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REPORT

drawn up on behalf of the Committee on Legal Affairs and Citizens' Rights

on the abduction of children

Rapporteur: Mrs M.-C. VAYSSADE

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Adopted pursuant to Rule 37 of the Rules of Procedure

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Or. FR

At its sitting of 10 March 1989 the European Parliament referred the motion for a resolution by Mrs Lizin and Mrs Dury on the abduction of children across national borders (Doc. B 2-1627/85), pursuant to Rule 63 of the Rules of Procedure, to the Committee on Legal Affairs and Citizens' Rights as the committee responsible and to the Committee on Youth, Culture, Education, Information and Sport for its opinion.

At its meeting of 2 April 1989 the Committee on Legal Affairs and Citizens' Rights decided to draw up a report and appointed Mrs Vayssade rapporteur.

The European Parliament subsequently referred the following motions for resolutions to the Committee on Legal Affairs and Citizens' Rights as the committee responsible:

- at its sitting of 6 April 1987, the motion for a resolution (Doc. B 2-1651/86) by Mrs Lizin and others on freedom of movement and transfrontier exchanges of children whose parents are of different origins (referred to the Committee on Youth, Culture, Education, Information and Sport for its opinion);

- at its sitting of 15 June 1987, the motion for a resolution (Doc. B 2-416/87) by Mr Kuijpers and others on custody and abduction of children to non-EEC countries (referred to the Committee on Youth, Culture, Education, Information and Sport for its opinion);

- at its sitting of 15 June 1987, the motion for a resolution (Doc. B 2-418/87) by Mrs Maij-Weggen on international child abduction (referred to the Committee on Youth, Culture, Education, Information and Sport for its opinion);

- at its sitting of 17 December 1987, the motion for a resolution (Doc. B 2-1238/87) by Mrs Lizin on the agreements governing holidays abroad for children of divorced couples of different nationalities (Strasbourg Agreements) and the proposal to hold a convention to appraise the first year's progress (referred to the Committee on Women's Rights for its opinion).

At its meetings of 20 and 21 May 1987 the Committee on Legal Affairs and Citizens' Rights had an exchange of views on the subject. At its meeting of 2 and 3 March 1989 the committee fixed the deadline for tabling amendments to the draft report.

At its sitting of 16 March 1989 the European Parliament delegated the power of decision to the Committee on Legal Affairs and Citizens' Rights, pursuant to Rule 37 of the Rules of Procedure.

At its meeting of 27 April 1989 the committee considered the draft report and the amendments thereto and unanimously adopted the motion for a resolution contained in the draft report.

The following took part in the vote: Lady Elles, Chairman; Vayssade, first Vice-Chairman and rapporteur; Barzanti, Cabrera Bazan, Garcia Amigo, Gazis, Hoon, Janssen van Raay, Lafuente Lopez, Rothley and Vetter.

The opinion of the Committee on Youth, Culture, Education, Information and Sport on the motion for a resolution Doc. B 2-1627/85 by Mrs Lizin and Mrs Dury is attached. The Committee on Women's Rights decided not to deliver an opinion.

The report was tabled with Sessional Services on 28 April 1989 for inclusion on the agenda for the next part-session, pursuant to Rule 37(6) of the Rules of Procedure.

C O N T E N T S

The Committee on Legal Affairs and Citizens' Rights, to which the power of decision has been delegated by the European Parliament pursuant to Rule 37 of the Rules of Procedure, has adopted the following text:

A

MOTION FOR A RESOLUTION

on the abduction of children

The European Parliament,

- having regard to the Treaty establishing the European Economic Community, and in particular Articles 235 and 220 thereof,

- having regard to its resolution of 16 March 1984 on the custody and abduction of children across national borders(1),

- having regard to the motions for resolutions by:

  - Mrs LIZIN and Mrs DURY (Doc. B 2-1627/85) on the abduction of children across national borders,
  - Mrs LIZIN and others (Doc. B 2-1651/86) on freedom of movement and transfrontier exchanges for children whose parents are of different origins,
  - Mr KUIJPERS and others (Doc. B 2-416/87) on custody and abduction of children to non-EEC countries,
  - Mrs MAIJ-WEGGEN (Doc. B 2-418/87) on international child abduction, and
  - Mrs LIZIN (Doc. B 2-1238/87) on the agreement governing holidays abroad for children of divorced couples of different nationalities (Strasbourg Agreements) and the proposal to hold a convention to appraise the first year's progress,

- having delegated the power of decision to its Committee on Legal Affairs and Citizens' Rights, pursuant to Rule 37 of the Rules of Procedure,

- having regard to the report by the Committee on Legal Affairs and Citizens' Rights and the opinion of the Committee on Youth, Culture, Education, Information and Sport (Doc. A 2-154/89),

- having regard to the increasing numbers of couples of different nationalities, a direct consequence of greater freedom of movement within the Community,

- whereas the completion of the internal market will further increase the numbers of such couples,

- having regard also to the number of couples of different nationalities as a result of the presence of nationals of non-EEC countries within the Community,

(1) OJ No. C 104, 16.4.1984, p. 135

- whereas, in the cases of divorce or separation, disputes over the custody of the children of couples of different nationalities are often more difficult to settle owing to problems connected with differences in family, cultural and religious traditions and may result in abductions and legal disputes,

