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The Judges' Newsletter

on International Child Protection

Special focus

The Seventh Meeting of the Special Commission on the Pratical Operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention

10-17 October 2017

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Participants to the Seventh Meeting of the Special Commission on the practical operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention (10-17 October 2017). The Hague Academy of International Law (Peace Palace), The Hague.

Foreword

The continuation of the Judges' Newsletter

The Permanent Bureau is pleased to publish the XXIst Volume of the Judges' *Newsletter* with a special focus on the Seventh Meeting of the Special Commission on the practical operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention, 10-17 October 2017 (hereinafter, "the 2017 Special Commission").

The Permanent Bureau is also delighted to report to its readers that "[t]he [2017] Special Commission acknowledges the value and usefulness of the information provided in The Judges' Newsletter"[1] and furthermore "[t]he [2017] Special Commission supports the continued electronic publication of The Judges' Newsletter, subject to available resources, to be edited in-house".[2]

After an absence of almost four years, it would have been a missed opportunity not to publish anything on the Seventh Meeting of the Special Commission. Instead of drawing up a formal report in the form of a Preliminary Document to the attention of the Council on General Affairs and Policy, preference was given to the publication of an informal report of the 2017 Special Commission as a "special focus" of the Judges' *Newsletter*. That is in line with the Conclusions and Recommendations of the 2017 Special Commission according to which "States and members of the [International Hague Network of Judges] are invited to share with the Permanent Bureau topics for 'special focus' that they would like to see addressed in future issues of The Judges' Newsletter".[3] Additionally, and contrary to Preliminary Documents, the Judges' Newsletter includes pictures for those who could not attend the meeting and enjoys a wider distribution.

We already have ideas for our "special focus" in future publications of the Judges' *Newsletter* but would welcome any additional ideas from States and members of the International Hague Network of Judges (hereinafter, "IHNJ"). For example, future "special focuses" could cover the 20th Anniversary in 2018 of the IHNJ, recent case law under Article 11 of the 1996 Convention, description of implementation measures in relation to Articles 24 and 26 of the 1996 Convention, case law, practice and description of implementation measures in relation to Articles 8 and 9 of the 1996 Convention and Article 15 of the Brussels II a Regulation,[4] the next meeting of the Malta Process, to name a few.

At a minimum, every volume of the Judges' *Newsletter* should include recent developments and experiences in relation to direct judicial communications with a view to promoting their use across the IHNJ.

Any contributions and / or suggestions for relevant topics to be addressed in future volumes of The Judges' *Newsletter* should be sent directly to the following e-mail address: < secretariat@hcch.nl > with the subject line "The Judges' Newsletter".

With regard to "timely information", "[t]he Special Commission notes however that the current format of The Judges' Newsletter is not adequate to provide timely information".[5] In that respect, "[t]he Special Commission supports the development of an IHNJ specialised section on the HCCH website. This section would constitute a dedicated platform providing information relevant to the IHNJ".[6] Once, that specialised section is operational it could be used, for example, to announce new designations to the IHNJ, draw attention to recently posted case law on INCADAT, provide information on past judicial conferences and general information on direct judicial communications. Subject to available resources, it is our hope to see in the future, as supported by the Special Commission, "the creation of a secure portal for the members of the IHNJ. The secure portal would serve as an electronic platform to foster communication and dialogue among the members of the Network".[7] But that is for later.

For the moment, subject to available resources, we will endeavor to publish the Judges' *Newsletter* on a regular basis and create an IHNJ specialised section on the HCCH website. The publication of this Volume of the Judges' *Newsletter* would not have been possible without the assistance of current and former interns respectively, Julie Pheline, Phillip Adnett and Shi Ing Tay to which we are most grateful, and members of the Family Law Team. Most importantly, this publication would not have been possible without the very generous contributions of Francisco Javier Forcada Miranda, Serge Léonard, Martin Menne, Nigel Lowe, Victoria Stephens and Graciele Tagle de Ferreyra. We look forward to reading from other members of the IHNJ, members of Central Authorities under the Hague Children Conventions, academics and practitioners.

We hope you enjoy reading this Volume of Judges' *Newsletter* and we look forward to receiving your comments and suggestions.

The editors,

Philippe Lortie
First Secretary

Frédéric Breger
Legal Officer

1 "Conclusions and Recommendations adopted by the Special Commission on the practical operation of the 1980 and 1996 Hague Conventions (10-17 October 2017)", C&R No 71 [hereinafter, "C&R of the 2017 SC"], available on the HCCH website at < www.hcch.net > under "Child Abduction" then "Special Commission meetings" and "7th Special Commission meeting (2017)".
2 C&R No 72 of the 2017 SC.
3 *Ibid*.
4 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.
5 C&R No 71 of the 2017 SC.
6 C&R No 73 of the 2017 SC.
7 C&R No 74 of the 2017 SC.

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Special Focus

The Seventh Meeting of the Special Commission on the practical operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention (10-17 October 2017)

Participants to the Seventh Meeting of the Special Commission on the practical operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention (10-17 October 2017). The Hague Academy of International Law (Peace Palace), The Hague.

1. The 2015 Statistical Survey

By Nigel Lowe QC (Hon), Emeritus Professor of Law (Cardiff University) & Victoria Stephens, Freelance Research Consultant (Lyon, France)

A fourth statistical survey into the operation of the 1980 Convention has been conducted by Professor Nigel Lowe and Victoria Stephens, in consultation with the Permanent Bureau and the International Centre for Missing and Exploited Children (ICMEC). ICMEC generously funded the project and provided support throughout. The provisional report was formally presented to the Seventh Meeting of the Special Commission in October 2017. This report is an updated summary of the main overall findings.

Like previous surveys, the 2015 Survey is based upon the response to a detailed questionnaire sent to every Central Authority designed to collect information about the number of applications, the parties involved in the abduction, the outcome of the applications, and the length of time it took to reach the outcome. Details were sought of every application *received* in 2015 regardless of when, or even if, an outcome was reached. To be comparable with the previous surveys the cut-off date for outcomes was 18 months after the last possible application could have been made, namely, 30th June 2017. Although the questionnaire was essentially the same as before, for the first time information was collected via the INCASTAT online database (www.incastat.net) developed thanks to generous funding from the Government of Canada.

Replies were received from 76 of the then 93 Contracting States, providing detailed information on 2,270 incoming return applications and 382 incoming access applications. We estimate that overall there were a maximum of 2,335 return (86%) and 395 access (14%) applications made to Central Authorities under the 1980 Convention. In other words, the 2015 Survey is estimated to have captured 97% of all applications.

Making a direct comparison with the 2008 Survey, there was a 3% increase in return applications but a 3% decrease in access applications. This is in distinct contrast to the 2008 Survey which found a 45% increase in return applications and a 40% increase in access applications from 2003, and to the 2003 Survey which found a 16% increase in return applications and 8% in access applications from 1999.

Although many Central Authorities received fewer applications in 2015, busy Authorities, such as the United States of America, England and Wales and Germany, continued to receive significantly more applications.

Looking first at return applications, 73% of taking persons were mothers, a higher proportion than the 69% recorded in 2008, 68% in 2003 and 69% in 1999. In 2015, 24% of the taking persons were fathers and the remaining 3% comprised grandparents, institutions or other relatives. Where known, 80% of taking persons were the "primary carer" or "joint primary carer" of the child (91% of taking mothers and 61% of taking fathers). Analysing the data further, 67% of the taking mothers were joint primary carers as against 37% in 2008, while 52% of taking fathers were joint primary carers as against 20% in 2008. This finding reflects a growing trend of joint parenting. As earlier surveys had exploded the myth that all abducting mothers were primary carers and all abducting fathers were non-primary carers, so the 2015 Survey goes some way at least to dispel the notion that most abducting mothers are sole primary carers. 58% of taking persons (comprising 56% mothers and 64% fathers) had the same nationality as the requested State and might be presumed to be going home.

The majority of applications (70%) involved a single child and most (78%) were under 10 years old (the average age was 6.8 years, as against 6.4 years in 2008 and 6.3 years in 2003). 53% of the children were male and 47% female.

The overall return rate was 45%, in line with the 46% recorded in 2008 but lower than the 51% in 2003 and 50% in 1999. This return rate comprised 17% voluntary returns and 28% judicial returns. A further 3% concluded with access being agreed or ordered (the same as in 2008 and 2003).

12% of applications ended in a judicial refusal (less than the 15% in 2008 and 13% in 2003, though higher than the 11% in 1999). 14% were withdrawn compared with 18% in 2008. 6% of applications were still pending at the cut-off date of 30 June 2017. This is lowest such proportion so far recorded and compares with 8% in 2008, 9% both in 2003 and 1999. There was a decrease in the rate of rejection by the Central Authorities under Article 27 with 3% of applications ending in this way in 2015 (compared with 5% in 2008, 6% in 2003 and 11% in 1999).

Of the cases decided in court, 65% ended with a judicial return order (compared with 61% in 2008, 66% in 2003 and 74% in 1999), 6% with access (compared with 5% both in 2008 and 2003) and 28% were refused (reversing an upward trend compared with 34% in 2008, 29% in 2003 and 26% in 1999). Furthermore, more cases were appealed, 31% as against 24% in 2008 (22% in 2003 and 14% in 1999). In 67% of these cases the same outcome was reached on appeal as at first instance, compared with 80% in 2008.

Analysing the refusals in a little more detail, there were in total of 243 refusals and in 185 of these we have information on the reasons. Some cases (30) were refused for more than one reason. If all reasons are combined, the most frequently relied upon grounds for refusal were Article 13(1)(b) (the grave risk of harm exception) (47 applications, 25%) and the child not being habitually resident in the requested State (46 applications, 25%). Article 12 was a reason for refusal in 32 applications (17%) and the child's objections in 27 applications (15%).

In proportional terms, the 2015 findings are evidence, particularly in comparison with 2008, of a notable shift in the grounds for refusals with increasing reliance being placed on non-habitual residence in the requesting State and a decline in reliance on Article 13(1)(b) and on the child's objections. In fact, the proportion of refusals based on the child's non-habitual residence has consistently risen from 17% in 1999, 19% in 2003, 20% in 2008 to 25% in 2015. On the other hand, the 25% of refusals based on Article 13(1)(b), though markedly lower than the 34% in 2008, is more in line with the 26% both in 2003 and 1999. So far as the child objection exception is concerned, at 15%, the 2015 finding is the lowest proportion yet recorded and may be compared with 22% in 2008, 18% in 2003 and the 21% in 1999. None of the four surveys found any significant reliance upon Article 20.

In 2015, applications were generally resolved more quickly, compared with the 2008 Survey. The average time taken to reach a decision of judicial return was 158 days (compared with 166 days in 2008, 125 days in 2003 and 107 in 1999) and a judicial refusal took an average of 245 days (compared with 286 days in 2008, 233 days in 2003 and 147 days in 1999). For applications resulting in a voluntary return the average time taken was 108 days, compared with 121 days in 2008, 98 days in 2003 and 84 days in 1999.

So far as access applications were concerned, 73% of respondents were mothers (79% both in 2008 and 2003 and 86% in 1999) and 58% had the same nationality as the requested State compared with 50% in 2008, 53% in 2003 and 40% in 1999. The majority (75%) of applications concerned a single child. The overall average age of a child involved was 8 years (compared with 7.8 years in 2008 and 7.9 years in 2003) and 51% of children were female and 49% male.

The overall rate at which access was agreed or ordered was 27%, compared with 21% in 2008, 33% in 2003 and 43% in 1999. 19% of applications were withdrawn (31% in 2008, 22% in 2003 and 26% in 1999), 17% pending and 31% ending in reasons described as "other". 4% were rejected and 2% judicially refused. Of the 50 applications ending in an order for access, 68% were made under the 1980 Convention and 32% under domestic law. In 2008, these figures were 45% and 55%, respectively. Information on the nature of orders for refusal was only available in two applications – one order made under the 1980 Convention and one under domestic law. This reflects the different interpretations of Article 21.

Access applications took longer to resolve than return applications. The average time taken to reach a final outcome was 254 days overall, 97 days if there was a voluntary agreement for access, 291 days if access was judicially ordered and 266 days if access was refused. These timings are considerably faster than those in 2008 when the overall average was 339 days, 309 days where there was a voluntary agreement, 357 days where access was judicially ordered and 276 days if access was judicially refused.

The overall findings of the 2015 Survey are encouraging. That, however, is not to say that the 1980 Convention is working well in all respects. The access provisions clearly need re-visiting. Although the speedier disposals of return applications as evidenced by the 2015 Survey is a positive development, further improvements are required if the goal of prompt disposals of applications is to be truly met.

More detail can be found in the revised report (posted on the HCCH website (www.hcch.net) under "Child Abduction" then "Statistics"), which comprises a Global Report, three Regional Reports and a number of National Reports.

Finally, we would like to express our thanks to the Central Authority staff who spent so much time in completing the questionnaire and answering our subsequent queries. We are also indebted to ICMEC for their additional assistance in inputting data into INCASTAT.

2. Table of Conclusions and Recommendations of previous meetings of the Special Commission

At the beginning of the meeting of the 2017 Special Commission, the Permanent Bureau of the Hague Conference introduced a "Table of Conclusions and Recommendations of previous Meetings of the Special Commission (SC) on the 1980 Child Abduction Convention and the 1996 Child Protection Convention" (Prel. Doc. No 6).[8] The objective of this document is "to provide Contracting States with a compilation of Conclusions and Recommendations (C&R) from past Special Commission Meetings that are still relevant today". The document was very useful in the context of the 2017 Special Commission, as it ensured that all experts were on the same page with regard to issues already discussed, and concluded at previous meetings of the Special Commission. As a result, issues already resolved previously were not reopened and current issues were discussed further, or for the first time. At the end of the Special Commission, new Conclusions and Recommendations were adopted especially in relation to the 1996 Convention. Those new Conclusions and Recommendations that would be relevant for the future will be added to Preliminary Document No 6. The Permanent Bureau reminded experts that this document is also an extremely useful tool for the new and old Contracting States with regard to their implementation of the 1980 and 1996 Conventions and for their daily application and practical operation. Contracting States, Central Authorities, judges and even, in some cases, legal practitioners should regularly refer to the "Table of Conclusions and Recommendations of previous Meetings of the Special Commission (SC) on the 1980 Child Abduction Convention and the 1996 Child Protection Convention".

8 "Table of Conclusions and Recommendations of previous Meetings of the Special Commission (SC) on the 1980 Child Abduction Convention and the 1996 Child Protection Convention (1989 (1st SC), 1993 (2nd SC), 1997 (3rd SC), 2001 (4th SC), 2002 (follow-up SC), 2006 (5th SC), 2011-2012 (6th SC))", Prel. Doc. No 6 of July 2017 for the attention of the Seventh Meeting of the Special Commission on the practical operation of the 1980 Child Abduction and the 1996 Child Protection Convention (available on the HCCH website, see path indicated in note 1).

3. Addressing delays under the 1980 Convention

Introduction

Given the centrality of expeditious procedures to the effective operation of the 1980 Convention, achieving prompt action has repeatedly been addressed at meetings of the Special Commission on the practical operation of the 1980 Convention, including at its Seventh Meeting in October 2017. Prompt return has also been the subject of good practices developed by Contracting States over the years and collected by the Hague Conference. In preparation for the 2017 Special Commission, the Permanent Bureau prepared a number of documents to assist with the discussion of this subject, namely, Preliminary Documents Nos 10 A, 10 B and 10 C of August 2017, respectively dealing with: (A) *Delays in the return process; (B) Delays in the operation of the 1980 Convention – a compilation of existing resources; and, (C) Fact Sheets on swift procedures in the operation of the 1980 Convention* (available on the HCCH website at < www.hcch.net > under "Child Abduction" then "Special Commission meetings" and "7th Special Commission meeting (2017)"). The text that follows consists of extracts from Preliminary Document No 10 A.

