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Melvin A. Rubin

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# **Introduction to the Symposium on Cross-Border Family Mediation with an Emphasis on the 1980 Hague Convention on the Civil Aspects of International Child Abduction**

Melvin A. Rubin\*

In February 2008 the University of Miami School of Law hosted the first U.S. national conference devoted entirely to cross-border family mediation with an emphasis on the 1980 Hague Convention on the Civil Aspects of International Child Abduction.<sup>1</sup> The training was a collaborative effort between the University of Miami School of Law, Mediation Services, Inc. and the National Center for Missing & Exploited Children (NCMEC). In attendance were a wide range of participants—judges, academics, attorneys, experienced mediators, and representatives of the U.S. Department of State’s Office of Children’s Issues and the Hague Permanent Bureau—who traveled from all over the globe because of their common interest in exploring the use of mediation in international child abduction disputes. Topics covered included: the practical aspects of mediating a case under the Abduction Convention; case intake; consensus building; conflict resolution; drafting and recording of the settlement documents; and enforcement issues. Participants contemplated the various ethical issues that may arise in child abduction mediation, including the ethical and practical issues that arise when domestic violence or child abuse allegations have been raised by one of the parents. Finally, the group explored the various cross-cultural issues inherent in international family mediations.

Miami was a natural fit for the training because of the city’s proximity to Latin America and the Caribbean, regions that

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\* Melvin A. Rubin is a professional in dispute resolution with over 25 years of experience. Mr. Rubin conducts suit and pre-suit mediations in all areas of family mediation. As a family law litigator, he has handled numerous international cases involving many countries, including Pakistan, United Kingdom, Colombia, Austria, Germany, Switzerland, Venezuela, Brazil, Argentina and Mexico. Mr. Rubin has trained worldwide and helped design ADR systems. He was instrumental in bringing the Symposium to the University of Miami.

1. Hague Convention on the Civil Aspects of International Child Abduction Preamble, Oct. 25, 1980 (entered into force Dec. 1, 1980), T.I.A.S. No. 11,670, 1343 U.N.T.S. 89, available at [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=24](http://www.hcch.net/index_en.php?act=conventions.text&cid=24).

account for a majority of the cross-border family abduction cases reported annually to the National Center for Missing and Exploited Children. The *University of Miami School of Law Inter-American Law Review*, the only student-run periodical to focus solely on legal issues that directly affect Latin America and the Caribbean, intends to be a clearinghouse for future scholarship on this issue.

As a result of the conference, an all-volunteer Steering Group formed and developed specialized committees. The Group consists of academics, attorneys, mediators, and judges who share the common goal of designing a mediation model to respond to cross-border custody disputes and parental abductions involving the United States. The work of the Steering Group is ongoing; the Education and Training Committee hopes to develop a national training module and train a discreet group of mediators to respond to these cases by early summer 2009.

The importance of this issue can not be overstated. The devastating effects of parental abduction on children and their families are well-documented<sup>2</sup> and the problem will likely grow along with globalization. The Abduction Convention has provided relief to many affected families, but it has not been adopted in most countries. And, numerous structural, procedural, cultural and economic barriers can limit the treaty's effectiveness.<sup>3</sup> Recent initiatives in the international community suggest that mediation may be a superior alternative for many families caught up in the nightmare of a cross-border custody dispute.<sup>4</sup>

Accordingly, in April 2006, the Special Commission on General Affairs and Policy invited the Hague Permanent Bureau to prepare a feasibility study on cross-border mediation in family matters.<sup>5</sup> In 2007, the Permanent Bureau prepared a comprehensive report on trans-border access in cases arising under the

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2. See generally *A Family Resource Guide on International Parental Kidnapping*, U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention (Jan. 2007) at 7.

3. See generally Nigel V. Lowe & Katarina Horosova, *The Operation of the 1980 Hague Abduction Convention - A Global View*, 41 FAM. L. Q. 59 (2007).

4. See REUNITE INT'L CHILD ABDUCTION CTR., *MEDIATION IN INTERNATIONAL PARENTAL CHILD ABDUCTION: THE REUNITE MEDIATION PILOT SCHEME* (2006), <http://www.reunite.org/edit/files/Mediation%20Report.pdf>.

5. Hague Conference on Private International Law, *Conclusions of the Special Commission of 3-5 April 2006 on General Affairs and Policy of the Conference*, Preliminary Doc. no. 11, at 3 (June 2006), available at [http://www.hcch.net/upload/wop/genaff\\_pd11e2007.pdf](http://www.hcch.net/upload/wop/genaff_pd11e2007.pdf).

Hague Abduction Convention,<sup>6</sup> and the Permanent Bureau is in the process of developing a “Guide to Good Practice” on this topic to be submitted for consideration at the 2011 meeting of the Special Commission to review the practical operation of that Convention.<sup>7</sup> We hope that some of the ideas and initiatives stemming from the University of Miami conference, the work of the U.S. Steering Group, and this symposium will ultimately be helpful to that effort.