- whereas the notion of what is in the child's interests is interpreted in different ways, and whereas each parent more often than not obtains custody of the children in his or her own country of origin,

- whereas the children have a right to equal time and regular contact with their father and their mother, and whereas borders may not form any barrier whatsoever to the free movement of children between their two parents and their two countries,

- whereas, in cases of abduction, consolidation of the de facto situation thereby would be avoided by bringing it to an end as quickly as possible,

- whereas there are several international legal instruments governing the right of custody and the abduction of children:

  - the Convention of Luxembourg of 20 May 1980, concluded under the auspices of the Council of Europe, on recognition and enforcement of decisions concerning custody of children
  - the Convention of The Hague of 25 October 1980 concerning the civil aspects of child abduction, which establishes a procedure for the immediate return of abducted children,

- having regard to the incomplete nature of both these conventions which, although complementary, derive from different legal procedures,

- whereas the Convention of Luxembourg is first and foremost a convention on the enforcement of foreign court orders which makes the immediate return of abducted children subordinate to the recognition and enforcement of legal decisions taken in the State where the case has been brought,

- whereas the Convention of The Hague gives priority to the direct return of abducted children to the parent who has custody in preference to the recognition of legal decisions,

- whereas these multilateral conventions have not been signed and ratified either by most Community countries or those non-EEC countries whose nationals are most frequently involved in cases of child abduction,

- whereas, even between States signatory to the conventions, procedures are slow and complicated to enforce in respect of both cooperation between the central authorities appointed by the conventions and the procedures involved in the enforcement of a foreign court order in the country where the case has been brought,

- whereas these slow procedures impede the return of the abducted child to the parent who was granted custody,

- whereas the scope of the Conventions of Luxembourg and The Hague is considerably restricted because the Member States which have signed them are entitled to make exceptions on grounds of public order, in the interests of the child,

- whereas there are omissions from the multilateral conventions which make their application difficult and limit their effectiveness,

- whereas, in Member States which are signatories and in those which are not, there are, within the Ministries of Justice, officials with responsibility for dealing with cases of child abduction,

- whereas, in non-signatory States, these officials have no legal existence nor powers to enforce the conventions,

- whereas many abducted children are held in third countries,

- whereas multilateral international instruments currently in force are clearly inadequate to resolve current problems between the Member States of the EEC and third countries,

- whereas, besides the current international conventions, there are also bilateral conventions both between Member States of the EEC and between Member States and third countries,

- whereas the existence of bilateral conventions excludes recourse to the multilateral conventions,

- whereas the increasing number of conventions dealing with custody rights is a source of confusion to many people,

- whereas, on 20 March 1987, the President of the European Parliament appointed a European mediator for cases involving the cross-frontier abduction of children of marriages between partners of different nationalities,

- whereas, since her appointment, the mediator has received several requests for help from mothers and fathers in respect of both custody and access rights,

- whereas these requests also concern not only disputes between Community nationals and nationals of third countries but also cases of abduction from one Community country to another,

- whereas, while possessing no legal powers, the European mediator has always been welcomed and listened to by the relevant authorities with which she has dealt and has thus been able, with the President's personal support, to speed up certain procedures,

- whereas the chief problems requiring solutions are :

  1. recognition by the country to which the child has been taken of the enforceable nature of the court orders granting custody, so that parallel and contradictory court orders may be avoided,

2. the establishment of procedures to expedite the return of abducted children,
3. the organization of the right of access across frontiers.
4. the introduction of procedures to enforce the right of access,

- whereas solutions to these various problems are scattered throughout existing conventions, and whereas there are consequently some serious gaps in legislation both between EEC countries and between Member States and third countries,

- As regards relations between Member States of the EEC

- In the immediate future

1. Calls on the Member States of the EEC which have not yet done so to ratify as soon as possible and unreservedly the Convention of Luxembourg of 20 May 1980 and the Convention of The Hague of 25 October 1980;

2. Calls on the Member States of the EEC which have already ratified these conventions to do their utmost to improve the way the conventions function so that they are fully effective;

3. Calls on the Member States of the EEC to set up a network of officials within Ministries of Justice who would be empowered to refer matters to courts, thereby speeding up the procedures for enforcing foreign court orders and for returning abducted children immediately;

4. Calls on the Member States which have signed the Conventions of Luxembourg and The Hague to combine their efforts to secure the coordinated application of these two complementary Conventions;

- In the longer term

5. Calls for immediate consideration to be given to setting up a specific Community legal instrument which would :

   (a) establish procedures for the automatic enforcement of foreign court orders issued in the countries where the abduction took place, with precedence being given to court orders delivered by the court in the country of residence of the family at the time of the breakdown;

   (b) deal separately with the recognition of foreign court orders and the direct return of the abducted children, so that the most appropriate procedure may be followed according to each specific case;

   (c) devote a specific chapter to access rights including those concerning natural children;

   (d) establish procedures for the prompt return of children (e.g. within three months of an abduction) and make it the responsibility of the State concerned to ensure that this is done;

   (e) restrict to a minimum the grounds for refusing to recognize and enforce foreign court orders;

(f) ensure that no expenses were incurred and that legal aid was provided automatically and unconditionally;

(g) lastly, to be effective, such an instrument should not allow signatories any possible exemption;

