

■ Table of Contents

Acknowledgements 11

Foreword

Ewa Kopacz 13

Preface

Christoph C. Paul, Sybille Kiesewetter & Ischtar Khalaf-Newsome 15

Parental Child Abduction – A Personal Story

Konstanze Welz 23

Section 1 Mediation in Cross-border Family Cases 41

Family Mediation in an International Context

Sybille Kiesewetter & Christoph C. Paul 43

1. Cross-border Parental Child Abduction and Access Conflicts 43
2. Challenges of Mediating Cross-border Disputes Involving Parents and Children 43
 - 2.1 Putting Mediation on the Agenda – Public Outreach 43
 - 2.2 Suitability for Mediation 44
 - 2.3 Particularities of Mediation in 1980 Hague Convention Cases 45
 - 2.4 Finding Suitable Mediators 46
 - 2.5 Motivating Parents and Lawyers 48
 - 2.6 Preparing the Mediation Process 49
 - 2.7 Time Needed in the Preparatory Stage 50
 - 2.8 Location of the Mediation 51
 - 2.9 Timeframe of the Mediation 51
 - 2.10 Particular Features Related to the Stages of Mediation 52
 - 2.11 Who Else Should be Involved in the Mediation? 54
 - 2.12 Collaboration of the Co-mediators 55
 - 2.13 How Should the Lawyers of Both Parents be Integrated? 55
 - 2.14 How Should the Courts be Integrated? 56
 - 2.15 Particularities in Relation to the Mediation Process 57

- 2.16 Language, Communication, Documents, Resources 58
- 2.17 Agreement to Mediate 59
- 2.18 Fees and Expenses 59
- 2.19 Final Agreement – Memorandum of Understanding 60
- 2.20 Post-mediation Care and Support 60

3. References 61

Mediation in Action

Eberhard Carl & Jamie Walker 63

- 1. Introduction 63
- 2. The Challenges of Mediating Cross-border Family Conflicts 63
- 3. Making the Best of an “Impossible” Situation 64
- 4. Methodology, Dynamics and Attitude 66
- 5. Case Study 70
- 6. Bi-national Projects and Wider International Cooperation 72
 - 6.1 Developing Professional Mediation: The German-French Project 72
 - 6.2 Dealing With Different Legal Cultures: The German-US Project 74
 - 6.3 Cooperation at All Levels: The German-Polish Project 76
 - 6.4 Bridge to Asia: The German-Japanese Project 78
 - 6.5 International Cooperation and Networking 78
- 7. Conclusion 81
- 8. References 81

International Parental Child Abduction to Non-Hague Muslim Countries: Mediation as a Viable Option

Mohamed M. Keshavjee & Ishtar Khalaf-Newsome 83

- 1. Introduction 83
- 2. The 1980 Hague Convention and Muslim Countries 84
 - 2.1 The 1980 Hague Child Abduction Convention: Key Provisions 84
 - 2.2 Perceived Obstacles to Muslim Countries Joining the 1980 Hague Convention 86
 - 2.3 International Initiatives Between Hague Convention Countries and Non-Convention Muslim Countries 91
- 3. Mediation as a Viable Option in Child Abduction Cases to Non-Convention Muslim Countries 93

3.1	Working Party on Mediation in the Context of the Malta Process	93
3.2	Mediation in Different Cultures and the Development of Cross-border Family Mediation	94
3.3	The Amenability to Mediation of Family Conflicts in Islam	97
3.4	Cross-border Family Mediation in a Muslim Context: Towards a Model and Standards	98
3.5	Cross-border Family Mediation Training for a Muslim Context: A Culturally Appropriate Model	103
4.	Conclusion	105
5.	References	107

The Voice of the Child in International Family Mediation

Lesley Allport 111

1.	Introduction	111
2.	The Legislative Framework	111
3.	Insights from Research	114
4.	Involving Children in Mediation	116
5.	A Practice Model	121
6.	Considerations Specific to Cross-border Mediation Cases	125
7.	Conclusion	127
8.	References	128

