

The Seventh Meeting of the Special Commission on the Practical Operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention – October 2017

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**Report on the Experts' Meeting on Issues of Domestic / Family Violence and the
1980 Hague Child Abduction Convention**

12 June 2017

The University of Westminster, London

On 12 June 2017, 57 experts attended a meeting, at the invitation of the conference organisers, Professor Marilyn Freeman of the University of Westminster and the Hague Conference on Private International Law (HCCH), on the topic of Domestic / Family Violence and the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (1980 Child Abduction Convention). Participating experts included judges, government officials, Central Authority officials under the 1980 Convention, lawyers, mediators, psychologists, academics, researchers and members of non-governmental organisations from the following 19 jurisdictions: Australia, Belgium, Brazil, Canada, Finland, France, Germany, India, Italy, Japan, New Zealand, Norway, South Africa, Switzerland, the Netherlands, the United Kingdom (England and Wales, Northern Ireland, Scotland) and the United States of America, as well as European Union officials and members of the Permanent Bureau of the HCCH.

The meeting was opened with remarks by Mr. Justice A. K. Sikri, Supreme Court of India, and Ms. Salla Saastamoinen, Director, Directorate A Civil and Commercial Justice, Directorate General Justice and Consumers, European Commission, followed by four hour-long presentations and facilitated sessions on particular topics, engaging participants in discussion and debate. A questionnaire was circulated in advance of the meeting in order to provide background information on the topic from various jurisdictions in order to inform conference discussion.

1st Thematic Session

**Retrospective views on the 1980 Convention and the issue of domestic / family
violence and the evolution of national domestic violence regimes
(1980 to 2017)**

Chair:

Professor Nicholas Bala, Queen's University, Ontario, Canada

1. It was noted that through modern research and experience, more is known about the effects on a child of both direct abuse and exposure to intimate partner violence. Researchers have found, for example, that psychological harm to the child due to exposure to intimate partner violence may be as harmful as direct abuse. Research also establishes that there is a range of conduct that is characterized as abusive and could affect the child.
2. A large number of jurisdictions around the world are addressing issues of domestic and family violence as a matter of priority, including through awareness raising and training. More and more States recognise and address the impacts of domestic / family violence and provide programmes and services to support victims. In cases where domestic violence is raised it is important to consider, as required, the availability and efficacy of protective measures in the jurisdiction of the child's habitual residence to protect the child and the taking parent if return is ordered.
3. The meeting welcomed the signing by the European Union on 13 June 2017, of the [Council of Europe Convention on preventing and combating violence against women and domestic violence](#).

2nd Thematic Session

Evolution of Central Authority and judicial good practices related to the 1980 Convention and domestic / family violence

Co-Chairs:

**Lord Justice Moylan, Court of Appeal, London,
and Member of the International Hague Network of Judges Joelle Schickel, Central
Authority, Switzerland**

Central Authority practice

4. The size and resourcing of a Central Authority can be a challenge. For example, staffing a small Central Authority with a more limited caseload may only be a part-time job, even though special procedures to deal with these cases may be required.
5. Co-operation is key – between judges, between Central Authorities, and between or among authorities within a given country.
6. Education and information to assist Central Authorities to develop requisite skills and practices are of paramount importance.
7. It is important that Central Authorities consider how they may assist in situations involving domestic and family violence.
8. There is currently insufficient data about, for example, what happens after the return or non-return of the child in the context of such circumstances; such information would be helpful for both researchers and relevant actors (*i.e.*, Central Authorities and judges).

Judicial practice

9. The importance of implementing legislation for the 1980 Convention was highlighted. New Contracting States might look to other States' implementing legislation for examples as to how to craft their own.
10. The need to develop further means to assist courts in understanding and determining what protective measures are available in the requesting State and their effectiveness, in responding to any grave risk that is established, was underlined.
11. The importance of direct judicial communications in specific cases was emphasised.
12. There is an increased awareness within the judiciary around the world of the impact of domestic violence on children. Domestic violence can, by itself, establish the grave risk exception.
13. The possibility of establishing an Article 13(1)(b) defence under the 1980 Convention based in part on the subjective perception of risk has been established in case law in some States; the UK Supreme Court, for example, in the case of *Re S*¹ focused on the psychological impact on a mother of being returned in the context of domestic and family violence, taking account of the "objective basis" for those fears.
14. The judicial community commends the Working Group on Article 13(1)(b) and looks forward to publication of the Guide to Good Practice on Article 13(1)(b) of the 1980 Convention which will be of assistance at the global level.

¹ *Re S (a Child)* [2012] UKSC 10.