- As regards relations with third countries

6. Calls on the Commission to encourage the greatest number of third countries to ratify the Conventions of Luxembourg and The Hague;

7. Calls on the Commission to undertake systematically to raise these questions when negotiating cooperation agreements with third countries;

8. Calls on the Member States to conclude bilateral conventions with third countries and to modify existing conventions on the lines of the Franco-Algerian Convention of 21 June 1988;

9. Calls on the Member States to harmonize their positions, in the framework of political cooperation, and to adopt a common approach to problems involving the custody of children;

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10. Insists most strongly that, in every case, within and outside the Community, conventions should set up bodies - joint committees, officials responsible for abduction cases and a mediator - to oversee the implementation of the provisions of these conventions and take action, with powers of arbitration, to resolve legal disputes;

11. Calls for magistrates in all the signatory countries to be informed of the mechanisms of the conventions;

12. Calls on the newly-elected European Parliament and its President, in cooperation wi h the Committee on Petitions, to appoint another mediator;

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13. Instructs its President to forward this resolution to the Commission, the Council, the Foreign Ministers meeting in Political Cooperation, the governments of the Member States and, for information, to the Council of Europe and the Hague Conference on Private International Law.

EXPLANATORY STATEMENT

INTRODUCTION

For some years now Europe has seen the development of freedom of movement for individuals and the freedom to work and settle anywhere in the Community. Exchanges are more and more common through study, holidays, etc. 'Mixed' marriages between different nationalities are consequently also on the increase, representing a form of European integration which could form the basis of a new European citizenship.

Similarly, the presence of nationals of third countries in the Community and the development of tourism and more distant travel encourage mixed marriages.

Many victims of child abduction are kept in third countries. The number of cases of the abduction of children born of mixed marriages has been estimated at several thousand, only taking into account figures for disputes over the last ten years.

With regard to cases of abduction to third countries of which one parent is a national, the list of countries varies greatly in content and number every year.

Some countries, however, are more implicated than others. The Maghreb countries figure most prominently. Algeria is at the top of the list, followed by Tunisia and Morocco.

However, the problem is becoming worldwide and also involves the countries of the Mashrieq, Turkey, Yugoslavia and non-Mediterranean countries such as the USA, Canada, Australia, Brazil and Indonesia.

While the number of marriages is increasing, both between nationals of the EEC Member States and between Community nationals and nationals of third countries, so too is the number of divorces and separations. This then raises the problem of the custody of children.

This is a difficult question which can cause distressing conflict even between spouses of the same nationality.

When husband and wife are of different nationalities, the situation is even more delicate. In addition to the usual problems, there are extra sources of conflict: language problems and different family, cultural and religious traditions which mean that the concept of the interests of the child is interpreted differently by the national courts.

It should be noted that the courts usually award custody of the child to the parent of their own nationality, which could give rise to parallel and contradictory court judgments.

Such a situation is always detrimental to the children, who have a right to equal time and regular contact with both father and mother; national borders may not form any barrier to the free movement of children between their two parents and their two countries.

The problem of the 'Mothers of Algiers' has received a lot of press coverage over the last few years. These are women who have been granted custody of their children by the French courts, and whose ex-husbands have abducted the children during a visit and kept them in Algeria, usually in accordance with Algerian law.

It was as a result of the action taken by these mothers that the European Parliament decided to take action itself in the field of custody and the abduction of children.

I. ACTION TAKEN BY THE EUROPEAN PARLIAMENT:

A. EUROPEAN MEDIATOR APPOINTED BY THE PRESIDENT OF THE EP

1. BACKGROUND:

On 18 February 1987, Lord Plumb agreed to a meeting in Strasbourg with the 'five Mothers of Algiers' and a British mother. The mothers have been battling for several years for their children to have the right to move freely between their two parents. Strasbourg was a stop on the march from Paris to Geneva which they had organized from 10 February to 4 March 1987. Their intention was to present to the UN Commission on Human Rights in Geneva a draft recommendation on freedom of movement for form part of the draft UN Convention on the rights of the child.

On 24 February 1987 the President of the EP wrote to all the Member States informing them of the part played by the EP in the initiative of the mothers of Algiers and his personal support for their action. A member of the President's cabinet was specially appointed to follow up the matter.

On 20 March 1987 the President appointed your rapporteur 'European mediator' for cases involving the cross-frontier abduction of children of marriages between partners of different nationalities. This appointment demonstrated the EP's willingness to take practical action following the mothers' visit to Strasbourg.

The task of mediator consists in reviewing and coordinating, in collaboration with the Committee on Petitions, the legal disputes involving parents who refuse access to their children.

2. ACTION BY THE MEDIATOR

Since her appointment, the mediator has received a number of requests from mothers and fathers asking for help, either to have a child which has been illegally taken to another country by the other parent returned to the parent having legal custody, or to have rights of access observed.

These petitions concern both disputes between Community nationals and nationals of third countries and abductions outside the Community.

Thus,of the 65 cases brought to the attention of the mediator in two years:

- 45 concern the abduction of children of mixed marriages, including:
  - 21 cases of abduction in third countries (10 cases in Algeria, but other countries include Morocco, Libya, Yugoslavia, Egypt, Indonesia, and Brazil), and
  - 24 cases of abduction within the EEC (though Spain si most often mentioned as the country of refuge, all the Member States are involved).