The prompt return of abducted children is essential to the effective operation of the 1980 Convention. Each day that the child remains abducted from his / her place of habitual residence has repercussions for the child and contributes to the escalation of the conflict between the parents, the eroding of contact between the child and the left-behind parent (if it has not been severed altogether), and the child's integration into the place to which he / she has been abducted. The passage of time may cause the child to suffer once again severe emotional instability at the time of return.

Besides the harm that delays in the resolution of cases can cause to the child and the parents, delays also make it more difficult for judges to administer the 1980 Convention, as the passing of time complicates the assessment and application of key concepts, such as habitual residence custody, grave risk, and settlement of the child.

The drafters of the 1980 Convention established an urgent mechanism for return, which can only meet the 1980 Convention's goals if applied efficiently, without significant delays. Article 11 of the 1980 Convention suggests that there is a presumption of a case being delayed if a decision on return is not made within six weeks from the date of initiation of the proceedings. Nonetheless, delays in return continue in many Contracting States. Such delays have significant human rights implications and in some cases can constitute violations of States' treaty obligations contained in human rights conventions.

1980 Convention requirements for prompt procedures

The 1980 Convention in several places emphasises the need for the rapid return of children who have been wrongfully removed or retained. The first object of the 1980 Convention set forth in Article 1 is "to secure the *prompt return* of children wrongfully removed to or retained in any Contracting State" (Art. 1(a)). As mentioned above, Article 11 establishes a benchmark of *six weeks* as the time frame within which a decision on return should be made. The need for the expeditious return of abducted children is stated in a number of additional provisions: "[…] to ensure their *prompt* return to the State of their habitual residence […]" (Preamble, third paragraph); "[…] they shall use the *most expeditious* procedures available" (Art. 2); "[…] to secure the *prompt* return of children […]" (Art. 7); and, "[…] it shall directly and *without delay* transmit the application […]" (Art. 9).

Statistics

The Statistical Analysis of Applications Made in 2015 under the 1980 Convention (hereinafter, "2015 Survey"),[9] the results of which were presented at the 2017 Special Commission, notes the critical importance of timing with regard to the successful operation of the Convention. The 2015 Survey documents a trend of increasing delays in the operation of the 1980 Convention between 1999 and 2008, with some reversal in that trend during the period between 2008 and 2015. Some of the relevant findings:

The mean number of days taken to reach a final conclusion from the date the application was received by the requested Central Authority

	1999	2003	2008	2015
Voluntary return	84	98	121	108
Judicial return	107	125	166	158
Judicial refusal	147	233	286	244

Percentage of applications taking over 300 days to resolve

1999	2003	2008	2015
5%	12%	21%	15%

Other statistics reveal that the overall reduction in the time needed to reach a final conclusion can in general be attributed to more efficient judicial procedures (although in some States, the Central Authorities dealt with applications very quickly). However, improvement is still needed, as indicated in the following:

Percentage of cases resulting in a return order that were resolved in 90 days or less from the date the application was received by the requested Central Authority

1999	2003	2008	2015
59%	51%	43%	36%

Appeals, which add a substantial amount of time to the return process, are increasing. However, there has been significant improvement in the time needed to resolve appeals:

The average number of days to conclude a return application decided on appeal

	2008	2015
Judicial return by consent	280	167
Judicial return not by consent	281	249
Judicial refusal	369	286

Good practices to ensure prompt procedures

To determine how some States are achieving swift returns, the Permanent Bureau examined the Country Profiles for the 1980 Convention[10] for a selected number of States that have had success in this regard.[11] Common features of the practice of those States are as follows:

a. At the Central Authority phase:

- Sufficient resources allotted to Central Authorities, with the presence of qualified, and if the volume of cases requires, dedicated Central Authority staff who deal only with 1980 Convention applications and related issues.
- Acceptance of the requesting State's application form or the Hague Conference Model Application Form.
- Acceptance of return applications sent electronically, allowing the originals (if and when needed) to be sent subsequently by mail.
- Where information in the application is incomplete, beginning to process the application while informing the requesting State of the additional information that is needed.
- To avoid delays where efforts are made to obtain the voluntary return of the child, either: (1) initiating court proceedings at the same time as the voluntary return efforts, or (2) starting court proceedings after a relatively short deadline, if voluntary return efforts are not successful.
- Providing regular training to Central Authority staff, including updates on legal developments related to the 1980 Convention.

b. At the judicial phase:

- "Concentration of the jurisdiction" of courts in respect of applications under the 1980 Convention.
- The judges who decide return applications are specialists in family law, and in some cases international child abduction.
- Either requiring or recommending legal representation in return proceedings.
- The availability of reduced rate or free legal assistance, most often based upon eligibility.
- The availability of such legal assistance also for appeals and enforcement proceedings (this can be subject to an assessment of the likelihood of success of an appeal for which the assistance is sought).
- Adopting either legislation or procedural rules to ensure that judicial and administrative authorities act expeditiously in return proceedings.
- Where the child is to be heard, having procedures in place to prevent this from delaying the process unnecessarily, for example: determining whether hearing the child is desirable at an early stage in the proceedings; making such arrangements on an urgent basis; or, scheduling the child's testimony to be given in conjunction with the hearing on the return application.
- Appeal at the first level being available by right, with expedited procedures.
- Designating at least one judge for the IHNJ.
- Training of judges including participation in judicial seminars.

c. At the enforcement phase:

- Not allowing the merits of the proceedings for return to be reviewed in enforcement proceedings.
- The availability of coercive measures (which vary by State) to enforce a return order.

Mediation

Mediation is an important tool in the return process, as it can result in agreement between the taking parent and the left-behind parent on the return of the child to the State of

habitual residence without the need for a litigated decision. At the same time, there is a risk that mediation efforts, if not managed carefully, can unnecessarily delay the return process. A balance needs to be found between exploring the possibility of a mediated outcome while ensuring that return is achieved in an expedient manner.

The Guide to Good Practice on Mediation underscores that "[m]ediation in child abduction cases has to be conducted rapidly at whatever stage it is introduced".[12] Mediation should be suggested at an early stage, and its suitability should be assessed before attempting it.

Recognising that States employ a variety of models or methods for mediation, the Guide does not recommend a particular model or method as being superior to others. For illustrative purposes, following are features of the cross-border mediation process in the Netherlands:

- Each case has two specialised mediators, a lawyer and a psychologist.
- The cross-border mediation is conducted by the Mediation Bureau, which is associated with the International Child Abduction Centre.
- The Central Authority initially sends a letter to the abducting parent notifying him or her of the return application and requesting co-operation in the child's voluntary return. That letter also recommends mediation as an option for resolving the matter.
- The abducting parent has two weeks to respond.
- The Central Authority then addresses a letter to the left-behind parent informing him or her of the letter sent to the abducting parent. Again, mediation is recommended.
- The possibility of mediation is repeated during the pre-trial hearing.
- There is a maximum period of two weeks between the pre-trial review and the hearing before a judicial panel.
- The court will not approve additional time for the mediation process.
- The mediation consists of three sessions, each of three hours, over the span of two days.
- The first session is for preliminary talks / caucus; the second is for seeking solutions and drafting a concept agreement; at the third, the agreement (if reached) is finalised and signed by the parents.
- The Ministry of Security and Justice will pay for most or all of the cost of the mediation.
- In legal aid cases, the Legal Aid Board also contributes.

Conclusion

The 2017 Special Commission adopted the following Conclusions and Recommendations with regard to addressing delays under the 1980 Convention:

> "3. The Special Commission acknowledges that globally there is still a severe problem of delays that affect the efficient operation of the Convention.
> 4. The Special Commission acknowledges that some States have made progress in reducing delays and encourages States to review their procedures (including, where applicable, at the Central Authority, judicial, enforcement and mediation / ADR phases) in order to identify possible sources of delay and implement the adjustments needed to secure shorter time frames consistent with Articles 2 and 11 of the Convention.
> 5. The Special Commission welcomes Preliminary Documents Nos 10 A, 10 B and 10 C, which present procedures that have been implemented by States to reduce delays. It invites the Permanent Bureau to complete and amend them in the light of the comments agreed upon at the Meeting. The final version of these documents should be uploaded on the HCCH website and recommended as helpful tools for consultation by State authorities that are reviewing their implementing measures."

9 "A statistical analysis of applications made in 2015 under the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, Part I – Global Report", prepared by Prof. Nigel Lowe and Victoria Stephens, Prel. Doc. No 11 A of February 2018 (revised) for the attention of the Seventh Meeting of the Special Commission on the practical operation of the 1980 Child Abduction and the 1996 Child Protection Convention, availabl on the HCCH website (see path indicated in note 1).

10 See the HCCH website at < www.hcch.net > under "Child Abduction" then "Country Profiles".

11 Australia, Austria, Canada (Ontario and Quebec), Chile, Germany, Netherlands, New Zealand, United Kingdom (England and Wales), and Uruguay. Fact sheets for each of these States identifying practices that contribute to maintaining expedient procedures (Prel. Doc. No 10 C of August 2017 for the attention of the Seventh Meeting of the Special Commission on the practical operation of the 1980 and 1996 Hague Conventions) can be found on the HCCH website (see path indicated in note 1).

12 Permanent Bureau of the Hague Conference on Private International Law, *Guide to Good Practice under the* Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction – *Mediation*, The Hague, 2012, p. 27 (available on the HCCH website at < www.hcch.net > under "Child Abduction" then "Guides to Good Practice").

4. The operation of Article 15 of the 1980 Convention

During the 2017 Special Commission, experts discussed the use of the Article 15 mechanism of the 1980 Convention, by which a decision or determination can be obtained from the State of habitual residence of the child that the removal or retention was wrongful within the meaning of the Convention. Various experiences with the application of the provision were shared, with some participants explaining, for example, that the Article 15 mechanism is used often in their jurisdictions, while others indicated that it is only rarely done. Regardless of the frequency of its use, many States underlined the risk of incurring undue delays in cases in which the mechanism is improperly applied. In its Conclusions and Recommendations, the Special Commission thus encourages discretion in the use of the mechanism and consideration of other procedures, such as the use of Articles 8(2)(f) and 14 of the 1980 Convention as well as direct judicial communications, which may make it unnecessary to rely on Article 15. In the light of the discussion on the risk of incurring delays, the Special Commission furthermore "invites Contracting States to ensure expeditious and effective practices and procedures, including through legislation, for any Article 15 decision or determination, where such mechanisms are available."[13] In order to ensure the availability of sufficient resources providing relevant information on the Article 15 mechanism, the Special Commission recommends the inclusion of more detailed information on Article 15 in an amended version of the Country Profile of the 1980 Convention.[14] It further recommends that an Information Document on the use of Article 15 be considered, which might be drawn up with the assistance of a small Working Group, if necessary.

13 C&R No 6 of the 2017 SC.
14 C&R No 7 of the 2017 SC.

5. Revised Forms for Return and Access applications under the 1980 Convention

During the 2017 Special Commission, the Permanent Bureau presented Preliminary Document No 12 on the modernisation of the standardised Return Application Form and on the development of a standardised Access Application Form under the 1980 Convention. Mindful of the fact that standardised forms are key to a smooth co-operation between Central Authorities involved in a child abduction case, Conclusions and Recommendations adopted at previous meetings of the Special Commission have urged the Permanent Bureau to modernise the standardised Return Application Form under the 1980 Convention as well as to develop a standardised Access Application Form.

The Permanent Bureau invited States to provide comments on specific issues of the Return and Access Forms. In particular, States were asked as to whether the Form should contain details of a single child or several children of the same family; States were further invited to comment as to whether the Forms should provide the option for electronic online completion or at least provide for active cells and to give consideration to the possibility of making the Forms available in multiple languages.

States overall welcomed the work of the Permanent Bureau and acknowledged the utility of such forms for the operation of the 1980 Convention. A majority of experts expressed their preference for a single form for all children of the same family, and for the production of these forms in all the languages of the Contracting States, as opposed to a multilingual form. The possibility of being able to fill out the form electronically was favourably received by a number of States, but the question of the electronic transmission of these forms was still open for discussion.

An expert further stressed that the use of such forms should not become mandatory while others expressed reservations regarding the provisions on custody, criminal charges and child health, and noted that these should be drafted with caution.

The Special Commission invited the finalisation, if necessary with the assistance of a Working Group, of the proposed forms in the light of comments provided by States and invited States to share any further comments on Preliminary Document No 12 with the Permanent Bureau.[15]

15 See C&R No 9 of the 2017 SC.

6. European Court of Human Rights Case Law - *X v. Latvia*

During the 2017 Special Commission, further to the *Neulinger and Shuruk v. Switzerland*[16] case of 2010 discussed at its Sixth Meeting, the Permanent Bureau noted the *X v. Latvia*[17] decision rendered in 2013 by the European Court of Human Rights (hereinafter, "ECtHR"). The case concerned the removal of a child from Australia to Latvia by her mother in July 2008 and in respect of whom a return order had been issued by the Latvian courts in January 2009. Before the ECtHR, the mother argued that the Latvian courts had not properly assessed the best interests of the child in this situation. The ECtHR ruled that the Latvian courts violated Article 8 of the *European Convention on Human Rights of 1950* (hereinafter, "ECHR"), which protects the right to respect for private and family life, in failing to take account of various relevant factors in assessing the best interests of the child.

The Permanent Bureau recalled the discussions on the *Neulinger and Shuruk* case held at the Sixth Meeting of the Special Commission (Part I) in 2011, further to which Conclusions & Recommendations Nos 48 and 49 were adopted which read as follows:

> "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 […]).
>
> 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."

Some States noted that the approach taken by the Court in the *X. v. Latvia* decision was more consistent with the spirit of the 1980 Convention, while expressing concerns that this decision still referred to the *Neulinger* decision. Eventually, the Special Commission adopted Conclusion & Recommendation No 17 and highlighted the "subsequent developments" presented in *X v. Latvia* regarding the interpretation of the 1980 Convention, especially the declarations of the ECtHR under the title "General Principles" in which the Grand Chamber of the ECtHR stated, *inter alia*, that "in the context of an application for return made under the Hague Convention, which is accordingly distinct from custody proceedings, the concept of the best interests of the child must be evaluated in the light of the exceptions provided for by the Hague Convention […]".[18]

16 *Neulinger and Shuruk v. Switzerland*, No 41615/07, ECtHR, 6 July 2010.

17 *X v. Latvia* [Grand Chamber], No 27853/09, ECtHR, 26 November 2013.

18 *Ibid.*, para. 101. References are made there to Arts 12, 13 and 20 of the 1980 Convention. See also para. 107 where the Grand Chamber stressed that these "exceptions must be interpreted strictly".

7. Benefits and use of the 1996 Convention in relation to the 1980 Convention

During the 2017 Special Commission, the Permanent Bureau introduced the agenda item on the benefits and use of the 1996 Convention in relation to the 1980 Convention by outlining the necessity of coordinating the application of the two Conventions. The 1996 Convention does not amend or substitute the mechanism established by the 1980 Convention for dealing with situations of international child abduction (see Art. 50 of the 1996 Convention). Instead, the 1996 Convention supplements and strengthens the 1980 Convention in certain respects. This means that a number of its provisions can be useful as a complement to the mechanism of the 1980 Convention. The Permanent Bureau highlighted the importance for States already Parties to the 1980 Convention of becoming States Parties to the 1996 Convention. In order to provide more clarity to the discussions, it was decided to divide the agenda item into eight sub-topics: (1) Habitual residence, (2) Rules on applicable law, (3) Access and contact, (4) Mediation, (5) Urgent measures of protection, including to facilitate safe return, (6) Recognition and enforcement of measures of protection including in the case of return and relocation, (7) Transfer of jurisdiction, (8) Central Authority post-return assistance.

Habitual residence

As a general point in relation to the 1996 Convention and international child abduction, the Permanent Bureau noted that the jurisdictional rules set out in Chapter II of the 1996 Convention create a common approach to jurisdiction which provides certainty to parties and thereby may discourage attempts at forum shopping through international child abduction.

