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EDITORIAL

The 1996 Hague Convention: A unique role in the cross-border protection of children?

An international conference co-organised by ISS (see box below) was an opportunity to observe the added value of the HC-1996 'as a unique instrument comprehensively regulating the rules of private international law and co-operation mechanisms on child protection in order to ensure the primary nature of the best interests of the child'1. Yet, the low levels of ratification/accession to this Convention and the difficulties linked to its implementation still raise a considerable number of challenges.

In a global context, in which human displacement of different kinds (migration, professional relocation, separation and divorce of bi-national couples, etc.) is becoming more common, more complex, and in which the children are often overlooked, the need for cooperation and dialogue – not only amongst States but also amongst the involved professionals – is obvious. The 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children[2] (HC-1996) strengthens the UNCRC in this regard and confronts States with their responsibilities in terms of the protection of these children in a vulnerable situation.

A unique convention for the regulation of cross-border placements

The HC-1996 offers an international legal framework for the positive undertaking of alternative care measures, whose implementation goes beyond a country's borders. Some measures that are specific to some countries – such as intercountry *kafala* (see p. 5) or the international placement within the extended family and put into practice by some ISS Branches in the last few years (see p. 10) – are provided for in addition to those offered by the Guidelines for the Alternative Care of Children (hereinafter, the 'Guidelines), which are, in principle, rather focused on domestic solutions.

As for intercountry adoption, even though it is excluded for the scope of the HC-1996, the latter may, nonetheless, take over from the HC-1993 in cases of failure in the adoption, when a new family placement measure must be decided by the authorities in the receiving country, sometimes with the approval or, at least, based on consultations with the country of origin, as required by Russia, for example. Furthermore, as stated in the Practical Handbook on the operation of the HC-1996, '*the co-operation mechanisms and some of the general principles of the 1993 Convention may […] prove useful in relation to the cross-border provision of care*' through the measures aimed at by the HC-1996.

From 21 to 23 October 2015, over 200 legal, social and administrative experts, as well as 52 mediators, from around the world, met in Geneva in the framework of an international conference, organised by ISS and the Hague Conference on Private International Law, with the support of numerous actors, such as the University of Geneva, in order to share their views on the issue of cross-border child protection and the potential role of the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.

32 Quai du Seujet ■ 1201 Geneva ■ Switzerland
irc-cir@iss-ssi.org ■ www.iss-ssi.org

A unique convention for the protection of displaced children

During the above-mentioned conference, international organisations, such as UNICEF and the UNHCR, shared their concerns with regards to the increasing number of unaccompanied or separated and refugee or displaced children, victims of trafficking and exploitation of any kind, and the search for sustainable protection measures for them. UNICEF mentioned that, in 2015, there were 23,000 unaccompanied and separated children, of which 15,000 were in Europe, and it estimated that there were 1.2 million children, who were victims of trafficking. The HC-1996 may play an important role in the protection of these children, on the one hand, by appointing the State as responsible for adopting measures that respect their interests and are aimed at their protection (see p. 8), and by establishing the mechanisms that promote cooperation amongst authorities.

Gaps due to insufficient cooperation

Similarly to the HC-1993, the HC-1996 provides for the appointment of Central Authorities, which must cooperate amongst themselves and promote collaboration between the administrative and judicial authorities in their State. Furthermore, the Convention provides for the potential intervention of other public authorities or bodies, such as ISS, to fulfil the tasks that these are being delegated[3], which include the use of mediation, conciliation or other analogous means (see p. 7).

However, this essential cooperation faces numerous challenges in practice, whether amongst the various countries or within the latter. Amongst these, the issue of the costs of the procedure, the absence of a multidisciplinary approach or potential differences linked to the nature of the child protection measures, which may only exist in some countries, raise the issue of their equivalence in other countries. In order to overcome these obstacles and to strengthen this cooperation, direct communication is encouraged through initiatives, such as the International Hague Network of Judges (see p. 3).

Gaps due to a lack of training and advocacy

Even though it is promoted by the Guidelines[4], the HC-1996 and its wider scope of implementation remain, nonetheless, little known amongst child protection actors at domestic and international level. On the one hand, it only has a limited number of State Parties (42), and, on the other hand, its implementation is complex given the lack of knowledge of legal child protection systems, their operation and their interaction with foreign systems, often insufficient material and human resources within Central Authorities or the language barrier.

Faced with these needs, responses are already offered by bodies, such as ISS, in relation to the support to families and children affected, through protection measures that are adapted and result from a planned and multidisciplinary approach, driven by the spirit of mediation, the training of the various actors on international conventions, such as the HC-1993, and active advocacy aimed at a variety of domestic and international actors, such as the Committee on the Rights of the Child and other UN bodies.

In a world in which dialogue and the development of common approaches that respect differences and give priority to the human interest, international instruments, such as the HC-1996, must be subject to wider ratification/accession, and countries must be supported in their implementation. The spirit of cooperation, which they convey, and the practical means, which they offer, must be made available to the children and families, who need protection worldwide. ISS is now, more than ever, committed, through its daily support, advocacy and educational activities, to the constant improvement of the cross-border protection of children.

The ISS/IRC team
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32 Quai du Seujet ■ 1201 Geneva ■ Switzerland
irc-cir@iss-ssi.org ■ www.iss-ssi.org