The mediator endeavoured to find solutions for each of these specific cases, by contacting the judicial authorities in the third countries and also the parents themselves, to whom she has made repeated offers to try to resolve the disputes amicably.

In some cases the mediator has secured the help of Members of the European Parliament where they were better placed to take action and follow it up in a given member country.

Though possessing no legal powers and only a moral authority, the European mediator has always been welcomed and listened to by the relevant authorities with which she has dealt, and has thus been able, with the personal support of the President of the European Parliament, to speed up certain procedures.

On 9 December 1987 the mediator was invited by the Council of Europe to attend a meeting with the Committee on the Luxembourg Convention. This Committee comprises the central authorities appointed by the countries signatory to the Luxembourg Convention and observers from non-signatory countries. At this meeting, the object of which was to study and improve the way the Convention functions, the mediator was able to make a number of observations.

Following contact made at the meeting in Strasbourg, she also went to The Hague to study the functioning of the Hague Convention.

In her work the mediator has had the chance to see how the existing conventions function, and to identify the main stumbling blocks and the main problems to be solved when children are abducted.

II. THE EXISTING LEGAL INSTRUMENTS AT INTERNATIONAL LEVEL:

A. MULTILATERAL CONVENTIONS

1. THE CONVENTION OF LUXEMBOURG OF 20 MAY 1980 ON RECOGNITION AND ENFORCEMENT OF DECISIONS CONCERNING THE CUSTODY OF CHILDREN

This Convention, concluded under the auspices of the Council of Europe, came into force on 1 October 1983.

It has a dual purpose:

(i) to ensure recognition and enforcement of decisions concerning the custody of children at international level;

(ii) to ensure the immediate restoration of custody after the improper removal of a child to another country, which includes failure to bring the child back after a visit (Article 8(1)).

In order to achieve these objectives, the Convention coordinates legal cooperation among the Member States by arranging the setting up of a central authority in each country. These central authorities communicate with each other and receive requests from people wishing to achieve one of the objectives of the Convention.

- Any person who has obtained in a Contracting State a decision relating to the custody of the child and who wished to have that decision recognized or enforced in another Contracting State may submit an application for this purpose to the central authority in any Contracting State.

- The authority must keep the applicant informed without delay of the progress of his or her application (Article 4) and must take without delay all appropriate steps to discover the whereabouts of the child, avoid prejudice to the interest of the child or of the applicant and secure the recognition or enforcement of the decision (Article 5).

- The request must be accompanied by various supporting documents and if possible a statement indicating the likely whereabouts of the child in the State addressed (Article 5).

  It should be noted that Spain, for example, requires that the documents in question be translated into Spanish before the Spanish central authority can intervene. This type of proviso not only entails great expense on the part of the applicant, but also is a significant factor in slowing down procedures.

- Recognition and enforcement may be refused if it is found that the effects of a decision are manifestly incompatible with the fundamental principles of the law relating to the family in the State addressed or the child is settled in its new environment or has but few links with the State of origin (Article 10).[1]

(a) RATIFICATION

The Convention has been signed by all the Member States of the European Community except Denmark, and ratified by France, Belgium, Luxembourg, Portugal, the United Kingdom and Spain.

No country (apart from Denmark) has expressed its opposition in principle to ratification of the Convention. Nevertheless, six Member States have still not ratified it, six years after it came into force: the Federal Republic of Germany, Greece, Italy, the Netherlands, Ireland and Denmark.

Though the Convention is open to countries which are not members of the Council of Europe, none has so far applied. It seems unlikely that any third country will now accede.

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[1] Articles 17 and 18 allow Member States to make reservations with regard to these provisions

(b) CRITICAL ASSESSMENT OF THE FUNCTIONING OF THE LUXEMBOURG CONVENTION

Article 3(1) of the Convention stresses the need to deal as promptly as possible with cases involving child abduction. However, it is evident that the procedures laid down by the convention have proved slow and complicated to enforce in respect of both cooperation between the central authorities and the procedures involved in the enforcement of a foreign court order in the country where the case has been brought.

- In respect of cooperation between the central authorities:

  - There are delays in sending requests for information and replies to such requests between the central authorities.

  - There are delays in giving information to applicants on the progress of their application with the central authority concerned (authorities sometimes take more than four months to reply to an applicant).

  - Finally, locating the child in the country referred to also seems to be a long and sometimes difficult process (in fact, this problem of locating the child comes up frequently).

- In respect of recognition of legal decisions, the most worrying discovery is the slowness of the procedures involved in the enforcement of a foreign court order in the country where the case has been brought. Even when this procedure is completed, the delays are themselves likely to militate against the child being returned to the parent having custody.

In fact, simply the passage of time can change the situation of the abducted child so drastically that it may no longer necessarily be in the child's interests to return to the parent having custody in the country from which he or she was abducted, and indeed this may no longer seem advisable.

For all these reasons, your rapporteur believes that the effectiveness of the conventions on child custody, whether in respect of the recognition of legal decision or the restoration of custody, depends very largely on speedy action and the prompt, if not automatic, implementation of procedures.

As well as the difficulties of enforcement connected with slow procedures, there are gaps in the Convention which limit its scope and effectiveness.