The 1996 Convention supplements and reinforces the 1980 Convention by providing an explicit framework for jurisdiction, including in exceptional cases where the return of the child is refused or return is not requested. The Convention reinforces the 1980 Convention by underlining the primary role played by the authorities of the Contracting State of the child's habitual residence in deciding upon any measures which may be needed to protect the child in the long term. It does this by ensuring that the Contracting State of the child's habitual residence retains jurisdiction until certain conditions have been fulfilled (see Art. 7 of the 1996 Convention). The rule in Article 5 of the 1996 Convention which designates the child's habitual residence as the primary basis for the allocation of jurisdiction encourages parents to litigate (or to reach an agreement on) custody, access / contact and relocation issues in the Contracting State where the child currently lives, rather than removing the child to a second jurisdiction before seeking a determination of these issues.

Rules on applicable law

The Permanent Bureau presented the topic of parental responsibility by alluding to a case of child abduction where the determination of rights of custody was made with reference to the law of the child's former State of habitual residence. For example, when there are three States involved, the former State of habitual residence (*i.e.*, State of birth), the other two States being the current State of habitual residence and the State of refuge. For example, Article 16(2) of the 1996 Convention provides that "[t]he attribution or extinction of parental responsibility by an agreement or a unilateral act, without intervention of a judicial or administrative authority, is governed by the law of the State of the child's habitual residence at the time when the agreement or unilateral act takes effect". An agreement may have taken effect in the former State of habitual residence. Furthermore, Article 16(3) provides that "[p]arental responsibility which exists under the law of the State of the child's habitual residence subsists after a change of that habitual residence to another State".

Access and contact

Regarding the issue of access and contact in child abduction cases, the Permanent Bureau indicated that the 1996 Convention provides for more sophisticated mechanisms for access and contact than the 1980 Convention does. For example, Article 35 of the 1996 Convention is dedicated specifically to co-operation in international access / contact cases. Article 35 provides that the competent authorities of one Contracting State may request the authorities of another Contracting State to assist in the implementation of measures of protection taken under the 1996 Convention, especially in securing the effective exercise of rights of access as well as of the right to maintain direct contacts on a regular basis. Article 35 also provides a mechanism for a parent who lives in a different Contracting State than the child to apply to the authorities in his or her own State for them to gather information and evidence and make a finding on the suitability of that parent to exercise access / contact and the conditions under which such access / contact is to be exercised. The Article also gives discretion to the authorities who have jurisdiction to adjourn the access / contact proceedings pending the outcome of such a request. It is emphasised in the Convention that this adjournment to wait for the receipt of such information may be particularly appropriate when the competent authorities are considering the restriction or termination of access / contact rights granted in the State of the child's former habitual residence.

Mediation

Mediation is a subject matter regulated by Article 7(c) of the 1980 Convention and Article 31(b) of the 1996 Convention. The Permanent Bureau elaborated on the usefulness of reaching an agreement under those two Articles, noting that the mediation agreement would therefore benefit from the provisions of the 1996 Convention which would facilitate its recognition and enforcement in another State.

Urgent measures of protection, including to facilitate safe return

The Permanent Bureau outlined the importance of urgent measures of protection under Article 11 to ensure contact between the child and the left-behind parent but also to protect the child upon return. Noting the usefulness of the 1996 Convention in supporting the 1980 Convention to ensure the safe return of the child, an expert from the United Kingdom shared the interpretation given by his State's Supreme Court on Article 13(1)(b) of the 1980 Convention. The Court stated that this Article implies an obligation to seek

assurance that protective measures will be implemented in the State of return and stressed the value of direct judicial communications in this context.

Recognition and enforcement of measures of protection including in the case of return and relocation (Arts 23, 24 and 26 of the 1996 Convention)

The Permanent Bureau explained that relocation is useful when it comes to preventing child abduction. Indeed, the Permanent Bureau indicated that when the possibility of relocation is provided by a court then the chances of having the child abducted by one of the parents would decrease. The Permanent Bureau noted that, in this field, direct judicial communications are helpful especially where there is a need to recognise and enforce access rights after a decision on family relocation was rendered.

Transfer of jurisdiction (Arts 8 and 9 of the 1996 Convention)

The Permanent Bureau stressed that in cases where an agreement is concluded in a State the authorities of which do not have jurisdiction to render decisions on the merits of custody, a problem could arise with regards to the possibility of having this agreement recognised and enforced. For instance, this would be the case when an agreement on the merits of custody is presented to the authorities of the State of refuge (*i.e.*, the State where the child has been abducted to). In this type of case, it would be advisable for the authorities of that State to request the authorities in the State of habitual residence of the child that they be authorised to exercise jurisdiction in accordance with Article 9 of the 1996 Convention.

Central Authority post-return assistance

The Permanent Bureau indicated the possibility, under Article 32(a) of the 1996 Convention, of requesting a report on the child's situation after his/her return. The Permanent Bureau stressed the importance of this provision which ensures the effectiveness of protective measures. The Permanent Bureau also highlighted the fact that the use of the mechanism provided for under Article 32(a) is not limited to Central Authorities and can be extended to courts and other competent authorities under the 1996 Convention. Several States emphasised the non-mandatory nature of the requests made under Article 32(a) and cautioned that such requests should not become systematic.

8. The application of the 1996 Convention to unaccompanied and separated children

One of the most challenging discussions that took place during the 2017 Special Commission dealt with the application of the 1996 Convention to unaccompanied and separated children, as presented in Preliminary Document No 7. It is important to note that Article 6(1) of the 1996 Convention provides that "[f]or refugee children and children who, due to disturbances occurring in their country, are internationally displaced, the authorities of the Contracting State on the territory of which these children are present as a result of their displacement have the jurisdiction provided for in paragraph 1 of Article 5 [of the Convention]" (*i.e.*, to take measures directed to the protection of the child's person or property). In addition, Article 6(2) provides that "[t]he provisions of the preceding paragraph also apply to children whose habitual residence cannot be established". Furthermore, it is important to remember that competent authorities have jurisdiction to take urgent measures of protection (Art. 11) and provisional measures of protection (Art. 12) based on the mere presence of the child in their territory. Finally, under the 1996 Convention, Central Authorities could, among other things, assist with discovering the whereabouts of a child (Art. 31(c)) and facilitate the placement of a child in another Contracting State (Art. 33). It goes without saying that measures of protection ordered for these children would have to respect the immigration laws of the different States concerned.

In his opening remarks during the meeting, the Secretary General underlined the importance of this topic, which was addressed during the meeting of the Special Commission for the first time. The ongoing global migration crisis and the widespread, tragic and urgent nature of the topic was the impetus for its inclusion on the agenda. Preliminary Document No 7 provided an overview of the relevant law, as well as the measures of protection and the jurisdiction and co-operation mechanisms that may apply to unaccompanied and separated children under the 1996 Convention. The presentation of the document recalled its aim, which was to improve co-operation between child protection and immigration authorities at both the international and the national level. It was also an opportunity to demonstrate the flexibility of the 1996 Convention, which can be applied to unaccompanied and separated children. In addition, the Permanent Bureau reminded the Special Commission that the UN Committee on the Rights of the Child (UNCRC Committee) in its General Comment No 6 recommended that States become a Party to the 1996 Convention.

A significant number of States (out of the 62 who attended the meeting of the Special Commission) thanked the Permanent Bureau for the opportunity to address this issue. One State underlined the non-mandatory nature of the practices described in the Preliminary Document No 7 and two other States indicated that States should apply their own national law if the latter appeared to be more favourable for the children than applying the 1996 Convention.

Regarding the question as to whether the 1996 Convention should apply to unaccompanied and separated children, a majority of States took the opportunity to affirm that the 1996 Convention is indeed applicable to cases involving unaccompanied and separated children. Furthermore, the European Union indicated that the Convention should apply to all such children who are present in the European Union but who do not have their habitual residence in a European Union Member State. Three observers, the UNCRC Committee, the International Social Service and the International Association of Women Judges highlighted the importance of the 1996 Convention and its mechanisms for the protection of unaccompanied and separated children. On the other hand, two States underlined that matters concerning unaccompanied and separated children are principally issues of public law rather than private international law.

The discussion continued on the future of Preliminary Document No 7 and whether it required modification or amendment, or the drafting of a new document related to unaccompanied and separated children. A majority of States highlighted the importance of having a document on this issue and were in favour of amending and modifying the existing document to meet the different views of the States. Three of these States mentioned the possibility of having a shorter document. Four emphasised the need for an opportunity to provide comments on the new version of Preliminary Document No 7 before distributing it. The majority of States agreed that the current version of Preliminary Document No 7 could be removed from the publicly accessible part of the HCCH website and transferred to the Secure Portal, while a new version would be circulated to States for their comments. However, one observer was opposed to removing the document from the publicly accessible part of the website since it raises awareness about private international law tools that can be used to tackle challenging issues related to immigration.

Towards the end of the session, the First Secretary read a message from UNICEF, which could not attend the meeting but fully supported Preliminary Document No 7 and the use of the 1996 Convention for the protection of unaccompanied and separated children.

The 2017 Special Commission, on this issue of applying the 1996 Convention to unaccompanied and separated children, concluded that "a number of States expressed support for the general direction of Preliminary Document No 7, while other States expressed concerns with regard to the general direction and / or some of the substance of the document". In addition, regarding the modification of the document "the Special Commission recognises the need to clarify the application of the 1996 Convention to refugee children, and children who, due to disturbances occurring in their country, are internationally displaced. To this end, Preliminary Document No 7 is to be removed from the publicly accessible part of the HCCH website and replaced, taking into account the comments received and any further comments to be received (by the end of 2017 at the latest). A new draft will then be circulated for comments to Members and Contracting States with a view to a timely finalisation."

9. Draft Guide to Good Practice on Article 13(1)(b) of the 1980 Convention

The Chair of the 2017 Special Commission introduced the discussions on the draft Guide to Good Practice on Article 13(1)(b) of the 1980 Convention and noted that the development of the Guide had been underway for a number of years. She further stressed the increasing reliance on the exceptions to return, including Article 13(1)(b). She noted the clear statement in the Explanatory Report that the 1980 Convention rests on the principle that it is in the best interests of the child not to be removed from its place of habitual residence. This principle gives way, however, in the case of an abduction, where there is a grave risk that ordering return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The Chair of the Working Group then addressed the Special Commission. She acknowledged that there was a short time period in which comments on the draft had been sought and she complimented States Parties and those individuals who had made submissions on their willingness to engage so thoughtfully with the process and provide detailed responses. She acknowledged that the submissions encompassed a range of views which would ultimately need to be reconciled before the draft Guide is completed. She informed the Special Commission that the Working Group had met in the preceding weekend and discussed the responses and issues they raised. She ad-

vised that the Working Group acknowledged that much more work on the Guide would be necessary and hoped for endorsement of an ongoing process of re-drafting and consultation and invited comments from experts with that timeframe in mind.

The Chair of the Working group then presented the three main outstanding issues which had been distilled by the Working Group related to the draft Guide, and invited the experts to comment.

Firstly, the Special Commission was asked to determine whether matters ancillary to the grave risk exception (*e.g.*, contact with the left-behind parent and mediation) should be included in the draft Guide. The Working Group was of the view that they should be included. The majority of experts attending the 2017 Special Commission echoed this view.

The second issue to be resolved was whether the case scenarios found in Part IV of the draft Guide should be integrated in the relevant sections throughout the Guide, as opposed to being contained in a designated part. In that respect, a large number of experts expressed their wish for the draft Guide to be shorter, more concise, and substantially reduced in order to encourage its use in practice. If the case scenarios found in Part IV of the draft Guide were to be integrated in the relevant sections throughout the Guide, this could reduce duplication and as a result the Guide could be shorter.

Finally, experts were asked whether the background information on the dynamics of domestic violence and relevant international norms in this area contained in Annex 3 should be included in the body of the draft Guide or in a separate document. A few experts suggested that Annex 3 should be deleted but that its main elements should be included in the body of the draft Guide in a concise and balanced manner, and always placed in the context of the 1980 Convention and the fundamental elements of the Article 13(1)(b) exception. On the other hand, a few experts considered that these issues relating to domestic violence should be set out in a separate document. A number of experts also noted that the draft Guide should spell out more clearly that domestic violence is not the only ground for non-return under Article 13(1)(b).

Celebrating the Honourable Chief Justice Diana Bryant's retirement during the Seventh Meeting of the Special Commission on the practical operation of the 1980 and 1996 Hague Conventions (10-17 October 2017). The Hague Academy of International Law (Peace Palace), The Hague.

In the end, the Special Commission concluded and recommended the following: "The Special Commission welcomes the work of the Working Group and the progress made on the draft Guide to date, and invites the Working Group to continue its work with a view to the finalisation of the Guide. The Special Commission recom-mends that priority be given to this work."

10. Third meeting of the Experts' Group on recognition and enforcement of mediated agreements in family matters

From 14 to 16 June 2017, the Experts' Group on cross-border recognition and enforcement of agreements in family disputes involving children met at the offices of the Permanent Bureau in The Hague for the third time. The meeting was attended by 28 experts and members of the Permanent Bureau under the chairmanship of Prof. Paul Beaumont from the University of Aberdeen.

At its first meeting in December 2013, the Group discussed the nature and extent of the legal challenges arising in the context of recognition and enforcement of voluntary agreements reached in the course of international child disputes. The Group acknowledged the increase in mobility of families and the need for the agreements to be "portable". The Group also noted the important role party autonomy plays in international family law and the value of providing tailor-made and comprehensive solutions that are likely to be respected by the parties. The discussions of the second meeting of the Experts' Group focused on the responses to a questionnaire circulated by the Permanent Bureau to private practitioners, judges, academics, government officials and Central Authorities' personnel with a view to assessing the desirability and feasibility of both a binding and non-binding instrument.

The Group concluded that there is a need to explore further the development of a non-binding navigation tool that could assist those who apply existing Hague Family Law Conventions to agreements in family matters. Cognisant of the difficulties that "package agreements" (*i.e.*, family

agreements related to custody, access, relocation and/or child support and which may include spousal support and other financial matters, such as property issues) encounter when they "travel" across borders, especially where their scope goes beyond the provisions of the existing Hague Family Law Conventions, the Group also concluded that the development of a binding legal instrument could help to secure the recognition and enforcement of such agreements.

In 2016, the Council on General Affairs and Policy of the Conference decided to task the Permanent Bureau, in consultation with the Experts' Group, to develop a non-binding "navigation tool" to provide best practices on how an agreement made in the area of family law involving children can be recognised and enforced in a foreign State under the 1980, 1996 and 2007 Conventions. The result of this work would further help to assess the desirability and feasibility of developing a new binding instrument.

At the third meeting, the discussions on the draft "navigation tool" highlighted that, while the existing Hague Family Law Conventions do facilitate the cross-border recognition and enforcement of these agreements to a certain extent, they do not address the specific issue of "package agreements" nor provide a simple, certain or efficient means for their enforcement. The Group recognised that very often the matters covered require the simultaneous application of more than one Hague Family Law Convention while some elements of those package agreements are not within the scope of any of the existing Hague Family Law Conventions, which creates difficulties for the enforcement of package agreements.

Against this background, the Experts' Group proposed three Conclusions and Recommendations for the attention of the 2017 Special Commission and which underlie the approach taken in the draft navigation tool.

The proposed Conclusions and Recommendations read as follows:

> "(1) Competent authorities in the State of habitual residence of the child, when a Hague 1980 Convention child abduction case is pending in another Contracting State, should be ready to swiftly give force of law to a family agreement between the parties after taking due account of the best interests of the child.
>
> (2) Where the parties make a family agreement which includes the non-return of a child in a Hague 1980 Convention case, the competent authorities in the State of habitual residence of the child should react swiftly, and in principle favourably, to a request under the 1996 Convention for a transfer of jurisdiction to the competent authorities in the place where the child is present.
>
> (3) Costs associated with measures of protection such as contact / visiting expenses do fall within the scope of the 1996 Convention and/or the 2007 Convention."

Of the three Conclusions and Recommendations, the 2017 Special Commission only adopted a revised version of Conclusion and Recommendation No 3.[19]

Moreover, the comments made by experts at the meeting (mostly from States Parties both to the 1980 and 1996 Conventions) revealed a notable divergence in determining the moment when the habitual residence of the child shifts in the case of a non-return agreement following an application for return under the 1980 Convention.

