

Table of contents

Special Focus

The Sixth Meeting of the Special Commission on the practical operation of the 1980 Hague Child Abduction Convention and 1996 Hague Child Protection Convention, Part I, 1-10 June 2011

- 1 – Introduction 2
- 2 – Statistical analysis, report by Prof. Nigel Lowe 2
- 3 – Domestic violence and family violence allegations and return proceedings 4
- 4 – Draft Practical Handbook under the 1996 Hague Convention 6
- 5 – Judicial networking and direct judicial communications 6
- 6 – Draft Guide to Good Practice on Mediation under the 1980 Hague Convention 10
- 7 – Conclusions and Recommendations 11

Case Comments and Perspectives

- A Brief Comment on *Neulinger and Shuruk v. Switzerland* (2010), European Court of Human Rights, *Professor Linda Silberman* 18

Judicial Communications

- Report on the Training of Moroccan judges on the 1980 Hague Child Abduction Convention, *Catherine Gaudet* 20
- Report of the Dutch Office of the Liaison Judge International Child Protection (BLIK) 20

Other Regional Perspectives

- Battered Mothers Seeking Safety Across International Borders: Examining Hague Convention Cases involving Domestic Violence, *Professor Jeffrey Edleson and Professor Taryn Lindhorst* 22

International Child Protection Conferences and Seminars

- Mexico Inter-American Meeting of International Hague Network Judges and Central Authorities on International Child Abduction (23-25 February 2011) 25
- Finnish-Russian Expert Conference on International Child and Family Law (23 March 2011) 31
- First Gulf Judicial Seminar on Cross-Frontier Legal Co-operation in Civil and Commercial Matters (20-22 June 2011) 31
- Fourth Asia Pacific Regional Conference (26-28 October 2011) 33

Hague Conference Update

- The Intercountry Adoption Technical Assistance Program (ICATAP): An Update 34

Hague Children's Conventions Status 36

Members of the International Hague Network of Judges 37

Personal Note 41

* **Special Focus** *

Report of Part I of the Sixth Meeting of the Special Commission on the Practical Operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention, 1-10 June 2011

drawn up by the Permanent Bureau

1. Introduction

Part I of the Sixth Meeting of the Special Commission on the Practical Operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (the 1980 Convention) and 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* (the 1996 Convention) took place in The Hague from 1 to 10 June 2011. In preparation for the Special Commission, it was decided that the subjects to be covered were too extensive for one meeting. The exceptional decision was made for the first time to hold the Special Commission in two separate parts, with the second part taking place seven months after the first part, from 25 to 31 January 2012.

The 2011 Special Commission (Part I), one of the largest ever, included more than 300 experts and observers from 69 States and 19 organisations. 58 of the States were Contracting States to the 1980 Convention and 27 of the States were Contracting States to the 1996 Convention. Five States were invited to participate in the meeting as observers, namely Indonesia, Namibia, Oman, Saudi Arabia and Zambia. Representatives of three inter-governmental organisations and 16 non-governmental organisations also participated as observers. Among the participants were 55 judges from 30 States, including 25 members of the International Hague Network of Judges from 21 States.

Ten Preliminary Documents drawn up by the Permanent Bureau were prepared for the Special Commission. Six Information Documents were also made available to participants of the Special Commission. These documents are all available on the Hague Conference website at < www.hcch.net > under "Work in Progress" then "Child Abduction".

The agenda of the Special Commission followed a number of specific themes which stimulated a detailed discussion on a range of current issues. The highlights of those discussions are mentioned in this Report. The Special Commission themes were:

- Statistical survey of 2008 cases under the 1980 Hague Convention
- Co-operation among Central Authorities under the 1980

Convention and the processing of applications for return by Central Authorities

- Applications concerning access/contact under the 1980 and 1996 Conventions
- Domestic violence allegations and return proceedings¹
- Judicial Networking and Direct Judicial Communications
- Consideration of the revised Draft Practical Handbook on the operation of the 1996 Convention
- Consideration of the Draft Guide to Good Practice on Mediation under the 1980 Convention

The Permanent Bureau provided an update as to the status of the 1980 and 1996 Conventions. There were nine new Contracting States to the 1980 Convention since 2006,² bringing the total to 85. There were 19 new Contracting States to the 1996 Convention,³ bringing the total to 32, with a further seven signatory States (the remaining six European Union Member States and the United States of America). Several States had indicated in the replies to Questionnaire No 1 that they were considering implementation of the 1996 Convention.⁴

Experts from Russia, Japan and Korea reported on the steps taken with regard to the 1980 Convention in their respective States and the significant progress made towards becoming Contracting States.

Part II of the Special Commission will take place in The Hague from 25 January to 31 January 2012. It will consider the desirability and feasibility of specific areas of further work in connection with the 1980 and 1996 Conventions. It will also consider international family relocation, the future of the "Malta Process" and the role of the Permanent Bureau in supporting and monitoring the 1980 and 1996 Hague Conventions.

2. Statistical survey of 2008 cases under the 1980 Hague Convention

The following is taken from the "Statistical analysis of applications made in 2008 under the 1980 Hague Convention: Part I – Global Report", drawn up by Professor Nigel Lowe of the Cardiff University Law School and which was presented at the Special Commission.⁵

Notes

¹ Including the endorsement of the Emerging rules regarding the development of the International Hague Network of Judges and draft general principles for judicial communications, including commonly accepted safeguards for direct judicial communications in specific cases, within the context of the International Hague Network of Judges.

² Albania, Andorra, Armenia, Gabon, Morocco, San Marino, Seychelles and Singapore.

³ Armenia, Austria, Croatia, Cyprus, Dominican Republic, Finland, France, Germany, Ireland, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Spain, Switzerland, Ukraine and Uruguay.

⁴ See the responses to Question 14.2 of Questionnaire No 1. State responses to Questionnaire No 1 are compiled in Prel. Doc. No 10. The response of South Africa to Questionnaire No 1 was received after the compilation was prepared, and is available separately on the website of the Hague Conference.

⁵ The full report is available on the website of the Hague Conference at www.hcch.net under "Child Abduction Section" then "Special Commissions", Preliminary Document Nos 8A, 8B and 8C.

a. Background and rationale of the project

This is the third statistical survey into the operation of the *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (hereinafter, “the Convention”) conducted by the Centre of International Family Law Studies at Cardiff University Law School (under the Directorship of Professor Nigel Lowe) in collaboration with the Permanent Bureau of the Hague Conference on Private International Law. The majority of funding for this project was generously provided by the International Centre for Missing and Exploited Children (ICMEC) with contributions from the Permanent Bureau and Cardiff Law School.

This survey concerns applications made in 2008. Previous surveys concerned those made in 1999 and 2003. As with the previous surveys, accuracy was sought by approaching each Contracting State for their own data.

b. Executive Summary

Replies have been received from 60⁶ of the 81 States party to the Convention in 2008.⁷ Detailed information has been provided on a total of 2,321 incoming applications, comprising 1,961 return and 360 access applications. Compared with the 2003 survey, there has been a 45% increase in return applications and a 40% increase in access applications.

i. Return Applications

The report shows that 69% of taking persons were mothers, a figure that has stayed virtually constant throughout past surveys at 68% in 2003 and 69% in 1999. In 2008, 28% of the taking persons were fathers and the remaining 3% comprised grandparents, institutions or other relatives.

Where the information was available (in 17% of the applications which constituted a sample size of 335 applications), the large majority (72%) of taking persons were the “primary carer” of the child.⁸ Where the taking person was the mother, this figure was 88% but only 36% where the taking person was the father. 60% of taking persons had the same nationality as the requested State.⁹ Proportionately more taking fathers (64%) had the same nationality as the requested State compared with 59% of mothers.

Notes

⁶ Albania, Argentina, Armenia, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, China - Hong Kong and Macau, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, Finland, France, Georgia, Germany, Greece, Guatemala, Hungary, Honduras, Iceland, Ireland, Israel, Italy, Latvia, Lithuania, Luxembourg, Malta, Mexico, Monaco, Montenegro, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Poland, Portugal, Romania, Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, UK (England and Wales, Northern Ireland, Scotland, Isle of Man, Bermuda, Cayman Islands, Falkland Islands), Ukraine, Uruguay and USA.

⁷ There are now 87 Contracting States following the accession of Andorra, Morocco, Gabon, Guinea, Singapore and the Russian Federation.

⁸ 40% were the sole primary carer of the child and 33% were a joint primary carer. These figures have been rounded up.

⁹ Either their sole nationality was the same as the requested State or they held dual or triple citizenship, one of which was the nationality of the requested State.

A total of 2,705 children were involved in the 1,961 return applications, making an average of 1.38 children per application. A large majority of applications (69%) involved a single child and there were close to equal numbers of boys and girls with 51% of children being male and 49% female. The average age of a child involved in a return application was 6.4 years, but 6.0 years if taken by a mother and 7.2 years if by a father.

The overall return rate was 46%,¹⁰ lower than the 51% recorded in 2003 and 50% in 1999, and comprised 19% voluntary returns and 27% judicial returns. A further 3% of applications concluded with access being agreed or ordered, the same proportion as in 2003. The report shows that 15% of applications ended in a judicial refusal (higher than 13% in 2003 and 11% in 1999), 18% were withdrawn (15% in 2003 and 14% in 1999) and the number of applications still pending at the cut off date of 30th June 2010 was 8%, lower than the 9% in 2003 and 1999. There was a decrease in the rate of rejection by the Central Authorities under Article 27 with 5% of applications ending in this way in 2008 compared with 6% in 2003 and 11% in 1999.

In 2008, 44% of applications were decided in court (44% in 2003 and 43% in 1999). 61% of court decisions resulted in a judicial return order being made compared with 66% in 2003 and 74% in 1999.

In 2008, 286 judicial refusals were recorded with reasons available in 262 of these applications. A further 7 applications involved a judicial refusal (4 applications ending with different outcomes for different children and 3 in more than one outcome) giving a total of 269 applications with reasons for refusal. The figures are complicated because 18% of the applications were refused for more than one reason. If all the reasons relied upon are combined then, following the pattern in previous surveys, the most frequently cited reason for refusal was Article 13(1) *b*) (27%). 17% of the applications were refused following the child’s objections, 15% because the child was not found to be habitually resident in the Requesting State and 13% citing Article 12.

In 2008, applications generally took longer to reach a conclusion. The average time taken to reach a decision of judicial return was 166 days (125 days in 2003 and 107 in 1999) and a judicial refusal took an average of 286 days to conclude (233 in 2003 and 147 in 1999). For applications resulting in a voluntary return the average time taken was 121 days (98 days in 2003 and 84 days in 1999).

11% of all applications in 2008 involved an appeal (24% of all applications that went to court). Looking only at the applications that did not involve an appeal and the first instance decisions of those that did, the average time taken to reach a decision was 168 days. By contrast, applications that went on appeal took an average of 324 days to conclude.

The 2008 survey also inquired for the first time into how the

Note

¹⁰ Calculated excluding applications where the outcome was missing.

time taken to reach a decision was split between the Central Authorities and the courts. On average, a Central Authority held the case for 76 days before sending it to court and the court then took 153 days to dispose of it.

ii. Access Applications

In the 360 access applications made under Article 21 in 2008,¹¹ 79% involved a mother as the respondent (79% in 2003 and 86% in 1999). 50% of respondents had the same nationality as the requested State as against 53% in 2003 and 40% in 1999. As in 2003, 72% of applications concerned a single child and a total of 477 children were involved making an average of 1.33 children per application. The overall average age of a child involved was 7.8 years (7.9 years in 2003), 7.5 years if the respondent was the mother and 9.1 years if it was the father of the child. As with previous studies there was an even distribution of boys and girls with 49% being female and 51% male.

The overall rate at which access was agreed or ordered fell to 21% from 33% in 2003 and 43% in 1999. 31% of applications were withdrawn (22% in 2003 and 26% in 1999), 17% pending and 14% ending in reasons described as 'other'. 13% were rejected and 3% refused.

Access applications took much longer to resolve than return applications and the average time taken to reach a final outcome was 309 days if there was a voluntary agreement for access, 357 days if access was judicially ordered and 276 days if access was refused. 73% of applications that were judicially determined and 74% of voluntary settlements took over 6 months to resolve.

3. Domestic and family violence allegations and return proceedings

The Special Commission considered Preliminary Document No 9 concerning domestic and family violence in the context of return proceedings. Domestic violence issues have increasingly been raised as an area of concern in case law, in *The Judges' Newsletter on International Child Protection* and academic literature.¹² While the subject had been discussed at previous Special Commission meetings, discussion had focused only on the issue of securing safe return.

The Permanent Bureau noted that the subject of domestic violence could present difficult challenges in the operation of the 1980 Convention. For example, how should a balance be achieved between the need to maintain expeditious procedures and to avoid examination of the merits of the underlying custody dispute while also allowing proper consideration of a defence under Article 13(1) b)?

Notes

¹¹ Not including return applications where the outcome was that access was agreed or judicially granted.

¹² At the meeting of the Council on General Affairs and Policy in 2011, the topic of the recognition of foreign civil protection orders made, for example, in the context of domestic violence cases, was added to the Agenda of the Conference: see para. 23 of the Conclusions and Recommendations adopted by the Council.

The discussion on domestic violence within the context of the Article 13 "grave risk" exception was divided into three parts. The initial part focused on the existing research and case law, the evidentiary aspects and the definition of domestic violence within the context of Article 13(1) b). The second part considered issues of protection, including protective measures for the safe return of the child and accompanying parent. The last part considered potential further actions and means to promote consistency.

a. Existing research and evidentiary aspects

The Permanent Bureau referred experts to some relevant figures from the Lowe statistical survey of 2008 cases. Fifteen percent of return applications resulted in judicial refusal of return. Of those cases, 27% were based on the grave risk exception, while 17% were based on the child's objections. The research in Preliminary Document No 9 also indicated that those were the two most common exceptions raised in cases of family or domestic violence. However, domestic violence was also sometimes alleged or present when other exceptions were satisfied.

The Permanent Bureau indicated that its research presented in Preliminary Document No 9 was limited, given the length of the document. Also, it was reported that there is general statistical uncertainty as to the number of global Hague proceedings which involve domestic violence issues, due to the lack of focused research in this area. However, States' responses to Questionnaire I provided some useful information.¹³ Sixteen States noted that the issue of domestic violence or abuse was "often raised" under Article 13(1) b) as an exception to the return of the child. Two States noted that allegations were raised "very often" and three States reported that such allegations were raised "quite often". A further three States specified that such allegations were regularly raised, but constituted a minority of cases, or that the seriousness of the allegations varied. Five States reported that such allegations were raised on occasion, sometimes or "sporadically", a further five States reported that such allegations were not often raised, and six reported having no cases of this type to date. Some States gave specific figures of cases where such allegations were raised: the United Kingdom (England and Wales) reported that these allegations were present in less than 20% of return cases, while Germany noted that academic studies of the applications handled by the Central Authority showed that between 10% and 14% of its Article 13(1) b) cases had involved allegations of domestic violence or child abuse.

The Permanent Bureau highlighted some key issues raised by the study, which included: the desirability of involving experts on the dynamics of family violence in developing appropriate policy; the manner in which harm towards a taking parent is addressed under the 1980 Convention; the potential effect of certain narrow interpretations of Article 13(1) b) in cases of family violence; and the question of how, in practice, to ensure a balance between expeditious

Note

¹³ See responses to Question 5.1.

proceedings and adequate attention to the safety and well being of an affected parent and child.

The Permanent Bureau also emphasised the need to give consideration to the cross-border nature and the importance of expeditious proceedings in Hague abduction cases. In that context, a number of evidentiary issues were present, including the types of evidence used in determining domestic violence claims (*e.g.*, police or medical reports), the role of the International Hague Network of Judges and Central Authorities in sharing information or evidence, the evidentiary standard to be applied and the role of expert evidence.

The experts agreed that domestic violence is a complex issue that requires a focused approach. Many confirmed that there was an increase in the number of cases alleging domestic violence as an exception to return under Article 13(1) *b*) and that domestic violence claims were always or should always be taken very seriously.

Recognising that the overall goal of the Convention was to protect the child, the experts agreed with the need to balance expeditious proceedings with the investigation into allegations of domestic violence. Some experts noted that the Article 13(1) *b*) exception should not stand in the way of speedy resolution. Others distinguished between “speed” and “haste”, and explained that the integrity of the proceedings should not give way to expedience: taking slightly more time to gather evidence to make a proper decision in such cases was not considered a problem if it avoided exposing the child to further harm. Many experts offered examples of good practices and practical solutions whereby the goals of expedition and appropriate investigation into allegations were balanced.

In the case of a return application where allegations of domestic violence have been raised, a number of experts indicated that the role of the court of the requested State is to assess, in light of the availability and efficacy of measures of protection in the requesting State and the evidence on file, the risk that the return of the child would expose him or her (and the accompanying parent, most often the primary care-giver) to physical or psychological harm or otherwise place the child in an intolerable situation. Recognising that a mere allegation of domestic violence was insufficient to justify the application of the Article 13(1) *b*) exception, experts indicated that the level of proof required should be substantial and appropriate in order to determine that the allegations are well-founded.

A number of experts emphasised the mutual trust between States and shared the view that the courts of the requesting State should be the best placed to determine whether domestic violence occurred, as they would be in the best position to appreciate all the circumstances and in particular the evidence. Several experts reaffirmed in this regard that the courts of the State of habitual residence of the child are the most competent to make long-term decisions concerning the protection of the child and the primary care-giver, including relocation.

Additionally, many experts highlighted the importance of training judges and Central Authority personnel in order to increase awareness of issues related to family violence dynamics within the operation of the 1980 Convention. Several experts expressed the concern that some taking parents may raise domestic violence allegations as a way to circumvent the international relocation procedures which should take place in the State of habitual residence of the child.

b. Protective measures to enable safe return of the child and accompanying parent

The Permanent Bureau explained that the case law sample showed a number of approaches to this issue. Questions included who had the burden of proving the ability of the home State to provide protection, how that question was investigated and by whom and whether the existence of laws or more concrete measures was relevant.