- On the one hand, the Member States which have signed the Convention are entitled to make exceptions on grounds of public order, in the interests of the child. These exceptions allow the courts to determine the interests of the child before granting the enforcement of a foreign court order. It is therefore possible to refuse to enforce a foreign court order on the grounds of the interests of the child. Occasionally, courts only agree to enforce a foreign court order subject to a complete review of the case. The applicant

therefore has to submit a new request regarding custody in the State applied to.

- On the other hand, though the Luxembourg Convention contains provisions on restoration of custody, it remains first and foremost a convention on the recognition and enforcement of court orders. In effect, the immediate return of abducted children is subordinate to the recognition and enforcement of legal decisions taken in the State applied to. The child cannot therefore be returned immediately unless a final court order has first been delivered in the country from which the child was abducted. This situation is particularly regrettable in the light of the fact that the applicant has only six months from the date the child was abducted to refer the case to the central authority in the country of refuge.

2. THE CONVENTION OF THE HAGUE OF 25 OCTOBER 1980 ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

This Convention, concluded in the context of the Hague Conference on Private International Law, institutes an action for the direct return of children wrongfully removed or kept against the will of the parent who has been granted custody. Its object is to secure the immediate return of abducted children (Article 1).

The removal or the retention of a child is considered wrongful where it is in breach of rights of custody attributed under the law of the State in which the child was habitually resident and these rights were actually exercised (Article 3).

This Convention also provides for the designation of a Central Authority to discharge the duties which are imposed by the Convention (Articles 6 and 7). It lays down the procedure for the return of the child and lists the formalities to be completed and the measures which must be taken by the State applied to (Articles 8 to 12).

The judicial or administrative authority of the State applied to is not bound to order the return of the child if the person who opposes its return establishes that the right of custody was not actually exercised or that consent had been given after the return of the child. The same applies where there is a grave risk that the return of the child would expose it to physical or psychological harm or to an intolerable situation.

The return of the child may also be refused if he or she objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of his or her views (Article 13).

(a) RATIFICATION

This Convention has been signed by all the EEC Member States (except Denmark). However it has only been ratified by six Community Member States: France, Luxembourg, Portugal, the United Kingdom, Spain and Belgium.

The Convention is open to all countries for signature, and has thus also been ratified by Canada, Australia and Switzerland. However, it

has not been signed and ratified by any of the countries whose nationals are most frequently involved in cases of child abduction.

(b) ASSESSMENT OF THE CONVENTION OF THE HAGUE

The Hague Convention falls short of the Luxembourg Convention, in that it lists many grounds for refusal on the basis of the interests of the child, allowing the authorities of the State addressed to oppose the restoration of custody.

It is also more restrictive with regard to the waiving of charges to applicants and legal aid. These two types of restriction significantly reduce the Convention's effectiveness.

In addition, like the Luxembourg Convention, it remains difficult to enforce because of the long delays which hinder its procedures.

3. FACTORS COMMON TO BOTH MULTILATERAL CONVENTIONS

In all the EEC Member States, whether they are signatories to the two multilateral Conventions or not, there are, within the Ministries of Justice, officials with responsibility for dealing with cases of child abduction.

However, in non-signatory States, these officials have no legal existence nor powers to enforce the Conventions.

In particular, they say that they are not competent because the applicants are already represented by a lawyer under the procedure for enforcing a foreign court order in the non-signatory country.

In addition, it is not always easy for the interested parties to identify and get in touch with these officials.

This is why it is essential that the Member States set us a network of officials who would be empowered to refer matters to the courts themselves, in order to speed up the procedures for enforcing foreign court orders and for returning abducted children immediately.

These two international instruments for the protection of children against the effects of wrongful removal are not incompatible . However, though complementary, the conventions remain incomplete, because they derive from different legal procedures. The Luxembourg Convention is primarily concerned with the recognition and enforcement of legal decisions, while the Hague Convention is concerned with the wrongful removal of children.

Nevertheless, if the two conventions were to be ratified by all the Member States of the EEC, they would provide not inconsiderable legal instruments for the protection of children and could make it possible to find satisfactory solutions for a number of disputes.

Within the Community, it would therefore seem advisable for all the Member States who have not yet done so to ratify these conventions as soon as possible and unreservedly. Those which have already ratified them must do

their utmost to improve the way the conventions function so that they are fully effective.

B. BILATERAL CONVENTIONS

Besides the multilateral conventions, there are also bilateral conventions on child custody.

It is difficult to draw up a full list of the bilateral conventions concluded between Member States of the EEC and between individual member States and third countries; however, certain observations can still be made.

In general, the bilateral conventions on legal cooperation contain gaps with respect to the conventions of The Hague and Luxembourg. In practice, because of their general nature, these conventions can very often only apply to provisional decisions made with regard to child custody and visiting rights during divorce proceedings.

Temporary decisions are the most common. The bilateral conventions thus only take account of decisions which have reached the status of res judicata or which can no longer be subject to an ordinary appeal.

In addition, as soon as a request is made to apply a convention having a general scope, an exception on grounds of public order may be invoked; public order based in this case on the interests of the child, which limits the effectiveness of these conventions.

Most bilateral conventions concern ONLY the recognition and enforcement of decisions and contain no provisions for the immediate return of the abducted child.

