

**RAPPORT DE LA RÉUNION DU GROUPE D'EXPERTS SUR LA RECONNAISSANCE ET
L'EXÉCUTION DES ORDONNANCES DE PROTECTION RENDUES
PAR DES JURIDICTIONS CIVILES ÉTRANGÈRES**

(12 et 13 février 2014)

établi par le Bureau Permanent

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**REPORT OF THE MEETING OF THE EXPERTS' GROUP
ON THE RECOGNITION AND ENFORCEMENT OF
FOREIGN CIVIL PROTECTION ORDERS**

(12-13 February 2014)

drawn up by the Permanent Bureau

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INTRODUCTION

1. In April 2011 the Council on General Affairs and Policy of the Hague Conference on Private International Law (the "Council") added to the Agenda of the Conference "the topic of the recognition of foreign civil protection orders made, for example, in the context of domestic violence cases".¹

2. The Sixth Meeting of the Special Commission on the practical operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention (Part I, 1-10 June 2011) welcomed the addition of this topic to the Hague Conference Agenda and recommended that "account should be taken of the possible use of such orders in the context of the 1980 Convention".²

3. The Permanent Bureau presented to the Council in April 2012 Preliminary Document No 7, "Recognition and Enforcement of Foreign Civil Protection Orders: A Preliminary Note"³ in fulfilment of the previous year's mandate.⁴

4. Upon request of the 2012 Council, a Questionnaire was circulated to Members of the Organisation in November of 2012.⁵ Preliminary Document No 4 B of March 2013, "Questionnaire on the recognition and enforcement of foreign civil protection orders: Summary of Member responses and possible ways forward,"⁶ was subsequently presented to the 2013 Council.⁷

5. In April 2013 the Council: "welcomed the work carried out by the Permanent Bureau and invited it to continue exploratory work, including further comparative research (such as a country profile) and investigation on the feasibility of a future instrument. The Permanent Bureau may, resources allowing, convene an Experts' Group to assist in carrying out this work".

6. In furtherance of this mandate, the Permanent Bureau developed a Draft Country Profile for this area of law,⁸ and convened an Experts' Group on the Recognition and Enforcement of Foreign Civil Protection Orders, which took place from 12 to 13 February 2014. This document presents a report of the meeting of the Experts' Group, including, in

¹ Conclusion and Recommendation No 23 of the Council on General Affairs and Policy of the Conference (5-7 April 2011). All Hague Conference / Permanent Bureau documents are available on the Hague Conference website at < www.hcch.net > under "Work in Progress" then "General Affairs", unless otherwise noted.

² Conclusion and Recommendation No 43 of Part I of the Sixth Meeting of the Special Commission, available on the Hague Conference website at < www.hcch.net > under "Specialised Sections" then "Child Abduction Section".

³ Prel. Doc. No 7 of March 2012 for the attention of the Council of April 2012 on General Affairs and Policy of the Conference.

⁴ The document noted significant national and regional policy attention to this area of law based on, among other things, a growing awareness of "[t]he ease of international cross-border travel combined with the severe risk to an individual who cannot obtain immediate recognition and enforcement of a foreign protection order" (*ibid.*, at p. 5).

⁵ "Questionnaire on the Recognition and Enforcement of Foreign Civil Protection Orders", Prel. Doc. No 4 A of November 2012 for the attention of the Council of April 2013 on General Affairs and Policy of the Conference.

⁶ Prel. Doc. No 4 B of March 2013 for the attention of the Council of April 2013 on General Affairs and Policy of the Conference.

⁷ This document included information from the 24 Members (including the European Union) from which the Permanent Bureau received individual responses before 28 February 2013, and supported the findings of the previous year's Preliminary Note. Individual Member responses to the Questionnaire, including responses received after 28 February 2013, are available on the Hague Conference website.

⁸ "Draft Country Profile – Meeting of the Experts' Group on the Recognition and Enforcement of Foreign Civil Protection Orders", Prel. Doc. No 4 B of March 2014 for the attention of the Council of April 2014 on General Affairs and Policy of the Conference.

Part I, a set of Conclusions and Recommendations agreed upon by the experts, and, in Part II, a short summary of meeting discussion, organised around the various Conclusions and Recommendations of the meeting.

7. Two annexes are also attached to this report: Annex I, the Agenda of the meeting of the Experts' Group; and, Annex II, the List of Participants of those attending or invited to the meeting of the Experts' Group.