The Permanent Bureau highlighted the important role of Central Authorities (Art. 7(2) *h*) of the 1980 Convention), the International Hague Network of Judges and the information in the completed Country Profiles¹⁴ in organising protective measures to enable safe return under the 1980 Convention.

The Permanent Bureau also drew attention to some of the key issues in this area. First, in relation to voluntary undertakings, research to date showed that undertakings were commonly not respected where they were not enforceable or where there was no monitoring or follow-up after return. It suggested discussion on how undertakings should be employed and how undertakings and / or conditions to return could be made enforceable. Second, it noted access to justice issues that could arise after the return of the taking parent, relating to fair custody proceedings and financial resources to participate in custody proceedings.¹⁵ Third, the Permanent Bureau raised the issue of follow-up and information exchange after return: that is, what follow-up should be pursued after return, and whether Central Authorities, judges, or other authorities in the requested or requesting State should be responsible.

Finally, in relation to the 1996 Convention, the Permanent Bureau explained that there was nothing to prevent judges from considering harm to parents when determining whether, and if so which, necessary protective measures should be made in respect of a child in “cases of urgency” (see Art. 11).¹⁶ Other provisions in the 1996 Convention could also be helpful, for example Articles 30(2) and 34 with respect to information exchange.

Several experts raised the issue of the need for a proper legal framework for the recognition and enforcement of protective measures in international cross-border situations so that a

Notes

¹⁴ See Question 11.2.

¹⁵ See also the discussion below at paras 136-141 on access to justice following return.

¹⁶ Art. 1 of the 1996 Convention makes clear that any protective measures taken must be measures “directed to the protection of the person or property of the child”.

return order under the 1980 Convention would not give rise to a new flight.¹⁷ A number of experts noted that the 1996 Convention may provide some useful tools in this respect. The importance of securing legal effect for the measures of protection in all the States concerned was emphasised. The importance of mutual trust and support between the authorities concerned was also underscored in relation to the availability and efficacy of the measures of protection put in place to protect the child and the accompanying parent upon return.

Several experts noted that the safe return of the child was the joint responsibility of both the requested State and the requesting State. Where domestic violence is concerned, it is important that States do all in their power to ensure that the child does not suffer harm.

c. Promoting consistency in judicial practices

There was a general desire among experts to promote greater consistency and good practice in cases where there are allegations of domestic violence, but the Chair noted that sufficient discussion had not yet taken place in order to reach conclusions regarding the precise mechanisms which should be used in order to achieve these goals. The Chair further concluded that all experts had demonstrated a commitment to this topic and that there is no doubt that domestic violence can and should be considered in the application of Article 13(1) *b*). The question remained open as to what specific future action would be taken on this topic, which will be discussed during Part II of the Special Commission.

4. Consideration of the draft Practical Handbook to the 1996 Convention¹⁸

The Permanent Bureau recalled the Conclusions and Recommendations of the 2006 Special Commission,¹⁹ inviting the Permanent Bureau to begin work on the preparation of a practical guide to the 1996 Convention. The Permanent Bureau explained that an Implementation Checklist had been prepared and a first draft of the Handbook circulated in 2009.

Reminding the experts of the non-binding nature of the Handbook, the Permanent Bureau welcomed the experts' comments on Preliminary Document No 4, particularly on the structure and the substance of the Handbook, including any errors or omissions, as well as on the follow-up steps to be taken. The Permanent Bureau emphasised that the Handbook was of a different nature from the Guides to Good Practice. It was intended to be a practical tool for Central Authorities, judges, lawyers and other child protection officials. Through the use of plain language, relevant and comprehensive case examples and simple flowcharts, it is hoped that the Handbook will promote a clear understanding of how the Convention is intended to operate in practice, thereby ensuring that good practice under the Convention is

established and fostered from the outset in Contracting States.

The structure of the Handbook follows that of the 1996 Convention. It discusses the objectives and scope of application of the Convention, questions of jurisdiction, applicable law, recognition and enforcement as well as the role of Central Authorities and co-operation mechanisms. The Handbook also addresses certain special topics in separate chapters, amongst others international child abduction, access/contact, mediation and kafala and cross-border placements.

The majority of experts agreed that the Handbook was a useful implementation tool. Some experts stressed the value of the Handbook from their points of view as newly implementing States or as judges interpreting the 1996 Convention, with some noting that they had already used the draft Handbook in preparing for implementation.

Detailed discussions took place regarding the Handbook on a chapter-by-chapter basis. These discussions led to interesting debate on certain matters relating to the practical operation of the 1996 Convention, including:

- the provisions on transfer of jurisdiction (Arts 8 and 9 of the 1996 Convention) and, in particular, the practical aspects of a transfer including judicial and Central Authority co-operation;
- the scope of Article 11 of the 1996 Convention, particularly in the context of return proceedings brought under the 1980 Convention;
- the scope of Article 33 of the 1996 Convention and, in particular, the meaning of the term “placement” within Article 33; and
- the role of the Central Authority under the 1996 Convention and the similarities / differences in comparison with the 1980 Convention.

The Permanent Bureau thanked the experts for the many helpful comments and suggestions and welcomed further written suggestions or comments of an editorial nature. The Permanent Bureau advised that it would make amendments to the Handbook in light of discussions at the Special Commission, noting areas of continuing uncertainty and the need to clarify the relationship between the Explanatory Report and the Practical Handbook. In doing this work the Permanent Bureau will consult with certain experts.

5. Judicial networking and direct judicial communications²⁰

Development of the International Hague Network of Judges

The Permanent Bureau introduced the development of the International Hague Network of Judges, noting that the Network had more than tripled in the last five years, with more than 60 judges from 45 States. It also noted that a

Notes

¹⁷ See *supra* note 71.

¹⁸ Prel. Doc. No 4.

¹⁹ See Conclusions and Recommendations 2.2 – 2.3.

Note

²⁰ Prel. Docs Nos 3 A, 3 B, 3 C.

number of States such as Argentina, Canada and Mexico had implemented national networks, and in one State, the Netherlands, there had been legislation to create an office of the liaison judges. The Permanent Bureau made reference to the joint conference of the European Commission and the Hague Conference on Direct Judicial Communications on Family Law Matters and the Development of Judicial Networks, held in Brussels (15-16 January 2009) and the time devoted by the Permanent Bureau to consolidating the network.

Several experts reported new designations to the Network or steps being taken to make such a designation. An expert from the United States of America reminded States of the importance of notifying the Permanent Bureau of new contact details where there was a change of designation. Some experts also explained the operation of national networks in their respective countries and noted additional networks in which their judges had participated, such as IberRed and the European Judicial Network.

Those States in which direct judicial communications have taken place as a result of the designation of a judge to the Hague Network found this practice to be successful in assisting with the safe return of children. For example, an expert from Australia noted that direct judicial communications were used to obtain mirror orders or complementary orders to ensure safe return, to obtain evidence, including oral evidence, and to discuss the timetable of matters in the other jurisdiction.²¹ Several experts commented that the Network judges helped to resolve applications more quickly.

Many experts thought that exchanging information was important at an international and regional level, as well as between Central Authorities and judges at a national level. An expert from Belgium noted the importance of inter-network co-operation, for example with the European Judicial Network. Some experts stated that judges who are members of the Hague Network had an important role in providing help to other national judges who had limited prior experience with the 1980 Convention. An expert from the United Kingdom thought that it was also important to have contact with judges in States that were not Party to the 1980 Convention.

Experts from Switzerland and Monaco indicated with regard to judicial communications *per se* that judges in their respective States can engage in direct judicial communications in relation to specific cases. On the other hand, the Expert from Switzerland indicated that these judges do not handle the liaison part of the work as it is an administrative function, for which they rely on the Central Authority. He indicated that his State was not opposed to the idea of a liaison judge if it was in the interest of other States that Switzerland have one. He concluded by emphasising the need for a legal basis.

Some experts voiced concerns about protecting the confidentiality of information when judges exchanged information concerning specific cases. A few experts thought

that the independence of judges could also be jeopardised. In this respect, a number of experts did not consider this an issue since judges respect the principles of judicial independence and impartiality and protect confidential information. All experts agreed on the need to protect the independence of judges.

Discussion of principles: emerging rules

The discussion of the Principles was based on Preliminary Document No 3A of March 2011 entitled “Emerging rules regarding the development of the International Hague Network of Judges and draft general principles for judicial communications, including commonly accepted safeguards for direct judicial communications in specific cases, within the context of the International Hague Network of Judges”. The Permanent Bureau explained the methodology followed in developing these principles, emphasising the methodical and careful approach that had been taken. The Principles which, in the first place, had been prepared with the assistance of a group of experts mainly constituted of judges, were each the subject of specific discussion by each of the panels of the joint conference co-organised by the European Commission and the Hague Conference that took place in Brussels in January 2009. The Permanent Bureau indicated that the emerging rules and principles could be separated and that States could choose the relevant parts and adapt them to their needs. Concerning the discussion of emerging rules, the Permanent Bureau noted that they reflect current practice and take into account the Conclusions and Recommendations of previous Special Commissions as well as the conclusions of other judicial seminars.²² It outlined comments received on the draft emerging rules from various States.²³

Several experts preferred that the title of Preliminary Document No 3 A be amended by replacing the word “rules” with “guidance”. Experts also noted that some sentences in the document should be less affirmative and that “must” could be replaced by “should”.

Some experts were concerned with the wording of paragraphs 1.2 to 1.6 of Preliminary Document No 3 A, in particular paragraph 1.3, in relation to the appointment of judges to the Network. To account for the differences between national laws, it was suggested to avoid limiting the possibility to designate judges to the Hague Network by judicial authorities when, in some States, this is the role of the executive.

Discussion of principles: principles for direct judicial communications in specific cases including commonly accepted safeguards

The Permanent Bureau presented the relevant introductory sections of Preliminary Document No 3 A on the topic of Principles for Direct Judicial Communications in specific cases including commonly accepted safeguards and highlighted that these principles are of a non-binding nature.

Note

²¹ See also responses to Question 6.4 of Questionnaire I for further examples.

Notes

²² See further Prel. Doc. No 3 B and Info. Doc. No 3.

²³ See further Prel. Doc. No 3 C.

Many experts stated that judicial communication was a reality and that its evolution had to be encouraged in a flexible manner to accommodate different legal traditions, as well as new developments. An expert highlighted that the real focus of the discussions should be on how to enhance co-operation in Hague cases to ensure expeditious proceedings. However other experts also noted the importance of having guidelines: to provide a basis for direct judicial communications, for the confidence of the parties, and particularly for States new to using direct judicial communications.

An expert from Switzerland asked what the difference was between paragraphs 6.2 and 6.3 and stated that paragraph 6.2 could be deleted in favour of paragraph 6.3. He also wondered whether the question of impartiality of the judge, as opposed to independence, was deliberately omitted. Additionally, he highlighted the need for civil law jurisdictions to have a legal basis for the purpose of engaging in direct judicial communications in specific cases. Some experts noted that the confusion over these issues stemmed from the lack of experience of many States Parties with direct judicial communications and that in practice the independence of the judiciary was not called into question. Many experts stated that the rules contained in points 6.1, 6.2 and 6.3 were essential principles even though they were self-evident.

The Permanent Bureau highlighted the flexible nature of the wording of paragraph 6.4 and explained that these procedural safeguards were meant to give guidance to the parties and to judges who were not yet comfortable with direct judicial communications.

The Chair stated that it was evident through the interesting discussions that there was concrete support for the object of Preliminary Document No 3 A. He highlighted that this document summarised good practice from experience with direct judicial communications. He added that there was still some work ahead since the document still appeared to pose some concerns which needed to be addressed prior to distribution. He indicated that the Permanent Bureau would finalise the document, taking into account the discussion held during the meeting.

Legal basis for judicial communications / development of binding rules

The Permanent Bureau stated that the responses to the Country Profiles²⁴ revealed some confusion as to what was meant by a “legal basis” for direct judicial communications. The Permanent Bureau explained that the question was whether a judge could undertake direct judicial communications in the absence of a domestic law which provides for such communication. It suggested that work may be necessary on the determination of a legal basis within jurisdictions and invited experts to restrict their comments on their domestic rules.

Notes

²⁴ Question 21.

An expert from the United Kingdom explained that in common law jurisdictions this was a matter of judicial deployment and that it was the discretion and responsibility of the Chief Justice to allocate direct judicial communication powers to judges. He added that it would be helpful if each State could establish a mechanism and, in the event that they could not, an international instrument could provide a foundation for this.

An expert from Argentina mentioned that one of the leading conclusions from the 2011 Inter-American Experts Meeting was that a legal framework for direct judicial communications should be established. She added that such rules had been established in her State on a national level and disseminated to all courts.

Several experts wondered whether it was really necessary to create a formal legal basis for direct judicial communications and whether strict rules would be conducive to the promotion of direct judicial communications. They explained that each State had its own procedures and that such communications were already taking place on an informal basis. An expert from Uruguay stated that there appeared to be no consensus and that the States needed to be guided by the Hague Conference.

The Chair concluded that there were States that did not need a legal basis, but also States that needed a formal legal basis, for which development of domestic legislation should be encouraged.

An expert from Switzerland introduced Working Document No 4,²⁵ indicating that it was based upon co-operation and reciprocity. He indicated that States may need a legal basis at the international level to allow direct judicial communications.

The Permanent Bureau proposed a preliminary discussion among experts on the merits of developing a legal basis for direct judicial communications. It indicated that sometimes reform of domestic law found its source in international Conventions. In this respect, it referred to powers of attorney (“powers of representation”) as they are provided for in the 2000 Hague Adults Convention, without which States such as Switzerland, France and Italy might not have legislated domestically to give life to that concept. Leaving aside the

Notes

²⁵ It provided:
“The Special Commission promotes, without prejudice to more specific principles, further examination of legal rules, in view of a later approval, as follows –

1. Each Contracting State shall designate one or more judges having as task to promote co-operation amongst the competent authorities of that State and to facilitate communications and the exchange of information between these authorities and those of other Contracting States in situations to which the Convention applies.
2. The Central Authority or the judicial authority, seized with the request for return, may, if the situation of the child and the review of the conditions of its return so require, request any authority of another Contracting State which has relevant information to communicate such information.
3. The Central Authority or the judicial authority, seized with the request for return, may in individual cases, if the situation of the child and the review of the conditions of its return so require, take measures for the protection of the child upon its return and enquire in particular about the measures which the competent authorities of the State where the child was habitually resident immediately before its removal or retention can take for the protection of the child upon its return.”

specific question of what form a legal basis should take, it proposed the following provision as an example: “Where appropriate, a competent authority may engage in direct judicial communications with regard to a specific case with another competent authority of another State”.

Several experts felt that, while binding rules on judicial communications may be helpful, at this stage it would be inappropriate to adopt such rules to facilitate judicial communications. They stressed the need to give States time to gain more experience in this area to identify common standards.

With regard to the Swiss proposal, many experts felt that its consideration was premature and preferred that this discussion be postponed to Part II of the Special Commission. The discussion concluded by highlighting that experts recognised the need to explore the development of binding rules, but they almost unanimously felt that the consideration of binding rules would be premature. For this reason, it was more appropriate to discuss the matter during Part II of the Special Commission. The Chair noted that the need for a legal framework enabling direct judicial communications appeared to be largely a domestic legal matter.

An expert from Switzerland agreed that the discussion be postponed to Part II of the Special Commission. He underlined that there is a need for a legal basis, but not necessarily for binding rules to facilitate direct judicial communications, and requested that States continue to reflect on the proposal for the discussion in January.

Use of IT to support networking and communications

The Permanent Bureau presented the outcome of research undertaken by it on secure communications systems (e-mail and video-conferencing systems). It had consulted with the Hague Network as to its needs and found that the Network wanted a secure platform through the Internet to exchange messages, to build a virtual library to archive and file documents, for example templates for communication such as requests for Article 15 declarations, and to conduct secure video-conferencing.

It identified the existing systems that would achieve some of these objectives (IberRed, the Organization of American States (OAS) secured communications system and Skype). Network judges had agreed with the proposal that a pilot project be launched based on, and supported by, IberRed. The IberRed system was able to provide a secure system for judicial communications, although it did not provide the possibility of a document library or video-conferencing. While the OAS system had the advantage of allowing video-conferencing on secure channels, it would have to be installed on all relevant computers because it is not a web-based interface and this might conflict with domestic government policies. At present, it was not possible to establish secure channels using Skype, although this was being further explored. It was noted that Eurojust and the European Judicial Network were discussing with IberRed concerning the use of its system of communications.

The Permanent Bureau suggested evaluating the potential use and implementation of the IberRed system, with future discussion of further possibilities to identify or build a more sophisticated system if supplementary funding allowed.

The role of the Judges' Newsletter on International Child Protection

The Permanent Bureau recalled the importance of *The Judges' Newsletter*, which is distributed in 115 States to over 800 recipients, including judges, Central Authorities and practitioners, in promoting the development of international judicial communication and co-operation. The Permanent Bureau thanked States for their positive feedback on the Newsletter in the responses to Questionnaire I, and noted the suggestions for improvement.²⁶ It also highlighted some recent improvements to the format of the printed and electronic versions of the Newsletter, and noted that attempts would be made for the Newsletter to be published more regularly.

The Permanent Bureau thanked all those who have contributed to the development of the Newsletter, in particular those who have contributed articles to the Newsletter, the publishers LexisNexis, who provide free printing and distribution, and Lord Justice Thorpe (United Kingdom) for his important role in supporting the Newsletter.

Finally, the Permanent Bureau noted that, since 2009, the Permanent Bureau had not published a Spanish version of the Judges' Newsletter due to insufficient funding for translation. The Permanent Bureau stressed that it would be pleased to receive support from States in order to resume translation in Spanish of the Judges' Newsletter, but noted that contributors could nevertheless continue to send their submissions to the Permanent Bureau in Spanish for translation into English and French. An expert from Uruguay reported that the Newsletter was widely used in his State, and emphasised the importance of it being made available in Spanish.