Finally, where third countries are involved, the scope of these bilateral conventions may not be wide enough to cover the filed of personal status, where this comes under a specific codification (as in the case in the Maghreb countries, for example).

Other countries, such as Belgium, have chosen to set up joint negotiating committees to solve individual disputes.

The practice of parallel negotiation case by case sometimes makes it possible to solve the most difficult individual cases, but it remains unsatisfactory in that it provides fewer guaranteed than general solutions drawn up within an international legal framework.

However, your rapporteur believes attention should be drawn to two new bilateral conventions on the protection of custody rights: one concluded between EEC Member States and the other between a Community Member State and third country.

1. THE FRANCO-BELGIAN CONVENTIONS OF 4 APRIL 1987 ON MUTUAL LEGAL ASSISTANCE ON CUSTODY AND VISITING RIGHTS

In the rapporteur's opinion, this bilateral agreement is the most successful model for conventions on custody and visiting rights. The

convention has the merit of being specific rather than general in scope and of filling certain gaps in multilateral conventions.

- Grounds for refusal by the State addressed to recognize or enforce final legal decisions made in the other State are reduced to minimum;

- the Convention does not allow the signatory States any possible exemption;

- it deals with action for recognition and action for the immediate return of the child separately. Thus, the return of the child is not necessarily subordinate to the recognition and enforcement of a legal decision in the State addressed;

- under no circumstances may the foreign decision be reviewed in the State addressed;

- finally, the Convention stipulates that there shall be no costs to pay and provides for automatic legal aid without means testing.

A convention of this type has also been concluded between France and Luxembourg and between Belgium and Luxembourg.

2. THE FRANCO-ALGERIAN CONVENTION ON THE FREE MOVEMENT OF CHILDREN OF SEPARATED COUPLES OF DIFFERENT NATIONALITIES

This bilateral convention, signed by France and Algeria in Algiers on 21 June 1988, establishes the principle of the free movement of the children of couples of different nationalities between the two countries and confirms the right of children to see both their father and their mother.

The principal merit of this document is that it established a link between the principle of custody rights and the principle of visiting rights by stipulating that the court of competent jurisdiction is in the country where 'communal family life' took place, i.e. in the country where the child was living before the break-up.

It must be regretted, however, that the convention is only concerned with the maintenance of the child's relations with both parents, confining itself to organizing trans-frontier visiting rights. In fact, the automatic and immediate return of the child to the parent who was granted custody is not stipulated. This remains subject to the establishment of legal procedures.

In some case, recourse to bilateral agreements does not hinder the intervention of the central authorities appointed under the Conventions of The Hague and Luxembourg. On the other hand, a convention such as the one concluded between France and Belgium on 4 April 1987 replaces and therefore excludes recourse to the multilateral conventions. The same will apply to the conventions between Luxembourg and France and between Luxembourg and Belgium, which are to be ratified shortly.

This situation, coupled with the increasing number of conventions dealing with custody rights, is a source of distressing confusion to ordinary people.

III. THE ROLE OF THE EUROPEAN COMMUNITY IN THE FIELD OF CHILD CUSTODY RIGHTS AND THE ABDUCTION OF CHILDREN

The Community Treaties do not provide for any powers in these areas, which come under family law and penal provisions in the Member States.

The above assessments however, point up the gaps in existing legislation both in relations between the EEC Member States and between Member States and third countries.

It is therefore necessary to consider possible Community instruments which could remedy these legal gaps.

A. BETWEEN THE EEC MEMBER STATES

Two legal instruments would be possible:

1. A Directive based on Article 235 of the EEC Treaty.

   Such a directive could be justified on the grounds that the problems of child abduction are connected with freedom of movement for persons, which is established and guaranteed under the Treaty.

   It must be remembered, however, that in its replies to written questions, the Council of Ministers has always said that these matters must be considered within the framework of political cooperation.

2. A convention based on Article 200 of the EEC Treaty.

   The only Community instrument in the field of recognition and enforcement of legal decisions, i.e. the Convention of Brussels of 17 September 1968 based on the fourth paragraph of Article 220 of the EEC Treaty, expressly excludes from its scope proceedings relating to the state and capacity of individuals.

   There is therefore a case for considering whether this exclusion should not be re-examined and the convention extended to include legal decisions on custody and visiting rights.

   It seems unlikely that such a solution could cover all the problems involved (not only enforcement of foreign court orders, but also restoration of custody, compliance with visiting rights, etc.).

   A more effective solution would therefore be to draft a specific convention on the basis of the first paragraph of Article 220 which states that : 'Member States shall, so far as is necessary, enter into negotiations with each other with a view to securing for the benefit of their nationals the protection of persons and the enjoyment and protection of rights under the same conditions as those accorded by each State to its own nationals',

   Your rapporteur recalls that under Article 177 of the Treaty, the CJEC has jurisdiction to give preliminary rulings on the interpretation of European conventions based on Article 220.

However, there is the danger that it could take several years to draft either a directive or convention. It is therefore essential that all the EEC Member States ratify the two existing multilateral conventions as soon as possible and set up a network of officials to speed up procedures and monitor the most difficult cases.

B. BETWEEN THE EEC AND THIRD COUNTRIES

It is evident that the current international multinational instruments are insufficient to resolve the problems between the EEC countries and third countries, since too few countries have ratified them.

Of course, third countries can be encouraged to ratify these conventions, but it seems unlikely that this will be done in the short term.