The articles in this issue reflect only partially the complexity of creating an international mediation program to address these high-conflict and often high-profile cases. The more obvious issues inherent in the creation of *any* mediation design system include: identifying all the stakeholders, enlisting their support in such a program, and accommodating varying, if not conflicting, agendas, interests, and desires. Designing such systems is difficult enough. Add to it the extraordinary issues of cultural diversity and child welfare that will permeate these mediations and you have an incredible challenge for any group of drafters.

But there is more. The question of what law applies to the substantive issues is enlarged by what procedural rules are followed. The professional mediator is further confronted with the question of which of the many professional and ethical standards are to be followed. The mediators will be as varied as the parties themselves, drawn from different countries, different professions, and different cultures. With the likelihood that parties will be of different nations, logistics will pose a significant obstacle. Telephonic mediation and online dispute resolution mechanisms pose an additional set of challenges.

Even more questions appear just as one attempts to answer the prior ones. Who is financing all of this? How are imbalances of power to be addressed? Are participants entitled to a “bill of rights” before they enter into the process? Are the participants from countries that recognize the Hague Conventions or not? Are the lawyers and mediators knowledgeable in the field of international child issues? Have the mediators been adequately trained to provide the services needed? Can counsel be provided to those

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6. See generally Hague Conference on Private International Law, *Transfrontier Access/Contact General Principles and Good Practice*, Preliminary Doc. no. 4 (Oct. 2006), available at [http://www.hcch.net/upload/wop/abd\\_pd04e2006.pdf](http://www.hcch.net/upload/wop/abd_pd04e2006.pdf).

7. Council on General Affairs and Policy of the Hague Conference on Private International Law, April 1-3, 2008, *Conclusions and Recommendations Adopted by the Council*, available at [http://www.hcch.net/upload/wop/genaff\\_concl08e.pdf](http://www.hcch.net/upload/wop/genaff_concl08e.pdf).

who cannot afford same? Are there options or alternatives available to participants who executed an agreement and find that the agreement is unenforceable, made in bad faith or contained misrepresented facts? Is there appellate review or some sort of basis for revisiting signed agreement? Is any uniformity of settlements possible or a mere fantasy? Do resolutions in fact provide any guidance or precedent for other cases on which mediators can rely or use as part of their analysis?

Obviously, like most design systems for conflict resolution, any initial plan will be considered a “work in progress” and will be the subject of continued reflection and refinement. It is indeed a daunting challenge but it is even a greater opportunity for those who will tackle these issues in order to bring mediation services to the many families in despair who need hope and assistance.

Ethical issues are certain to dominate any discussion about the mediation of cross-border child custody conflicts and must be given careful consideration in order for any dispute resolution design system to have legitimacy and credibility. Thus, it is fitting that in the first article in this symposium, *Practical and Ethical Implications of Mediating International Child Abduction Disputes: A New Frontier for Mediators*, Professor Jennifer Zawid examines the unique ethical issues that can arise during international child abduction dispute mediations, especially where conflicting sets of rules or standards govern the mediator’s conduct. She addresses in particular issues of imbalances of power, mediator competency, impartiality, confidentiality, and capacity to mediate. In her article she draws from her own experience in spearheading the University of Miami conference and on her strong belief that mediators who attempt to handle these extremely challenging cases must have the benefit and guidance of a well-developed set of standards.

In *When Human Rights Conflict: Mediating International Parental Kidnapping Disputes Involving the Domestic Violence Defense*, Julia Alanen tackles the controversial question of whether international parental kidnapping disputes should be mediated when one parent raises allegations of domestic violence against the other parent. She draws upon her extensive experience working with victims of *both* crimes—domestic violence *and* parental kidnapping—to conclude that international parental kidnapping mediation schemes must honor the right of every parent to choose whether or not to mediate a dispute involving his or her own child, and that, properly conducted, elective mediation can

protect and empower victims of domestic violence and victims of parental kidnapping.

To conclude the series, Professor Timothy Arcaro's article, *Creating a Legal Society in the Western Hemisphere to Support the Hague Convention on Civil Aspects of International Child Abduction*, proposes the creation of a legal society in the Western Hemisphere to provide regional support for the Hague Abduction Convention. The article explores ways in which the society might collaborate regionally to advance and harmonize best practices under the Abduction Convention. In so doing, Professor Arcaro draws upon his many years of experience in directing an innovative legal clinic at the Shepard Broad Law Center at Nova Southeastern University where certified legal interns, under his direction, have the opportunity to represent left-behind parents in international abduction cases. His experiences, coupled with multiple reports from the Hague Permanent Bureau, reflect a need for more regional support in Latin American countries as they attempt to implement and support operation of the Abduction Convention. Professor Arcaro also addresses the emerging need for alternative dispute methodologies as a platform for resolving international abduction cases and international child custody disputes. The article suggests a multidisciplinary collaborative approach, initiated through a voluntary legal society, to support regional efforts to advance the operation of the Abduction Convention in addition to maximizing the opportunity for successful mediated outcomes in international child custody disputes.

Readers who would like more information about international parental kidnapping, or who would like to become involved in any of the dispute resolution initiatives addressed herein, should feel free to contact any of the above authors or myself. We also welcome your ideas and comments. There is much work to be done.