Judicial conferences and meetings

The Permanent Bureau referred to Information Document No 3 and to the annexes of Preliminary Document No 3 B, which provide the Conclusions and Recommendations of major regional and international seminars and conferences organised or co-organised by the Hague Conference since 2006. The Permanent Bureau stressed the importance of these seminars in exchanging knowledge and information, and encouraged the organisation of future judicial conferences as they provide an excellent vehicle to increase trust and confidence between judges and Central Authorities of different States.

The Special Commission highlighted the importance of interdisciplinary judicial conferences and seminars and emphasised their importance for the effective functioning of the 1980 and 1996 Conventions.²⁷

Notes

²⁶ Responses to Question 22.1(b).

²⁷ See Conclusions and Recommendations Nos 2.10 and 5.6 of the 2001 Special Commission, Conclusion and Recommendation No 1.6.6 of the 2006 Special Commission and Conclusion and Recommendation No 75 of the 2011 Special Commission (Part I).

6. Consideration of the draft Guide to Good Practice on Mediation under the 1980 Convention

Review of the draft Guide to Good Practice on Mediation

The Permanent Bureau introduced the Draft Guide to Good Practice on Mediation and explained that the areas covered by the Draft Guide include mediator training, access to mediation and mediation principles/models/methods, having regard to specific challenges that arise in the context of 1980 Convention proceedings, such as the need for expeditious procedures, involvement of multiple legal systems, and cultural, religious and language differences.

The Permanent Bureau stated that the purpose of the Guide was to describe and promote good practices in mediation. It noted that while the Guide made recommendations, it was of a non-binding nature. It outlined that the Guide targeted a broad audience, including judges, lawyers, mediators, parties to cross-border disputes and other interested parties. The Permanent Bureau sought the experts' views on the Guide and in particular, whether more detail on issues of jurisdiction and applicable law was required.

A number of experts discussed the point in time at which it was appropriate to commence mediation. The comments by experts indicated that practices varied across States. Several experts reported that, in their jurisdiction, return proceedings would first be initiated and mediation would run in parallel or while the proceedings were stayed. At the same time, many experts noted that it was important that the option of mediation be made available to the parties at an early stage.

Several experts noted the usefulness of mediation in reducing the time taken for resolving applications under the 1980 Convention. Experts further noted that mediation in proceedings under the 1980 Convention should not lead to delays.

The Special Commission proceeded to consider the Guide chapter by chapter, providing comments for revision of the Guide.

Specialised training for mediation

The Permanent Bureau presented information about specialised training for mediation in international child abduction cases and safeguarding the quality of mediation. It noted that of 37 responses to the Country Profiles,²⁸ 11 States indicated that they had legislation dealing with mediator accreditation, and 11 States indicated that they regulated the qualifications of mediators. The overall picture was that standards for mediator qualification and accreditation were not widely legislated, especially in relation to specialised training for family and international disputes. The Permanent Bureau indicated that, given the different approaches taken by States this was not yet an area where

consensus could be found. Therefore, the Guide sought only to give guidance as to the result of initiatives to promote specialised training, without prejudice as to how this would be achieved (legislation, accreditation, etc.).

The Permanent Bureau drew attention to the recommendation that only experienced family mediators who had undergone specific training in international child abduction cases should conduct mediation in those cases. Several experts supported the idea that mediators in cases under the 1980 Convention should have specific training for mediation in international child abduction cases. At the same time, several experts noted that specialised training for international family mediation was still to be developed in many States.

The question of safeguarding the quality of mediation and possibly establishing common standards for evaluating the quality of mediation was also raised.

Access to mediation and assessment of suitability

Observers from various mediation organisations noted the importance of assessing a case's suitability for mediation. Several experts suggested that ideally a mediator should conduct this assessment. Experts had differing views as to whether the assessment of suitability could be conducted by the Central Authority, who represents one of the parties.

The Permanent Bureau drew attention to the suggestion made in the Guide that States should consider making legal aid available for mediation in child abduction cases. Of the 37 Country Profiles²⁹ analysed, only five States indicated that legal assistance was available for mediation, and five indicated that free mediation services were available. However, the Permanent Bureau noted the distinction between providing assistance for legal proceedings and for mediation, having regard to Article 26 of the 1980 Convention, as well as the fact that mediation costs could differ immensely among States.

The Permanent Bureau drew attention to the importance of the child's involvement when it came to rendering the agreement legally binding in some jurisdictions. It noted that out of 37 Country Profiles,³⁰ two States indicated that mediators must see the child and two States responded that the views of the child must be taken into consideration. Eleven States replied that it was up to the discretion of the mediator. In three States, the child's views played no role. All experts insisted on taking into account the interests of the child and, in particular, the need to reassure the child.

Mediation and domestic violence

The Permanent Bureau presented Chapter 10 on mediation and accusations of domestic violence. It recalled that the draft Guide did not take a position on whether cases with domestic violence issues were suitable for mediation, but would draw attention to safeguards to take into consideration where mediation was

Note

²⁸ Question 19.2.

Notes

²⁹ Question 19.3.

³⁰ Question 19.4.

considered appropriate. The Permanent Bureau indicated that mediation should never put the vulnerable party in danger and added that this objective could be achieved by the presence of experienced and specially trained mediators.

A few experts were concerned that mediation may not be suitable in cases involving domestic violence, as the victim often finds himself or herself in a position of inferiority which may affect his or her bargaining power and in such cases, the mediator would not have the judicial power to ensure application of safeguards. However a few observers insisted that parties, including vulnerable parties, must be given autonomy to decide whether to take part in mediation and noted that mediators were experienced in redressing power imbalances and putting safeguards in place.

Rendering the mediated agreement legally binding

The Permanent Bureau drew attention to the importance of properly preparing an agreement to make it legally binding in the different legal systems concerned and noted the practical importance of drafting realistic, practical terms, highlighting the fact that the Guide recommended allowing limited time for the parties to obtain legal advice before finalising the agreement.

Issues of jurisdiction and applicable law

The Permanent Bureau outlined a typical situation, where the mediation would take place in the State to which the child had been taken and an agreement reached covering issues such as custody, contact and relocation. The parties would typically want the agreement to be rendered binding in that State. The 1980 Convention does not contain jurisdictional rules. Further, Article 16 of the 1980 Convention prohibits the requested State from making decisions on the merits of a custody dispute, arguably also impeding the requested State's courts' ability to convert the mediated agreement into a court order. The Permanent Bureau mentioned that the 1996 Convention rules permitting transfer of jurisdiction might offer potential solutions. It also added that the many regional and bilateral jurisdictional rules may need to be analysed.

The Principles on Mediation developed within the Malta Process³¹

The Permanent Bureau referred to the Malta Conferences, held in 2004, 2006 and 2009, involving judges and government officials from a balanced representation of both Contracting and non-Contracting States to the 1980 Convention which sought to increase knowledge and understanding of how different legal systems operated as well as identifying ways of administrative and legal co-operation. Following a proposal of Canada at the Third Malta Conference in 2009, the Council on General Affairs and Policy had given the Permanent Bureau the mandate to establish a Working Party on Mediation in the context of the Malta Process, promoting the development of mediation structures to help resolve cross-border disputes

Note

³¹ Prel. Doc. No 6. Further information about the Malta Process is available on the Hague Conference website.

concerning custody of, or contact with, children. It was noted that the development of mediation services did not replace the development of legal structures, but was seen as complementary.

The Working Party was formed of experts from six Contracting States to the 1980 Convention³² and six non-Contracting States,³³ as well as two independent experts, and was co-chaired by Ms Thomsen (Canada) and Mr Justice Jillani (Pakistan). The Permanent Bureau referred to Preliminary Document No 6 and gave further details as to the Working Party's activities and steps towards the finalisation, in November 2010, of the "Principles for the establishment of mediation structures in the context of the Malta Process" and the "Explanatory memorandum".

A number of experts congratulated the Working Party on its work and welcomed the Principles and the invitation for the establishment of Central Contact Points for international family mediation.

Ms Thomsen noted that ideally Central Contact Points should be developed in the future in non-Hague States to create an international network for co-operation similar to that established among Central Authorities under the framework of the 1980 Convention. She also noted that while mediation may not be the first option for left-behind parents, it might be the only option.

The Permanent Bureau recognised that the development of the Principles and the establishment of the Central Contact Points was only the first step. It referred to the Conclusions and Recommendations of the Council on General Affairs and Policy of April 2011 mandating the Working Party to: (i) facilitate wider acceptance and implementation of the Principles as a basic framework for the process; and, (ii) consider further elaboration of the Principles.³⁴ It noted that the Working Party would report on the progress of its work at the next Council on General Affairs and Policy.

7. Conclusions and Recommendations

Adopted by the Special Commission

New Contracting States

- 1 The Special Commission welcomes the increase since the 2006 meeting of the Special Commission in the number of Contracting States to the 1980³⁵ (from 76 to 85) and 1996³⁶ (from 13 to 32) Conventions, and the

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³² Australia, Canada, France, Germany, the United Kingdom and the United States of America.

³³ Egypt, India, Jordan, Malaysia, Morocco and Pakistan. Morocco has since become a State Party to the 1980 Convention.

³⁴ Conclusion and Recommendation No 8, Council on General Affairs and Policy, 5-7 April 2011.

³⁵ The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereinafter, the "1980 Convention").

³⁶ 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 (hereinafter, the "1996 Convention").

number of States that have signed the 1996 Convention (7). The Special Commission calls for further efforts by Contracting States and by the Permanent Bureau, through the provision of advice and assistance, to extend the numbers of Contracting States.

- 2 The Special Commission suggests that an informal network of experts be arranged to discuss strategies and challenges in the implementation of the 1996 Convention, for example, with discussion carried out through a "listserv" (a closed electronic list).

Central Authority co-operation and communication under the 1980 Convention

- 3 Efforts should be made to ensure that Central Authorities act as a focal point for the provision of services or the carrying out of functions contemplated under Article 7 of the 1980 Convention. When the Central Authority does not itself provide a particular service or carry out a particular function, it should preferably itself engage the body which provides that service or carries out that function. Alternatively, the Central Authority should at least make available information regarding the body, including how to make contact with the body.
- 4 The Special Commission re-emphasises the crucial importance of the Central Authorities' active role in locating the child who has been wrongfully removed or retained. Where the measures to discover the whereabouts of the child within a Contracting State are not taken directly by the Central Authority but are taken by an intermediary, the Central Authority should remain responsible for expediting communications with the intermediary and informing the requesting State of the progress of efforts to locate the child, and should continue to be the central channel for communication in this regard.
- 5 Contracting States that have not already done so are asked to provide their Central Authorities with sufficient powers to request, where needed for the purpose of locating the child, information from other governmental agencies and authorities, including the police and, subject to law, to communicate such information to the requesting Central Authority.
- 6 The Special Commission draws attention to the serious consequences for the operation of the 1980 Convention of failure to inform the Permanent Bureau promptly of changes in the contact details of Central Authorities. In addition, the Permanent Bureau should undertake to remind Central Authorities of their duty in this respect once a year.
- 7 The Special Commission re-emphasises the need for close co-operation between Central Authorities in the processing of applications and the exchange of information under the 1980 Convention, and draws attention to the principles of "prompt responses" and

"rapid communication" set out in the *Guide to Good Practice under the 1980 Convention – Part I – Central Authority Practice*.

- 8 The Special Commission welcomes the increasing co-operation within States between the member(s) of the International Hague Network of Judges and the relevant Central Authority resulting in the enhanced operation of the Convention.
- 9 Central Authorities are encouraged to continue to provide information about and facilitate direct judicial communications including, where there are language difficulties, through the provision of translation services where appropriate and feasible.
- 10 The Special Commission encourages the Permanent Bureau to continue its work (described in Info. Doc. No 4) to modernise the recommended Request for Return model form and to create a form that can be completed electronically. The Special Commission also requests that the Permanent Bureau continue its work to develop a standardised Request for Access form. The Special Commission requests that different language versions of the forms should be made available on the Hague Conference website. For this purpose, States are encouraged to provide the Permanent Bureau with translations.
- 11 The Special Commission encourages the use of information technology with a view to increasing the speed of communication and improving networking between Central Authorities.
- 12 The requesting Central Authority should ensure that the application is complete. In addition to the essential supporting documents, it is recommended that any other complementary information that may facilitate the assessment and resolution of the case accompany the application.
- 13 The Special Commission re-emphasises that –
 - (a) in exercising their functions with regard to the acceptance of applications, Central Authorities should respect the fact that evaluation of factual and legal issues (such as habitual residence, the existence of rights of custody, or allegations of domestic violence) is, in general, a matter for the court or other competent authority deciding upon the return application;
 - (b) the discretion of a Central Authority under Article 27 to reject an application when it is manifest that the requirements of the Convention are not fulfilled or that the application is otherwise not well founded should be exercised with extreme caution. The requested Central Authority should not reject an application solely on the basis that additional documents or information are needed. Close co-operation between the Central Authorities involved to ensure that relevant documentation is made available

and to avoid undue delay in processing applications is strongly encouraged. The requested Central Authority may ask the requestor to provide these additional documents or information. If the requestor does not do so within a reasonable period specified by the requested Central Authority, the requested Central Authority may decide that it will no longer process the application.

- 14 Central Authorities are reminded of the valuable role that the Country Profile for the 1980 Convention is expected to play in enabling States to exchange information on the requirements for making an application in the requested State.
- 15 The Special Commission welcomes the increasingly important role played by Central Authorities in international child abduction cases to bring about an amicable resolution of the issues including through mediation. At the same time, the Special Commission recognises that the use of measures to this end should not result in delay.
- 16 The requested Central Authority should, as far as possible, keep the requesting Central Authority informed about the progress of proceedings and respond to reasonable requests for information from the requesting Central Authority. When the requested Central Authority has knowledge of a judgment or decision made in return or access proceedings, it should promptly communicate the judgment or decision to the requesting Central Authority, together with general information on timelines for any appeal, where appropriate.

Rights of access / contact cases in the context of the 1980 Convention and / or 1996 Convention

- 17 The Special Commission notes that in many Contracting States to the 1980 Convention applications concerning access under Article 21 are now processed in the same way as applications for return.
- 18 Central Authorities designated under the 1980 and / or 1996 Conventions are encouraged to take a pro-active and hands-on approach in carrying out their respective functions in international access / contact cases.
- 19 The Special Commission reaffirms the principles set out in the *General Principles and Guide to Good Practice on Transfrontier Contact Concerning Children* and strongly encourages Contracting States to the 1980 and 1996 Conventions to review their practice in international access cases in light of these principles, where necessary.
- 20 The Special Commission recognises that, pursuant to Articles 7(2) b) and 21 of the 1980 Convention, during pending return proceedings a requested Contracting State may provide for the applicant in the return proceedings to have contact with the subject child(ren) in an appropriate case.

Statistics relating to the 1980 Convention

- 21 The Special Commission acknowledges the great value of the “Statistical analysis of applications made in 2008 under the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*” (Prel. Doc. No 8) carried out by Nigel Lowe and Victoria Stephens, and notes the increase in the number of Hague return applications, the marginally lower proportion of returns and the apparent increase in the time taken to conclude Hague return proceedings.
- 22 The Special Commission reaffirms Recommendation No 1.14 of the 2001 meeting of the Special Commission and Recommendation No 1.1.16 of the 2006 meeting of the Special Commission –

“Central Authorities are encouraged to maintain accurate statistics concerning the cases dealt with by them under the Convention, and to make annual returns of statistics to the Permanent Bureau in accordance with the standard forms established by the Permanent Bureau in consultation with Central Authorities.”
- 23 The Special Commission recommends that one statistical questionnaire be developed that is capable of being completed online, and that combines the data currently sought for INCASTAT (the International Child Abduction Statistical Database) with the data last sought for the statistical analysis of cases arising in 2008. The Special Commission recommends that the Permanent Bureau, in conjunction with certain interested States Parties, explore the possibility of automated data migration to INCASTAT.

Country Profile for the 1980 Convention

- 24 The Special Commission welcomes the development of the Country Profile for the 1980 Convention and the important improvement it makes to the exchange of information between Central Authorities.
- 25 All Contracting States that have not yet completed the Country Profile are strongly encouraged to do so as soon as possible.
- 26 The Special Commission recommends that Contracting States regularly update their Country Profile to ensure that the information remains current. The Permanent Bureau will send an annual reminder to Contracting States in this regard.
- 27 The Country Profile does not replace the Standard Questionnaire for Newly Acceding States. However, all newly acceding and ratifying States are encouraged to complete the Country Profile as soon as possible following their accession to or ratification of the 1980 Convention.

Information and training visits for newly acceding / ratifying States and States considering accession to or ratification of the 1980 Convention

- 28 Immediately following a State becoming Party to the 1980 Convention (or, in an appropriate case, where a State is preparing to do so or has expressed a strong interest in doing so), the State in question should be offered, by way of a standard letter from the Permanent Bureau, the opportunity to visit an experienced Contracting State to the 1980 Convention for the purpose of gaining knowledge and understanding regarding the effective practical operation of the 1980 Convention.
- 29 The Permanent Bureau will maintain a list of all experienced Contracting States willing to accept such a visit and, when a newly acceding / ratifying (or interested) State responds positively to an offer, will provide details of Contracting States prepared to receive the newly acceding / ratifying (or interested) State for the two States concerned to organise and arrange the visit.

Immigration issues in the context of the 1980 Convention

- 30 In order to prevent immigration issues from obstructing the return of the child, Central Authorities and other competent authorities should where possible clarify the child's nationality and whether the child is in possession of the necessary travel documents as early as possible during the return procedure. When making a contact order, judges should bear in mind that there might be immigration issues that need to be resolved before contact can take place as ordered.
- 31 Where there is any indication of immigration difficulties which may affect the ability of a (non-citizen) child or taking parent to return to the requesting State or for a person to exercise contact or rights of access, the Central Authority should respond promptly to requests for information to assist a person in obtaining from the appropriate authorities within its jurisdiction without delay such clearances or permissions (visas) as are necessary. States should act as expeditiously as possible when issuing clearances or visas for this purpose and should impress upon their national immigration authorities the essential role that they play in the fulfilment of the objectives of the 1980 Convention.