Some States expressed the view that the agreement reached by the parties not to return a child in a 1980 Convention case would bear the consequence that the habitual residence of the child immediately shifts to the requested State (*i.e.*, the State where the child is present). Other States expressed reservations with regard to this interpretation and noted that the agreement not to return the child, while it would inevitably influence the determination of the child's habitual residence, could not be regarded as

Participants in the third meeting of the Experts' Group on cross-border recognition and enforcement of agreements in family disputes involving children, 14-16 June 2017, Permanent Bureau, The Hague.

the decisive element for the purposes of determining the child's habitual residence.

In light of these discussions, it was decided, upon a suggestion made by the Chair and in consultation with the members of the Experts' Group, to propose to Council on General Affairs and Policy that the Experts' Group be convened for a fourth meeting in late 2018. Subject to the outcome of this discussion, the Experts' Group may revise the draft navigation tool and revisit its conclusions regarding the desirability and feasibility of developing a new binding instrument. This proposal will be brought to the 2018 meeting of the Council on General Affairs and Policy.

19 "The Special Commission takes note of the finding of the Experts' Group that, depending on the individual circumstances of the case, the applicable law or the wording of the agreement or decision, the travel expenses associated with the exercise of cross-border access / contact may fall within the scope of the 1996 Convention." See C&R No 53 of the 2017 SC.

11. Recognition and enforcement of protection orders

During the 2017 Special Commission, the Permanent Bureau presented the status of the Project on the recognition and enforcement of foreign civil protection orders and recalled that, as recognised by past meetings of the Special Commission, the protection of the child under the 1980 Convention sometimes equally required the protection of an accompanying parent upon return to the State of habitual residence. The Permanent Bureau further recalled that, during Part I of its Sixth Meeting, the Special Commission welcomed the decision of the 2011 Council on General Affairs and Policy of the Conference to add the topic of the recognition of foreign civil protection orders to the Organisation's agenda.

Referring to the Experts' Meeting on Issues of Domestic / Family Violence and the 1980 Convention held on 12 June 2017 at the University of Westminster in London,[20] the Permanent Bureau noted that there exists a need for the development of an international instrument for the recognition of foreign protection orders. While the 1996 Convention can prove beneficial in the context of the safe return of a child, *e.g.*, by providing for the automatic recognition and enforcement of measures of protection, it does not purport to deal with the protection of the child's carer. It was further noted at the Westminster meeting that 1980 Convention proceedings are restricted to the parties, usually the parents. There are many situations where protection orders are required in respect of other actors and in particular extended family members. Thus, only a new international instrument could provide for those areas of protections, in addition to orders under the 1996 Convention. The Permanent Bureau also informed the 2017 Special Commission that the preparation of a short note for the 2018 meeting of the Council on General Affairs and Policy was underway.

A number of delegations intervened on the subject. An expert from the European Union indicated that the EU had already expressed its doubts about the Project, which were linked to the fact that a directive on criminal protection orders and a regulation on civil protection orders already addressed these issues within the EU since January 2015. The majority of participants acknowledged the importance of the work carried out in this area and supported the Protection Orders Project. In particular, an expert from Canada reiterated the support of her country for the Project and believed that the recognition of foreign civil protection orders could be useful in child abduction cases. An expert from Venezuela underlined the importance of this matter with a view to ensuring the safe return of the child and suggested that information on the availability of protective measures in each State be included in the Country Profile for the 1980 Convention. The expert also highlighted the relevance of direct judicial communications for ensuring the safe return of the child. Finally, the Special Commission welcomed the report on preliminary work already undertaken as well as the continued exploration of further work on the recognition and enforcement of foreign protection orders at the international level.[21]

20 See "Report on the Experts' Meeting on Issues of Domestic / Family Violence and the 1980 Hague Child Abduction Convention, 12 June 2017, The University of Westminster, London", Info. Doc. No 6 of August 2017 for the attention of the Seventh Meeting of the Special Commission on the practical operation of the 1980 Child Abduction and the 1996 Child Protection Convention, available on the HCCH website (see path indicated in note 1).

21 C&R No 55 of the 2017 SC.

12. Launch of the improved INCADAT

On 16 October 2017, during the 2017 Special Commission, an improved INCADAT (International Child Abduction Database) website was officially launched by Mr. Christian Höhn, Head of the German Central Authority for the 1980 Convention. The technical refurbishment of the database and website was enabled by generous financial assistance provided by Germany and Miles & Stockbridge P.C.

A number of improvements feature on the new INCADAT website (which can be accessed at < www.incadat.com >) that are designed to enhance its principle functions. The system is now able to search the full content of all international child abduction decisions contained in the database, and to generate relevance-based search results where users choose to search by keyword. The search criteria that were available in previous versions of INCADAT can also still be used. The website is more user-friendly, as it is now supported by a range of mobile devices and has a redesigned layout, including an overview of news on the 1980 Convention from HCCH. In addition, a number of critical changes to the content management system of the website will help to significantly streamline the editorial workflow for the uploading of new cases.

The Special Commission welcomed the launch and "further supports the consolidation of a global network of INCADAT correspondents to ensure a wide geographic coverage for the database, and encourages all States to designate a correspondent for this purpose". In the coming months, the Permanent Bureau will be consolidating the network of INCADAT correspondents as part of its overall objective to ensure the database is as up-to-date as possible.

13. New Contracting States to the 1996 Convention

Since 2015, six States have joined the 1996 Convention, namely: Italy, Serbia, Norway, Turkey, Cuba and, most recently, Honduras for which the Convention will enter into force on the 1st of August 2018. In addition, Argentina and Canada have signed the Convention on 11 June 2015 and 23 May 2017 respectively.

14. Country Profiles for the 1980 and 1996 Conventions

Development of an electronic Country Profile for the 1980 Convention

With a view to facilitating the continuous updating of the Country Profiles for the 1980 Convention, the Permanent Bureau asked the 2017 Special Commission whether it would support the development of an electronic Country Profile similar to the one that had been created for the 2007 Child Support Convention. This electronic Country Profile would allow States to directly update their data online and would also enable the automatic and simplified extraction of data *e.g.*, for comparative research purposes. The Permanent Bureau emphasised the importance of having up-to-date Country Profiles of Contracting States to the 1980 Convention by pointing out to the correlation between the continuous updating of Country Profiles and acceptances of accessions to the Convention.

The 2017 Special Commission concluded and recommended as follows:

> "77. The Special Commission urges Contracting States that have not yet done so to complete a Country Profile for the 1980 Convention as soon as possible. With a view to facilitating its completion and its updating, as well as facilitating the extraction of information, the Special Commission recognises the value of developing, subject to supplementary voluntary contributions, an electronic Country Profile ("e-Country Profile") for the 1980 Convention."

Development of a future Country Profile for the 1996 Convention

The Permanent Bureau noted that it was important, in the context of the 1996 Convention, for States to dispose of information on the services offered by the authorities of each Contracting State, as such services varied between States with different legal traditions. Country Profiles for the 1996 Convention would provide valuable information on jurisdictions connected by the Convention, such as the type of information that could be requested from competent authorities, available procedures, applicable time limits and the types of protective measure available. The Permanent Bureau insisted that this would have significant added value for the operation of the Convention.

A number of delegations supported the development of a Country Profile. They indicated that the issue of funding for

such a project should be left open for the moment. The experts further stated that such profiles should be sufficiently detailed to be useful, indicating the average timeframe for different stages of appeal and how, *e.g.*, requests regarding cross-border placement of a child under Article 33 of the 1996 Convention are dealt with.

In its Conclusion and Recommendation No 45, the 2017 Special Commission recommended the development of a Country Profile by the Permanent Bureau in consultation with Contracting States to the 1996 Convention and Members of the Organisation.

*Members of the team that organised the Seventh Meeting of the Special Commission on the practical operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention (10-17 October 2017). The Meeting was co-Chaired by Ms Leslie Kaufman (First Senior Deputy to the State Attorney, Office of the State Attorney, Department of International Affairs, Ministry of Justice, Israel) for the parts of the Special Commission on the 1980 Convention and by Ms Joëlle Schickel-Küng (*Cheffe de l'Unité droit international privé, Office Fédéral de la Justice, *Switzerland) for the parts of the Special Commission on the 1996 Convention. The Hague Academy of International Law (Peace Palace), The Hague.*

Direct Judicial Communications

1. Dialogue of Judges - European Liaison Judges and Judges of the International Hague Network of Judges

This article is an abridged, updated version of the "Dialogue of Judges – Verbindungsrichter und internationale Richternetzwerke",[22] *by Dr. Martin Menne, Appellate Judge in Family Matters,* Kammergericht Berlin*/Berlin Appellate Court and German Liaison Judge within the European Judicial Network in Civil and Commercial Matters*

Direct communications between judges have gained significant importance in the recent judicial practice, in particular in the field of international family law as well as international insolvency law. This article takes as a starting point the substantive problems that judges face in their daily practice and goes on to discuss existing solutions. The article further seeks to provide an insight on direct judicial communications practice in Germany as well as recent developments in certain States' legislations.

I. Starting point: practical issues

The increasing mobility of families across borders has given rise to a growth in the number of cases in family courts with a connecting factor to a foreign country and thus has become part of judges' and courts' daily practice. The recent trend in private international family law shows a decline of nationality, as the traditional connecting factor, and an increased consideration of habitual residence. This change of trend has resulted in many cases where foreign law was to be applied. However, the most frequent practical difficulties that judges face in family court practice are not issues of determination or interpretation of foreign law; rather they occur in other areas which are illustrated in the following practical cases.

Case scenario 1: German Federal Constitutional Court* ("Bundesverfassungsgericht") *– Examination of the records of the Romanian adoption authority in Timişoara

In this case, the applicant argued that he had been adopted in 1970 by the defendant and her late husband in Romania when he was 13 years old. To support his claim, he produced as evidence an order for adoption issued by the Mayor's office in Timişoara (Romania) and filed the recognition thereof with the first instance court in Frankfurt (Germany). The motive was a dispute over the claimant's right to a compulsory portion of the deceased husband's inheritance. The portion as she contested the validity of the adoption order. A scrutiny of the Romanian adoption, access to which had already been granted to the court by the competent authority in Timişoara, would have allowed to establish with certainty the nullity of the adoption order. The first instance court in Frankfurt decided to base its decision on the sole evidence of the adoption order. The respondent initiated a constitutional recourse where she raised the lack of investigation, arguing that the first instance court should have examined the validity of the Romanian order for adoption.[23]

Case scenario 2: Swiss Federal Court* ("Bundesgericht") *– Impending arrest for contempt of court in Pennsylvania (USA) in a child abduction case between the United States of America and Switzerland

A return application under the 1980 Hague Convention was pending before the Swiss Federal Court. The mother was the primary carer to the young child and was still breastfeeding him. In the course of proceedings, it was found that the Court of Common Pleas in the Centre County in Bellefonte (Pennsylvania) had granted the father temporary sole custody for the child while holding the mother in contempt of court because of repeated violations of court orders; as a result, a return to the US would expose the mother to the execution of a pending arrest warrant for contempt of court. The Federal Judges in Lausanne deemed that the subsequent separation of the child from his mother would amount to a grave risk of harm in the sense of Article 13(1)(b) of the 1980 Hague Convention.[24]

Case scenario 3: First instance court* ("Amtsgericht") *in Freiberg (Sachsen/Germany) – Inadmissibility of the petition for divorce of a Pakistani-Romanian couple on the grounds of a pending divorce procedure abroad

A Romanian wife who was living with her two minor children had filed a petition for divorce from her husband, a national of Pakistan. In the course of proceedings, it was argued that divorce proceedings had been commenced in France and in Spain, where the spouses were found to have been habitually resident. The husband claimed that divorce proceedings had been commenced in Spain. The wife indicated that

she had applied for legal aid in France in order to initiate divorce proceedings. She further contended that she had applied for a protection order, alleging to have suffered domestic violence. The counsels of the parties were not able to clarify the situation. The first instance court asked whether the divorce proceedings would be inadmissible because of pending divorce proceedings abroad.[25]

Case scenario 4: First instance court ("Amtsgericht") Marienberg (Sachsen/Germany) – Divorce request by a Lebanese asylum seekers couple

Following the advice of the family judge in the first instance court in Marienberg, a counsel contacted the liaison judge of the International Hague Network of Judges. The counsel indicated that he represented a Lebanese asylum seekers couple in divorce proceedings. Both of them lived in Sachsen but they had separated. The spouses had arrived from Lebanon with their three children where they religiously married in 2004. Later on the marriage was confirmed by a Lebanese court. After a ew years, the mother filed a petition for divorce. As the wife did not possess a marriage certificate, the counsel sought advice from the liaison judge on the issues of jurisdiction and applicable law, as well as on the validity of the marriage.

II. Possible approaches to solve the issues

There are different solutions to overcome these difficulties:

1. In family law

a. Central Authorities

Central Authorities can provide a useful platform to foster communication and co-operation between judges. While the possible courses of action of these Central Authorities are primarily dependent on the international instrument from which they derive their powers, they usually play an important role when it comes to exchanging information about the situation of a child or about ongoing proceedings in another State.

In the 1st case scenario, a scrutiny of the records of the competent authority for adoption in Romania would have been possible if the German judge dealing with the recognition of the adoption order issued in Romania had turned to the German Central Authority for Adoption; the latter could have tried to gain access to the orders for adoption issued by the Mayor's office in Timişoara with the assistance of the Romanian Central Authority under the 1993 Hague Intercountry Adoption Convention.

However, while there undoubtedly exists fruitful co-operation between judges and Central Authorities, this co-operation does not fall under the so-called "dialogue of judges"; rather, the Central Authority process can be described as a judicial administrative proceeding.

b. Judicial networks

The situation is somewhat different when judicial co-operation is channelled through a **judicial network**. The most important judicial network is the European Judicial Network in Civil and Commercial Matters (hereinafter, the "EJN")[26] whose object is to enhance cross-border co-operation between EU Member States in civil and commercial matters with an international element. The members of the Network provide support to courts and authorities in the Member States with a view to settling cross-border disputes and assisting with the practical implementation of European Community law.

The EJN rests on the belief that cross-border informal personal contacts based on mutual trust between members of the Network can effectively contribute to overcome challenges arising from (family) matters involving a cross-border element.

In Germany, the EJN consists of:

- The contact points of the Network;
- Central bodies and Central Authorities provided for in Community instruments, instruments of international law to which the Member States are parties or rules of domestic law in the area of judicial co-operation in civil and commercial matters;
- The French liaison magistrate ("*magistrat de liaison*") in the German Federal Ministry of Justice and Consumer Protection;
- The German liaison magistrate in the French Ministry of Justice;
- The liaison judges of the EJN.

In the 1st case scenario, the German Federal Constitutional Court emphasised the role of the members of the EJN with regard to facilitating judicial co-operation and contributing to the smooth carrying out of judicial proceedings with cross-border elements. In practice, this means that both the first instance court in Frankfurt (Case scenario No 1) and the first instance court in Freiberg (Case scenario No 3) could have requested support and assistance from the contact point or the EJN liaison judge.

This option could however not be envisaged in case scenarios Nos 2 (child abduction case between Switzerland and

the US) and 4 (divorce of a Lebanese couple) as the EJN is solely meant to facilitate judicial co-operation between Member States of the European Union (with the exception of Denmark).

In order to establish a proper dialogue of judges, it is pivotal that courts in the above-mentioned cases turn to a liaison judge. There exist two kinds of liaison judges in Germany:

i. Liaison judges of the EJN

In Germany, four judges have been designated in the context of the EJN. They are "sitting" family judges that take on the additional duties of a liaison judge on top of their regular duties as family judges – a task for which they do not receive any compensation. These four liaison judges are disseminated across Germany so as to evenly cover German courts.[27]

Liaison judges provide assistance to judges in their jurisdiction dealing with cross-border legal (family) disputes. They can only assist in relation to a concrete individual case. They are tasked to provide information on the process taking place abroad and to respond to general enquiries (however, always in relation to a concrete individual case) on the judicial practice or legal system of the foreign country.