3rd Thematic Session

New Guide to Good Practice on Article 13(1)(b) of the 1980 Convention and other mechanisms to strengthen international cooperation on this issue

Chair:

Chief Justice Diana Bryant, AO, Family Court of Australia Chair of the HCCH Working Group on Article 13(1)(b) and Member of the International Hague Network of Judges

15. The meeting welcomed the report on the progress on a new Guide to Good Practice on Article 13(1)(b) of the 1980 Convention, which includes, but is not limited to, assertions of domestic and family violence raised under the grave risk defence.

16. The importance of mediation as a means of achieving conditions for return and a “soft landing” for children was emphasised. The cross-border enforceability of mediated agreements and the development of a Navigational Tool on this topic under existing Hague Children’s Conventions were also noted as issues and projects of interest.

17. Participants underlined the potential of the [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](#) (“1996 Convention”) for orders to be made enforceable under Article 11 in the context of the “safe return” of a child. The need for effective means of obtaining and enforcing orders upon return was highlighted. Participants agreed upon the importance of Network Judges and the International Hague Network of Judges in this respect, *e.g.*, regarding confirming what orders can be made and their enforceability.

18. The new Guide to Good Practice on Article 13(1)(b) will be compatible with different legal systems internationally, but specific States or jurisdictions may want to develop their own bench books to best address local specificities in law and practice.

4th Thematic Session

Discussion of a potential new international instrument on protection orders

Chair:

Anne-Marie Hutchinson, QC (Hon) OBE, Dawson Cornwell & Co., Solicitors

19. Participants welcomed continuing international work on protection orders, and recognised a need in practice, both in the operation of the 1980 Convention, and in a variety of other cross-border circumstances (*e.g.*, domestic and family violence, stalking, general harassment, human trafficking, forced marriage, female genital mutilation (FGM), etc.), for an international instrument addressing the recognition and enforcement of protection orders.

20. It was noted that the protective measures that could be obtained under the 1996 Convention are related to the child concerned / the dispute concerning the child and not necessarily the child’s carer. Further, 1980 Convention proceedings are restricted to the parties, usually the parents. There are many situations where protection orders are required in respect of other actors and in particular extended family members, thus, only a separate new international instrument could provide for those areas of protection, even if accompanied by orders under the 1996 Convention.

21. Any new instrument should likely be multi-layered with an option for “full” protection orders that are transportable across international borders, as well as provision for urgent measures that are intended to be time-limited (*e.g.*, in the context of return proceedings under the 1980 Convention). In all cases, the due process rights of a respondent should be safeguarded.

22. In the context of the operation of the 1980 Convention, potential in this area could be realised in particular through co-operation and liaison within judicial networks, among lawyers and Central Authorities.

23. The need to learn from operational experience with the 1996 Convention was highlighted, including the need to ensure that recognition and enforcement of measures would be truly "automatic." The great importance of attention to the issue of effective enforcement of orders generally, and training of relevant actors (*e.g.*, enforcement officers) on the same, was underlined.

24. Participants suggested the need for an effective database or other registration system for "transportable" international orders so they could be accessed and verified swiftly, *e.g.*, by law enforcement. Learning could also be drawn from the Passport system of the United States of America, or that of a transnational model form / certificate used within the European Union.

Final session

Co-Chairs:

**Lady Justice Jill Black, Head of International Family Justice, Court of Appeal,
London, and Member of the International Hague Network of Judges
Philippe Lortie, First Secretary, HCCH**

25. The challenge of striking the correct balance between resolving and properly investigating cases involving domestic and family violence (to the extent required by the grave risk exception under the Convention) and maintaining the expedition necessary to return children without undue delay was emphasised. It is important to recall also the legitimate needs and expectations of the left-behind parent.

26. The importance of ensuring, practically speaking, the enforceability of mirror orders was underlined. It was suggested that using simpler language which conveys the meaning of the order more easily and enables them to be better understood in other countries might assist in this respect.

27. Further awareness and attention should be given to immigration matters in the context of the operation of the 1980 Convention in cases involving domestic and family violence, as immigration status is not infrequently used by abusive partners as a means of control.

28. The recommencement of the regular publication of *The Judges' Newsletter* on International Child Protection was supported. The Permanent Bureau noted that the value of *The Judges' Newsletter* has been recognised as a unique comparative law research tool which has provided key background for the development of many Guides to Good Practice, Practical Handbooks, Guidelines and Principles.

29. Participants noted the great advantage of meeting together face-to-face, and suggested that such events be repeated in the future.

The need for further research

30. The meeting recognised that further (evidence-based) research is needed to strengthen existing knowledge on international child abduction. In particular, it would be highly desirable to have further research addressing:

- a. the short-term and long-term outcomes for children (and relevant family members, including taking and left-behind parents), for example in the context of return and non-return cases, when abductions occur against a background of domestic / family violence and / or other abuse;
- b. the impact and effectiveness of post-return protective mechanisms, measures, judicial and legal processes, support services, and / or arrangements; and,
- c. the ascertaining of children's views in Hague proceedings.