Access to justice in the context of the 1980 Convention

- 32 The Special Commission highlights the importance of ensuring effective access to justice for both parties in return and access proceedings, as well as for the child where appropriate, while recognising that the means of ensuring such effective access may vary from State to State, particularly for Contracting States that have made a reservation under Article 26 of the Convention.
- 33 The Special Commission emphasises that the difficulty in obtaining legal aid at first instance or an appeal, or of finding an experienced lawyer for the parties, may result in delays and may produce adverse effects for the child as

well as for the parties. The important role of the Central Authority in helping an applicant to obtain legal aid quickly or to find experienced legal representatives is recognised.

- 34 The Special Commission acknowledges the importance of ensuring effective access to justice for both parties, as well as the child where appropriate, in custody proceedings following the return of the child, while recognising that the means of ensuring such effective access may vary from State to State.

Domestic and family violence in the context of the 1980 Convention

- 35 The Special Commission notes that a large number of jurisdictions are addressing issues of domestic and family violence as a matter of high priority including through awareness raising and training.
- 36 Where Article 13(1) *b*) of the 1980 Convention is raised concerning domestic or family violence, the allegation of domestic or family violence and the possible risks for the child should be adequately and promptly examined to the extent required for the purposes of this exception.
- 37 The Special Commission affirms its support for promoting greater consistency in dealing with domestic and family violence allegations in the application of Article 13(1) *b*) of the 1980 Convention.
- 38 The Special Commission considered three proposals for future work with a view to promoting consistency in the interpretation and application of Article 13(1) *b*) of the 1980 Convention, and in the treatment of issues of domestic and family violence raised in return proceedings under the Convention. These were –
- (a) a proposal that includes, among others, the drafting of a Guide to Good Practice on the implementation of Article 13(1) *b*) (Work. Doc. No 1);
 - (b) a proposal to establish a working group, drawn in particular from the International Hague Network of Judges, to consider the feasibility of developing an appropriate tool to assist in the consideration of the grave risk of harm exception (Work. Doc. No 2);
 - (c) a proposal to establish a group of experts, including in particular judges, Central Authority experts and experts in the dynamics of domestic violence, to develop principles or a practice guide on the management of domestic violence allegations in Hague return proceedings (Prel. Doc. No 9, para. 151).

Further consideration of these proposals was deferred until Part II of the meeting of the Special Commission.

Facilitating the safe return of the child and the accompanying parent, where relevant (1980 and 1996 Conventions)

- 39 The Special Commission recognises the value of the assistance provided by the Central Authorities and other

relevant authorities, under Articles 7(2) *d*), *e*) and *h*) and 13(3), in obtaining information from the requesting State, such as police, medical and social workers' reports and information on measures of protection and arrangements available in the State of return.

40 The Special Commission also recognises the value of direct judicial communications, in particular through judicial networks, in ascertaining whether protective measures are available for the child and the accompanying parent in the State to which the child is to be returned.

41 It was noted that the 1996 Convention provides a jurisdictional basis, in cases of urgency, for taking measures of protection in respect of a child, also in the context of return proceedings under the 1980 Convention. Such measures are recognised and may be declared enforceable or registered for enforcement in the State to which the child is returned provided that both States concerned are Parties to the 1996 Convention.

42 In considering the protection of the child under the 1980 and 1996 Conventions regard should be given to the impact on a child of violence committed by one parent against the other.

43 The Special Commission welcomes the decision of the 2011 Council on General Affairs and Policy of the Hague Conference "to add to the Agenda of the Conference the topic of the recognition of foreign civil protection orders made, for example, in the context of domestic violence cases, and ... [to instruct] the Permanent Bureau to prepare a short note on the subject to assist the Council in deciding whether further work on this subject is warranted." The Special Commission recommends that account should be taken of the possible use of such orders in the context of the 1980 Convention.

Rights of custody (1980 Convention)

44 The Special Commission reaffirms that Convention terms such as "rights of custody" should be interpreted having regard to the autonomous nature of the Convention and in the light of its objectives.

45 In relation to the autonomous Convention meaning of the term "rights of custody", the Special Commission takes notice of *Abbott v. Abbott*, 130 S.Ct. 1983 (2010), which supports the view that a right of access combined with a right to determine the residence of the child constitutes a "right of custody" for the purposes of the Convention and acknowledges that it is a significant contribution towards achieving consistency on an international level regarding its interpretation.

46 The Special Commission recognises the considerable utility of the Country Profile and direct judicial communications in helping to determine the law of the State of the child's habitual residence for the purpose of establishing whether an applicant in return proceedings has "rights of custody" within the meaning of the Convention.

Jurisprudence of the European Court of Human Rights (1980 Convention)

47 The Special Commission notes that the European Court of Human Rights has in decisions taken over many years expressed strong support for the 1980 Convention, typified by a statement made in the case of *Maumousseau and Washington v. France* (No 39388/05, ECHR 2007 XIII) that the Court was "entirely in agreement with the philosophy underlying the Hague Convention".

48 The Special Commission notes the serious concerns which have been expressed in relation to language used by the court in its recent judgments in *Neulinger and Shuruk v. Switzerland* (Grand Chamber, No 41615/07, 6 July 2010) and *Raban v. Romania* (No 25437/08, 26 October 2010) in so far as it might be read "as requiring national courts to abandon the swift, summary approach that the Hague Convention envisages, and to move away from a restrictive interpretation of the Article 13 exceptions to a thorough, free-standing assessment of the overall merits of the situation" (per the President of the European Court of Human Rights, extra-judicially (Info. Doc. No 5)).

49 The Special Commission notes the recent extrajudicial statement made by the President of the European Court of Human Rights (see above) in which he states that the decision in *Neulinger and Shuruk v. Switzerland* does not signal a change of direction for the court in the area of child abduction, and that the logic of the Hague Convention is that a child who has been abducted should be returned to the State of his / her habitual residence and it is only there that his / her situation should be reviewed in full.

The child's voice / opinions in return and other proceedings (1980 and 1996 Conventions)

50 The Special Commission welcomes the overwhelming support for giving children, in accordance with their age and maturity, an opportunity to be heard in return proceedings under the 1980 Convention independently of whether an Article 13(2) defense has been raised. The Special Commission notes that States follow different approaches in their national law as to the way in which the child's views may be obtained and introduced into the proceedings. At the same time the Special Commission emphasises the importance of ensuring that the person who interviews the child, be it the judge, an independent expert or any other person, should have appropriate training for this task where at all possible. The Special Commission recognises the need for the child to be informed of the ongoing process and possible consequences in an appropriate way considering the child's age and maturity.

51 The Special Commission notes that an increasing number of States provide for the possibility of separate legal representation of a child in abduction cases.

Guides to Good Practice (1980 and 1996 Conventions)

- 52 The Special Commission recognises the value of all parts of the Guide to Good Practice under the 1980 Convention and the *General Principles and Guide to Good Practice on Transfrontier Contact Concerning Children* under the 1980 and 1996 Conventions. It encourages the wide dissemination of the Guides. The Special Commission encourages States to consider how best to disseminate the Guides within their States and, in particular, to the persons involved in implementing and operating the Conventions.

The Practical Handbook on the 1996 Convention

- 53 The Special Commission welcomes the revised Draft Practical Handbook on the 1996 Convention (Prel. Doc. No 4) as a valuable document which provides beneficial guidance to persons involved in implementing and operating the Convention.
- 54 The Special Commission recommends that the Permanent Bureau, in consultation with experts, make amendments to the revised Draft Practical Handbook, in light of the comments provided at the Special Commission meeting.
- 55 The Special Commission looks forward to the publication of the Practical Handbook on the 1996 Convention following this final revision process.

INCADAT (the International Child Abduction Database) and INCASTAT: extension to the 1996 Convention

- 56 The Special Commission recognises the great value of INCADAT and welcomes further exploration of the extension of INCADAT to the 1996 Convention. The Special Commission suggests further exploration of the desirability and feasibility of the extension of INCASTAT to the 1996 Convention.

Mediation

- 57 The Special Commission notes the many developments in the use of mediation in the context of the 1980 Convention.
- 58 The Special Commission welcomes the draft Guide to Good Practice on Mediation under the 1980 Convention. The Permanent Bureau is requested to make revisions to the Guide in light of the discussions of the Special Commission, taking account also of the advice of experts. Consideration will be given to the inclusion of examples of mediated agreements. The revised version will be circulated to Members and Contracting States for final consultations.
- 59 The Guide will be published in a form which allows updating.
- 60 The Special Commission expresses appreciation for the work carried out by the Working Party on Mediation

in the context of the Malta Process and welcomes the *Principles for the establishment of mediation structures in the context of the Malta Process* (Prel. Doc. No 6).

- 61 The Special Commission notes the efforts already being made in certain States to establish a Central Contact Point in accordance with the Principles. States are encouraged to consider the establishment of such a Central Contact Point or the designation of their Central Authority as a Central Contact Point. The contact details of Central Contact Points are available on the Hague Conference website.
- 62 The Special Commission notes the request of the 2011 Council on General Affairs and Policy of the Hague Conference that the Working Party should continue to work on the implementation of mediation structures and, in particular, with the support of the Permanent Bureau, and in light of discussions in the Special Commission –
- “to facilitate wider acceptance and implementation of the Principles as a basic framework for progress;
 - to consider further elaboration of the Principles; and,
 - to report to the Council in 2012 on progress”. (See the Conclusions and Recommendations adopted by the Council on General Affairs and Policy of the Conference (5-7 April 2011).)

Article 15 of the 1980 Convention

- 63 The Special Commission records the problems, including delays, that were identified in the operation of Article 15. It recommends that the Permanent Bureau give further consideration to the steps which may be taken to ensure a more effective application of the Article.

Judicial communications (1980 Convention)

- 64 The Special Commission welcomes the extraordinary growth in the International Hague Network of Judges in the period from 2006 to 2011 which now includes more than 65 judges from 45 States. States that have not yet designated Hague Network judges are strongly encouraged to do so.
- 65 The Special Commission also welcomes the actions taken by States and regional organisations nationally and regionally regarding the establishment of judicial networks and the promotion of judicial communications.
- 66 The Special Commission emphasises the importance of direct judicial communications in international child protection and international child abduction cases.

Respective roles of judges and Central Authorities

- 67 The Special Commission reaffirms Recommendations Nos 1.6.4 and 1.6.5 of the 2006 meeting of the Special Commission –
- “The Special Commission recognises that, having

regard to the principle of the separation of powers, the relationship between judges and Central Authorities can take different forms.

The Special Commission continues to encourage meetings involving judges and Central Authorities at a national, bilateral or multilateral level as a necessary part of building a better understanding of the respective roles of both institutions.”

Emerging Guidance and General Principles for Judicial Communications

- 68 The Special Commission gives its general endorsement to the Emerging Guidance and General Principles for Judicial Communications contained in Preliminary Document No 3 A, subject to the Permanent Bureau revising the document in light of the discussions within the Special Commission.

Legal basis for direct judicial communications

- 69 Where there is concern in any State as to the proper legal basis for direct judicial communications, whether under domestic law or procedure, or under relevant international instruments, the Special Commission invites States to take the necessary steps to ensure that such a legal basis exists.
- 70 The Special Commission notes that the question of the desirability and feasibility of binding rules in this area, including a legal basis, will be considered during Part II of the Sixth Meeting of the Special Commission.

Effective secured electronic communications

- 71 The Special Commission notes the exploratory work of the Permanent Bureau regarding the implementation of a pilot project for effective secured electronic communications, in particular for members of the International Hague Network of Judges.

Actions to be undertaken by the Permanent Bureau

- 72 In relation to future work, the Permanent Bureau in the light of the observations made during the meeting will –
- (a) explore further the development of secured systems of communications, such as secured video-conferencing, in particular for members of the International Hague Network of Judges;
 - (b) continue to develop contacts with other judicial networks, to promote the establishment of regional judicial networks, as well as consistency in the safeguards applied in relation to direct judicial communications;
 - (c) continue to maintain an inventory of existing practices relating to direct judicial communications in specific cases under the 1980 Convention and with regard to international child protection; and,
 - (d) draw up a short information document for judges on direct judicial communications.

The Judges' Newsletter on International Child Protection

- 73 The Special Commission supports the continued publication of *The Judges' Newsletter on International Child Protection* and expresses its appreciation to LexisNexis for its support in publishing and distributing the Newsletter.
- 74 The Special Commission urges that every effort should be made to make the Newsletter available in Spanish and encourages States to consider providing support for this purpose.

Conferences

- 75 The Special Commission re-emphasises the importance of inter-disciplinary judicial conferences and seminars and the contribution they make to the effective functioning of the 1980 and 1996 Conventions. The Special Commission encourages States to support and provide continued funding for such meetings and other meetings in support of the consistent application of the Conventions.

Case Comments and Perspectives³⁷

A Brief Comment on *Neulinger and Shuruk v. Switzerland* (2010), European Court of Human Rights

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The European Court of Human Rights decision in the *Neulinger and Shuruk v. Switzerland* (application No 41615/07, 6 July 2010) case is an unfortunate development in the jurisprudence relating to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abductions* (“the Hague Convention”). The European Convention on Human Rights contains various provisions that are relevant in Hague child abduction cases. In particular, Article 8 (1), providing for a right to respect for family life, has been the subject of opinions by the European Commission, and later the European Court of Human Rights. In earlier cases, an abductor’s complaint that an order of return interfered with family life was rejected where national authorities had ordered return of the child pursuant to their obligations under the Hague Convention. Indeed, in several cases, countries have been found in breach of Article 8 for failing to carry out the provisions of the Hague Convention, and in particular for unjustified delays.

Neulinger represents a substantial setback in various ways. The Swiss Federal Court, reversing the decision of a district and appellate cantonal court, had ordered the child returned by the end of September 2007. Proceedings for enforcement of that order were never commenced because shortly thereafter proceedings were brought in the European Court of Human Rights by the abductor and her child, challenging the return order as an interference with family life under Article 8. The President of the Chamber indicated to the Swiss Government that the return order should not be enforced while those proceedings were pending. In June 2009 a Lausanne District Court provisionally granted sole parental authority to the mother for purposes of obtaining identity papers for the child.

In January 2009, a seven-person “initial” Chamber decided 4-3 that there had been no violation of Article 8; the case was then taken up by the Grand Chamber, and in July, 2010, it determined that Switzerland would be in violation of Article 8 if the order of return were now enforced.

The Grand Chamber focused on a point agreed upon by each of the Swiss courts that heard the Hague application – that Article 13 (1) *b*) of the Hague Convention (providing

Note

³⁷ The Permanent Bureau welcomes comments on recent significant cases and developments. The views expressed are those of the author, not of the Permanent Bureau of the Hague Conference or its Member States.

a defense to return if there is a grave risk that return would expose the child to harm or otherwise create an intolerable situation) would justify a refusal to return if the mother could not return with the child to Israel. Although the Swiss cantonal courts determined that the mother’s refusal to return was justified, the Swiss Federal Court and the initial chamber of the European Court of Human Rights found that the mother was in fact able to return with the child to Israel and commence proceedings there. Nonetheless, the Grand Chamber of the Court ruled that it would be an interference with her rights to require her to return to Israel with the child. The European Court of Human Rights conceded that a “margin of appreciation” must be afforded to national authorities to make that determination (Para. 145), but it held that it must assess the situation at the time of the enforcement of the return order and not when the return order was made. Analogizing to its case-law on the expulsion of aliens, the Grand Chamber determined for itself that the “settlement” of the child in the new country and the difficulties to an accompanying parent must be taken into account in making that assessment.

A particular troubling aspect of the opinion is its reliance (in Para. 145-47) on Article 12 of the Hague Convention to justify non-return. Article 12 provides that if a case is commenced after one-year of the wrongful removal or retention, return is not required if the child is settled in its new environment. In *Neulinger*, Hague proceedings were instituted in Switzerland well within a year of the abduction, even though it took almost a year to learn the whereabouts of the child. But the Grand Chamber applies the “well-settled” concept to the time the child has been in Switzerland since his abduction in 2005, despite the fact that the delay in the enforcement of the return order can be traced to the proceedings in the European Court itself and its direction not to enforce the 2007 order. Would-be abductors may well take heart from the message sent by *Neulinger*: abduct, hide, and prolong proceedings so that the child can be considered “well-settled”.

There is also a lot of “talk” about “best interests” of the child in *Neulinger*. The Grand Chamber insists that the child’s best interests “must be assessed in each individual case”. It concedes that the task is one for the “domestic authorities”, but emphasizes that the “margin of appreciation” is subject to a European supervision. The Court maintains that it has the responsibility to “ascertain whether the domestic courts conducted an in-depth examination of the entire family situation and of a whole series of factors,” as to what would be best for an abducted child in the context of an application for return. But that misconceives the role of a court hearing a petition for return, which under the Hague Convention is to ensure the child’s safety and well-being in making an order of return. It is for the courts of the habitual residence to examine the “entire family situation” in making the appropriate custodial decision. Indeed, the Swiss Federal Court had it exactly right: its obligation was to make an appropriate inquiry into the hardships that would confront the abductor if she returned and having determined that the refusal to return was not justified, ordered returned. The Grand Chamber’s substitution of its views with respect to the “disproportionate interference” with the mother’s life

resulting from a return order is unfortunate and opens the door to increased abductions by custodial parents.

One cannot ignore the backdrop to the *Neulinger* case and the impact on relocation issues. The abductor-mother desired to relocate to Switzerland, but the Israeli courts refused to lift the *ne exeat* order to allow her to leave Israel and travel with her son to Switzerland. If she were now to return to Israel with the child, it is unlikely that the Israeli courts would permit her to relocate, even were she to continue to keep custody. And it is the relocation issue that lies behind an increasing number of abductions by

custodial parents. Unfortunately, *Neulinger* gives comfort to an abducting parent – maybe one who has been refused the right to relocate – by endorsing the possibility of relocating “unilaterally” and insisting upon the right to remain (“Having Swiss nationality, she is entitled to remain in Switzerland”, says the Grand Chamber).