Liaison judges occasionally act as contact point for the judges in their country and assist them with the resolution of cross-border (family) disputes. The threshold for an informal exchange of views between colleagues from the judiciary is much lower than with formal requests addressed to an executive body and thus prompts judges to seek assistance through this channel.

In case scenario No 3, the German liaison judge contacted by e-mail the French and German liaison magistrates, respectively in the German Federal Ministry of Justice and in the French Ministry of Justice. The French liaison officer turned to the Tribunal de grande instance *in Créteil which confirmed after a few days that the Romanian wife had indeed applied for legal aid in order to file a petition for divorce. The French court indicated however that, in line with the rules of French civil procedure, the case had been removed from the register in May 2014 since no proceedings had been initiated. As a result, the proceedings were barred by limitation after a period of two years with the consequence that, in May 2016, no* lis pendens *in France was barring the divorce proceedings initiated in Germany. In order to clarify the legal situation in Spain, the German liaison judge turned to the Spanish EJN liaison judge, a judge in Zaragoza. After a couple of days, the latter confirmed by e-mail that the Pakistani husband had indeed applied for legal aid in 2011 in order to contest a request for a protection order filed by the wife with the first instance court of Santa Coloma de Gramanet (Spain). The EJN liaison judge communicated the name of the competent judge in the first instance court to the German family judge in order for her to contact him directly and clarify whether there was a case of* lis pendens *in Spain that would constitute a bar to the divorce proceedings in Germany.*

A similar approach could have been envisaged in case scenario No 1 (Recognition of the Romanian adoption order); the liaison judge could have clarified whether direct contact with the adoption authority in Romania could be established or could have referred the court to the Federal Contact Point of the EJN.

ii. Liaison judges of the International Hague Network of Judges

The International Hague Network of Judges (hereinafter, the "IHNJ") is a worldwide, rapidly growing network; to date, it encompasses 125 judges from 81 jurisdictions.[28] Germany currently has two judges as members of the Network. The purpose of the Network is limited to judicial co-operation and direct judicial communications in child / child abduction matters in relation to the 1980 Hague Convention or to the 1996 Hague Convention.

The practical role of Hague Network Judges is to facilitate direct cross-border communications between judges and courts in concrete child abduction cases with a view to removing practical obstacles to return, to help to ensure that the prompt return may be effected in safe and secure conditions for the child. Their role may comprise the provision of information on foreign law, in particular where assistance is needed as regards the interpretation of foreign law concepts.[29]

In case scenario No 2 (US-Switzerland child abduction case), the investigating Swiss judge contacted the competent judge in the Court of Common Pleas in the Centre County in Bellefonte (Pennsylvania/USA). Contact with the US court was directly established by the Swiss judge as there was no liaison judge appointed in 2009 in Switzerland. Only in 2013 were two Swiss judges appointed as members of the IHNJ. The US and Swiss judges clarified whether the temporary order granting sole physical custody of the child to the father could be set aside and whether there was certainty that the pending arrest warrant for contempt of court would not be executed if the mother were to return to the US. After having heard the parties and upon approval by the

US judge that these two conditions could be satisfied, the Swiss Federal Court ordered the return of the child to the US within 30 days.

It is worthy to recall that liaison judges, whether they have been appointed under the auspices of the EJN or the IHNJ, can only respond to queries from other members of the judiciary in relation to a concrete case. Queries from third parties (*e.g.*, lawyers) do not fall within their purview. The reason for this being that judges are not supposed to give advice: this is a prerogative of lawyers.[30] Therefore in case scenario No 4 (divorce of the Lebanese asylum seekers couple) the question posed by the counsel of one of the asylum seekers could not be answered by the liaison judge.

In cases involving a State that is not yet a Party to the 1980 Hague Convention, and where a liaison judge has not yet been designated, consideration should however be given to the possibility to use the channel of the IHNJ to facilitate direct judicial communications. This is of special importance for Lebanon or other Arab States being part of the Malta Process: the Malta Process (an HCCH initiative) is a dialogue between Contracting States to the 1980 Hague Convention and the 1996 Hague Convention and non-Contracting States with Sharia-based or Sharia-influenced legal systems. It aims at improving State co-operation in order to assist with the resolution of difficult cross-border family law disputes in situations where the relevant international legal framework is not applicable. It seeks in particular to improve child protection between the relevant States by ensuring that the child's right to continued contact with both parents is supported (even though they live in different States) and by combating international child abduction. In particular, where the dispute concerns a State that is a Party to the Malta Process, judges should be encouraged to reach out to the Network judges.[31]

2. In other areas of law

There exist other areas of law, such as international insolvency law, where the use of direct judicial communications would prove necessary. In the context of a global market and of the growing interdependence of commercial relationships, insolvency of companies has no borders. In order to effectively implement insolvency liability and to co-ordinate insolvency proceedings across States, the co-operation of all parties involved in the process is necessary. The practice of cross-border insolvency disputes needs to be shaped by direct judicial communications between insolvency courts as well as between courts and liquidators involved in insolvency proceedings taking place in a foreign jurisdiction.

A parallel may be drawn between the use of direct judicial communications in the context of international insolvency cases and in the context of international family law; the practice of direct judicial communications in the latter area has however not yet developed to the same extent. It should be noted that Germany has not yet developed a domestic soft law instrument for family court practice with a view to promoting and developing good practices in the area of cross-border judicial co-operation.

III. Current topics of discussion

1. Competency to initiate judicial co-operation across borders

An important question is whether there exists a legal basis for direct judicial communications, and whether such communications are actually permitted under the current legal framework.

From a public international law perspective, it seems that the mere request from a judge to a foreign judge with a view to assessing whether the latter is willing to share information and, where possible, to co-operate would not breach the sovereignty of his / her State.

Furthermore, several international instruments encourage the use of direct judicial communications. For instance, Article 15, paragraph 6, of the Brussels II a Regulation[32] provides for (direct and indirect) cross-border judicial co-operation in a case of transfer of jurisdiction:[33] with this provision, it is assumed that judges are permitted to communicate with judges from another Member State of the European Union to consult on the opportunity of a transfer of jurisdiction.

This premise is even more clearly supported in Recommendation 5.1 of the Emerging Guidance regarding the development of the International Hague Network of Judges and General Principles for Judicial Communications which provides: "The Hague Network Judge will encourage members of the judiciary in his / her jurisdiction to engage, where appropriate, in direct judicial communications".

2. The absence of a legal framework in German international family law

However the question as to where the right to direct judicial communications is regulated, remains unanswered. As such, there exists no clear legal framework in German family law for the co-operation between judges of the IHNJ or for direct judicial communications; the legal basis is

rather to be found in a multitude of recommendations and decisions, but also in customary practice. It is sometimes argued that the inquisitorial nature of family procedure rules in Germany justifies the use of direct judicial communications. The most important directive for family court practice are the Conclusions and Recommendations of the joint EC-HCCH Conference on Direct Judicial Communications on Family Law Matters and the Develop-ment of Judicial Networks.[34]

This current lack of clarity in the legal framework has prompted criticism of the German and Austrian family law practice and called for the necessity to develop rules establishing a clear legal basis for direct judicial communications; this idea found a large support from the members of the IHNJ at the meeting of the IHNJ in Hong Kong in November 2015.[35]

3. Legal framework for Direct Judicial Communications in European and German insolvency law

A comparison between German family law on the one hand and European and German international insolvency law on the other hand reveals that the legal framework for direct judicial communications is far more advanced under the latter. The current legal framework for insolvency law explicitly gives judges the possibility to communicate and exchange information with a foreign court.[36] The recast of the EU Regulation on insolvency proceedings goes even further by providing that, where insolvency proceedings in relation with the same debtor are conducted before the courts of different Member States, these courts shall co-operate.[37]

European law further regulates how judicial co-operation should be achieved and to what areas it could extend. The insolvency courts are bound to respect the processual rights of the parties and the confidentiality of the information shared; they are further bound to agree on the appointment of liquidators, the communication of information or the co-ordination of the surveillance of the business operations made by the debtor.

4. Instances of legislation in foreign family law

The legal framework for direct judicial communications in certain States is also more advanced than the framework that currently exists in Germany.

Spain, for instance, recently enacted a comprehensive legislation on international judicial co-operation in civil matters. The law provides in its Preamble for a general authorisation to Spanish judges to make use of direct judicial communications under the conditions that they respect the law of the foreign State, that the rights of the parties are respected and that the judicial independency be respected. At the same time, the code of civil procedure was completed with a new chapter on the procedure for international child abduction further to which judges can seek assistance from Central Authorities, judges of the EJN, judges of the IHNJ and from international liaison magistrates in order to facilitate direct judicial communications at the enforcement stage.[38]

In **Switzerland**, Article 10 of the Federal Act on international co-operation in relation to International Child Abduction and the Hague Conventions on the protection of children and adults,[39] provides that courts, in cases of international child abduction, shall co-operate on child welfare and child care matters with the competent authorities of the State where the child was habitually resident before the abduction. The preparatory works emphasise the importance of communicating with authorities on-site in cross-border cases with a view to securing the return of the child in line with his / her best interests and of making use of all available resources.

In the **United States of America**, the 1997 Uniform Child Custody Jurisdiction and Enforcement Act allows courts in different states to communicate with each other in matters related to child care.[40]

In **Canada**, the Canadian Judicial Council has adopted a comprehensive set of recommendations on direct judicial communications, providing guidance as to how they should be channelled and implemented.

5. Towards a German legal framework for direct judicial communications?

Mallory Völker and *Wolfgang Vomberg* propose to add a new Article 26a to the German Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction[41] that would allow for direct judicial communications between judges;[42] it would further allow for judicial communications channelled, in part or completely, through Central Authorities, IHNJ liaison judges and contact points of the EJN.

The proposal to include this provision under Article 26 (which pertains to the judge's powers of investigation – "inquiry *ex officio*") is relevant as direct judicial communications specifically aim at gathering necessary information

and asserting facts that will help the judge to reach a decision in cross-border cases. Direct judicial communications in cross-border family procedures are to prevent the risk that parallel procedures (domestically and abroad) result in contradictory decisions.

Consideration ought to be given to completing a general legal basis with sub-statutory provisions, such as a legislative decree or guidelines (or handouts). The benefit of having soft law in this area cannot be argued. The practice of insolvency law has played a decisive role in the acceptance and dissemination of direct judicial communications, while providing for security in the use thereof. Soft law would be the appropriate solution to regulate direct judicial communications; in particular, as to when direct judicial communications can be used, how they should be conducted, in what language they should take place and how the results of direct judicial communications shall be used for the purposes of the process. Provisions on the organisational framework of liaison judges could be included: *e.g.*, the precise tasks and competences of liaison judges, how they are appointed, the preferred limitation to "sitting judges", and the respect of judicial independency. The adoption of soft law rules would certainly prevent the risk of containing direct judicial communications in a too narrow framework which would prevent any possibility to adapt them in the future.

IV. Conclusion

The practice has reacted to the internationalisation of family relations by elaborating innovative instruments, such as liaison judges and international networks of judges with a view to addressing the new challenges. It is now crucial to strengthen the existing instruments, to better disseminate them and to give them an appropriate place in daily family court practice in order to create the conditions for judicial cross-border communication and co-operation.

22 M. Menne, "Dialogue of Judges – Verbindungsrichter und internationale Richternetzwerke", in *Juristenzeitung*, Mohr Siebeck publishers, Tübingen, *JZ* 2017, p. 332-341. Sincere thanks are given for the permission to reprint this article.

23 German Federal Constitutional Court, order of 14 September 2015 – 1 BvR 1321/13, FamRZ 2016, p. 26.

24 Swiss Federal Court, Judgement of 16 April 2009 – 5A_105/2009, FamPra.ch 2009, p. 791.

25 Freiberg Local Court, file No 1 F 452/15 (unpublished).

26 The legal basis of the Network is a decision of the European Council establishing a European Judicial Network in civil and commercial matters: Decision No 2001/470/EC of Council of 28 May 2001 as amended by Decision No 568/2009/EC of the European Parliament and of the Council of 18 June 2009.

27 See for details Brieger, DRiZ 2017, pp. 98-99; Menne, [2016] IFL 175, pp. 181-183.

28 As of 6 December 2017. The full list of members of the IHNJ can be accessed on the HCCH website at < www.hcch.net > under "Child Abduction" then "Members of the International Hague Network of Judges".

29 See for details Brieger/Erb-Klünemann, FamRZ 2016, pp. 962-963; Bähler, FamPra.ch 2014, pp. 359-372.

30 Art. 3 of the Federal Lawyers' Act (*Bundesrechtsanwaltsordnung*).

31 Conclusions & Recommendations Nos 8-10 of the 4th Malta Conference on Cross-Frontier Child Protection and Family Law (May 2016) (available on the HCCH website at < www.hcch.net > under "Child Abduction" then "Cross-border family mediation" and "Malta Process").

32 *Supra*, note 4.

33 A similar procedure is available under Arts 8 and 9 of the 1996 Child Protection Convention.

34 The Conclusions and Recommendations of that meeting are available at < https://www.hcch.net/en/news-archive/details/?varevent=158 >.

35 See "Conclusions and Recommendations of the Meeting of the International Hague Network of Judges (11-13 November 2015)", C&R Nos 15, 18 and 19, available on the HCCH website at < https://www.hcch.net/en/news-archive/details/?varevent= 440 >.

36 Art. 348, para. 2, of the German insolvency law ("*Insolvenzordnung*") provides for a general authorisation further to which German insolvency courts can cooperate and share information with a foreign insolvency court in cross-border cases that do not fall within the realm of the Council Regulation on insolvency proceedings.

37 Art. 42 of the Regulation (EU) No 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) reads: "In order to facilitate the coordination of main, territorial and secondary insolvency proceedings concerning the same debtor, a court before which a request to open insolvency proceedings is pending, or which has opened such proceedings, shall cooperate with any other court before which a request to open insolvency proceedings is pending, or which has opened such proceedings, to the extent that such cooperation is not incompatible with the rules applicable to each of the proceedings."

38 See for details Forcada Miranda, *Communicationes Judiciales Directas Y Cooperacíon Jurídica Internacional. Universidad Nacional de Educación a Distancia Madrid, Tesis Doctoral Año 2017*, available at < http://e-spacio.uned.es/fez/ >; Forcada, [2016] IFL p. 11-12.

39 *Bundesgesetz über internationale Kindesentführung und die Haager Übereinkommen zum Schutz von Kindern und Erwachsenen* (BG-KKE).

40 Sections 105 and 110 of the Uniform Child Custody Jurisdiction and Enforcement Act combined allow courts to engage in direct judicial communications with sovereign States.

41 *Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit (FamFG)*

42 See Völker/Vomberg, in: DFGT (ed.), 20. Deutscher Familiengerichtstag Brühl 2013, 2014, pp. 149 and following; Völker/Clausius, Sorge- und Umgangsrecht (2016), para. 11, N. 156.

2. Direct judicial communications and international judicial co-operation

The present article draws on the introduction of the recently published Ph.D. thesis of Mr Francisco Javier Forcada Miranda, member of the IHNJ for Spain since 2009, "Comunicaciones judiciales directas y cooperación jurídica internacional. Una propuesta de guía práctica española para casos específicos a la luz de los trabajos de la Conferencia de La Haya de derecho internacional privado. (2017)". *The thesis written in Spanish is available under the following link < http://e-spacio.uned.es/fez/view/tesisuned:ED_Pg_DeryCSoc-Fjforcada >.*

Direct judicial communications constitute an innovative tool for international judicial co-operation which is on its way to becoming a useful technique of increasing prevalence in the field of cross-border co-operation.

Where sitting judges from different jurisdictions directly engage in communications about a specific case, the need emerges to determine whether there is a legal or non-legal basis for the communication, its purpose, scope, the safeguards that should be established, and the transparency, certainty, predictability and legality of the entire communication process.

