

IACP HAGUE CONVENTION TASK FORCE REPORT

1.- The Charge of the TF

The Hague Convention of October 25th, 1980 deals with the civil aspects of international child abduction and among its provisions it encourages the amicable resolution of family disputes. Article 7 of the Convention states in particular that Central Authorities '*shall take all appropriate measures (...) to secure the voluntary return of the child or to bring about an amicable resolution of the issues*'.

While there have been studies and programs looking at how mediation could help in these situations, there is no evidence of such studies regarding the possibility to deal with these cases through the lenses of Collaborative Practice.

Aim of the Task Force was to look at the possibility of introducing Collaborative Practice as a recognized method to amicably solve cross border family issues when child abduction is involved, with particular attention both to the opportunities and to the challenges that could be connected with the use of CP.

2.- Three possible scenarios.

Looking at how Collaborative Practice could work in Hague Convention Cases, the TF identified three possible different scenarios:

- 1- before an application under the Hague Convention is filed (pre-application)
- 2- once an application under the Hague Convention is filed
- 3- after a decision under the Hague convention is made (return order/no return order)

Looking at the three scenarios, different challenges and different opportunities for Collaborative Practice can be envisioned: from a process perspective (time can be a real challenge in the first two scenarios, less problematic in the third); from a cultural/geographical perspective (parents will likely be located in two different countries in the second and third scenario, could still be in the same place in the first one); from a team perspective (with the need to be mindful of geographical balance in creating the team, especially for the neutrals).

Moreover, while CP could be a clear option in the third scenario (to help parents develop a new parenting plan and to take care of child support issues), it appears more problematic in the first and in the second scenario.

3.- Specific challenges regarding the professionals.

3.1.- Lawyers: an important challenge regards the disqualification clause and the identification of possible exemptions to IACP standards. Some of the questions we explored were the following: could it be possible to hire and keep in standby litigation lawyers while we try to solve the matter collaboratively? Could collaborative lawyers file the petition under the Hague Convention just to save the deadlines or would that be a violation of the IACP Standards? What would be the value for the parties and how can we explain it to them?

3.2- 1-coach vs. 2-coach model: how to reach a joint appointment of a neutral coach when cultural models are different and impact the pending conflict? Should the neutral coach be of a third country? Is a two-coach model more appropriate in these cases? Would coaches need to be from the two countries to create balance? What cultural or language barriers can we envision?

3.3.- the role of the child specialist: in addition to the usual role, in these cases the TF focused on the role of educating parents on the effects of alienation and in helping them understand the best interest of the child/children. It would be highly recommended for a child(ren) who has been separated from one parent for an extended period to engage in therapeutic reunification counselling. Reunification counselling can address unresolved feelings of neglect, abandonment, grief, and loss. Additionally, the therapist may discuss with the child(ren), readjustment into their parents' life and potentially any new family members including immediate and extended relatives. A plan to readjust to their country of residence once it is established would be beneficial. It is expected that child(ren) would experience uncertainty and anxieties surrounding this new adjustment. Counselling should be made available to the child(ren) if it is needed to address the transition and take into consideration any underlying diagnoses. Many of the challenges we considered for the neutral coach would apply to the child specialist.

4.- Training

All professionals will need to have a specific competence in Hague Convention / international child abduction cases.

A special caveat for MHP: in some jurisdictions, an MHP can only assist clients in case that are in their geographical area of competence, even if the proceeding is online.

5.- The criminal law side of the matter

5.1- child abduction as a crime.

Abduction of minors is a criminal offence in many countries. Brining a child to a foreign country without consent of the other parent is usually considered to be an abduction of a child, even if it is your own child (e.g. up to 3 years prison in Switzerland).

The parent that is left behind will considerably strengthen his or her position by pressing criminal charges against the abducting parent with the police.

As a consequence, there will be a criminal prosecution against the abducting parent. In such a criminal proceeding, the roles are different than in a family law proceeding. They are perpetrator and victim and not parents and children.

The abducting parent will be criminalised. Also there is a chance that the abducting parent will be punished, probably with prison. The criminal proceeding can influence the proceeding in which it will be decided whether the child will remain with the abduction parent or whether it will be brought back.

For that reason, a lawyer (including a collaborative lawyer) has to inform the left behind parent about the possibility to press criminal charges and discuss this option.

Severe offences such as child abduction are (in certain countries at least) prosecuted without the victim to press criminal charges when the prosecution learns about the offence. This also means that the proceeding can go on even if all parties agree on an outcome.

5.2.- Influences on Collaborative Practice

CP can help the parents to find solutions before, during and after the child abduction. To do so while the parties are involved in a criminal proceeding would be unusual and possibly in contradiction to CP standards. This ethics issue should be addressed. Exceptions, if necessary, could be formulated by IACP to clarify the situation to collaborative professionals worldwide.

The Collaborative Process can be flexible enough to include aspects of criminal law. In the tradition of restorative justice (victim-offender-mediation), the parties could negotiate compensation and an apology. Also, it is possible for the victim to declare not being interested in the prosecution anymore and for the prosecution to close a case based on a lack of need to punish. Procedural costs may still incur. They can be addressed as well.

In criminal cases, special consideration shall be paid to the interpersonal dynamic between the persons involved (including power dynamics, dynamics of abuse, application of pressure and coercion, psychological pressure on the victim to make an agreement etc.). The involvement of mental health professionals (preferably one per party) could be advisable.

In the criminal proceedings, it is only checked whether a minor has been abducted according to the law. In this analysis, the child is merely a factual factor. Its interest will hardly be considered.

In the Collaborative Process, the interests and special circumstances of the child can be considered in detail. The child can be involved in the process. Its wished can be evaluated and inform the parents and the parents' agreements that follow

6.- Costs.

The affordability and therefore the access to Collaborative Practice can also be a challenge in these cases, that often involve either very wealthy families or very poor families: engaging two sets of lawyers (for the collaborative and the litigation scenario), involving different other professionals, condensing the process in a very tight timeframe can become an

impassable obstacle. How to explain to the parties the value of this option? Could the different Central Authorities located in every country be the place where a first education/information on the existence of CP can be delivered?

6.- Conclusion.

As a TF we are still working on the different challenges, especially those regarding the consistency with the IACP Standards. The TF would like to deepen its research and try to answer the questions we have been exploring. The TF would also like to inform and involve the broader collaborative community, by means of organizing a webinar on this topic, maybe for the 2022 Institute or the 2022 Forum, and writing an article for the Collaborative Review.

As a TF we ask the Board to allow us one more year of work.

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IACP Hague Convention Task Force 2021

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