Under these circumstances, other solutions must be sought.

It has been proposed that a convention could be concluded between the EEC as such and the third countries whose nationals are most often involved in cases of child abduction.

However, this solution would seem difficult to put into practice, because of the difficulty in identifying the third countries, which are increasingly diverse, and the difficulty in enforcing such a centralized convention.

For this reason, it would be more effective if the EEC were to conclude bilateral conventions with third countries. The Franco-Algerian Convention of 21 June 1988 could, in some cases, provide a satisfactory model.

On the other hand, it would be desirable for the Member States to adopt a common approach where problems of child custody involve third countries. With this in view, the EEC Member States should endeavour, wherever possible, to harmonize their positions when concluding specific conventions on the custody of children with certain third countries.

Finally, with regard to the effectiveness of the conventions on custody, your rapporteur would like to insist most strongly that, in every case, these conventions should set up bodies (joint committees, officials, mediators etc.) to oversee the implementation of the provisions of these conventions and take action to resolve legal disputes.

COMMITTEE ON YOUTH, CULTURE, EDUCATION, INFORMATION AND SPORT

OPINION

Letter from the chairman of the Committee on Youth, Culture, Education, Information and Sport to Mrs M.-C. VAYSSADE, chairman of the Committee on Legal Affairs and Citizens' Rights.

Subject : Opinion of the Committee on Youth, Culture, Education, Information and Sport on the abduction of children across national borders
(Doc. B 2-1627/85)

Mrs M.-C. VAYSSADE
Chairman of the Committee on Legal Affairs and Citizens' Rights

Dear Mrs Vayssade,

At its meeting of 25-27 November 1986 my committee considered the motion for a resolution talbed by Mrs LIZIN on the abduction of children across national borders (Doc. B 2-1627/85).

At the close of its deliberations, the committee unanimously[1] adopted the following conclusions :

A. having regard to the increasing numbers of serious situations arising when parents of different nationalities separate and one of them wrongfully keeps their children,

B. having regard to cultural differences and differences in the perception of the role of children and the family that may exist in different countries,

C. whereas the interests of the children concerned are paramount, and whereas they must be given the right to choose with which parent and in which country they wish to live,

[1]The following took part in the vote : Mrs EWING, chairman; Mr BARRAL AGESTA (deputizing for Mr Ramirez Heredia), Mr CANTARERO DEL CASTILLO, Mr COIMBRA MARTINS (deputizing for Mr Bayona Aznar), Mr ELLIOTT, Mr HAHN, Mr MARSHALL, Mr McMILLAN-SCOTT, Mr MÜNCH, Mr PELIKAN, Mrs PEUS and Mrs SEIBEL-EMMERLING.

CO/BND/cd
28 November 1986

1. Believes that the best solution is an amicable settlement that respects the rights of all the parties involved;

2. Believes, however, that where this type of settlement is not possible, every legal means must be used to ensure that the children's interests are safeguarded;

3. Notes that legal instruments deriving from international and European conventions already exist; calls, therefore, on the Member States of the Community to ratify these conventions at an early date and, where necessary, to conclude bilateral agreements with the states concerned;

4. Requests that, in cases when a child or children are taken out of the European Community, the ambassadors of the three 'troika' countries (the past, present and forthcoming EC Presidency) with the ambassador of the country from which the abduction took place, make joint representations to the government of the third country, where appropriate, to emphasize the solidarity of the Community in regard to child abduction.

Yours sincerely,

Winifred M. EWING

ANNEX I

MOTION FOR A RESOLUTION (Document B 2-1627/85)
tabled by Mrs LIZIN and Mrs DURY
pursuant to Rule 47 of the Rules of Procedure

on the abduction of children across national borders

The European Parliament,

A. whereas orders concerning the custody of children of parents of different nationality are not necessarily enforceable in third countries if made in the country in which these children normally reside,

B. having regard to the plight of families confronted with such problems,

C. having regard to the report drawn up on behalf of the Legal Affairs Committee on custody and abduction of children across national borders (Doc. 1-1396/83),

D. having regard to the motion for a resolution on the abduction by their Algerian fathers of children whose mothers are Community citizens (Doc. B2-770/85 of 31 July 1985),

E. having regard to the Council of Europe Convention of 20 May 1980 on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children,

F. having regard to the Hague Convention of 25 October 1980 on the Civil Aspects of the International Abduction of Children,

1. Protests vehemently against the abduction and removal of children against their will to a third country when an order has been made in their normal country of residence;

2. Calls on the Ministers meeting in political cooperation (legal cooperation) to speed up ratification of the Council of Europe Convention of 20 May 1980 and the Hague Convention of 25 October 1980;

3. Urges the Member States which have expressed reservations (France, Spain, the United Kingdom and the Federal Republic of Germany) to withdraw these reservations in order to speed up this process;

4. Recommends that the Member States supplement the ratification of the Convention with detailed bilateral agreements;

5. Calls for diplomatic efforts to be stepped up between the governments of the Member States and the third countries concerned so that a positive solution can be found when children are abducted, including guarantees that they will be repatriated to their countries of origin;

6. Calls on the Foreign Ministers meeting in political cooperation to take all the necessary measures vis-à-vis the authorities of the countries concerned to ensure a favourable solution to the plight of all children of parents of different nationalities who are kept against their will by one of their parents.

