

## INTRODUCTION

The Communique issued at the conclusion of the Meeting of Commonwealth Law Ministers held in Barbados in April/May 1980 contained the following declaration:

"Ministers expressed profound concern that their legal systems were, in a growing number of instances, failing to safeguard adequately the welfare of children. Increasingly, parties to disputes over custody had been abducting their children and taking them to foreign jurisdictions, frequently in defiance of court orders. Ministers reaffirmed their view that in attempting to deal with this matter the best interests of children must always be paramount. They saw the question of jurisdiction as lying at the heart of the matter, and in this context felt that the nationality of a child could not of itself be the deciding factor.

Prompt and concerted collective action was regarded as essential, and it was of great importance that any arrangements should include non-Commonwealth, as well as Commonwealth jurisdictions. The Meeting welcomed the fact that the matter is to be considered by The Hague Conference on Private International Law in October this year. A number of Governments were convinced that the present Draft Hague Convention on the topic, with jurisdiction based on the 'habitual residence' of the child, was an appropriate response to the problem. The Meeting expressed the sincere hope that the deliberations at The Hague would be successful, and that a large number of countries would accede to any resulting Convention as a matter of priority."

On 25 October 1980 a Draft Convention on the Civil Aspects of International Child Abduction was agreed at The Hague by the delegates of 29 Governments (Argentina, Australia, Austria, Belgium, Canada, Czechoslovakia, Denmark, the Arab Republic of Egypt, Finland, France, the Federal Republic of Germany, Greece, Ireland, Israel, Italy, Japan, Yugoslavia, Luxembourg, the Netherlands,

Norway, Portugal, Spain, Surinam, Sweden, Switzerland, Turkey, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Venezuela). It is open to non-member States of the Hague Conference on Private International Law to accede to Hague Conventions. The following Commonwealth Governments who are not members of the Conference have acceded to certain Conventions in the past: Barbados (Notification), Botswana (Form of Wills, Legalisation, Notification), Cyprus (Legalisation, Enforcement of Judgments, Protocol of Jurisdiction), Fiji (Form of Wills, Legalisation), Lesotho (Legalisation), Malawi (Legalisation, Notification), Malta (Legalisation), Seychelles (Legalisation), Singapore (Taking of Evidence), Swaziland (Form of Wills, Legalisation), Tonga (Legalisation). It will be evident that effective action against the problem of international child abduction is particularly dependent on the number of countries which participate in such action so that the number of "abduction havens" is reduced and, if possible, eliminated entirely. The purpose of this document is, therefore, to explain the essential features of The Hague Convention, to evaluate their implications for Commonwealth countries and to make suggestions about the legal and administrative steps necessary for accession and implementation.

Appendix A contains a Draft Model Act. Its purpose is to provide Governments some idea of the kind of legislation that may be necessary to give effect to the

Convention. Naturally, it ignores questions that may be specific to particular States and can therefore be no more than a rough guide to them. It must also be emphasized that the Draft Model Act does not purport to translate into legislative form all the provisions of the Convention in a comprehensive manner. This simply reflects an individual judgment that some provisions of the Convention can be followed without being incorporated in statutory form. But these questions are obviously ones of judgment for each Government.

Appendix B sets out the Convention itself.