The particular procedural posture of *Neulinger* – a provisional order by the European Court of Human Rights itself that effectively stayed the federal court’s order of return two years previously – may limit the case to its facts. It would be unfortunate if it were to have any broader impact.

Judicial Communications

Report on the Training of Moroccan judges on the 1980 Hague Child Abduction Convention

Catherine GAUDET
French retired judge

A training session was held on 15-17 December 2010 at the Senior Legal Staff Training College of Morocco regarding practical implementation of the 1980 Hague Convention on the Civil Aspects of International Child Abduction, which Morocco has recently acceded to. That training session, directed mainly at judges, was organised by the Supreme Court of Morocco in collaboration with TAIEX and the Hague Conference.

I enjoyed the good fortune of being on the panel of coaches, which also included Philippe Lortie, First Secretary, and Nicolas Sauvage, Legal Officer of the Conference.

That good fortune was first of all the opportunity to pass on legal knowledge backed by thirty years' experience in applying the Convention. You are aware of the remarkable teaching skills developed by the Conference: documentation presented orally with slide-shows, repeated in full in French and Arabic paper versions, high-quality simultaneous interpretation, a genuine opportunity to question and discuss, sub-group hypothetical case studies pooled at full sessions, presentation of the INCADAT database, etc.

All the fundamental issues were reviewed: the role of Central Authorities, the judges, provisional and preventive measures, the criteria for the return ruling, its enforcement, but also the role of international family mediation and the Judges' Network.

A comprehensive environment was presented to the Moroccan judges, ranging from theoretical knowledge to methodological tools.

That good fortune was also everything we received in return. I discovered a body of open-minded judges, made up of young and dynamic men and women, fluent in French, all highly motivated by the acquisition of that new knowledge. I was especially impressed by the earnestness of the work, the quality of the methodology applied to the various case studies and the concern for taking all the relevant factors into account, so that the real issues were raised.

Pondering cases of split families with our Moroccan colleagues highlighted their commitment to promoting the new Family Code of 2004. The family courts have been established and are applying the new rules. Applications for no-fault divorce are being presented in large numbers, often by the wives. The time allowed for trying cases is strictly limited, and observed.

The interests of the child and the parents' equal rights are being taken into account. The family judges are accordingly playing an essential part in the country's modernisation.

All this against the backdrop of Morocco's wonderful hospitality, lively, warm and food-loving!

The experience is a favourable omen for the Convention's application and for Moroccan judges' cooperation in the Judges' Network.

The Dutch Office of the Liaison Judge International Child Protection (BLIK)

Report from 1 January 2010 to 1 January 2011

1. Introduction

The following article is a summary of the Report on the activities of the Dutch Office of the Liaison Judge International Child Protection (BLIK) from January 2010 to January 2011. A first presentation of the BLIK's activities was made in Volume XV of the Judges' Newsletter.

BLIK has performed the duties of a liaison judge since its creation on 1 January 2006. It has since then acquired a position of permanent importance as a centre of expertise and an advisory body in the field of international child protection for judges in Family Divisions of Dutch District Courts. It is a mainstay of the Family Division of the District Court of The Hague which over the years has heard a large number of cases relating to aspects of private international law.

2. Developments in 2010

2.1 Preliminary draft amendment

In a first chapter, the report discusses the developments in 2010. On 1 April 2010, the Dutch Ministry of Justice presented to Parliament a preliminary draft amendment to the Dutch International Child Abduction and Child Protection Implementation Acts, aiming to improve the position of those directly involved with international child abduction. The preliminary draft aims to considerably speed up the return application procedure by concentrating jurisdiction in one or a limited number of courts, both at first instance and on appeal. The draft amendment also proposes to remove the Central Authority's powers of legal representation in child abduction cases.

2.2 Mediation pilot

Another important development in 2010 was that the District Court of The Hague ran a pilot on cross-border mediation in international child abduction cases from 1 November 2009 until 1 May 2010. In summary, the return procedure during the pilot is as follows. Within six weeks after the submission to the Central Authority of the application for return it has

an interview with the parent(s) and arranges a mediation session if possible. If the parents fail to reach a settlement, the return application will be brought before the District Court. The proceedings before the District Court also take no more than six weeks. First of all, a pre-trial review takes place within two weeks from the filing of the application. The judge at this pre-trial review explores the possibility of mediation if it has not already taken place at the preliminary stage. Mediation should take place within two weeks. The mediation is conducted by two professional mediators, preferably a lawyer and a psychologist. If the parents fail to reach a settlement within two weeks, a second hearing will take place before the full court, followed by a decision on the return application within two weeks. An appeal to the Court of Appeal may be lodged within two weeks. A hearing will take place within two weeks from the lodging of the appeal, and the Appeal Court decision will follow two weeks later. Consequently, the result is a sort of 'pressure cooker procedure' which lasts no more than 18 weeks (3x6).

The Verwey-Jonker Institute (for social scientific research) has evaluated the mediation pilot. The results turn out to be positive. The report³⁸ finds that ten cases were referred to mediation in the reference period, leading to full or partial settlements in six cases. These mediations took place either at the pre-hearing stage after some intervention or after the pre-trial reviews. The Central Authority has referred four out of fifteen incoming cases to mediation. In two cases this has resulted in full settlements and in the third case in a partial settlement, whilst in the fourth case no agreement could be reached. The District Court referred relatively more incoming cases to mediation. Out of twelve incoming cases, six were referred to mediation. In one case parties reached full agreement, in two cases partial agreement, and in the remaining three cases no settlement could be reached. In these latter two categories further hearings before the full court proved necessary. If parties had reached a partial settlement this usually concerned their contact with the other parent after the court's decision, be that either the granting or refusal of a return order. If the number of cases referred to mediation appears small, it should be kept in mind that the number of return applications in a year is also limited. After the pilot had officially ended (1 May 2010), several cases were heard which had been filed at the time the pilot was still running and which therefore qualified for free mediation. The results in those cases, however, could not be taken into account in the analysis by the Verwey-Jonker Institute. Remarkably enough, it is in exactly these cases that a full settlement was most often reached. This may be attributable to the broader experience gained by the mediators in these very complex cases.

Note

³⁸ I. Bakker e.a., *Evaluatie pilot internationale kindertvoering*, Utrecht: Verwey-Jonker Institute 2010.

3. The legal framework

Chapter 2 of the report presents the legal framework in which the BLIK operates: the 1980 Hague Convention on the Civil Aspects of International Child Abduction; the 1980 European Custody Convention³⁹; the Brussels IIa Regulation⁴⁰; the 1996 Hague Child Protection Convention⁴¹; the Dutch International Child Abduction Implementation Act and the Dutch International Child Protection Implementation Act.

4. The duties and activities of BLIK

Chapter 3 outlines the duties and activities of BLIK, which main task is to support the Liaison Judges in the performance of their duties. The Liaison Judge serves as a contact point for Dutch judges who hear child abduction cases or other cases involving aspects of international child protection, and who want to contact a foreign judge, as well as for foreign judges who want to contact a Dutch judge in this respect. BLIK also serves as a help desk for Dutch judges and runs a website which is only available to the judiciary.

5. Cases handled by BLIK

Chapter 4 gives an overview of the cases handled by BLIK. In 2010 thirty four return applications and other cases involving aspects of international child protection were filed before the District Court of The Hague. Mediation resulted in full settlements between the parents in seven abduction cases, after which return applications were withdrawn. Liaison requests were made to BLIK by 8 foreign judges, mostly from Member States of the European Union. The BLIK Help desk answered 12 information requests by Dutch District Courts. The Liaison Judges and other staff members of BLIK attended 11 conferences and international meetings in 2010.

6. Other

Finally, the report also provides information in chapters 5 and 6 concerning the staff and finances of BLIK. For a complete version of the report, we invite you to contact BLIK at Liaisonrechter.internationale.kinderbescherming@rechtspraak.nl

Notes

³⁹ European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children of 20 May 1980.

⁴⁰ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

⁴¹ 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.

Other Regional Perspectives⁴²

Battered Mothers Seeking Safety Across International Borders: Examining Hague Convention Cases Involving Allegations of Domestic Violence

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Transnational relationships have become more common in the past 30 years, and negotiating the dissolution of these relationships is increasingly complicated. Women whose husbands are abusive often turn to family members for assistance in coping with the abuse and repairing their lives. Mothers who flee with their children may have few other options to ensure their safety and that of their children in the face of their partner's violence, yet they remain vulnerable to being legally treated as an "abducting" parent when returning to family means leaving one nation for another. Our study, funded by the U.S. National Institute of Justice, focused on the situations of women who experienced intimate partner abuse in another country. They came to the United States in an effort to protect themselves and their children, but then faced U. S. court actions under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.

Our research goal was to obtain perspectives from battered mothers, attorneys, judges and others involved in Hague petition cases heard in U.S. courts. In this article, we report a selection of the information we obtained from in-depth interviews with 22 battered women who had come to the U.S. with their children and subsequently had a Hague petition filed against them by a left-behind father. We also interviewed 14 of the mothers' attorneys, nine attorneys who had represented left-behind fathers, five other specialists such as expert witnesses and reviewed 47 published decisions issued by American judges. For full details on the complete study, please see our final report available at <http://www.haguedv.org>.

Description of Families Studied

The parents in this study were generally in their late 30's, most mothers were white, one was African American and six were Latina. Over half of the women had a college degree, and almost all of the left-behind fathers were highly educated.

Note

⁴² The Permanent Bureau welcomes comments and different viewpoints. The views expressed are those of the authors, not of the Permanent Bureau or the Hague Conference or its Member States.

Parents had been in a relationship with each other for, on average, over 10 years. All but one of the women was legally married to the father of their children, however, six (27.3%) of the women were legally divorced from the men at the time their ex-husbands filed a Hague petition. Forty-five children were involved in the Hague petitions, of which almost two-thirds (63.2%) were boys. The children tended to be young, with an average age of 6.42 years and ranged from one to 15 years old.

Mothers in the study came to the U.S. primarily from countries on the northern and eastern coasts of the Mediterranean (n=11; 49.9%), from Northern European countries (n=6; 27.24%) and Latin America (n=5; 22.7%). Five women (22.7%) were immigrants to the United States, while 17 (77.3%) were U.S. citizens. The majority of the men were not U.S. citizens.

Mother and Child Exposure to Violence

The women in the study reported a variety of severe abusive experiences towards themselves, and sometimes towards their children. These experiences included emotional terrorizing, physical assault, threats to life, intentional isolation, economic control such as withholding finances, immigration threats (i.e., destroying passports) and rape. In the following excerpt, one of the mothers recalls a situation that exemplified the kind of emotional terrorizing and threat to life that many of the women experienced.

"One night, he put a weapon to my head. I saw it on my right temple. I saw from the corner of my eye, how he was pulling the trigger. When he put it to my head, I asked him to not to play around like that, please. I tried not to move an inch because I thought that if I moved, he would shoot me. I closed my eyes and heard the 'click.' Then he took the weapon away from my temple and laughed. He said, 'You're so dumb. You're an ass. It's not even loaded.' I went up to my room crying, and for days after that I kept thinking what if the weapon would have had only one bullet?"

Violence in these families was not limited to the women, although all of the women experienced some combination of the types of abuse described above. In eight families, the children were themselves the intentional targets of their father's violence, or were harmed during a physical attack on their mother. The mother's story below illustrates the kinds of physical abuse experienced by the children in these families.

"It must have been Christmas day, or just after Christmas. My older son did something to my daughter's doll and it got [my husband] into such a tirade that he went to go beat [my son] with that doll. I got in between him and [my son], and kept trying to push [my husband] away from [my son], and [my husband], then, beat me, beat [my son]."

Regardless of whether they were the intended victims of their fathers' abuse, many children in these families experienced significant levels of fear, even long after they were physically

separated from their fathers. Even those children who were not directly victimized by their fathers had ongoing emotional difficulties and fearfulness. The mothers attributed these reactions to their children's witnessing of the violence and of the mother's emotional response to the abuse.

Coercion, Violence and Habitual Residence

The purpose of the Hague Convention is to return children to their "habitual residence" as quickly as possible since the priority is to have courts in the country where the child has usually resided make decisions about issues of custody and visitation upon the dissolution of a marriage/ partnership. An underlying assumption of the habitual residence concept is that both parents voluntarily agree to reside in another country with their children. U.S. courts are divided on whether to evaluate the shared intent between parents to reside in a certain place as indicative of habitual residence (Vivatvaraphol, 2009). Many judges have suggested that habitual residence must demonstrate some element of voluntary agreement between parents. However, forty percent of the U.S. citizens in this study were coerced in some manner to either return to their husband's country, or to stay there once the family had relocated. For example, one mother described her relocation to the other country as follows:

"I moved with my husband and my two children to [his country] [...] and the day after we arrived there, I realized that I had made a mistake. Our marriage had been falling apart, and literally the day after we arrived, I told him that I had made a mistake and I wanted to go home, and I wanted a divorce. What I didn't know was that before we had moved, he had set it up so that I couldn't go home. [...] He had set up, with his family, a meeting with an attorney, which he did immediately, got a restraining order against me, and I could not leave the country. I was trapped."

A few months later this mother and her children travelled to the U.S. on what was to be a vacation but what she secretly planned as a permanent return to the U.S. After a Hague petition was filed, the U.S. court ordered the children returned to the other country.

The question of the child's habitual residence is far more complex than a simple calculus of time or a child's attachment to social institutions. Children may have spent several years in another country. However, their residency may be rooted in efforts of the father to entrap the mother and children in the other country. As a result, the issue of habitual residence in these families should be carefully explored. To determine the child's habitual residence without acknowledging the dynamics of abuse may further perpetuate harm to the women and children.

Relationship of Domestic Violence to the Hague Decision

The majority of mothers we interviewed had their children returned to the other country (n= 12; 54.5%). In seven of these cases, the return to the other country meant return

to the father. In three remaining cases, the judge permitted the children to remain with their mothers on return to the other country; in two cases, it was unclear who had physical custody of the child after the return.

We compared whether a child was ordered returned to the left-behind parent's country or allowed to stay in the U.S. based on categorizing the violence experienced in the household into four groups: (1) mother and child both physically harmed (8 families), (2) mother physically harmed and child exposed to the violence (7 families), (3) mother physically harmed, child not exposed to the violence (3 families), and (4) emotional terrorizing with no or minimal violence (3 families). One other family's pattern was unclear. By grouping families in this way, a distinct pattern was seen in these cases. Families where women and children were both physically harmed were the most likely to be allowed to remain in the U.S. (6 of 8 had return denied). Judges were most likely to return the children to the other country (usually to the father) when serious domestic violence had occurred and the child was exposed to it, but the physical abuse was only directed towards the mother (6 of 8 had children returned). Judges were also less likely to allow the children to remain in the U.S. with their mother when emotional terrorizing in the absence of physical violence occurred, and when the abuse situation was unclear.

Finally, in four cases where children were returned to the country of the left-behind father, undertakings agreed to by the father outlined steps for protecting the children and their mothers upon their return. Mothers reported that none of these undertakings were implemented. This is consistent with Reunite International's (2003) finding that in cases decided in the United Kingdom, none of the undertakings protecting children on return were implemented.

Discussion

Women and children in this study usually faced severe and sustained exposure to domestic violence prior to the mothers' decision to flee the other country. For the majority of the women, this violence included serious physical assaults against them, coupled with a degree of threatening behavior that led the women to believe that their lives and/or those of their children were in danger. They were usually isolated from family members and friends, prevented by their husbands from having independent access to financial resources and/or exposed to threats based on their immigrant status. These patterns are consistent with the larger literature on the experience of woman battering and coercive control (see Stark, 2007).

Sometimes, children saw fathers assault mothers in ways that could have resulted in the mother's serious injury or death. Based on current definitions of children's exposure to domestic violence, 86.4% of the children in this sample were exposed to domestic violence. In most cases a child's exposure to domestic violence was not a sufficient reason to prevent their return to the other country, and their father. Despite the severity of abuse happening in these families, most U.S. judges in these Hague cases did not acknowledge

that exposure to this violence could constitute a grave risk of physical and especially psychological harm to the children, providing an exception to their return.

The majority of the women in this study had their children returned to the other country, and most of the time this meant return to the abusive husband. A sizable minority of mothers we interviewed indicated they were tricked into relocating, immediately prevented from returning when they arrived in the other country, or forced by potentially life-endangering threats to accompany their husband to the other country. Although the Hague Convention is clearly understood to deal with the jurisdictional issue of which court should hear cases regarding the child, and *not* as a child custody case, the fact that returned children are usually given to fathers in the other country means that these decisions act as *de facto* custody rulings. Fathers in the other country often used the fact that children were returned by a U.S. judge as proof that the mother was an unfit parent who had acted illegally in fleeing with the children.

Over the past two decades, numerous studies have indicated that children who are exposed to adult domestic violence – even when this exposure consists of witnessing or being aware of the violence, but not direct physical harm – can show similar levels of psychological problems as children who are the victims of direct physical abuse (Bogat et al., 2006; Kitzmann et al., 2003; Wolfe et al., 2003). The original framers of the Hague Convention provided for exceptions to the child's return based on a grave risk of physical or psychological harm to the child, return represents an intolerable situation for the child or a violation of the child's human rights, among others. Many judges appeared to take a narrow view of these exceptions despite two decades of mounting social science evidence regarding the grave psychological risks created for children exposed to domestic violence.

Battered women's flight across national borders raises two paradoxical issues. First, women are traditionally castigated for staying with battering husbands. Since the earliest writing on battered women many have asked, "Why does she stay?" For mothers who finally flee the batterer,

but end up crossing an international border to do so, the ironic focus becomes the exact opposite: "Why did she leave?" Second, under the current policies and procedures emanating from the Hague Convention, the law indicates that women should stay in the country where they are residing with their children, even in the face of serious abuse, under the assumption that services and resources are available to assist her in the other country (services which were not available to the majority of women in this study). Ultimately, the implication of the Hague Convention is that women can either choose to save themselves and leave their children behind if they need to escape the violence, or stay in the other country and risk trauma, injury and potentially death at the hands of their abuser in order to seek custody of their children back in the country of habitual residence. As U.S. Supreme Court Justice Stephen Breyer asked in the recent *Abbott v. Abbott* hearing: "She has to choose between her life and her child – is that what this convention is aimed at?"