ANNEX II

MOTION FOR A RESOLUTION (Document B 2-1651/86)
tabled by Mrs LIZIN, Mrs VAYSSADE, Mrs d'ANCONA and Mrs CRAWLEY
pursuant to Rule 47 of the Rules of Procedure

on freedom of movement and transfrontier exchanges for children whose parents are of different origins

The European Parliament,

A. aware of the tragic situation faced by a large number of children whose parents are separated and of different origins,

B. recalling the increasing number of abducted children, who are in this way brutally cut off from one of their parents against their will, without being able to do anything about the situation,

1. Calls on each Member State to appoint a mediator whose task would be to find a solution suited to each particular case, in collaboration with the legal authorities;

2. Calls for the appointment of a European mediator to look after these problems in each state;

3. Calls for the early ratification by the Twelve Member States of conventions on the abduction of children;

4. Calls for a common stand to be taken, in the context of political cooperation, at the meeting of the UN Commission on Human Rights in Geneva on 4 March 1987.

MOTION FOR A RESOLUTION (Document B 2-416/87)
tabled by Mr KUIJPERS, Mr VANDEMEULEBROUCKE and Mr COLOMBU
pursuant to Rule 47 of the Rules of Procedure

on custody and abduction of children to non-EEC countries

The European Parliament,

A. having regard to the report drawn up on behalf of the Legal Affairs Committee on custody and abduction of children across national borders (Document 1-1396/83),

B. having regard to the Council of Europe Convention of 20 May 1980 and the Hague Convention of 25 October 1980,

C. whereas in many of the EEC Member States, there are legal provisions governing the right to custody of children in cases of separation or divorce, and whereas these are often supplemented and reinforced by penal provisions which, however, remain a dead letter in cases where an individual does not comply with the rules governing the custody of children and emigrates to another country,

D. whereas most of the children abducted across national borders are detained in third countries,

Urges the Member States to sign the Council of Europe Convention of 20 May 1980 on Recognition and Enforcement of Decisions concerning Custody of children and on Restoration of Custody of Children, and the Hague Convention of 25 October 1980 on the Civil Aspects of the International Abduction of Children;

Calls for limited rights of access where the parent granted custody of the child submit a justified request to that effect;

Instructs its President to forward this resolution to the Ministers of Justice of the Member States.

MOTION FOR A RESOLUTION (Document B 2-418/87)
tabled by Mrs MAIJ-WEGGEN
pursuant to Rule 47 of the Rules of Procedure

on international child abduction

The European Parliament,

A. having regard to the case of Mrs Isabella Verstraeten, a Netherlands subject, residing in Clinge in Zeeland, whose two children (born 1980 and 1982) were abducted by her Moroccan husband and father of the children, Mr Zerrouh, and taken to Morocco where they have been living with his brother since November 1985 while Mr Zerrouh himself has been working in Belgium, and whereas Mrs Verstraeten has been trying in vain to have her children returned to her in the Netherlands,

B. whereas, pending a divorce, the Court provisionally granted custody to the mother,

C. whereas [illegible] cases of international child abduction be it within the European Community or to countries outside the European Community, appear to be becoming more frequent (reported each year are some 30 cases in the Netherlands alone),

D. having regard to the Luxembourg convention (20 May 1980) and the Hague convention (25 October 1980) on international child abduction,

E. whereas the European Community has concluded cooperation and/or association agreements with various third countries,

1. **Asks the Commission to set up an inquiry into the size of the international child abduction problem and into ways of reducing it as far as possible;**

2. **Considers that the decisions taken on guardianship and access during and after a divorce must take account of the interests of all the parties concerned but, above all, of the interests of the child;**

3. **Asks the Commission to urge those Member States that have not yet done so to sign and ratify the Luxembourg and the Hague conventions on international child abduction at an early date and to see whether the European Community itself can become a party to these conventions;**

4. **Asks the Commission to urge third countries to ratify the Luxembourg and the Hague conventions (e.g. through existing cooperation and association agreements) so that a solution satisfactory to all parties can be found in cases where children are abducted from Community countries to third countries;**

5. **Asks the Commission, when dealing with this subject to give special thought to the particular case of the abduction of Mrs Verstraeten's children;**

6. **Instructs its President to forward this resolution to the Commission and Council.**

ANNEX V

MOTION FOR A RESOLUTION (Document B 2-1238/87)
tabled by Mrs LIZIN
pursuant to Rule 63 of the Rules of Procedure

on the agreements governing holidays abroad for children of divorced couples of different nationalities (Strasbourg Agreements) and the proposal to hold a convention to appraise the first year's progress

The European Parliament,

A. aware of its special rôle with regard to children of couples possessing different nationalities,

B. recalling its previous resolutions on this matter and its appointment of Mrs VAYSSADE as European mediator,

C. recalling the progress made since last year in the matter of holidays abroad and the international conventions ratified during that time,

D. concerned about the persistent difficulties facing several hundred couples of different nationalities,

E. aware of the need for consultation with the judiciary, the Ministries of Justice and the chanceries of the twelve Member States,

. Calls on its competent committees to mark the first anniversary of the Strasbourg Agreements by holding a Convention in February to assess progress made in these areas in respect of both individual cases and general agreements.