Cross-border and Bilingual: Bridging the Linguistic Gap

Mary Carroll 131

1.	Introduction	131
2.	Parties in Conflict	132
3.	Complex Problem: Clear-cut Solution?	133
3.1	Intercomprehension	135
3.2	The Co-mediator as Interpreter	135
3.3	From a Triad to a Quadrant – Enlisting an Interpreter	137
4.	Role Plays and Interviews	141
5.	Conclusion	142
5.1	Suggestions for Mediators of Bilingual Cross-border Mediations	143
6.	References	145

Mediation With a Twist – Handling Mediation Online

Lin Adrian & Charlotte Baek Risbjerg 147

1. Introduction 147
2. Online Dispute Resolution – Definition and Formats 148
3. Specificities in Video-supported Mediation 149
4. Suggestions for Video-mediation Practices 155
 - 4.1 Handling the Technology. 156
 - 4.2 Ensuring a Good Process 158
 - 4.3 Working with Interpersonal Relations 159
 - 4.4 Handling Communication and Lack of Social Cues 161
 - 4.5 Considering Co-mediation 162
5. In Closing 163
6. References 164

Cross-border Family Mediation (CBFM) Training

Jamie Walker & Ishtar Khalaf-Newsome 167

1. Introduction 167
 - 1.1 The Development of Cross-border Family Mediation (CBFM) Into a Specialist Field 168
 - 1.2 Best Practices in Cross-border Family Mediation 169
2. The Need for CBFM Training and Training Initiatives 171
 - 2.1 Training Needs for CBFM Mediators 171
 - 2.2 CBFM Training Needs for Other Target Groups 172
 - 2.3 Training Initiatives and Training Models 174
3. Training Content and Methodology 175
 - 3.1 Content 176
 - 3.2 Training Methodology 183
 - 3.3 The Need for Qualified Trainers 184
4. Networking and On-going Support 184
5. Conclusion 184
6. References 185

Section 2 The Legal Context of Cross-border Family Cases 187

The Legal Framework of Child Abduction Cases

Kyra Nehls 189

1. Introduction 189

2. The Legal Framework of the Hague Convention on the Civil Aspects of International Child Abduction (1980 Hague Convention)	189
2.1 Scope	190
2.2 Substantive Requirements for Return	190
2.3 Ban on a Decision on the Merits of Custody Rights (art. 16)	191
2.4 Exceptions to the Obligation to Return the Child Immediately	192
2.5 Procedural Steps	193
2.6 Special Features of the Brussels IIb (Recast) Regulation	194
2.7 De-escalation Measures to End Proceedings	195
3. European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children (European Custody Convention)	198
4. Abductions in Contracting States Not Party to the 1980 Hague Convention	199
5. International Rights of Custody and Access	199
5.1 Brussels IIb Regulation	199
5.2 Hague Convention Concerning the Powers of Authorities and the Law Applicable in Respect of the Protection of Infants (1961 Hague Convention)	201
5.3 Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (Hague Child Protection Convention)	201
5.4 Access Rights Under the 1980 Hague Convention	204
5.5 Rights of Access Under the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children	204
5.6 Convention on Contact Concerning Children (Contact Convention)	204
5.7 Autonomous Law	205
6. Conclusion	206
7. References	206

Integrating Mediation Into Return and Parental Responsibility Court Proceedings

Eberhard Carl & Martina Erb-Klünemann 207

1. Introduction	207
-----------------	-----

2. Court Proceedings for the Return of the Child 207
3. Advantages of Integrating Mediation 211
4. Integrating Mediation Into Court Proceedings 212
5. Return Proceedings Under the 1980 Hague Convention 213
 - 5.1 Promotion of Mediation 213
 - 5.2 Working Groups 214
 - 5.3 German Working Group Recommendations 215
 - 5.4 Further Considerations When Recommending Mediation 217
6. Financing Mediation 222
 - 6.1 Systems of Financing Mediation 222
 - 6.2 Statement of Costs 224
7. Integrating Results of Mediation Into Court Proceedings 226
 - 7.1 Mediation as a Safe Place 226
 - 7.2 Content of a Mediated Agreement 227
 - 7.3 Rendering an Agreement Legally Binding 227
 - 7.4 Choice of Court Agreements Under the Brussels IIb Regulation 229
8. Cross-border Parental Responsibility and Contact Proceedings 231
9. Conclusion 232
10. References 232

