



Second Study Commission  
Civil law and procedure

Meeting in Sevilla (Spain) - September 1992

Conclusions

THE LEGAL STATUS OF CHILDREN AFTER  
A) DIVORCE, B) SEPARATION,  
C) ANNULMENT OF MARRIAGE AND  
D) SEPARATION OF PARENTS HAVING COHABITED WITHOUT BEING MARRIED.

1. All countries represented on the Commission agree that after divorce, separation or annulment of marriage, the welfare of the child is the paramount consideration to guide legislators and judges. The Commission notes that legal systems diverge in that certain countries permit joint custody while others do not permit it or positively exclude it. A majority of members of the Commission consider that legislation should not hinder the possibility of joint custody when both parents so desire. The possibility of modification under the control of the competent authorities of arrangements made by parents and the decisions taken by a judge constitutes a means of achieving the objective of the welfare of the child.
2. The interest of the child requires, other than for serious reasons, that personal contact should be maintained between the child and both parents. The opinion of both parents should be taken into account in considering all important decisions concerning the welfare of the child.
3. Legislation should encourage the principle that parental responsibility is more important than parental right when considering what is in the best interests of a child.
4. The ratification of international conventions is the method of resolving certain problems concerning applicable law and jurisdiction in connection with the protection of children, the recognition of decisions in relation to custody and the return of children abducted across border. It is desirable that legislators simplify and abbreviate the procedures while safeguarding effective controls on the capacity of adoptive parents in the best interests of the child.
4. There are differences between countries on the matter of the entitlement of adopted children to ascertain the identity of natural parents. There should be a basic right to an adopted child to ascertain the identity of his natural parents, but consideration should be given to whether there should be some restriction to this right.