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International Child Protection Conferences and Seminars



Participants to the Mexico Inter-American Meeting of International Hague Network Judges and Central Authorities on International Child Abduction, México City, Mexico.

Mexico Inter-American Meeting of International Hague Network Judges and Central Authorities on International Child Abduction

México City, Mexico, 23-25 February 2011

On 23-25 February 2011, seventy-three Judges, Central Authority officials, and other experts from Argentina, Bahamas, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, Spain, United States of America, Uruguay, and Venezuela, and from the Organization of American States (OAS), IberRed, the Inter-American Children's Institute (IIN), the Ministry of Foreign Affairs of Mexico, as well as the Hague Conference on Private International Law, met in Mexico City to discuss how to improve, among the countries represented, the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (the 1980 Hague Child Abduction Convention) and the *Montevideo Convention of 15 July 1989 on the International Return of Children* (the 1989 Inter-American Convention) and the implementation 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 (the 1996 Hague Child Protection Convention).

Participants welcomed the following achievements and agreement was reached on the following Conclusions and Recommendations:

Achievements made in the Inter-American region since the Monterrey December 2004 Judicial Seminar

Examples of achievements relating to the judiciary

1. An impressive number of regional designations to the International Hague Network of Judges was recognised. Almost all States in the Inter-American region are represented on the Hague Network.
 2. A regional Model Law on Procedure for the Application of the Conventions on International Child Abduction was developed by a group of experts gathered by the Hague Conference on Private International and the Inter-American Children's Institute (IIN) from 19 to 21 September 2007.
 3. Several States in the region have implemented the Model Law on Procedure for the Application of the Conventions on International Child Abduction.
 4. Rules of procedure have been amended in a number of States with a view to increase the speed of procedures. In some cases, grounds for appeal have been limited. In some States the number of hearings for a return application has been reduced to a single hearing, where possible.
 5. Concentration of jurisdiction has been achieved in a number of jurisdictions.
 6. National networks of judges have been established or are being established in a number of States that, among other things, will support the Hague International Network of Judges and / or IberRed.
 7. Direct judicial communications in specific cases have increased. The recent use in a small number of States of secured videoconferencing to facilitate such communications was welcomed.
 8. Judicial seminars and conferences have been organised nationally and regionally in order to disseminate information, increase awareness, and provide training to judges.
- #### **Examples of achievements relating to Central Authorities**
9. A number of initiatives to promote agreed and amicable solutions were highlighted.
 10. Efforts to increase communications and synergies between national actors responsible for the implementation and

operation of both the 1980 Hague Child Abduction Convention and the 1989 Inter-American Convention were welcomed.

11. One Central Authority is in the process of implementing the iChild case management software provided for free by WorldReach Software in co-operation with the Government of Canada.
12. One Central Authority has significantly increased its human resources to deal with its high volume of cases.
13. One Central Authority has conducted a national statistical survey on international child abduction in order to respond better to current and future pressures on the child protection system.
14. One Central Authority systematically sends a follow-up reminder letter to judges seized of return applications after six weeks.
15. A practice by a Central Authority of identifying the member of the International Hague Network of Judges in its State when forwarding the application to the court, was noted.

Other examples of achievements

16. Full support and recognition were expressed for the Liaison Legal Officer for Latin America established in 2005 and for the recent addition of a part-time assistant to the Liaison Legal Officer.
17. The recent development of the Spanish webpage of the Hague Conference and the availability of the INCADAT database in Spanish were underlined as essential tools for the region.
18. The publication in Spanish of Guides to Good Practice on Central Authority Practice, Implementing Measures, Preventive Measures and Enforcement under the 1980 Hague Child Abduction Convention and Trans-frontier Contact concerning Children were applauded and continued support was expressed for the publication in Spanish of the Judges' Newsletter.
19. The recent development of secured communication systems such as the secured communication system offered by the Organisation of American State (OAS) and the IIN, and the Iber@ system offered by IberRed, were welcomed. Continued efforts to promote the implementation and the use of iChild and the INCASTAT database were also welcomed.

Future challenges in the Inter-American region

Participants identified the following future challenges:

20. Efforts should continue to increase the number of State Parties to the 1980 Hague Child Abduction Convention and the 1989 Inter-American Convention.

21. It was recognised that additional work needs to be undertaken both at the judicial and Central Authority levels with a view to increase the speed of return proceedings.

22. It was underlined that improvement of processes alone are not sufficient to face the recent increase of applications under the 1980 Hague Child Abduction Convention and the 1989 Inter-American Convention but that additional resources are needed for national actors.

23. The use of information technology to manage cases and to facilitate communications among Central Authorities on the one hand, and between judges on the other, with a view to increase the speed of treatment of applications under the 1980 Hague Child Abduction Convention and the 1989 Inter-American Convention, was emphasized.

24. It was underlined that additional training of national actors responsible for the implementation and operation of the 1980 Hague Child Abduction and the 1989 Inter-American Convention was needed, with a view to increase communication, co-operation and synergies among these actors, and that funding should be made available to carry out such activities.

25. Efforts should continue to consolidate the interaction between the International Hague Network of Judges and IberRed. IberRed Member States which have not designated a specialist family judge as a contact point but have designated a judge to the Hague Network are invited to consider the designation of the same judge or judges as contact points within IberRed.

26. Efforts should continue to consolidate the interaction between the Hague Network of Central Authorities for the Hague Child Protection Conventions and the OAS Network of Hemispheric Legal Cooperation in the Area of Family and Child Law, coordinated by the Secretariat for Legal Affairs and the IIN, as representatives of the OAS Network.

27. Participants recognised the importance of the question of issuance of visas to enable a parent to have contact with his or her child or to return to the State of habitual residence with the child and invited the relevant competent authorities to discuss this issue further in order to find solutions.

Conclusions and recommendations relating to judicial matters

Members of the International Hague Network of Judges from the Inter-American region agreed as follows:

Inter-American Model Law

28. States from the Inter-American region are invited to implement the Inter-American Model Law.

Increasing the speed of Hague procedures

29. Following the wording of the Inter-American Model Law, it is recommended, where possible, and while respecting due process, to amend rules of procedures with the aim of increasing the speed of proceedings, for example by limiting the grounds of appeal and reducing the number of hearings.

Judicial communications

30. Members of the International Hague Network of Judges emphasised the importance of both general judicial communications and direct judicial communications in specific cases.
31. States that have not designated a Hague Network judge are strongly encouraged to do so.
32. Members of the Hague Network ratified the Montevideo Declaration, on the scope and content of judicial communications, adopted at the meeting of the Inter-American Network of December 2009.
33. The Emerging Rules regarding the Development of the International Hague Network of Judges and the Draft General Principles for Judicial Communications, including Commonly Accepted Safeguards for Direct Judicial Communications in Specific Cases, within the Context of the International Hague Network of Judge as they will be presented to the Sixth Meeting of the Special Commission to Review the Practical Operation of the 1980 and 1996 Conventions (1-10 June 2011), were endorsed.
34. Members of the Hague Network underlined the importance of having, as soon as possible, a legal basis to carry out direct judicial communications in specific cases. It was suggested that States and / or competent authorities be invited to provide for such a legal basis, where necessary. Such legal basis could be found in Guidelines issued by national judicial councils, Rules of Court, the Inter-American Model Law or domestic law. It is hoped that the endorsement of the Draft General Principles for Judicial Communications by the Sixth Meeting of the Special Commission of June 2011 will assist in that respect.
35. Efforts should be made within States of the region to promote the appropriate use of direct judicial communications, for example by the development of national rules of conduct to govern the use of direct judicial communications at the domestic level between the Member of the Hague Network and his or her colleagues within the jurisdiction, and to increase awareness of the existence and role of Network judges.
36. The development of national networks in support of the international and regional networks should continue to be advanced.

Voice of the child

37. When hearing the child, it is desirable that the person interviewing the child should be properly trained and experienced and should shield the child from the burden of decision-making. It was noted that there are differences in approaches taken to the interviewing of the child concerned.

Articles 14 and 7 d)

38. The benefits of Article 14 to take notice directly of the law, and of judicial or administrative decisions of the State of the habitual residence of the child, to ascertain whether there has been a wrongful removal or retention, were recalled. When required by specific circumstances, recourse can be made to Article 7 d) in order to obtain information relating to the social background of the child.

Practical handbook for judges

39. It was proposed to develop a practical handbook for judges under the 1980 Hague Child Abduction Convention taking into account existing good practices, training material, and national handbooks.

Maintenance of statistics

40. Judges are encouraged to maintain statistics concerning the cases dealt with by them under the 1980 Hague Child Abduction Convention and the 1989 Inter-American Convention.

IT tools

41. Members of the Hague Network emphasised the importance of implementing as soon as possible, under the auspices of the Hague Conference, Internet-based secured means of communications such as secured e-mail and videoconferencing systems with a view to facilitate networking and reduce the costs of telephone communications.

Conclusions and recommendations relating to Central Authority matters

Central Authorities from the Inter-American region agreed as follows:

Co-operation between Central Authorities

42. Maximum efforts should be undertaken to improve cooperation between Central Authorities.

Timeframes for responses between Central Authorities

43. Commitments agreed to in the Conclusions and Recommendations of the Inter-American Expert Meeting on International Child Abduction co-organized by the Inter-American Children's Institute and the Hague Conference on Private International Law, held in

The Hague on 10 November 2006, were recalled and reaffirmed.

“Central Authorities – Fluency in communications

1. Central Authorities should comply with the following time periods in their communications related to cases under the Child Abduction Conventions:
 - a) **New return or access applications:** Once a new return or access application has been received the requested Central Authority should, within one week, acknowledge receipt of the application to the requesting Central Authority stating whether the received documentation is sufficient to initiate the procedure or whether further documentation / information is needed. This first communication has to do with the preliminary review performed by the requested Central Authority and does not comprise the subsequent review that may be performed by the Authority or professional who should file the case before the Court.
 - b) **Follow up of proceedings:** The requested Central Authority has the duty to keep the requesting Central Authority informed about the development of proceedings and to respond to all the information requests addressed by such Authority. The use of e-mail is encouraged as a mean of swift communication between Central Authorities. In this regard, it is advisable to use an e-mail address, which is checked on a daily basis, regardless of the absence or replacement of competent officers. Central Authorities should respond to requests received by e-mail within 48 hours from receipt. Communications received by fax or ordinary mail should be responded to within 72 hours.”

Communication of judgments and decisions

44. After the requested Central Authority takes note of a judgment or decision made in return or access proceedings it should communicate the judgment or decision to the requesting Central Authority with maximum urgency, mentioning the timeframes the applicant has to file an appeal.

Rapid means of communication

45. Central Authorities should avoid, as much as possible, formalities in their communications. The use of modern means of communication was encouraged, in order to make gains in speed and efficiency, privileging the direct communications between Central Authorities.

IT tools

- 46 The advantages of using IT tools were highlighted. It was recommended that Central Authorities assess the implementation of the secured communication system offered by the OAS and the IIN, and the Iber@ system, offered by IberRed.

47. The advantages of using IT tools to improve case management and the generation of statistics were also acknowledged. Using these tools should result in the saving of substantial time and resources and in efficiency gains for Central Authority operations. Central Authorities agreed to assess the possible implementation of the iChild solution, offered for free by WorldReach and the Government of Canada, and the use of INCASTAT.

Amicable solutions and mediation

48. States are invited to promote and facilitate the use of mediation, conciliation or similar means to bring about amicable solutions to child abduction cases, and to establish the necessary legal framework to ensure the recognition and enforcement of amicable solutions, including mediation agreements. In that respect, participants welcomed the development of a Guide to Good Practice on Mediation in the context of the 1980 Hague Child Abduction Convention.

Trans-frontier contact

49. Central Authorities noted point 4.6 of the Guide to Good Practice on Trans-frontier Contact that states:

“The Central Authority should make its services available in all circumstances where cross-frontier contact rights of parents and their children are in issue. This includes cases where a foreign parent seeks to establish a contact order, as well as cases in which the application is to give effect to an existing contact order made abroad.

In the context of abduction or alleged abduction, this includes cases where an interim order for contact is sought by an applicant pending a decision on the return of the child, as well as cases in which contact arrangements are sought (for example, by the abducting parent) in the country to which the child has been returned or, where return is refused, in the country to which the child has been taken.”

Control of the application

50. The requesting Central Authority shall verify that the requirements of Article 8 of the 1980 Hague Child Abduction Convention are met and in particular provide maximum clarity in explaining the facts and basis of law upon which the application is founded. Likewise, it is recommended that any other complementary information that may facilitate the assessment and resolution of the case accompany the application.
51. In turn, the review of the application performed by the requested Central Authority and / or the institution in charge of filing the application in Court should not generate unnecessary delays in the proceedings.
52. Central Authorities recommended as good practice that States complete the Country Profile under the 1980 Hague Child Abduction Convention with a view to provide

information as to the requirements necessary to make an application.

Localisation of the child and taking parent

53. The existence of severe problems in localisation procedures were noted, both before proceedings are initiated and at the enforcement stage. Central Authorities agreed that they should strive to develop the best possible co-operation with institutions responsible for localisation. In relation with the enforcement phase, the use and promotion of the Guide to Good Practice on Enforcement prepared by the Hague Conference, with special attention paid to the logistical and migratory issues necessary for the return of the child, was emphasised.
54. It is recommended that requesting Central Authorities should strive to provide as much information as possible that might facilitate localisation in the requested State.

Additional information to the competent Court

55. It is recommended that when forwarding the application to the court, or as soon as it becomes possible, the requested Central Authority informs the competent court in every case about the existence of the International Hague Network Judge and the INCADAT database in order to raise awareness about these helpful means / tools that are at the disposal of the judge seized.

Prevention

56. The importance of the Guide to Good Practice on Preventive Measures in raising awareness among the various actors who play a role in international child abduction proceedings was underlined, and it was agreed to promote the use and distribution of this Guide.

Inter-American Children's Institute - SIM Programme

57. The importance of implementation of the Inter-American Programme of Cooperation to Prevent and Remedy International Parental Child Abduction Cases (SIM) was highlighted and Central Authorities agreed to the working programme proposed by the IIN in order to continue with the implementation of this Programme.

Future work

58. Central Authorities invited the Hague Conference and the IIN to consider developing:
- a glossary of the key terms included in both the 1980 Hague Child Abduction Convention and the 1989 Inter-American Convention;
 - an online training course specifically designed for Central Authority officers;
 - an online training course specifically designed for Judges; and
 - a tool kit for Central Authority operators.

1996 Hague Child Protection Convention

59. Understanding the benefits of a legal framework for the resolution of international disputes concerning custody and the contact of children with their parents, and for the protection of children at risk in cross-border situations, the participants invited States from the Inter-American Region to study the 1996 Hague Child Protection Convention with a view to future implementation.

Scope and object of the 1996 Hague Child Protection Convention

60. Participants noted that the scope of the 1996 Hague Child Protection Convention is very broad as it covers a very wide range of civil measures of protection concerning children, from orders concerning parental responsibility and contact to public measures of protection or care, and from matters of representation to the protection of children's property.

61. The function of the Convention is to avoid legal and administrative conflicts and to build a structure for effective international co-operation in child protection matters between different jurisdictions. In this respect, the Convention builds bridges between legal systems having diverse cultural or religious backgrounds.

62. The ideal basis for international legal co-operation in child protection matters is the mutual recognition of decisions based on common grounds of jurisdiction such as those set out in the Convention. These rules of jurisdiction, which avoid the possibility of conflicting decisions, give the primary responsibility to the authorities of the State where the child has his or her habitual residence, but also allow any third State where the child is present to take necessary emergency or provisional measures of protection. The Convention also determines which State's laws are to be applied. In addition, the co-operation provisions of the Convention provide the basic framework for the exchange of information and for the necessary degree of collaboration between administrative (child protection) authorities in the different Contracting States. The participants noted that the Convention is particularly helpful in the following areas: (1) parental disputes over custody and contact; (2) unaccompanied minors; (3) cross-frontier placements of children; and (4) international child abduction, as a complement to and reinforcement of the 1980 Hague Child Abduction Convention and the 1989 Inter-American Convention.⁴³

63. The participants noted, through hypothetical cases, the following benefits for the Latin American region in relation to the 1996 Convention:

- The 1996 Convention reinforces Article 16 of the 1980 Hague Child Abduction Convention.

Note

⁴³ See Art. 34 of the 1980 Hague Child Abduction Convention, Art. 35 of the 1989 Inter-American Convention and Art. 50 of the 1996 Hague Child Protection Convention.

- The 1996 Convention provides for very useful urgent measures of protection, in the case of a return application under the 1980 Hague Child Abduction Convention, which have effect in all States Parties to the 1996 Convention.
 - Urgent measures ordered upon the return of the child to the State of habitual residence will be automatically recognized and enforced, thus avoiding the need to organise mirror orders in both jurisdictions concerned.
 - The 1996 Convention reinforces Article 21 of the 1980 Hague Child Abduction Convention by providing clear rules regarding the law applicable, jurisdiction, recognition and enforcement and co-operation in relation to custody and contact rights issues.
 - The 1996 Convention provides, under Article 26, for a system of declaration of enforceability and registration for the purpose of swift enforcement in States Parties to the Convention of measures of protection enforceable in one Contracting State, such as measures that could be included in a mediation agreement having the force of law.
 - The 1996 Convention provides for a novel international procedure for dealing with formalities for access requests that significantly promotes access to justice by the party requesting access rights.
 - The 1996 Convention includes jurisdiction rules to order measures of protection for children that are the subject of trafficking activities.
64. The participants recognised the importance of developing mechanisms to facilitate direct judicial communications, more specifically in relation to Articles 8 and 9 of the 1996 Convention.
65. Finally, participants concluded that:
- States Parties to the 1993 Hague Intercountry Adoption Convention consider becoming Parties to the 1996 Convention in order to provide cross-border foster care for children not covered by the 1993 Convention.
 - Dissemination of information and training of judges are essential to raise awareness of the 1996 Convention.
- Preparations for the Sixth Meeting of the Special Commission of June 2011**
66. Participants welcomed the opportunity to discuss the preparations for the Sixth Meeting of the Special Commission to Review the Practical Operation of the 1980 and 1996 Conventions, to be held in June 2011.
67. Efforts to co-ordinate the views and input of the region in preparation of the Sixth Meeting of the Special Commission through the Liaison Legal Officer for Latin America were welcomed.
68. Voluntary contributions from States in the region to provide for Spanish translation of documents for, and interpretation during, the Sixth Meeting of the Special Commission, were encouraged. Participants welcomed the voluntary contributions made by Argentina and Spain.
69. States were encouraged to submit their statistics for the year 2008 for the Professor Nigel Lowe study as soon as possible in preparation for the Sixth Meeting of the Special Commission.

