convention are requested to consider the usefulness of special conventions to be concluded between themselves in order to facilitate the application of that convention.
3. States parties to the Hague Convention and to the European Convention are requested to provide the Central Authorities with sufficient means in staff and budgetary resources in order to enable them to perform their duties speedily, vigorously and efficiently.

4. In order to allow a continuous exchange of information and experience between themselves, States parties to these conventions are requested to encourage activities of the respective secretariats of the Council of Europe and of the Hague Conference on Private International Law as regards the co-ordination of the activities of the Central Authorities, the setting-up of a documentation on the application of the said conventions and the organization of periodical meetings of senior officials.

5. The documentation on the application of the conventions should be made available to all circles concerned through the competent services of the Council of Europe and the Hague Conference on Private International Law.

6. In order to ensure the proper operation and the effectiveness of the above mentioned conventions, States are requested to disseminate both the conventions and the relevant case law to the authorities, the professional circles and the public at large.

7. States are requested to take the following measures within their internal systems :

a) the establishment of flexible and easily accessible procedures, including the setting-up of systems of free legal aid and assistance ;

b) a limitation of remedies and a shortening of the procedural time limits, taking into account the rights and interests of the persons concerned ;

c) the establishment of rules permitting the adoption of provisional measures and the provisional enforcement of judgments ;

d) the speedy establishment of contacts between Central Authorities and between each of them and the administrative and judicial authorities of its own country ;

e) the speedy performance by the various competent administrative and judicial authorities of the duties assigned to them.

8. Reservations on grounds of public policy and other clauses which restrict the normal operation of rules provided for in the conventions shall be narrowly interpreted ; their application shall thus be limited to cases where either the recognition and enforcement of a foreign judgment or the treatment of a request received from the competent authority of another State would be manifestly contrary to the fundamental principles of the legal order of the requested State relating to the protection of human rights and fundamental freedoms.

9. Contracting States which at the time of ratification, acceptance, approval or accession have made reservations are requested to reconsider such reservations and to withdraw them as far as possible.

States which are not parties to the conventions concerned are requested to ratify or accede to the latter without making reservations.

10. Contracting States shall see to it that their competent administrative authorities, when issuing passports to minors or registering minors in the passports of one of the parents, make sure that the applicants for the passports or registration are duly authorized to that effect.

11. Steps required for the return of a child shall not be delayed on the ground that the financial problems relating to the expenses incurred by the search for the child, by the procedure followed in the requested State and by the arrangements for the return journey have not yet been settled. As a provisional measure, the expenses in question should be advanced by the requested State.

12. Contracting States shall ensure that their authorities act promptly to respond to any application from Central Authorities or Interpol services for search of the whereabouts of an abducted child.

13. As the abduction of children or refusal to return children is often the consequence of an unsatisfactory exercise of the rights of custody and of access as agreed between parents or determined by courts, the competent authorities of the States concerned shall strive to ensure that the terms of the rights of custody and of access are complied with.

14. In view of the fact that the basic principles of the conventions referred to in this Resolution as well as the methods laid down for their application appear to be more widely acceptable, States which have not yet acceded to these conventions are requested to use them as a guidance in their legislation and administrative practice ; States could also be guided by them when concluding bilateral conventions on the matter, as the conclusion of such conventions appears particularly appropriate in the relations between States committed to different cultural notions.

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(31 August 1995)