All these issues, which similarly arise in other direct judicial communications not related to specific cases, should be the subject of a thorough analysis and research—something that to this day had not been undertaken in such a comprehensive manner.

Direct judicial communications in common law and civil law countries

The current status of the issue varies widely around the world and the countries from civil law and common law traditions have adopted very different approaches thereto.

In common law jurisdictions, direct judicial communications emerged quite some time ago (common law jurisdictions were pioneers in this regard) and in the absence of specific legal provisions, with a view to approaching the practical aspects of co-operation between common law judges dealing with cross-border cases. In order to facilitate the logistics of direct judicial communications, protocols and practical guides were thus developed over time, and continue to be developed, to provide judges with guidelines concerning the practical and theoretical aspects of direct judicial communications.

In civil law jurisdictions, because the phenomenon is much more recent and linked to globalisation and technological developments, a very different approach was taken. The search for a legal basis enabling and regulating the issue is of greater importance, although in both legal traditions and in various States, it is assumed that no legal basis is required to engage in direct judicial communications.

The increasing connectedness and the use of this kind of communications by courts and judges—from both the common law and civil law traditions—has provided worldwide justification for studying this international co-operation tool in greater detail.

To this day, only a few international organisations have addressed the issue. The United Nations, the European Union and the Council of Europe only addressed it indirectly, while the Hague Conference has addressed it thoroughly and with commitment.

Even though the effective use of direct judicial communications in specific cases remains limited in numbers, there are increasingly more States that promote and provide a direct legal basis for them, and more protocols and practical guides are increasingly available with a view to encouraging and regulating their use.

This is largely due to the attention received by so-called judicial activism, the work of domestic and international judicial co-operation networks, and the work conducted by courts and judges from different jurisdictions at national and international meetings and conferences. The conclusions and recommendations adopted at such events have provided an invaluable basis for progress in the field.

Direct judicial communications are used for co-operation purposes in criminal cases and even in cases of mutual legal assistance, where they have had the most significant implementation difficulties. However, the strength and relevance of direct judicial communications in civil and commercial matters should not be overlooked, especially with regard to cross-border insolvency and family law matters involving children.

In both these fields direct judicial communications constitute a useful tool that contributes to the efficiency and expediency of court proceedings, as they constitute a flexible, swift and secure way of ensuring co-operation. There are seemingly no substantive or procedural obstacles to the use of direct judicial communications in other jurisdictions, provided established procedural principles and safeguards are respected and the rights of

the parties observed.

While direct judicial communications in Spain were grounded in EU legislation and some Conventions drafted under the auspices of the Hague Conference, the topic has acquired new relevance since 2015, when it was regulated in the Law on International Legal Cooperation in Civil Matters [*Ley de cooperación jurídica internacional en material civil* (LCJIMC in the Spanish acronym)], of 30 July 2015, at Article 4; and the Law on Civil Procedure [*Ley de Enjuiciamiento Civil* (LEC in the Spanish acronym)] at Art-icle 778.quater.7, following the amendment made by Law 15/2015, of 2 July, on voluntary jurisdiction.

The **preliminary chapter** of Mr Forcada's thesis places direct judicial communications in the field of international legal co-operation. After covering international legal co-operation and its link with private international law—especially within the European Union—an analysis is conducted on the evolution of communications between various types of authorities leading up to cross-border judicial communications, going through traditional and modern techniques for co-operation and communication between authorities.

Placing direct judicial communications within the field of international legal co-operation facilitates presenting their role in overcoming the deficiencies and limitations of certain international instruments. This serves to show that direct judicial communications have been and are vital in the search of operative solutions—in particular in the area of cross-border family law—to address the current challenges that traditional international legal co-operation instruments are unable to overcome.

Part I of the thesis is concerned with defining the boundaries of the concept of direct judicial communications, delimiting their scope of application, analysing their advantages and disadvantages and evaluating the bases for their use.

The first three chapters study the concept of direct judicial communications from various perspectives, and what has been and may be their scope of application, both from a general and a more specialised approach. In both cases, practical examples are provided and the advantages and disadvantages of their actual implementation in the field of international legal co-operation are evaluated.

Regarding the bases enabling direct judicial communications, the issue of their legal bases is addressed thoroughly, including non-legal or informal bases, in order to unravel which are, or should be, the appropriate bases in light of the various ways in which direct judicial communications can be practised. The thesis provides examples both from the common law tradition as well as those extracted from the works of the Hague Conference.

A first approach to legislative texts is provided through the study of the UNCITRAL Model Law on Cross-Border Insolvency of 30 May 1997 and the Maxwell Protocol, EU regulations on the subject matter, and how these have been incorporated in the regulatory framework of national and international judicial networks.

Towards the development of a legislative framework

Part II of the thesis addresses the development of a legislative framework through the work conducted by certain international organisations, which allows for in-depth research into national legal bases and an analysis into possible legislative avenues discussed at the Hague Conference and the Council of Europe.

All of the above provides an introduction to the study of the national legal framework for direct judicial communications in 48 States around the world, with a particular added reference to their regulation in Spain.

The thesis provides an analysis of a total of 49 States (including Spain) having national legal direct and indirect legal bases for direct judicial communications. In addition, indication is provided as to which States have national guides or protocols concerning direct judicial communications, as well as which States have no domestic legislation on the topic.

It further provides an extensive analysis of the legislative inception of direct judicial communications in Spain with the LCJIMC and LEC, and the contrast between the former and current legal frameworks. In the conclusion of this part, the need for further regulation following the entry into force of the LCJIMC is invoked.

Part III of the thesis is dedicated to the consolidation of legislative work and developments, by analysing the relevance of questionnaires and statistics, national and international conferences, and the study of the IHNJ, as well as the work of the Spanish Network Judge, in particular regarding the use and development of direct judicial communications, providing statistical data previously unpublished.

The actual utility of direct judicial communications is evidenced by the statistical data available and the question-

naires from which this information was obtained, basically conducted in the ambit of the Hague Conference, for Special Commission meetings, meetings of members of the IHNJ, as well as the Ibero-American Judicial Summit and the International Judicial Co-operation Protocol developed in the context of the latter.

The need for direct judicial communications between sitting judges of different jurisdictions, both in the context of specific cases and in relation to general aspects, is a recurrent theme in various national and international conferences.

As a conclusion to Part III, the past and current development of the IHNJ is presented, as well as the work conducted by Mr Forcada since his designation as the Spanish Network Judge in January 2009, in particular, the work relative to the implementation of direct judicial communications in specific cases. The statistical information presented in the thesis is new and evidences how international co-operation tasks are actually effected and how direct judicial communications are practised. It aims at presenting the role of the Spanish liaison judge, his work, its statistical aspects, and to assess his operative role in the practise and use of direct judicial communications, as well as information and elements unpublished until now.

The proposal for a practical guide for the use and development of direct judicial communications

Part IV of the thesis focuses on one of its main objectives: providing a formal proposal for a Spanish practical guide for the use and development of direct judicial communications in specific cases, consisting of an explanatory report and the above-mentioned Spanish practical guide.

The thesis gives special attention to questions related to the safeguards for direct judicial communications—both at the EU and the Hague Conference—and to questions related to data protection and the preservation of the independence and impartiality of the judges involved. Other issues such as the technologies used for the communication are also covered.

From a methodological perspective, the thesis does not only cover the contributions of the Hague Conference, the EU and the Council of Europe on the subject matter under study, but also focuses on the assessment of questionnaires and the conclusions drawn from the most relevant national and international conferences as well as from a survey directly conducted by the author of the thesis to specific members of the IHNJ, from whose responses valuable information was obtained.

The outcomes obtained are rendered particularly valuable thanks to the compilation of examples of national legislation on direct judicial communications provided by 49 States. The thesis also provides a compilation and analysis of various similar protocols and instruments developed at a global scale to regulate direct judicial communications. The thesis further benefits from study of the work conducted by Mr Forcada throughout over seven years, in particular, on the use of direct judicial communications.

The thesis is intended to be conducive to the advancement of the current knowledge on its subject matter resulting from various factors. Its intention is to carry out a comprehensive study into all aspects related to direct judicial communications and to collect information that was until now scattered, thus offering experts a global and systematic view. Furthermore, there was until now no complete study of ad hoc Spanish legislation, in particular of Article 4 of the LCJIMC, and the information presented in this thesis on the inception of this legislation had not yet been published. In addition, the thesis analyses and provides a proposal on future steps and the need for further legislative measures.

Finally, the thesis presents a proposal for a Spanish practical guide on the use and development of direct judicial communications in specific cases, with a detailed analysis of some of the most important questions related to this interesting yet unknown—in particular to the greater public—aspect of international judicial co-operation. Unless a regulatory framework is developed for the recent Spanish domestic legal provisions for direct judicial communications, pursuant to the above-mentioned Article 4 of the LCJIMC, Spanish judges could be discouraged from using this tool to the detriment of a swifter and more effective international judicial co-operation in specific cases.

From this perspective, it is understood that the drafting and implementation of a practical guide such as the one proposed in the thesis of Mr Forcada would contribute to promoting the use of these communications and help ensure compliance of current legislation, providing transparency and certainty to the communication process.

1996 Child Protection Convention

Protecting children beyond borders. In support of multi-disciplinary and international child protection

By Serge Leonard, avocat, *legal consultant to the Delegate General for rights of the child in the Wallonia-Brussels Federation.*

The purpose of this presentation is to consider the options for international child protection and the desirability of promoting multi-disciplinary practices across borders. Many children are involved in cross-border disputes. Families are increasingly international, and so are children. The purpose of international child protection instruments, of the Brussels II a Regulation,[43] is to deal with these situations, to provide solutions to them in circumstances that can vary greatly, such as litigation relating to parental authority (wrongful removal), international adoption, international foster care, or international protective measures. In response, the countries party to the Hague Conventions relating to international protection of children have established Central Authorities in each country. The assignment of these domestic administrative authorities is to cooperate among themselves and to set up an international child protection system. I do not intend to review the various Hague Conventions or the Brussels II a Regulation in detail. I propose to draw inspiration from the 1996 Hague Child Protection Convention. That Convention was ratified by the Belgian State in May 2014, and entered into force on 1 September 2014. It undoubtedly enhances the field of child protection, in particular as regards cross-border situations, by providing for confirmation of existing practices implemented by other international instruments (such as Art. 56(1) of the Brussels II a Regulation: "Where a court having jurisdiction under Articles 8 to 15 contemplates the placement of a child in institutional care or with a foster family and where such placement is to take place in another Member State, it shall first consult the Central Authority or other authority having jurisdiction in the latter State where public authority intervention in that Member State is required for domestic cases of child placement.") In addition, as civil issues relate in particular to delegations of parental authority and guardianship, the Convention has enabled / facilitated the establishment and handling of protective measures, measures for assistance to children in need (*e.g.*, placement, fostering, kafala). These situations are not exceptional. In Belgium, many children are placed pursuant to rulings issued by French authorities. The Grand-Duchy of Luxembourg also places minors within the field of assistance to youth (children at risk), and indeed minors having committed criminal offenses. In addition, pursuant to kafala, many children are entrusted to families residing in Belgium. Dealing with these situations, however, involves a psycho-socio-legal aspect extending far beyond a strictly legal approach. The assignment of the aforementioned Central Authorities includes in particular ascertaining the proper application of the international instruments. Interpreting the interests of the child to be moved should not, however, be restricted to a strictly legal interpretation, and requires a combination of information. Certain Central Authorities have appropriate infrastructure or request assistance from other agencies, or even NGOs. This is not true, however, of all Central Authorities.

It must be admitted that there remain reluctance, obstacles, and many professionals hesitate to contemplate international protective measures even though the child's interests ought to require them. With respect to assistance to children in need (abuse, serious neglect, sexual abuse) in cross-border situations (*e.g.*, parents residing in a different country from the child), many professionals sometimes object to a cross-border removal and fear a lack of consistency or safeguards, or a scattering of information as to the child's care. In response to these fears, the professionals prefer to retain the case. On the other hand, in certain situations, international protective measures are implemented without observing international law. Many children from third countries are accordingly placed in Belgium in disregard of the relevant procedures.

The implementation on an international basis of child-protective practices accordingly remains difficult. As mentioned above, there are many obstacles and they can appear legitimate. It seems to me, however, that they are also due to the way in which we view borders.

1. A territorial border is frequently viewed as the boundary beyond which the child-protection measure will cease to be applicable as a matter of domestic public policy. Yet the concept of public policy blends into the expression of the State's sovereignty. The unchanging international case-law holds that any protective measure is a matter for the State where the child resides. Since a Boll ruling, in a dispute between the Dutch Government and the Swedish Government, the International Court of Justice has specified that child-protection measures are matters of ordre public,

thereby laying down a principle of primacy of jurisdiction for the authorities of the child's residence over those of the State of which it is a national.[44]

This means that protective measures are domestic measures of the State where the child resides, and that no State may interfere in the domestic matters of a State dealing with protective measures for a minor located on its territory. It follows that no public authority may export protective measures to another country, nor may it interfere in another country's domestic affairs. In other words, once a country decides to request an international protective measure and the host country consents to transfer of the situation, the country transferring the case relinquishes control over the situation. Accordingly, no child-protection model prevails over another, and States need also to trust one another. This trust involves the establishment of practices of cross-border co-operation.

2. A border is frequently and mistakenly presented as a guarantee of professionalism. As mentioned above, in principle, protective measures are territorial, meaning that the authorities, whether judicial or governmental, with jurisdiction to take them may not apply any other law than their own. Certain professionals' fears extend beyond such legal matters, however. For instance, a child's proposed move to another country may be challenged because certain professionals fear a loss of information and inconsistency in the child's care. A move beyond a border can lead to loss of information. As an illustration, professionals approached and involved in a cross-border situation may not necessarily be aware of what has been done in the third country (where the child was located previously), and not necessarily aware of the child's situation. Before organising a move and removal of the child abroad, the professionals located in the country of the child's residence are often faced with a dilemma and fear the taking of inconsistent measures for dealing with the child's care in the host country. These professionals may be reluctant to transfer the child's case to another country.

3. Finally, as mentioned above, in the absence of psycho-socio-legal institutional support, many children are placed in foreign countries without an opportunity for review and co-operation between the countries as to the grounds for the placement, as to the project's consistency, or as to the quality of care. For instance, a foreign authority may decide to place a child in a foreign country and approach directly a private institution that might receive the child. This, however, is a contractual relationship between a foreign public agency and a private institution.

The internationalisation of children should accordingly cause us to challenge our views and our social practices. As mentioned above, the practical realities, the professional and institutional practices may in fact militate against implementation of those treaties even though the child's interests seem best served by international removal. In dealing with these obstructions, I suggest a few prospects. It seems to me to be important, first, to return to basics:

- The United Nations Convention on the Rights of the Child ("UNCRC") tends to treat children as having rights and to make the child's interests prevail over any other consideration. This instrument was adopted under the aegis of the United Nations on 20 November 1989, and has been ratified by almost all countries in the world. It is important, therefore, to consider the situation of cross-border children against the background of this essential foundation.

- It is obviously important to develop information about the Conventions of the Hague Conference through awareness-building and training campaigns, through meetings to review their operation in practice, the organisation of conferences, the circulation of newsletters, etc. It is also important to develop awareness of Central Authorities in States Parties to the Hague Conventions, and of the manner of their operation.

- The growing international nature of families, and of situations in which children may be in need of protection, should cause us to overhaul our professional practices. We are at a crossroads, between a unilateral order of States and a more interactive and egalitarian international order, involving greater participation. The genius of the Hague Conference is to have imagined it. The international law arising out of the Conference is basically co-operative in nature. It takes account of the principle of equality between States and the diversity of systems. It imposes on each Contracting State an obligation to designate a Central Authority acting as a contact point for the purposes of co-operation between States Parties. The emergence of these new international practices ought accordingly to favour the development of more collaborative and cooperative professional practices, and lead us to imagine practices based on respect for differences, plurality and diversity. In this respect, the practice of international mediation is obviously to be encouraged.