Finnish-Russian Expert Conference on International Child and Family Law

Helsinki, Finland, 23 March 2011

On Wednesday 23 March 2011, a Finnish-Russian Expert Conference was held in Helsinki to discuss questions related to international child and family law. The Permanent Bureau was invited to participate in this meeting and was represented by Deputy Secretary General William Duncan.

Conclusions of the conference

The participants of the Finnish-Russian Expert Conference discussed questions related to international child and family law. In the discussions, emphasis was laid on the central principles of the United Nations Convention on the Rights of the Child, such as the priority of the best interest of the child and the equal treatment of children as well as the right of the child to maintain a personal relationship and direct contact with both parents on a regular basis, except if it is contrary to the child's best interest. Comparisons between the child and family law of Finland and the Russian Federation were made in the Conference.

The participants considered it important to further develop the judicial cooperation between Finland and Russia in child and family law matters within the framework of the Conventions of the Hague Conference on Private International Law.

It was noted in the Conference that a legislative proposal concerning the accession of Russia to the Hague Convention on the Civil Aspects of International Child Abduction, drafted by the Russian Ministry of Education and Science, has been passed by the Government of the Russian Federation and sent to the State Duma for consideration. In this connection, the participants emphasised the significance of designating a central authority in accordance with the Hague Child Abduction Convention and the importance of an effective implementation mechanism in Russia. These will enable the required legal security in cross-border child custody cases.

The following objectives were especially brought up in the Conference:

- designating a central authority and starting effective central authority operations in Russia
- developing cooperation between the Finnish and Russian central authorities
- arranging education concerning the application of the Child Abduction Convention for the competent authorities in Russia, together with the Hague Conference on Private International Law, while taking into account the administrative, funding-related and organisational issues.

The participants were also pleased to discover that Russia is making preparations for accession to the 1996 Hague

Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children. The participants agreed to keep on cooperating in order to promote these objectives.

The participants emphasised the significance of preventive child protection measures and the comprehensive development of the Finnish-Russian cooperation projects.

The participants were of the opinion that it is of utmost importance to further enhance the mutual knowledge of the Finnish and Russian authorities on the civil and family law of both the countries as well as on the procedures related to child custody and protection of children. In order to implement these objectives, regular expert meetings between the countries shall be held also in future.

First Gulf Judicial Seminar on Cross-Frontier Legal Co-operation in Civil and Commercial Matters

Doha, Qatar, 20-22 June 2011

Conclusions and recommendations

From 20 to 22 June 2011, approximately 80 participants from Member States of the Gulf Cooperation Council (GCC) – Kuwait, Qatar, Saudi Arabia, the United Arab Emirates and Oman (Bahrain was excused) – including Ministry officials, academics, professionals, as well as members of the Permanent Bureau of the Hague Conference on Private International Law (the Hague Conference), met in Doha, Qatar, to discuss the relevance and possible implementation of some of the Conventions adopted under the auspices of the Hague Conference (the Conventions) within the GCC Region (the Region) in the areas of child protection, as well as legal co-operation and litigation. The Conventions discussed included those of 1980 on Child Abduction, of 1996 on Protection of Children, of 2007 on International Child Support (Maintenance Convention), of 1965 on Service of Process Abroad, of 1970 on Taking of Evidence Abroad, of 1980 on Access to Justice, of 1971 on the Recognition and Enforcement of Judgments, of 2005 on Choice of Court Agreements, and of 1961 on the Abolition of Legalisation for Foreign Public Documents (Apostille Convention).

The participants thanked His Highness Sheikh Hamad Bin Khalifa Al Thani, the Emir of the State of Qatar, His Highness Sheikh Tameem Bin Hamd Al Than, Heir Apparent, His Excellency Sheikh Hamad Bin Jassem Bin Jabor Al Thani, the Prime Minister and Foreign Minister of Qatar, His Excellency Mr Hassan Bin Abdulla Al Ghanim, the Minister of Justice of Qatar, His Excellency Dr Abdullatif Al Zayani, the Secretary General of the Gulf Cooperation Council, as well as the Ministry of Justice of Qatar for the generous hospitality and superb organisation of the seminar, and unanimously adopted the following Conclusions & Recommendations:

1. The participants agreed that the Seminar had provided an excellent opportunity for them to:
 - i. gain a better understanding of the great potential value of the Conventions for the Region;
 - ii. understand the need for sound implementation of the conventions in the context of the legal systems in the region;
 - iii. appreciate the role of the Conventions as an important basis for furthering international co-operation among different legal systems around the globe; and
 - iv. understand the role and possibilities of the Permanent Bureau in providing support and technical assistance to States which request it.
2. The participants reviewed the Conventions and suggested further research into possible implementation of the Conventions with a view to considering becoming Contracting States to these Conventions. The participants also agreed to study possibilities for the GCC States to become Members of the Hague Conference, with a view in particular to participating in negotiations of future Conventions and attending Special Commission meetings on the practical operation of existing Conventions.
3. The participants suggested that, in a first stage, the 1961 Apostille and the 1996 Protection of Children Conventions may offer particular advantages to be considered for accession and ratification. Participants also suggested that States that are not yet party to the Conventions should seek to benefit from the experience of States that are already party to Conventions, such as Kuwait (1965 Service and 1970 Evidence Conventions, and 1971 Recognition of Judgments Convention) and Oman (1961 Apostille Convention).
4. The participants emphasised the importance of training and information sessions for judges, lawyers, government officials and professionals in order to secure the effective implementation and practical operation of the Conventions, in co-operation with the Permanent Bureau's International Centre for Judicial Studies and Technical Assistance, and the relevant national, regional and international bodies including non-governmental organisations.
5. The participants agreed that the awareness of the Conventions within GCC States should be increased. Participants agreed to explore further the possibility of establishing a dialogue within the GCC States and between the GCC States and States Parties to the Conventions.
6. Specifically in relation to the following Conventions, the participants acknowledged:

Part One: Hague Legal Co-operation and Litigation Conventions

1961 Apostille Convention

- A. the great success of the Apostille Convention in creating a globally-recognised method of authenticating the origin of public documents executed in one Contracting State and to be produced in another Contracting State, and its advantages for private individuals and commercial entities in their cross-border activities and for cross-border trade and investment (as recognised by the World Bank);

- B. the potential merits of the use of the Apostille system in the Region;
- C. the benefits and greater use of technology in the implementation and operation of the Apostille Convention, in particular through the electronic Apostille Pilot Program (e-APP);

1965 Service Convention and 1970 Evidence Convention

- A. the benefits of these Conventions as essential tools for international judicial co-operation and cross-border litigation, in particular by providing effective channels for service and taking of evidence abroad, while not impacting on the domestic laws of Contracting States and preserving the applicability of existing or future bilateral or regional treaties in these matters;
- B. the advantages of greater use of technology (such as video-conferencing) in the implementation and operation of the Evidence Convention;

1980 Access to Justice Convention

- A. the necessity to study the potential benefits of the Access to Justice Convention in the States of the Region;

2005 Choice of Court Convention

- A. the necessity to study the benefits of predictability and legal certainty provided by the 2005 Convention on Choice of Court Agreements and its resulting advantages for cross-border trade and investment, as well as the potential merits of acceding to the 2005 Convention as an instrument to consolidate the international litigation system, in parallel to the international arbitration system, in particular the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards;

Recognition and Enforcement of Judgments

- A. the importance of harmonised rules for the recognition and enforcement of foreign judgments at the regional and global level, and in particular the possibility of GCC States engaging in the ongoing work of the Hague Conference in this area;

Part Two: Hague International Child Protection Conventions

- A. that the 1980, the 1996 and the 2007 Conventions implement the principles set out or implicit in the United Nations Convention on the Rights of the Child of 1989, such as:
 - i. the best interests of the child as a primary consideration in all actions concerning children;
 - ii. the right of a child whose parents reside in different States to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents; and

iii. the opportunity for a child to learn, to know and respect the culture and traditions of both parents; all of which are underlying principles of *sharia* law.

1980 Child Abduction Convention and 1996 Protection of Children Convention

- A. the use of the 1980 Child Abduction Convention in providing a structure to support family relationships, by providing a civil, non-criminal procedure to return a child to his or her habitual residence when taken by a parent or a custodian;
- B. the value of the 1996 Protection of Children Convention in providing protection for vulnerable children in cross-border contexts and in supplementing and supporting the 1980 Convention;
- C. the potential merits of establishing focal points in each GCC State to co-operate with each other and with Central Authorities established under the 1980 and 1996 Conventions;

2007 Maintenance Convention

- A. the importance of the Maintenance Convention for families and children in the Region, and worldwide.

Follow-up

7. The participants further agreed:
 - A. to explore possibilities of providing a translation in Arabic of all the Hague Conventions and related documents, such as Explanatory Reports, and of the full Hague Conference website; and
 - B. to share the information and other benefits obtained from the Seminar with the responsible bodies and authorities in the relevant States.
8. The Participants recommended that such a seminar be held every two years, possibly in a different State on a rotating basis, in co-ordination with the GCC Secretariat.

Fourth Asia Pacific Regional Conference

Manila, the Philippines, 26-28 October 2011

The 4th Regional Conference, which was held from 26 to 28 October 2011 in Manila, Philippines, gathered over 230 delegates and participants from Australia, Bahrain, Bhutan, Brunei Darussalam, Cambodia, China, Fiji, India, Indonesia, Japan, Republic of Korea, Lao PDR, Malaysia, Myanmar,

Nepal, New Zealand, Philippines, Qatar, Saudi Arabia, Samoa, Sri Lanka, Thailand, Timor-Leste, United Arab Emirates, Vanuatu and Vietnam, along with observers from Iraq, United States of America and the Association of South East Asian Nations (ASEAN) Secretariat, and judicial officers, academics, other professionals, representatives from non-governmental organisations and members of the Permanent Bureau of the Hague Conference on Private International Law (the Hague Conference).

The 4th Regional Conference was organised by the Department of Foreign Affairs of the Philippines and the University of the Philippines Law Center, Philippine Judicial Academy, in conjunction with the Permanent Bureau of the Hague Conference on International Private Law. The purpose of the Regional Conference was to build on the work and achievements from previous regional meetings held in Malaysia (2005), Australia (2007), and the Hong Kong Special Administrative Region of the People's Republic of China (2008) and to discuss the latest work of the Hague Conference as well as matters relating to the implementation and practical operation of certain Hague Conventions. Particular emphasis was put on:

- the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (Intercountry Adoption Convention); and
- the *Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (Apostille Convention).

The programme also included presentations and discussions on the Hague Conventions of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, of 25 October 1980 on International Access to Justice, of 30 June 2005 on Choice of Court Agreements, of 25 October 1980 on the Civil Aspects of International Child Abduction, 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, and of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance, as well as presentations on private international law issues in the Asia-Pacific region, private international law aspects of (economic) migration, and the Permanent Bureau's ongoing work on choice of law in international contracts.

We will report further on the event in our next edition. More information is available on the website of the Hague Conference at < www.hcch.net >, under "News and Events", then "2011".

Hague Conference Update

As usual, please visit our website < www.hcch.net > for further information on Hague Conference related matters.

The Intercountry Adoption Technical Assistance Program (ICATAP): An Update

In 2011 Viet Nam ratified, Senegal acceded to and Haiti signed the Hague 1993 Intercountry Adoption Convention. By December 15th, 2011, the Hague global network in the field of intercountry adoption consisted of 85 States Parties to this Convention. The global network for administrative co-operation under the Convention includes over a thousand Central Authorities, competent authorities and accredited bodies co-operating to protect children worldwide.

The Intercountry Adoption Technical Assistance Programme ("ICATAP"), which aims at providing assistance to certain States which are planning ratification of, or accession to, the 1993 Convention, or which have ratified or acceded to the Convention but need assistance with implementation of the Convention, has continued its work during the past years. In particular, in the second half of 2010 and in 2011, technical assistance, including legal assistance and training, was provided to a variety of actors (Central Authorities, competent authorities, civil society groups, etc.) in Madagascar, Chile, Kazakhstan and Zambia, amongst others.

In other countries ICATAP has developed specific programmes over a longer period of time. For example, in Cambodia, ICATAP provided advice and assistance with the completion of national implementing legislation (the 2009 Law on Adoption and accompanying regulations), as well as contributing to the establishment and functioning of the Cambodian Central Authority. The Cambodian Government imposed a temporary moratorium on intercountry adoptions pending completion of its legal framework and the strengthening of control mechanisms. The moratorium was extended until 1 April 2012 on the recommendation of the Permanent Bureau, as there were still some challenges to overcome before the resumption of intercountry adoptions. In 2011 a consultant, as well as staff of the Permanent Bureau and other Central Authorities, also travelled to Cambodia to train the Central Authority and other competent authorities. A Manual on Procedure was developed in 2011 to assist Central Authority staff in applying the law and regulations to adoption cases. The Permanent Bureau, through ICATAP partners and UNICEF, will continue efforts to provide the necessary training, capacity-building and fund-raising for resources to continue with the assistance.

In Guatemala, technical assistance provided by the Permanent Bureau facilitated the development and approval of a new adoption law, and the entry into force of the 1993 Convention 1 March 2003. The Permanent Bureau and other Central Authorities have undertaken several missions in the last few years in order to train various Guatemalan actors in this

field. Although intercountry adoptions have not officially resumed yet in Guatemala due to severe irregularities in the child protection system reported by a UN body, the Central Authority for adoptions has worked hard to guarantee the rights of children who may be adopted. In particular, the Central Authority deserves special recognition for the following achievements: i) the successful development of national adoptions, which have dramatically increased in the last three years; and ii) the assistance provided to mothers who initially wished to give up their children for adoption and, after receiving advice, decided not to do so. At the end of 2011, following a request of the Guatemalan Central Authority, the Permanent Bureau has helped this Central Authority to find experts who could assist them in evaluating the bond between adoptable children and prospective adoptive parents in connection with approximately 100 cases in transition.

ICATAP has also been present in Haiti, following a request of assistance made by the Haitian Prime Minister in June of 2010. This country signed the 1993 Hague Intercountry Adoption Convention in March of 2011. The Permanent Bureau was asked to provide comments on the revision of Haiti's 2010 draft Law on adoptions. In addition, the Permanent Bureau played a fundamental role in the three meetings convened by the "Montreal Group" on intercountry adoption that involved governments of Quebec and France, along with the Central Authorities of Belgium, Canada, Chile, France, Germany, Italy, the Netherlands, Switzerland, and the United States of America. Haitian authorities and UNICEF also participated in the meetings. The meetings took place in Montreal (December 2010), Port au Prince (June 2011) and Rome (November 2011). During these meetings, participants affirmed their commitment to the principles of the 1993 Intercountry Adoption Convention. Guidelines for a joint action plan in preparation for Haiti's ratification of the Convention were drafted and the Haitian Government expressed its commitment to develop legitimate and internationally-accepted adoption procedures. The draft action plan indicates that support for the Government of Haiti should continue for the long term in order to strengthen its child protection system and to implement national procedures consistent with the 1993 Intercountry Adoption Convention, which will eventually assure the resumption of international adoptions in Haiti. In addition, a member of the Permanent Bureau participated in an informational seminar for Haitian authorities and bodies on the 1993 Intercountry Adoption Convention in December of 2011.

Mexico has also benefited from ICATAP. Following the *Report of the Fact-finding Mission on the Protection and Adoption of Children in Mexico* written by the Permanent Bureau in October 2010, one member of the Permanent Bureau participated in a workshop on Child Protection and Family Attorneys from 31 of the 32 states of Mexico. During the workshop, conclusions and recommendations of the mentioned report designed to raise standards of protection of the rights of the child in protection and adoption processes in Mexico were presented and discussed. In addition, all participants were trained on objectives, principles, challenges and good practices in relation to adoption. Presenting the reasons why private adoptions should be abolished was

one of the major objectives of the workshop. The Mexican authorities also presented their major achievements since the report was published in October 2010, among them, the approval of a law in the state of Veracruz that abolished private adoptions and that made compulsory the intervention of the Mexican public authorities (DIF) in all domestic and intercountry adoptions.

In Nepal ICATAP has been present since 2009. A meeting about “Children deprived of parental care in Nepal and available alternative care for them, including adoption in Nepal” was organized by the Italian Central Authority in cooperation with the Permanent Bureau. The meeting took place in Rome the 31st of March and the 1st of April. In addition to the Nepali Central Authority, the Central Authorities of Belgium, Canada, Denmark, France,

Germany, Italy, Norway, Spain, Sweden, Switzerland, United Kingdom and United States of America, as well as UNICEF and Terre des Hommes participated in the meeting. The meeting welcomed the changes made by the authorities of Nepal following a Report written by the Permanent Bureau after a mission to Nepal in November 2009. The participants also welcomed the expressed will of the Nepalese government to improve the current child protection and adoption procedures in Nepal. The participants agreed on conclusions and some action points that the government of Nepal would start to put into place. Further communication between the Nepalese authorities and the Permanent Bureau permitted the further discussion of necessary improvements and challenges. However, new resources are needed to continue technical assistance in this country.

