

LONDON 2016 CONCLUSIONS AND RESOLUTIONS

Between 6 and 8 July 2016 over 220 specialists including: judges, lawyers, psychologists, academics, researchers, students, mediators, arbitrators, child evaluators, victims, representatives of NGOs, police, support groups, governments and the Hague Conference on Private International Law, met in London to discuss the three conference themes of Culture, Dispute Resolution and the Modernised Family (and related Family Law topics).

The conference delegates were from the following 31 jurisdictions: Australia, Belgium, Brazil, Canada, England & Wales, Finland, Germany, Hong Kong, Iceland, India, Ireland, Israel, Italy, Japan, New Zealand, Norway, People's Republic of China, Romania, Russia, Scotland, Singapore, South Africa, Spain, Sweden, Switzerland, The Netherlands, The Philippines, Turkey, United Arab Emirates, United States of America, Venezuela.

The Conference Plenary Sessions were chaired (in order of appearance) by: Sir Mathew Thorpe (England & Wales), Professor Stephen Gilmore (England & Wales), Judge Mary O'Dwyer (New Zealand), Chief Justice Diana Bryant (Australia), Mr. Justice Moylan (England & Wales), Henry Setright QC (England & Wales), The Right Hon The Baroness Hale of Richmond (United Kingdom), and Professor Mark Henaghan (New Zealand).

The conference rapporteurs (all from England and Wales) were Sir Peter Singer with Edward Devereux; assisted by Oliver Woolley, Charlotte Trace, Caroline Korah, Kirsty Lea, Samantha Jones, Andrew Powell, James Netto and Tom Beak, all of counsel or family law firms of solicitors.

The conclusions and resolutions drafting committee was chaired by Sir Peter Singer (England and Wales) and comprised:

Diana **Bryant** (Australia),
Frances **Burton** (England and Wales),
Edward **Devereux** (England and Wales),
Zenobia **Du Toit** (South Africa),
Marilyn **Freeman** (England & Wales),
Stephen **Gilmore** (England and Wales),
Mikiko **Otani** (Japan),
Nicola **Taylor** (New Zealand).

The following provisions were agreed at a meeting reporting on the outcomes of the conference sessions:

Unaccompanied migrant children and young adults

1. We applaud and support the efforts of the Hague Permanent Bureau to stimulate an effective and coordinated response by States to the plight of the increasing numbers worldwide of unaccompanied migrant children and young people for whom for the most part wholly inadequate provision is offered, and in this context urge Contracting States (and others) to have regard to the obligations undertaken under the relevant provisions of the 1996 Hague Convention on the Protection of Children.

Culture

2. Whilst recognising that sensitivity to what others regard as norms of their traditional, cultural and religious observances and customs is required to ensure the non-discriminatory exercise of family law worldwide, and thus that decision-making for children and young people should be viewed through an appropriate cultural prism, we would welcome a more universal acceptance that such relativity cannot apply when harm or the risk of harm thereby result.
3. As examples of what should be regarded as culturally and traditionally unacceptable practices we highlight forced marriage, female genital mutilation or cutting, and child betrothal and marriage which can all be described as abusive from both a child rights and a human rights perspective.
4. Although we recognise that civil and/or criminal remedies for such practices are being developed in increasing numbers of States we remain persuaded that the initiatives most likely to bring about perceptible change are public awareness and education.
5. While welcoming the enactment of legislation designed to combat under-age marriage of children in (by way of recent example) the Gambia and Tanzania we express our disappointment at the gulf apparent in some jurisdictions between the minimum age level and other requirements set by statute and the impunity with which such requirements are transgressed.
6. We note with concern the emergence in some communities of unilaterally imposed 'self-help' custody and parental separation strategies whereby parents (most usually a mother) are left abandoned and stranded in their country of origin without access to the means and without the documentation essential to enable them to maintain links with their children in another State.
7. We urge governments in their immigration policies to make passports and visas more readily accessible in such cases and thereby to recognise the pernicious effects of such detrimental behaviour, constituting as it does a breach of the human right to family life both for one parent and for the children concerned.