A Best Practice Model: MiC-Mediators in Court
Sabine Brieger 237

1. Introduction 237
 - 1.1 International Family Proceedings 237
 - 1.2 Specialised Family Mediation 238
 - 1.3 Proceedings Under the 1980 Hague Child Abduction Convention and Mediation 239
2. The “Mediators-in-Court” (MiC) Model 240
 - 2.1 Written Information About Mediation 240
 - 2.2 Particularities of the MiC Model 240
 - 2.3 The Decisive Difference 243
3. Suggestions for Further Promotion of Mediation in Return Proceedings 245
 - 3.1 Legal Requirements 245
 - 3.2 Specialised Mediation and Mediation Structures 246
 - 3.3 Financing 246

- 3.4 Training 247
- 3.5 The Role of Lawyers 247
- 3.6 Standardized Procedure 247
- 3.7 Legal Implementation of an Agreement Reached
in Mediation 248
- 4. Conclusion 249
- 5. References 249

Rendering Mediated Family Agreements Legally Binding and Enforceable

Juliane Hirsch & Sabine Brieger 251

- 1. Introduction 251
- 2. General Considerations 251
 - 2.1 Why Is It Important to Render Mediated Agreements Legally Binding and Enforceable? 251
 - 2.2 What Are the Main Challenges in Practice? 252
 - 2.3 What Are General Requirements for an Agreement to Become Legally Binding and Enforceable in One Legal System? 253
 - 2.4 Identifying the Relevant International Procedural Law and the Ideal “Starting Point Jurisdiction” 258
- 3. International Work Undertaken to Improve the Situation 260
- 4. Sample Agreement and Guidance in Practice 262
 - 4.1 Family Agreement in a German-Polish Case 262
 - 4.2 How to Render the Agreement Legally Binding and Enforceable in Germany 263
 - 4.3 How to Render the Agreement Legally Binding and Enforceable in the Other State – Poland – With the Help of International/Regional Legal Instruments 268
- 5. Need for Legislative Activity – on the National and International Level 268
 - 5.1 On the National Level 268
 - 5.2 On the International Level 270
- 6. References 272

Section 3 Important Contacts, Guidelines and Resources 273

- 1. Important Contacts 275
- 2. Weblinks to Important Resources 276
 - 2.1 Links to Practice Guides & Information Films and Other Resources 276

2.2	Links to Important Legal Resources, Declarations & Legal Instruments	277
3.	Checklists	278
3.1	Checklist for Requirements for an Order of Return	278
3.2	Procedural Checklist for Judges	279
4.	Court Information Letters	282
4.1	Information for Conflict Parties: An Example From Germany	282
4.2	Information for Lawyers: An Example From Germany	284
5.	Stages of Mediation	287
6.	Agreement to Mediate	288
7.	Examples of Mediated Parental Agreements	291
7.1	Parental Settlement and Court Order – Germany	291
7.2	Parental Settlement and Mirror Order – USA	293
8.	Choice of Court Agreement	298
9.	Wroclaw Declaration	301
Section 4	Legal Instruments	303
1.	1980 Hague Convention	305
2.	Brussels IIb (Recast) Regulation	318
3.	1996 Hague Child Protection Convention	398
4.	Mediation Directive 2008/52/EC – European Parliament and of the Council	418
Section 5	Case Studies	429
 A Bangladeshi-British Mediation		
	<i>Mohamed M. Keshavjee</i>	431
 The Role of Consulting Lawyers		
	<i>Christoph C. Paul & Jamie Walker</i>	437
 From Child Abduction to Property Distribution		
	<i>Christoph C. Paul & Jamie Walker</i>	445
Notes on Contributors		455
List of Authors		467
Index		471