- International child protection should accordingly not be restricted to strictly legal and administrative processes. The Central Authorities have without doubt developed considerable expertise with respect to international law,

but are rarely provided with psycho-social infrastructure. Yet child-protection measures require a combination of knowledge. The cross-border removal of a child implies a prior review of the child's interest to determine whether the child's interest, and its mental well-being, are supported by the cross-border move. This review is a psycho-social matter. In addition, a State hosting a displaced child also needs to review whether the foster parents and hosting institutions meet the child's needs and interests. This review with respect to hosting is also a matter for multi-disciplinary review. This is already clear to certain States, such as Switzerland in particular, which has set up a federal Central Authority and cantonal Central Authorities. In brief, the federal Central Authority is established mainly as an expert in international law, to ascertain the validity of foreign acts, and international co-operation between States. The cantonal Central Authorities, on the other hand, are in charge of assisting individuals and of child protection. Thus their remit is of a more social nature and based on a multi-disciplinary approach. Switzerland has selected a public institutional model, but this multi-disciplinary support can be implemented by a private social agency, an international point of contact, a non-profit entity, a non-governmental organisation.

- The dangers of failure to comply with international law deserve due attention. Certain foreign countries place children in Belgium. These practices can be permitted, provided, however, that they comply with international and EU law. If they fail to comply with the relevant procedures, these foreign placements can involve serious harmful consequences for the child. Such placements are sometimes organised in private institutions away from any control and any standard for approval. The absence of standards for approval with respect to infrastructure and pedagogical care can cause very serious risks for the child. In addition, the social services' failure to collaborate amongst themselves also raises issues, such as what to do when a child runs away from an institution, engages in criminal or hazardous behaviour, and the host country has no information about the child's situation.

- Addressing the issue of institutional and professional obstructions allows the provision of solutions. The fear of a loss of consistency regarding the child's protection and the fear of scattering of the information relating to the child can be dealt with if there is an international multi-disciplinary infrastructure, an international network of child-protection professionals. The establishment of such infrastructure provides professionals with safeguards as to requirements of professionalism and consistent tracking of the children's care.

In conclusion, the establishment of international practice among child-protection professionals must make us question anew our professional practices, on the basis of values founded in internationalism, in a collaborative and multi-disciplinary approach to the work. The development of such a project also requires institutional support. Finally, it seems important to me to point out once again that the child's development requires respect for its caregivers regardless of its international situation. International severance of a child's links to caregivers may affect its mental health, and refusal to contemplate child protection beyond borders can be detrimental. The international circumstances, the advent of the UNCRC, and of the Hague Conventions, require us to provide a reply.

43 *Supra*, note 4.

44 *Boll*, *Netherlands v. Sweden*, judgment of 28 November 1958, ICJ Reports 1958, p. 55. For commentary, see in particular: H. Batiffol and Ph. Francescakis : "L'arrêt Boll de la Cour Internationale de Justice et sa contribution à la théorie du droit international", *Revue de droit international* (1959) 259.

International Child Protection Conference

International Family Law Conference 2016: The Future of Family Justice: International and Multi-Disciplinary Pathways

By Shi Ing Tay, former intern at the Permanent Bureau of the Hague Conference.

The International Family Law Conference 2016 took place in Singapore on 29 and 30 September 2016, as part of the International Family Justice Week. The Conference, which was jointly organised by the Family Justice Courts of Singapore, the Law Society of Singapore and the Singapore Academy of Law with the support of the Ministry of Social and Family Development, attracted more than 400 participants both locally and from overseas, including members of the judiciary, policy-makers, practitioners, academics and professionals from the social science domain. The central theme of the Conference, *The Future of Family Justice: International and Multi-Disciplinary Pathways*, was considered from a variety of perspectives by distinguished speakers from various jurisdictions, who provided elucidating insights into pertinent family justice issues facing the world today.

Opening Address by Chief Justice Sundaresh Menon, *Supreme Court of Singapore*

In his opening address, Chief Justice Sundaresh Menon expounded on the underlying philosophy that is driving the ongoing transformation of the Singapore family justice system, which is to change the court from a competitive battleground to a forum where sustainable solutions can be reached. He also noted the increasing complexities of delivering justice in a modern, globalised world, *e.g.* the challenges of deciding on issues of relocation and child abduction when a transnational marriage breaks down. In this regard, he considered that the 1980 Hague Convention seeks to ensure the prompt return of children to their State of habitual residence, which will then determine substantive custody issues. This was affirmed in the Court of Appeal decision of *BDU v. BDT* [2014] 2 SLR 725, wherein the abducting parent had resisted a return application by relying on the Article 13(1)(b) exception in the 1980 Hague Convention. The Court of Appeal was of the view that the Article 13(1)(b) exception should not be invoked lightly, and ultimately ordered the return of the child, subject to both parents providing specific undertakings.

Chief Justice Sundaresh Menon also emphasised the importance of sustaining international conversation on issues that are pertinent to family justice. He referred to various initiatives that have been developed to further this cause, including:

- the Working Group of the Council of ASEAN Chief Justices on Family Disputes involving Children, which facilitates interaction and dialogue on family matters amongst judiciaries in the region;
- the International Advisory Council to Singapore, which was established by the Chief Justice and brings together leading thinkers in the world in the field of family justice, in order to discuss and share perspectives on the latest developments in family law and practice; and
- the IHNJ.

The keynote address, delivered by the Honourable Chief Justice Diana Bryant AO, traced the development and evolution of Australia's family justice system in the 40 years since the birth of the Family Court in 1976.

Plenary Session 1: Family Justice Systems Around the World and the Challenges

The Honourable Judge of Appeal, Justice Judith Prakash chaired the first plenary session, titled "*Family Justice Systems Around the World and the Challenges*". Distinguished speakers provided their perspectives on the challenges that are facing family justice systems around the world, including in Germany, England and Wales, Hong Kong (SAR), and Singapore. The following issues were discussed:

- Increased numbers of litigants-in-person and how or to what extent judges should assist such persons;
- Increased incidence of cases involving cross-border issues, *e.g.* the reciprocal enforcement of maintenance orders and international child abduction;
- The incorporation of multi-disciplinary pathways, including through the use of child-inclusive mediation where appropriate, conducting judicial interviews with the child, engaging child representatives, and referring cases to parental co-ordinators;
- The possibility of mediating disputes which involve allegations of domestic violence, provided there be a careful assessment of the parties' capacities to participate in mediation and to ensure that there is no

power imbalance, as well as to secure the safety of all parties before, during, and after the mediation; and
- The methods by which the child may be heard, *e.g.* through a child representative who conveys the child's wishes and keeps the child informed of the process, or through the appointment of a neutral person who focuses on communicating the subjective wishes of the child to the court while also making an objective assessment of what would be in the child's best interests.

Plenary Session 2: International Frameworks Relating to Separating Couples

The second plenary session, titled "*International Frameworks Relating to Separating Couples*", was chaired by Professor Anselmo Reyes, Representative of the Hague Conference (Regional Office for Asia and the Pacific). The central focus of the presentations was on the interpretation and application of the Hague Conventions, namely the 1980 Child Abduction Convention and the 1996 Child Protection Convention. Several speakers recalled that the foundation of the 1980 Convention is based on mutual trust between the Contracting Parties to the Convention, that Central Authorities would be faithful to the letter and the spirit of the Convention and ensure prompt return of the child, save for the exceptional situations that are provided for under the Convention.

Observations in relation to the interpretation and application of the Hague Conventions:

- An overly liberal interpretation of the exceptions in the 1980 Convention undermines the objectives of the Convention;
- There should be close case management of return proceedings in the requested State in order to ensure that the return proceedings are determined expeditiously;
- Direct judicial communications through the IHNJ is a useful tool;
- Where there are concerns of domestic violence, the court of the requested State could consider putting in place measures to protect the child upon return. Such protection would be enhanced with widespread ratification of the 1996 Convention;
- Reference was made to Article 11 of the 1996 Convention, which provides that the State in whose territory the child or property belonging to the child is present has the jurisdiction to take urgent measures of protection. Such orders are capable of being recognised and enforced under the Convention; and
- Co-operation between the Central Authorities of Contracting States, which is expressly provided for in the 1996 Convention, as well as ensuring the recognition and enforcement of measures directed at the protection of the child, would promote certainty.

Ongoing efforts undertaken by the Hague Conference

- The Honourable Chief Justice Diana Bryant AO, Chair of the *Working Group on Article 13(1)(b) of the 1980 Convention* elaborated on the efforts of the Working Group in developing a Guide to Good Practice, which will explain and clarify the situations in which the Article 13(1)(b) exception may commonly be invoked;
- Ms Maja Groff, Senior Legal Officer of the Permanent Bureau of the Hague Conference, noted the ongoing discussions on whether new legislative work should be undertaken to ensure the cross-border recognition and enforcement of protection orders which would assist in ensuring "safe return" under the 1980 Convention (this project was welcomed by the Sixth Meeting of the Special Commission on the practical operation of the 1980 and 1996 Conventions). She also elaborated on the success of the Malta Process, which is a continuing dialogue between the Contracting States to the 1980 Convention and/or 1996 Convention and non-Contracting States whose legal systems are based on or influenced by Islamic law.

Plenary Session 3: International Mediation in Cross-Border Family Disputes

The central focus of the third plenary session was on the challenges relating to international mediation and the enforceability of mediated agreements across borders.

With regards to the enforceability of mediated agreements, Professor Paul Beaumont, Chair of the *Experts' Group on cross-border recognition and enforcement of agreements in family disputes involving childrens*, elaborated on the recent efforts that were undertaken to evaluate the extent to which mediated agreements can be enforced under the existing Hague Conventions, and to determine whether a new instrument should be negotiated. The following matters were considered:

- Article 16 of the 1980 Convention, which imposes restrictions on the jurisdiction of a court hearing a return application to decide on the merits of custody rights until return is refused under the Convention, may hinder a successful mediation outcome. However, experience shows that judges and practitioners have practical ways

to go around and address the Article 16 issue;

- Although Article 10 of the 1996 Convention provides for some degree of party autonomy, only the aspects of the agreement that relate to parental responsibility would circulate under the Convention. As such, this may not be a holistic solution since parties usually conclude "package agreements" which deal with all aspects of the dispute, not just on issues of parental responsibility;
- Article 30 of the 2007 Child Support Convention provides for the recognition and enforcement of maintenance arrangements;
- An ideal solution would be to allow parents to confer jurisdiction exclusively on one court to incorporate the "package agreement" into a consent order, and to provide that such orders be recognised and enforced overseas.

Day Two: Keynote Address by Mr Tan Chuan-Jin, Minister for Social and Family Development, Singapore

Three key strategies in keeping families-in-crisis together highlighted by Minister Tan Chuan-Jin:

(1) going upstream and enhancing preventive efforts;
(2) delivering timely services in a child-centric manner; and,
(3) ensuring that social and justice systems are future ready.

Plenary Session 4: The Role of Social Science and Family Law

The Honourable Judicial Commissioner Debbie Ong chaired the fourth plenary session, titled "*The Role of Social Science and Family Law*". During the session, it was acknowledged that evidence-based social science research could be used to better inform judges and practitioners working within the family justice system, provided that such research is credible. With regards to Hague return proceedings, certain gaps in social science research were identified, including research on protective abductions and the wellbeing of children post-return.

Session 5A: Family Violence and Child Abuse

District Judge Shobha Nair chaired the session titled "*Family Violence and Child Abuse*", where distinguished speakers discussed the challenges that courts face in dealing with domestic violence issues. Concerns were raised as to the following:

- The need to establish the impact of exposure to domestic violence on children, and to correctly gauge/understand the seriousness of the effects of such exposure;
- Undertakings for return/mirror orders in cross-border circumstances are not being enforced;
- Lack of assurance that mediated agreements will be enforced;
- Lack of experience/knowledge of counsel and judges dealing with Hague return cases.

Session 5B: Multi-Disciplinary Approaches to Family Mediation

The use of multi-disciplinary approaches in family mediation was explored in a session chaired by Ms Sophia Ang, Director for Counselling and Psychological Services in the Family Justice Courts of Singapore. It was believed that adopting a multi-disciplinary approach to family mediation and collaborative family law practice will benefit parents and children alike. Examples of multi-disciplinary models include:

- Child-focused mediation model: mediator to assist and encourage parents to focus on their children's needs in deciding parenting arrangements, with the aim of creating parenting plans / mediated agreements that positively support children's needs;
- Child inclusive mediation model, which seeks to include the child's voice through trained child consultants who work with the children of separating parents.

Plenary Session 6: The Future of Family Justice: The Evolving Role of Family Practice and Ethics

In the final plenary session, distinguished speakers considered the evolving nature of family justice systems and how family lawyers can adapt their practices to meet new challenges. It was noted that family justice systems have evolved to include the use of multi-disciplinary approaches, dispute resolution processes which go beyond traditional litigation, and various methods in order to ensure that the child's voice is heard. It was also foreseen that technological advancements could also play a role in the evolving nature of family practice, e.g. use of technology to determine the range of possible settlement options with regards to division of property. In relation to ethical considerations, it was suggested that the paramount consideration of lawyers should be the best interests of the child, over and above the duties owed to their clients.

Concluding Remarks: Family Justice in a World without Borders

The Honourable Judicial Commissioner Valerie Thean, Presiding Judge of the Family Justice Courts of Singapore, concluded the successful conference by emphasising the need for global solutions to international family justice issues, including through promoting dialogue and consensus between States.

News from Argentina

Implementation law for the 1980 Convention in the Province of Córdoba (Argentina)

By Graciela Tagle de Ferreyra, Member of the International Hague Network of Judges of Argentina

"On December 21, 2016, the Legislature of the Province of Córdoba passed Procedural Law No. 10419 for the application of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, which was enacted on 27 January 2017. I drafted the law, and an ad hoc committee was established to analyse it, with whose favourable opinion it reached the Legislature. The law provides, amongst other things, for "concentration of jurisdiction" and "devolutive effect in appeal proceedings of cases in which there are sufficient reasons to so grant it."

Concentration of jurisdiction was established by the High Court of Justice of the Province in a particular number of courts based on their location and territorial proximity with the purpose of processing return and rights of access applications under the 1980 Hague Child Abduction Convention and the 1989 Inter-American Convention on the International Return of Children. It also provides for an operating schedule and continuous training for judges, public prosecutors, defenders and officials. The first case in which this law was applied concerned a request for access rights in a case with France. Less than a month after the request for access rights was lodged, and once the parties and the children had been heard by the judge, interim contact was agreed upon, which was given force of law by the court."

Members of the IHNJ

Since the last issue of the Judges' *Newsletter* in June 2014, there has been a significant turnover in membership of the IHNJ. A great deal of judges, who have contributed enormously to the expansion of the Network since, have subsequently left the Network and been replaced by new judges who bring with them their own unique experience.[45]

Each and every one of those departed members contributed greatly to the Network, bringing experience of their own legal systems and helping grow the Hague international child protection mission.

We would like to express our condolences to the family of Justice Evelyn Roxana Nuñez Franco from El Salvador, who passed away on 20 July 2014. Her contributions to both domestic and international family law will be sorely missed.

We further convey our sincere gratitude to the following judges who have left the Network since June 2014. Their work was always been invaluable and we wish them well in their current endeavours.