In-court practices and procedures

8. We note with concern the impact on judicial processes in many States of scarce resources and urge governments, within the means available to them, to ensure that welfare decisions concerning children and families should receive personnel and financial allocations designed to accelerate court processes so as to avoid delays which are causing real harm to children and their families.
9. In this regard we reiterate the need as critical constituents of family justice systems for there to be specialist judges, continuity of decision-taker, the provision of support services (including specialist reports) and speedier outcomes.
10. While in no sense seeking to diminish the importance which attaches in decision-making processes (whether in court or out-of-court) to hearing the voice of the child we view with concern moves towards standardising the method whereby in different jurisdictions this should be achieved, and we firmly support the proposition that a wide margin should be left to national courts consistently within their own jurisdiction to apply their own method and approach to this issue.

11. We recognise and wish to draw attention to the need for decisions (for instance in determining the habitual residence of a child) to be approached and concluded with the child's perspective firmly in view.

12. We recognise the need for further research and education to enable courts to curtail the inappropriate use of their resources by high conflict individuals (including those motivated by pathological hatred) rather than by a desire to resolve disputed issues concerning their children.

Dispute resolution

13. We acknowledge that court listings and consequently judicial and support staff and indeed child and family legal practitioners face increasing burdens and in this context welcome the more universal availability in a growing number of jurisdictions of alternative out-of-court procedures for dispute resolution, and the reduction of the pressures facing courts which such systems can effect.

14. We welcome what has become a discernibly increasing international trend to add arbitration as a process for family dispute resolution which may have positive advantages for individuals unable or unwilling to reach their own negotiated or mediated settlement but who are prepared for an arbitrator rather than a judge to determine the outcome of the issues which divide them.

15. We repeat the reservation that in all out-of-court procedures for dispute resolution the voice and views of the child should so far as practicable be taken into account, and the child's interests throughout kept firmly in focus.

Child abduction and relocation

16. We recognise the potential for serious and long-lasting harm to flow from the abduction of children by parents and family members. These effects may persist into and throughout adulthood and compromise both the well-being and interpersonal relationships of those who were previously abducted. We encourage further research to strengthen the existing knowledge-base in this area and the development and provision of preventative, protective and supportive measures designed to ameliorate these negative outcomes.

17. We support as a potential improvement upon the established requirement for the 'forthwith return' of abducted children a system whereby the potential for 'ping-pong' disruption for the child could be mitigated in cases where legal proceedings in the habitual residence State can be promptly and effectively resolved without requiring the child's return meanwhile.

18. We express our appreciation of the fact that the courts and government institutions of Japan tasked with the introduction and establishment of their Central Authority and with judicial training and public awareness of issues concerning child abduction and access disputes falling within the scope of the 1980 Hague Convention have demonstrated a very commendably proactive response. We similarly appreciate the efforts to implement the 1980 Hague Convention which are being made in India in order to address the instances of child abduction which occur between India and other countries which are signatories to the 1980 Hague Convention.

The modernised family

19. **Surrogacy:** We commend the Hague Permanent Bureau initiative in establishing an Experts Group to investigate status issues arising from surrogacy, with a mandate to explore the feasibility of uniform rules of private international law for children affected by cross-border considerations in the circumstances of their conception, birth or parentage as well as those arising from International Surrogacy Arrangements (ISAs), and support the principle of investigating the viability of an international instrument on these topics.

20. **Marriage and cohabitation:** Recognising the widespread decrease in the rate of marriages celebrated by contrast with the increasing prevalence of established cohabitation relationships, we encourage changes in law designed to provide greater parity of available outcome remedies upon relationship breakdown, particularly for family units which include children.

21. **Same-sex marriage:** In States where same-sex marriage has been institutionalised residual discriminatory factors should be eliminated such as any which provide or require differentiation in the treatment of heterosexual and same-sex partners.

22. We invite those States that impose sanctions upon same-sex relationships and homosexual behaviours to embark upon educational programs designed to promote improved tolerance and recognition of a person's human right to exercise individual autonomy in matters of sexual orientation.

23. **Marriage registration requirements:** The domestic registration of marriage (and, where applicable, of its termination) should be universally recognised as a function of the State, irrespective of individual religious, cultural or traditional tenets and beliefs or practices applicable, and available to all its citizens irrespective of their tenets and beliefs or practices.

International judicial collaboration

24. We emphasise the continuing importance for States and their judiciaries to maintain an appropriately high level of international judicial collaboration which should extend to the provision of adequate administrative, financial and logistical support for such endeavours between family judges worldwide.

25. We respectfully encourage the judges of the European Court of Justice and of the European Court of Human Rights to increase their participation in the process of promoting judicial communication and collaboration in the interests of comity and harmony in family-related areas of their activity.