Part I. Conclusions and Recommendations of the Experts' Group

8. "The Experts' Group reached the following Conclusions and Recommendations:

Background to the discussion

No 1: The protection orders, in the cross-border context, that were the subject of discussion of the experts are usually restricted to the enforcement of personal no-contact or proximity orders. These types of protection orders do not have final financial or property ownership consequences resulting from their enforcement and do not deal with the determination of final parental rights and responsibilities.

No 2: The experts discussed protection orders, in the cross-border context, that are used to prevent harmful behaviours where an individual's life, physical or psychological integrity, personal liberty, security or sexual integrity is at risk. These behaviours include, *inter alia*: a) domestic and family violence; b) stalking; c) sexual assault and sexual violence; d) dating violence; e) interpersonal harassment and intimidation; f) forced marriage; g) so-called "honour crimes"; h) human trafficking; and, i) female genital mutilation (FGM).

No 3: The experts discussed protection orders regardless of the nature of the issuing authority, for example, authorities of a civil, administrative or other nature.

Policy rationale for potential future work

No 4: The experts recognised the importance of the human rights framework, and the high priority—at national, regional and international levels—accorded to the protection of women and children in particular from violence, as well as to the protection of victims of crime.

No 5: The experts noted that the recognition and enforcement of foreign protection orders is the subject of regional work within the European Union and within or among a number of individual States, but as of yet there is no global instrument in this area.

No 6: The experts noted that States and Regional Economic Integration Organisations (REIOs) which have legislated in this area have done so on the basis of inferences drawn from increasing cross-border mobility rates and national, regional and international statistics showing high levels of domestic violence and other harmful behaviours that are addressed by protection orders. Specific statistics as to the number of cases which would benefit from cross-border mechanisms with respect to protection orders at the international level are not available due to difficulties in collecting such statistics, lack of a centralised authority that would be tasked with collecting such statistics and the scale of the populations affected.

No 7: With the current lack of global mechanisms in this field, the experts highlighted the undue burdens and barriers currently faced by those seeking immediate

protection through a national protection order when they move or travel abroad, including:

- a) delays which are often inherent in establishing a new protection order or to have an existing order recognised in the foreign jurisdiction(s), thereby defeating the purpose of a protection order to address situations of imminent harm;
- b) the substantial financial resources that may be required to establish a new protection order or to have an existing order recognised in the foreign jurisdiction(s);
- c) common problems with a foreign authority assuming jurisdiction to establish a new protection order (e.g., a weak evidentiary basis to establish subject matter or personal jurisdiction), or indirect jurisdictional rules applicable to the recognition of a foreign order;
- d) challenges in accessing information, appropriate legal expertise and in gathering and presenting adequate evidence in the foreign jurisdiction(s);
- e) language and legal-cultural barriers when establishing a new protection order or having an existing order recognised in the foreign jurisdiction(s); and,
- f) other legal and practical problems.

No 8: The experts observed, in the case of the safe return of the child to the State of habitual residence under the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, that the development of a future instrument in this field would assist in addressing the safe return of the taking parent in particular, which is not covered by the 1980 Child Abduction Convention or the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children*. Further work in this area would also provide enhanced protection of children from violence. Some experts noted that current measures sometimes employed in this context, such as mirror orders, undertakings and similar mechanisms, are often not effective.

No 9: The experts discussed the expansion of definitions of violence globally, for example, to include such phenomena as stalking, intimidation, and the effects of children being exposed to violence between their parents, among others.

No 10: The experts took note of national policy work that has underlined the economic impact and consequences when protection orders are not recognised and enforced in cross-border circumstances, as health, labour market and other costs are accrued.

No 11: On the above bases, the experts concluded that there is a need for further work in this area, given the high international priority to prevent and mitigate violence.

Policy orientations of future work

No 12: The experts underlined the importance of victim protection and harm prevention principles:

- a) *Victim protection and security*: victims or potential victims should be provided with assurances of security in advance of and during travel or a move abroad, in order to protect the victims' or potential victims' mobility rights;

- b) *General deterrence*: a successful global solution should result in raising awareness and ensuring that persons causing a risk understand that protection orders will be effective in foreign jurisdictions and that there will be consequences when violating the terms of such orders abroad; and,
- c) *Specific deterrence*: a successful global solution should include immediate / "on-the-spot" enforcement of a foreign order to allow for harm prevention in circumstances of imminent risk or threat.

No 13: The experts at the meeting noted that in their jurisdictions the protection of the police and other enforcement officers from liability for good faith enforcement of protection orders is an important and established principle.

No 14: The experts agreed and underlined that appropriate due process rights of the person causing the risk should be respected.