AUSTRALIA

The Honourable Chief Justice Diana BRYANT, Appeal Division, Family Court of Australia, Melbourne (13/10/2017)

CANADA

The Honourable Justice Jacques CHAMBERLAND, Court of Appeal of Quebec (*Cour d'appel du Québec*), Montreal (Civil Law) (22/11/2016)

The Honourable Justice Robyn M. DIAMOND, Court of Queen's Bench of Manitoba, Winnipeg (Common Law) (22/11/2016)

DENMARK

Judge Bodil TOFTEMANN, City Court of Copenhagen (*Københavns Byret*), Copenhagen (29/01/2015)

Judge Kirsten SCHMIDT, City Court of Copenhagen (*Københavns Byret*), Copenhagen (01/01/2017)

FINLAND

Justice Elisabeth BYGGLIN, Helsinki Court of Appeal (*Helsingin Hovioikeus*), Helsinki (03/10/2017)

FRANCE

Judge Isabelle GUYON-RENARD, Deputy Judge of the First Civil Chamber of the Court of Cassation (*Conseiller référendaire à la première chambre civile de la Cour de cassation*), Paris (13/06/2017)

HUNGARY

Judge dr Márta GYENGE-NAGY, Judge of the Szeged Municipal Court, Szeged (19/08/2015)

IRELAND

The Honourable Ms Justice Mary FINLAY GEOGHEGAN, The High Court, Dublin (22/01/2018)

ISRAEL

The Honourable Judge Benzion GREENBERGER, District Court of Jerusalem, Jerusalem (31/12/2017)

KOREA, REPUBLIC OF

Judge Yongshin CHUNG, Judge, Seoul Family Court, Seoul (27/09/2016)

Judge Inwoo SONG, Presiding Judge, Seoul Family Court, Seoul (12/08/2015)

NORWAY

Judge Anne Marie SELVAAG, Trondheim District Court, Trondheim (18/10/2013)

Judge Torunn Elise KVISBERG, PhD, Sør – Gudbrandsdal District Court, Lillehammer (18/10/2013)

PAKISTAN

The Honourable Mr Justice Tassaduq Hussain JILLANI, Judge, Supreme Court of Pakistan, Islamabad (22/12/2016)

The Honourable Mr Justice Umar Ata BANDIAL, Judge, Supreme Court of Pakistan, Lahore (02/08/2016)

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 (31/05/2016)

SERBIA

Judge Djurdja NESKOVIC, Judge of the High Court, Belgrade (28/04/2015)

Judge Maja MARINKOVIC, First County Court, Belgrade (28/04/2015)

SINGAPORE

Judicial Commissioner (JC) Valerie THEAN, Presiding Judge, Family Justice Courts, Singapore (13/09/2017)

SLOVENIA

Judge Tadeja JELOVŠEK, District Court Judge (specialised in family law), District Court of Ljubljana, Ljubljana (12/12/2017)

SOUTH AFRICA

The Honourable Mrs Justice Belinda VAN HEERDEN, Supreme Court of Appeal, Bloemfontein (05/08/2014)

TURKEY

Dr. Süleyman MORTAŞ, Judge at the Supreme Court of Turkey, Ankara (22/08/2016)

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

For England and Wales

Lady Justice Jill BLACK, DBE, Judge of the Court of Appeal, The Royal Courts of Justice, London (13/11/2017)

For Northern Ireland

The Honourable Mr Justice Ben STEPHENS, The Royal Courts of Justice, Belfast (30/09/2014)

Scotland

Sheriff Deirdre MacNEILL, Sheriff Court House, Edinburgh (24/03/2016)

For British Overseas Territories

Bermuda

Mrs Norma WADE-MILLER, Puisne Judge, Supreme Court of Bermuda, Hamilton (04/07/2016)

UNITED STATES OF AMERICA

The Honourable Justice James GARBOLINO, Former Presiding Judge, Superior Court of California, Roseville (31/12/2015)

VENEZUELA

Judge Carmen ELVIGIA PORRAS DE ROA, Magistrate, Vice-President of the Social Chamber of Cassation and Coordinator of the National Jurisdiction for the Protection of Children and Adolescents , Supreme Court of Justice (*Magistrada, Vicepresidenta de la Sala de casación Social y Coordinadora Nacional de la Jurisdicción de Protección de Niños, Niñas y Adolescentes, Tribunal Supremo de Justicia*), Caracas (14/07/2015)

Finally, we are delighted to inform you that judges from the following countries have been designated since the last publication of the Judges' *Newsletter*, and have already made valuable contributions to the international protection of children. Many of the judges represent jurisdictions that had not previously participated in the IHNJ, namely: Andorra, Aruba (The Netherlands), Barbados, Curaçao (The Netherlands), Fiji, Guyana, Japan, Kazakhstan, Latvia, Lithuania, Macao SAR (China), Sint Maarten (The Netherlands), Sri Lanka, Suriname, Thailand, Turkey and the Organisation of Eastern Caribbean States (OECS) (representing Anguilla, Antigua and Barbuda, the British Virgin Islands, Dominica, Grenada, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines).

ANDORRA

The Honourable David MOYNAT ROSSEL, Judge for Children and Adolescents, Civil Chamber; President of the Court of First Instance of Andorra (Batllia), The Higher Council of Justice, Andorra La Vella (18/03/2014)

AUTRALIA

The Honourable Chief Justice John PASCOE, AC CVO, Chief Judge, Family Court of Australia, Chief Justice's Chambers, Sydney (10/11/2017)

BARBADOS

The Honourable Sir Marston C.D. GIBSON K.A., Chief Justice, Supreme Court of Barbados, St. Michael (15/07/2016)

The Honourable Madam Justice Jacqueline CORNELIUS, Judge of the High Court, St. Michael (15/07/2016)

CANADA

The Honourable Justice Marianne RIVOALEN, Associate Chief Justice, Family Division, Court of Queen's Bench of Manitoba, Winnipeg (Common Law) (22/11/2016)

The Honourable Justice Laurence I. O'NEIL, Associate Chief Justice, Family Division, Supreme Court of Nova Scotia, Halifax (Common Law) (22/11/2016)

The Honourable Justice Louis LACOURSIÈRE, Superior Court of Quebec, Montreal (Civil Law) (22/11/2016)

CAPE VERDE

The Honourable Magistrate Ary Allison SPENCER SANTOS, District Court Judge, District Court of São Vicente, São Vicente (03/08/2016)

CHINA

For Macao, Special Administrative Region (SAR)

The Honourable Judge Shen LI, Family and Juvenile Court of the Lower Court, Macao SAR (31/01/2018)

The Honourable Judge Leong MEI IAN, Family and Juvenile Court of the Lower Court, Macao SAR (31/01/2018)

COLOMBIA

Doctor Jaime LONDOÑO SALAZAR, Magistrate, Civil Family Division, Superior Court of the Judicial District of Cundinamarca (*Magistrado de la Sala Civil Familia del Tribunal Superior del Distrito Judicial de Cundinamarca*), Bogotá (26/03/2015)

DENMARK

Judge Kirsten SCHMIDT, City Court of Copenhagen (*København Byret*), Copenhagen (01/02/2015)

Judge Harald MICKLANDER, City Court of Copenhagen (*København Byret*), Copenhagen (17/01/2017)

EL SALVADOR

Chief Judge Alex David MARROQUIN MARTINEZ, Judge of the Family Court of Appeal for Children and Adolescents, San Salvador (31/01/2017)

Judge María de los Ángeles FIGUEROA MELÉNDEZ, Judge of First Instance for Children and Adolescents, San Salvador (31/01/2017)

FIJI

The Honourable Madam Justice Anjala WATI, Family Court of Fiji, Suva (09/08/2017)

The Honourable Mr Justice Sunil SHARMA, High Court of Fiji, Lautoka (09/08/2017)

FINLAND

Justice Heli SANKARI, Judge of the Court of Appeal Helsinki Court of Appeal, Helsinki (03/10/2017)

FRANCE

Judge Dominique SALVARY, Judge at the Court of Appeal of Paris, (*Conseillère à la Cour d'appel de Paris*), Paris (13/06/2017)

GUINEA, REPUBLIC OF

Judge N'Faly SYLLA, Magistrate, President of the Court for Children and Adolescents of Conakry, Conakry (16/02/2017)

GUYANA

Madam Chief Justice Yonette CUMMINGS-EDWARDS, Judge of the Court of Appeal, Supreme Court of Judicature of Guyana, Georgetown (18/07/2016)

Madam Justice Roxanne GEORGE, Judge of the High Court, Supreme Court of Judicature of Guyana, Georgetown (18/07/2016)

HUNGARY

Judge Adrienn VÁRAI-JEGES, Judge of the National Office for the Judiciary, Budapest (19/08/2015)

IRELAND

The Honourable Ms Justice Leonie REYNOLDS, The High Court, Dublin (22/01/2018)

ISRAEL

The Honourable Judge Zvi WEIZMAN, Central District Court of Lod, Lod (31/01/2018)

ITALY

Judge Daniela BACCHETTA, Judge, Department for Juvenile Justice, Ministry of Justice, Rome (24/10/2017)

JAPAN

Judge Hironori WANAMI, Director, Co-ordination Division, Personnel Affairs Bureau, General Secretariat, Supreme Court of Japan, Tokyo (27/05/2015)

Judge Yoshiaki ISHII, Director, Second Division, Family Bureau, General Secretariat, Supreme Court of Japan, Tokyo (27/05/2015)

Judge Tomoko SAWAMURA, Director, First Division, Family Bureau, General Secretariat, Supreme Court of Japan, Tokyo (27/04/2017)

KAZAKHSTAN

Judge Galiya AK-KUOVA, Supervisory Collegium for Civil and Administrative Cases, Supreme Court of Kazakhstan, Astana (18/09/2014)

KOREA, REPUBLIC OF

Judge Sungwoo KIM, Presiding Judge, Seoul Family Court, Seoul (12/08/2015)

Judge Sunmi LEE, Judge, Seoul Family Court, Seoul (27/09/2016)

LATVIA

Judge Viktors PRUDŅIKOVS, Riga City North District Court, Riga (14/08/2014)

LITHUANIA

Judge Gediminas SAGATYS, The Supreme Court of Lithuania, Civil Division, Vilnius (10/06/2016)

MEXICO

Mtro. José Roberto de Jesús TREVIÑO SOSA, Second Judge for the Oral Family Trials, First Judicial District of the State of Nuevo Leon (*Juez Segundo de Juicio Familiar Oral, Primer Distrito Judicial del Estado de Nuevo León*), Monterrey (16/11/2015)

NETHERLANDS

For Aruba

Justice Mrs N. ENGELBRECHT, Court of First Instance of Aruba, Oranjestad (24/08/2016)

For Curaçao

Justice Mrs U.D.I. GIRIGORI-LUYDENS, Court of First Instance of Curaçao, Willemstad (24/08/2016)

For Sint Maarten

Justice M.J. DE KORT, Court of First Instance of Sint Maarten, Philipsburg (24/08/2016)

NORWAY

Judge Bjørn FEYLING, Olso District Court, Oslo (04/10/2016)

Judge Per GAMMELGÅRD, Olso District Court, Oslo (04/10/2016)

ORGANISATION OF EASTERN CARIBBEAN STATES (OECS)
(representing Anguilla, Antigua and Barbuda, the British Virgin Islands, Dominica, Grenada, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines)
Justice Margaret PRICE-FINDLAY, Resident High Court Judge, Eastern Caribbean Supreme Court, St. Georges, Grenada (20/06/2014)

PAKISTAN
The Honourable Mr Justice Umar Ata BANDIAL, Judge, Supreme Court of Pakistan, Islamabad (22/12/2016)

The Honourable Mr Justice Faisal ARAB, Judge, Supreme Court of Pakistan, Islamabad (02/08/2017)

PANAMA
The Honourable Chief Judge Efrén C. TELLO C., Chief Judge of the Appeals Court for Children and Adolescents (*Magistrado, Presidente del Tribunal Superior de Niñez y Adolescencia*), Ancón, Panama City (03/05/2016)

Lic. Margarita CAMARGO, Judge, Court for Children and Adolescents of the Chiriquí Judicial Circuit (*Juez de Niñez y Adolescencia del Circuito Judicial de Chiriquí*), Chiriquí (03/05/2016)

SERBIA
The Honourable Judge Jelena BOGDANOVIĆ RUŽIC, Judge in the Higher Court in Belgrade, Belgrade (28/04/2015)

SINGAPORE
The Honorable Justice Debbie ONG, Judge of the Supreme Court of Singapore; Presiding Judge, Family Justice Courts, Singapore (13/09/2017)

SLOVENIA
Judge Nadja MAROLT, District Court Judge, District Court of Ljubljana, Ljubljana (22/12/2015)

SOUTH AFRICA
The Honourable Justice Baratang Constance MOCUMIE, Free State High Court, Bloemfontein (05/08/2014)

SRI LANKA
The Honorable Justice Kankani Tantri CHITRASIRI, Judge of the Supreme Court of Sri Lanka, Colombo (15/07/2015)

SURINAME
Madam Justice Marie METTENDAF, Member of the Court of Justice, Court of Justice of Suriname, Paramaribo (18/07/2016)

Madam Justice Siegline WIJNHARD, Member of the Court of Justice, Court of Justice of Suriname, Paramaribo (18/07/2016)

SWEDEN
The Honourable Judge Lena CARLBERG JOHANSSON, Stockholm District Court (*Stockholms Tingsrätt*), Stockholm (07/12/2017)

THAILAND
The Honourable Chief Judge Supat YOOTHANOM, Central Juvenile and Family Court, Bangkok (14/10/2014)

TURKEY
Dr. Süleyman MORTAŞ, Judge at the Supreme Court of Turkey, Ankara (26/09/2014)

Mr Yetkin ERGÜN, Judge, representative of the Central Authority for Turkey designated under the Hague 1980 Child Abduction Convention, General Directorate International Law & Foreign Relations, Ministry of Justice, Ankara (22/08/2016)

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
For England and Wales
The Honourable Mr Justice Alistair MACDONALD, Judge of the Family Division, Royal Courts of Justice, London (13/11/2017)

For Northern Ireland
The Honourable Mr Justice John O'HARA, The Royal Courts of Justice, Belfast (30/09/2014)

For Scotland
The Honourable Lady Morag WISE, Senator of the College of Justice, Outer House, Court of Session and the High Court of Justiciary, The Supreme Courts, Edinburgh (24/03/2016)

For British Overseas Territories
Bermuda
The Honourable Mrs Justice Nicole STONEHAM, Puisne Judge, Supreme Court of Bermuda, Hamilton (04/07/2016)

UNITED STATES OF AMERICA

The Honourable Hiram PUIG-LUGO, Presiding Judge of the Family Court, Superior Court of the District of Columbia, Washington, D.C. (31/07/2015)

VENEZUELA

Chief Judge Maryorie CALDERÓN GUERRERO, Presiding Judge of the Appellate Division for Social Matters and Co-ordinating Judge for the Judicial Circuit of Child Protection, Children and Adolescents (*Presidenta de la Sala de Casación Social y Coordinadora de la Jurisdicción de Protección de Niños, Niñas y Adolescentes, Tribunal Supremo de Justicia*), Caracas (14/07/2015)

Judge Rosa Isabel REYES REBOLLEDO, Superior Court Judge and Co-ordinating Judge for the Judicial Circuit of Child Protection, Children and Adolescents of the Judicial District of the Caracas Metropolitan Area and National Co-ordinating Judge of International Adoption (*Jueza Superiora y Coordinadora del Circuito Judicial de Protección de Niños, Niñas y Adolescentes del Área Metropolitana de Caracas y Nacional de Adopción Internacional*), Caracas (14/07/2015)

Judge Xiomara Josefina ESCALONA, Co-ordinating Judge for the Judicial Circuit of Child Protection, Children and Adolescents of the Judicial District of the state of Carabobo (*Jueza Coordinadora del Circuito Judicial de Protección de Niños, Niñas y Adolescentes del Estado Carabobo*) (14/07/2015)

Judge Carlos Guillermo ESPINOZA RONDÓN, Co-ordinating Judge for the Judicial Circuit of Child Protection, Children and Adolescents of the Judicial District of the state of Anzoátegui (*Juez Coordinador del Circuito Judicial de Protección de Niños, Niñas y Adolescentes del Estado Anzoátegui*) (14/07/2015)

Judge Douglas Arnoldo MONTOYA GUERRERO, Superior Court Judge and Co-ordinating Judge for the Judicial Circuit of Child Protection, Children and Adolescents of the Judicial District of the state of Mérida (*Juez Superior y Coordinador del Circuito Judicial de Protección de Niños, Niñas y Adolescentes del Estado Mérida*) (14/07/2015)

45 The full list of members of the International Hague Network of Judges is available on the website of the HCCH (www.hcch.net) under "Child Abduction Section" then "Members of the International Hague Network of Judges".