The Hague Children's Conventions Status

The status of all the Hague Conventions is available on the website of the Hague Conference < www.hcch.net >, under "Conventions", then under the Convention in question, click "Status".

1980 Hague Child Abduction Convention

The Hague Conference is delighted to report the accession of the **Russian Federation** and of **Guinea** to the 1980 Hague Child Abduction Convention. The Convention entered into force in the Russian Federation on 1 October 2011 and in Guinea on 1 February 2012. The 1980 Hague Child Abduction Convention also recently entered into force in **Andorra** on 1 July 2011. The Standard Questionnaire of Newly Acceding States has been completed by Andorra and their response can be found on the Hague Conference website (see: Child Abduction Section / Questionnaires and responses / Standard Questionnaire for newly acceding States – responses).

In addition, the Hague Conference is very pleased to report that both **Japan** and **Korea** have indicated significant progress made in their respective States towards becoming Contracting States to the 1980 Hague Child Abduction Convention

The Convention has today 87 Contracting States. To check whether the Convention has entered into force between specific Contracting States, we invite you to consult the "Child Abduction Section", then "Contracting States" on the website of the Hague Conference < www.hcch.net >.

1996 Hague Child Protection Convention

The number of Contracting States to the 1996 Hague Child Protection Convention continues to grow rapidly. The Hague Conference welcomes the recent entry into force of the Convention in the following countries: the **Netherlands** (1 May 2011), **Portugal** (1 August 2011) **Denmark** (10 October 2011) and **Malta** (1 January 2012). The Convention will also soon enter into force in **Greece** (1 June 2012). The Hague Conference is also delighted to report the accession of **Montenegro** on 14 February 2012. The Convention will enter into force for Montenegro on 1 January 2013.

The Convention has today 35 Contracting States. To check whether the Convention has entered into force between specific Contracting States, we invite you to consult the website of the Hague Conference < www.hcch.net >.

1993 Hague Inter-country Adoption Convention

The Hague Conference is very pleased to announce that **Haïti** signed the *Hague Convention of 29 May 1993 on the Protection of Children and Co-operation in Respect of Inter-country Adoption* on 2 March 2011. This is the first Hague Convention which Haïti has signed, making it the 138th State to be "connected" to the Hague Conference. By signing the Convention, the Republic of Haïti signals its wish and intention to reform its child protection system, as well as its inter-country adoption system, which is an essential starting point for the ratification of the Convention. The Hague Conference is also delighted to report the accession of **Senegal** on 24 August 2011 and the ratification of **Viet Nam** on 1 November 2011, as well as the accessions of **Montenegro** on 9 March 2012 and of **Rwanda** on 28 March 2012. The Convention entered into force for Senegal on 1 December 2011 and for Vietnam on 1 February 2012 and will enter into force for Montenegro and Rwanda on 1 July 2012.

87 States are today Parties to the Convention. To check whether the Convention has entered into force between specific Contracting States, we invite you to consult the "Inter-country Adoption Section", then "Contracting States" on the website of the Hague Conference < www.hcch.net >.

2007 Child Support Convention

The Hague Conference is very pleased to announce that on 6 April 2011, the **European Union** signed the *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance*. On 9 June 2011, the Council of the European Union approved the Convention on behalf of the European Union and thereby authorised the President of the Council to designate the person(s) to deposit, on behalf of the Union, the instrument of approval according to the Convention. The Convention was also signed on 5 July 2011 by **Bosnia and Herzegovina** and on 21 October 2011 by **Albania**.

Members of the International Hague Network of Judges

With 47 jurisdictions represented by 68 judges, the International Hague Network of Judges is constantly growing. We are delighted to inform you that judges from the following countries have recently been designated as members of the Network: Austria, Bulgaria, Colombia, Guatemala, Singapore, United Kingdom (British Overseas Territories – Cayman Islands), and Trinidad and Tobago.

List as of 9 March 2012

ARGENTINA

Judge Graciela TAGLE, Judge of the City of Cordoba (*Juez de la Ciudad de Córdoba*), Córdoba

AUSTRALIA

The Honourable Chief Justice Diana BRYANT, Appeal Division, Family Court of Australia, Melbourne (alternate contact)

The Honourable Justice Victoria BENNETT, Family Court of Australia, Commonwealth Law Courts, Melbourne (primary contact)

AUSTRIA

Dr. Andrea ERTL, Judge at the District Court of Linz (*Bezirksgericht Linz*), Linz

BELGIUM

Ms Myriam DE HEMPTINNE, Magistrate of the Court of Appeals of Brussels (*Conseiller à la Cour d'appel de Bruxelles*), Brussels

BRAZIL

Judge Mônica Jacqueline SIFUENTES PACHECO DE MEDEIROS, Federal Judge – Federal Court of Appeals (*Juiz Federal – Tribunal Federal de Apelações*), Brasília

With geographical responsibility for: the Federal District of Brasília and the Federal States of Acre, Amapá, Amazonas, Bahia, Goiás, Maranhão, Mato Grosso, Minas Gerais, Pará, Piauí, Rondônia, Roraima, Tocantins, São Paulo and Mato Grosso do Sul.

Judge Jorge Antonio MAURIQUE, Federal Judge – Regional Federal Court of the Fourth Region (*Juiz Federal – Tribunal Regional Federal da 4ª Região*), Porto Alegre, Rio Grande do Sul

With geographical responsibility for: Rio Grande do Sul, Santa Catarina and Paraná.

BULGARIA

Judge Bogdana JELIAVSKA, Vice President of the Sofia City Court, Sofia

CANADA

The Honourable Justice Jacques CHAMBERLAND, Court of Appeal of Quebec (*Cour d'appel du Québec*), Montreal (Civil Law)

The Honourable Justice Robyn M. DIAMOND, Court of Queen's Bench of Manitoba, Winnipeg (Common Law)

CHILE

Judge Hernán Gonzalo LÓPEZ BARRIENTOS, Judge of the Family Court of Pudahuel (*Juez titular del Juzgado de Familia de Pudahuel*), Santiago de Chile

CHINA (Hong Kong, Special Administrative Region)

The Honorable Mr Michael HARTMANN, Justice of Appeal of the Court of Appeal of the High Court, High Court, Hong Kong Special Administrative Region

The Honorable Judge Bebe Pui Ying CHU, Principal Family Court Judge, Family Court – Wanchai Law Courts, Hong Kong Special Administrative Region

COLOMBIA

Doctor José Guillermo CORAL CHAVES, Magistrate of the Civil Family Chamber of the Superior Court for the Judicial District of Pasto (*Magistrado de la Sala Civil Familia del Tribunal Superior del Distrito Judicial de Pasto*), Pasto

COSTA RICA

Mag. Diego BENAVIDES SANTOS, Judge of the Family Tribunal, First Judicial Circuit (*Juez del Tribunal de Familia, Primer Circuito Judicial*), San José

CYPRUS

The Honourable Justice George A. SERGHIDES, Doctor at law, President of the Family Court of Nicosia-Kyrenia, Nicosia

CZECH REPUBLIC

Judge Lubomir PTÁČEK, Regional Court *Ústí nad Labem*, Branch Office in Liberec, Liberec

DENMARK

Judge Bodil TOFTEMANN, City Court of Copenhagen (*Københavns Byret*), Copenhagen

DOMINICAN REPUBLIC

Judge Antonia Josefina GRULLÓN BLANDINO, Court of Children and Adolescents, National District, Civil Chamber

(*Tribunal de Niños, Niñas y Adolescentes, Distrito Nacional Sala Civil*), Santo Domingo

ECUADOR

Dr Arturo MÁRQUEZ MATAMOROS, Provincial Judge of the Court of Appeal of El Oro (*Juez Provincial de la Corte de Apelaciones de Justicia de El Oro*), Machala

EL SALVADOR

Lic. Evelyn Roxana NUÑEZ FRANCO, Magistrate of the Administrative Litigation Chamber of the Supreme Court of Justice (*Magistrada de la Sala de lo Contencioso Administrativo de la Corte Suprema de Justicia*), San Salvador

Lic. Ana Guadalupe ZELEDON VILLALTA, Fourth Family Court of San Salvador, Integrated Judicial Centre of Private and Social Law (*Juzgado 4 de Familia de San Salvador, Centro Judicial Integrado de Derecho Privado y Social*), San Salvador

FINLAND

Justice Elisabeth BYGGLIN, Helsinki Court of Appeal (*Helsingin Hovioikeus*), Helsinki

FRANCE

Ms Bénédicte VASSALLO, Deputy judge of the First Chamber of the Court of Cassation (*conseiller référendaire à la première chambre de la Cour de cassation*), Paris

GABON

Judge Jean-Pierre SOBOTCHOU, Presiding Judge, *Cour de Cassation du Gabon*, Libreville

GERMANY

Judge Martina ERB-KLÜNEMANN, Judge of the District Court of Hamm (*Richterin am Amtsgericht, Amtsgericht Hamm*), Hamm

Judge Sabine BRIEGER, Judge of the Family Court, District Court of Pankow-Weißensee (*Richterin am Amtsgericht, Amtsgericht Pankow-Weißensee*), Berlin

GUATEMALA

Judge Rony Eulalio LÓPEZ CONTRERAS, First Magistrate of the Court of Appeals for Children and Adolescents (*Magistrado Vocal Primero de la Sala de la Corte de Apelaciones de la Niñez y Adolescencia*)

HONDURAS

Judge Belia Olmeda TORRES MERLO, Judge of First Instance for Children, Children's Court of First Instance of San Pedro Sula (*Jueza de Letras de la Niñez, Juzgado de Letras Primero de la Niñez San Pedro Sula*), San Pedro Sula

Judge Anny Belinda OCHOA MEDRANO, Judge of First Instance for Children, Second Children's Court of First Instance for the Department of Francisco Morazán (*Jueza de Letras de la Niñez, Juzgado de Letras Segundo de la Niñez, del Departamento de Francisco Morazán*), Tegucigalpa

ICELAND – NEW DESIGNATION PENDING

IRELAND

The Honourable Ms Justice Mary FINLAY GEOGHEGAN, The High Court, Dublin

ISRAEL

The Honourable Judge Neal HENDEL, Supreme Court of Israel, Jerusalem

KENYA (Non-State Party to the 1980 Convention)

The Honourable Lady Justice Martha KOOME, The High Court, Nairobi

LUXEMBOURG

Mr Serge WAGNER, Advocate-General (*Avocat général*), General Prosecutor's Office of Luxembourg (*Parquet general du Grand-Duché de Luxembourg*), Luxembourg

MALTA

The Hon. Mr Justice Noel CUSCHIERI, President, Family Section of the Civil Court, Courts of Justice, Valletta

MEXICO

Lic. Adriana CANALES PÉREZ, Magistrate of the Third Family Chamber, Superior Court of Justice of the Federal District (*Magistrada de la Tercera Sala Familiar, Tribunal Superior de Justicia del Distrito Federal*), Mexico D.F.

Lic. Dionisio NUÑEZ VERDIN, Judge of First Instance in Family Law (*Juez de Primera Instancia en materia familiar*), Jalisco

Dr Lázaro TENORIO GODÍNEZ, Judge of the First Family Chamber, Superior Court of Justice of the Federal District (*Magistrado de la Primera Sala Familiar, Tribunal Superior de Justicia del Distrito Federal*), Mexico D.F.

Lic. Oscar Gregorio CERVERA RIVERO, President of the Second Family Chamber, Superior Court of Justice of the Federal District (*Presidente de la Segunda Sala Familiar, Tribunal Superior de Justicia del Distrito Federal*), Mexico D.F.

NETHERLANDS

Judge Robine DE LANGE-TEGELAAR, Vice-President, District Court of The Hague, The Hague (primary contact)

Judge Jacques M.J. KELTJENS, Vice-President, District Court of The Hague, The Hague (alternate contact)

NEW ZEALAND

His Honour Judge Peter BOSHIER, Principal Family Court Judge, Chief Judge's Chambers, Wellington

NICARAGUA

Mag. María José ARÁUZ HENRÍQUEZ, First Family District Judge (*Juez Primero de Distrito de Familia*), Managua

NORWAY

Judge Anne Marie SELVAAG, Trondheim District Court, Trondheim

Judge Torunn Elise KVISBERG, PhD, Sør – Gudbrandsdal District Court, Lillehammer

PANAMA

Lic. Edgar TORRES SAMUDIO, Court of Children and Adolescents of the Chiriquí Judicial Circuit (*Juzgado de Niñez y Adolescencia del Circuito Judicial de Chiriquí*), Chiriquí

Lic. Delia CEDEÑO P., Judge of Children and Adolescents of the First Judicial Circuit of Panama (*Jueza de Niñez y Adolescencia del Primer Circuito Judicial de Panamá*), Panama City

Paraguay

Professor Dr. Irma ALFONSO DE BOGARÍN, Magistrate of the Criminal Court of Appeals for Adolescents, Capital District (*Magistrada del Tribunal de Apelaciones en lo Penal de la Adolescencia de la Capital*), Asunción

Abg. María Eugenia GIMÉNEZ DE ALLEN, Judge of the Court of Appeals for Children and Adolescents, Central Department (*Miembro de Tribunal de Apelación de Niñez y Adolescencia del Departamento de Central*), Asunción

PERU

Dra. Luz María CAPUÑAY CHÁVEZ, Superior Judge, First Family Chamber of the Superior Court of Justice (*Vocal Superior de la Corte Superior de Justicia, Sala de Familia, Poder Judicial*), Lima

ROMANIA

Judge Andreea Florina MATEESCU, Bucharest Tribunal, Vth Civil Section, Bucharest (primary contact)

Judge Anca Magda VLAICU, Bucharest Tribunal, IVth Civil Section, Bucharest (alternate contact)

SINGAPORE

Senior District Judge FOO Tuat Yien, Family and Juvenile Justice Division, Subordinate Court, Singapore

SOUTH AFRICA

The Honourable Mrs Justice Belinda VAN HEERDEN, Supreme Court of Appeal, Bloemfontein

SPAIN

The Honourable Judge Francisco Javier FORCADA MIRANDA, Family Court of First Instance No 6 (*Juzgado de Primera Instancia N° 6 de Zaragoza*), Saragossa

SWEDEN

The Honourable Judge Ann-Sofie BROQVIST, Stockholm District Court (Stockholms Tingsrätt), Stockholm

TRINIDAD AND TOBAGO

The Honourable Madam Justice Allyson RAMKERRYSINGH, Family Court of Trinidad and Tobago, Port of Spain

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

For England and Wales

The Right Honourable Lord Justice Mathew THORPE, Judge of the Court of Appeal, Head of International Family Justice, The Royal Courts of Justice, London

For Northern Ireland

The Honourable Mr Justice Ben STEPHENS, The Royal Courts of Justice, Belfast

For Scotland

The Honourable Lord WOOLMAN (Stephen), Supreme Court, Edinburgh

Sheriff Deirdre MACNEILL, Sheriff Court House, Edinburgh

For British Overseas Territories

Cayman Islands

The Honourable Judge Anthony SMELLIE, Chief Justice of the Cayman Islands, Chief Justice's Chambers, Grand Cayman

UNITED STATES OF AMERICA

The Honourable Justice James GARBOLINO, Former Presiding Judge, Superior Court of California, Roseville

The Honourable Judith L. KREGER, Circuit Judge, Eleventh Judicial Circuit of Florida, Miami

The Honourable Peter J. MESSITTE, United States Federal District Judge, US District Court for the District of Maryland, Greenbelt

The Honourable Mary W. SHEFFIELD, Presiding Judge, Circuit Court, Rolla

URUGUAY

The Honourable Judge Ricardo C. PÉREZ MANRIQUE, Magistrate of the Second Session of the Court of Appeal of Family Affairs (*Ministro del Tribunal de Apelaciones de Familia de 2º Turno de Montevideo*), Montevideo

VENEZUELA

Dra. Rosa Isabel REYES REBOLLEDO, President of the Judicial Circuit of for the Protection of Children and Adolescents for the Judicial District of the Caracas Metropolitan Area and National Co-ordinator of International Adoption (*Presidente del Circuito de Protección de Niños, Niñas y Adolescentes de la Circunscripción Judicial del Área Metropolitana de Caracas y Coordinador Nacional de Adopción Internacional*), Caracas

Personal Note

Hans van Loon

Secretary General

The Permanent Bureau of the Hague Conference on Private International Law was informed in late August by the Norwegian Ministry of Justice and the Police that the Ministry had been severely damaged during the terrorist attack in Oslo, Norway on July 2011. The Department of Civil Affairs (Central Authority under the 1980 Hague Convention on the Civil Aspects of International Child Abduction) was deeply saddened by the loss of two colleagues, Ms Ida Marie Hill and Ms Kjersti Berg Sand, both of whom dealt with child abduction cases and the Service and Evidence Conventions. The Department of Civil Affairs was also deeply saddened by the loss of Ms Ingrid Midtgaard, who was killed on 26 August 2011 during a bomb attack at the United Nations Headquarters in Nigeria. Ms Midtgaard was temporarily working for the United Nations and had planned to return to the Ministry of Justice in October

2011 where she was to continue her previous work on child abduction cases and the Service and Evidence Conventions. Ms Midtgaard was one of the organizers of the Nordic Baltic Seminar on International Child Abduction in Tallinn last year. She and a colleague wrote a report of the seminar in *The Judges' Newsletter* Volume XVII Spring 2011.

My colleagues and I were devastated to receive such terrible news. On behalf of the Hague Conference on Private International Law, I wish to express our deepest sympathy to the Norwegian Ministry of Justice, having lost three wonderful colleagues. We feel and share the sorrow of their families, friends and co-workers. It will require extraordinary efforts by the Central Authority, which also lost its offices, to continue the highly appreciated work of the victims with regard to the 1980 Hague Child Abduction Convention. We wish these colleagues in particular, all possible strength and courage. We know that they will be supported by other colleagues, including the Norwegian Liaison Judges, Anne Marie Selvaag and Torunn Kvisberg.