No 15: The experts agreed that an undue burden should not be placed on the victim / protected person when seeking to have a protection order recognised and enforced abroad.

No 16: The experts referred to the internationally accepted standard that, with regard to violence against women, States are required to abide by the due diligence standard, requiring proactive measures to combat all forms of violence.

No 17: The experts' discussions highlighted the need to address issues of language barriers.

No 18: The experts noted that the existence of an instrument in this field would assist in highlighting principles for dealing with victims of domestic violence and other victims of violence in cross-border circumstances; for example, requirements for speedy resolution, confidentiality and referrals to support services. Such principles could form a basis for subsequent judicial education, Guides to Good Practice or other initiatives.

No 19: The experts underlined the importance of securing protection of personal data in particular in relation to the registration of orders either at the national or international level.

Discussion of possible solutions

"On-the-spot" / immediate enforcement

No 20: The experts discussed with great interest the feasibility of an instrument that would provide for "on-the-spot" / immediate enforcement of foreign protection orders. The experts discussed both the possibility to enforce: i) on the simple presentation of the order; and ii) on the simple presentation of the order accompanied by a multilingual enforcement certificate and / or e-certificate. It was felt that additional work and discussion among experts should take place to weigh further the benefits and drawbacks of these two solutions.

Advance establishment of protection orders

No 21: The experts agreed that advance establishment of a protection order in another jurisdiction should be available, in accordance with the conditions set out under the law of the jurisdiction where establishment is sought.

Advance recognition of foreign protection orders

No 22: The experts agreed that application for advance recognition of foreign protection orders should be available. Such advance recognition would not preclude protected individuals from availing themselves of additional mechanisms under national law, as appropriate.

No 23: The experts agreed that traditional private international law methods for the recognition and enforcement of a foreign decision were not usually appropriate in this area.

Central Authorities

No 24: The experts discussed the potential value of establishing a Central Authority or another system under a possible future instrument. Possible specific functions of Central Authorities were identified by the experts. In no order of priority, Central Authorities could take appropriate measures to:

- a) transmit and receive applications for:
 - i) advance establishment of protection orders, and
 - ii) advance recognition of foreign protection orders;
- b) initiate or facilitate the institution of proceedings in respect of such applications;
- c) serve as a channel to provide assistance for the subsequent review / challenge of the enforcement of a foreign protection order;
- d) where circumstances require, provide or facilitate the provision of legal assistance;
- e) where circumstances require, provide or facilitate the provision of assistance to victims;
- f) provide assistance with the training of enforcement officers with regard to the enforcement of foreign protection orders; and
- g) provide information of a general character as to the relevant law of their State in connection with the recognition and enforcement of foreign protection orders.

Country Profile

No 25: The experts underlined the importance of victims' access to information in this area. The Draft Country Profile prepared by the Permanent Bureau was well-received by the meeting, and it was recognised that it could, in a more final form, be used as one tool that could play a role in this respect.

Other tools and mechanisms

No 26: The experts discussed a number of other tools and mechanisms that could be used to assist with the recognition and enforcement of protection orders, such as:

- a) a standardised international enforcement certificate;
- b) other standardised forms (*e.g.*, for advance establishment, advance recognition); and
- c) an international electronic database for registration of orders and real-time access to established orders.

Future work / next steps

No 27: The experts recommended that the feasibility of a binding instrument be explored further with the assistance of the Experts' Group. Such instrument could include the three types of mechanisms for which there was interest: a) "on-the-spot" enforcement; b) advance establishment; and c) advance recognition. The experts were of the view that these mechanisms are not mutually exclusive.

No 28: The experts recognised the value of international co-operation in this area but noted that it would be difficult to achieve without an international framework creating obligations to co-operate. Designated authorities responsible for such co-operation would require a legal basis for the delineation of functions.

No 29: In addition, the experts agreed that other tools should be explored further that could be used in combination with a binding instrument. The Country Profile was identified as one such tool.

No 30: In carrying the feasibility study forward, the experts recommended that practical experience be drawn from the operation of existing national and regional instruments in this area, as well as from the 1996 Child Protection Convention, insofar as such experience could benefit the individuals protected by a protection order in cross-border circumstances."

Part II. Information supplementary to Conclusions and Recommendations: summary of meeting discussion

9. Discussions took into consideration previous documents prepared by the Permanent Bureau, Prel. Doc. No 7 of March 2012 and Prel. Doc. No 4 B of March 2013.⁹

A) Background to the discussion

10. The experts' discussion on the recognition and enforcement of foreign protection orders (or parts of foreign orders¹⁰) focused primarily on "no contact" and "stay away" orders; that is, orders where an individual or individuals are prohibited from contacting or coming within a certain distance of an intended protected person or a place that the protected person frequents, either generally or in relation to a particular place.¹¹ The experts explored a range of existing instruments on the recognition and enforcement of foreign protection orders, and in some detail, several recent legislative initiatives which address these types of "no contact" or "stay away" orders.¹² The focus on these types of orders formed an important basis for the discussion of possibilities for a system providing for the immediate enforcement of foreign protection orders at the global level. Such orders are limited to the temporary separation of two (or more) individuals where it has been determined that there is a risk posed and / or a past history of violence or abuse, and do not bear, for example, on final parental, property or financial rights.

11. While the types of harmful behaviours addressed by protection orders discussed by the experts¹³ have been given a strong policy priority at the national, regional, and international levels, the experts noted that there is no reason to exclude the generality of situations where it is deemed that there exist serious grounds for considering that an individual's life, physical or psychological integrity, personal liberty, security or sexual integrity is at risk.¹⁴

12. Some experts thought it important to note that many of the harmful behaviours commonly addressed by protection orders fall under the general category of "gender-based violence" or violence against women, as mentioned in relation to the United Nations *Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979* ("CEDAW")¹⁵ and other United Nations human rights norms, the Council of Europe 2011 "Istanbul Convention,"¹⁶ and in the 2013 EU Regulation.¹⁷

⁹ *Supra*, notes 3 and 6.

¹⁰ It was clarified that under several existing systems for the recognition and enforcement of foreign protection orders, recognition could be limited to parts of decisions.

¹¹ *E.g.*, a respondent can be instructed to stay away from any school that an individual attends, a place of work, or from a particular address.

¹² Namely, the *Uniform Enforcement of Canadian Judgments and Decrees Amendment Act, 2011* (the "Uniform Act") and *Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters* (the "2013 EU Regulation"). Both legislative initiatives are described or reported in Prel. Doc. 7 of March 2012 and Prel. Doc. No 4 B of March 2013 (*supra*, notes 3 and 6). See also *infra*, under "Discussion of Possible Solutions".

¹³ See Conclusion and Recommendation No 2 of the meeting of the Experts' Group for examples of the types of behaviours addressed, under Part I of this Report, *supra*. See also Prel. Doc. No 4 B of March 2013, at p. 13 and Annex I, at para. 3 (*supra*, note 6).

¹⁴ See recitals to the 2013 EU Regulation (*supra*, note 12), at para. 6.

¹⁵ See Committee on the Elimination of Discrimination against Women General Recommendation No 12, Eighth Session (1989), and General Recommendation No 19, Eleventh Session (1992).

¹⁶ The 2011 *Council of Europe Convention on preventing and combating violence against women and domestic violence*, Art. 53, requires that States Parties must make protection orders available for *all* types of violence covered by the Convention (see Annex I of Prel. Doc. No 4 B of March 2013, *supra*, note 6).

¹⁷ *Supra*, note 14.

13. Experts from a range of jurisdictions shared information as to recent national specialised forced marriage protection order legislation, human trafficking legislation which bears on cross-border situations (of trafficked women and children in particular), and the recent adoption of stalking legislation.¹⁸ It was noted that it had been ascertained, in internal Permanent Bureau research, that almost 100 States had protection order legislation only or primarily related to domestic and family violence. It was acknowledged that this figure likely understates the number of States with such protection order legislation, as it is based on the special database of the United Nations Secretary General on violence against women which relies on the voluntary reporting of States.¹⁹

14. The experts discussed the above-mentioned types of protection orders, regardless of the nature of the issuing authority, be it of a civil, administrative or other nature.²⁰ It was noted that the two recent European Union instruments in this field were meant to be a “package” with the goal of comprehensive victim protection among Member States of the European Union.²¹ The aim to provide practical protection of victims by covering protection orders from varied types of issuing authorities is shared by a number of existing systems.²² Experts highlighted that there is diversity within national legislation, at the regional and global levels, as to what types of authorities might issue protection orders.²³

B) Policy rationale for potential future work

Prioritisation and human rights framework

15. Experts shared information as to the high priority and / or human rights frameworks applicable in this area.

16. Within the European Union, it was noted that the issue of victims’ rights is a very high priority. There is a 2012 European Union victims’ Directive which sets out a broad, horizontal framework for basic rights, including ensuring that protection measures are available for victims.²⁴ It was found that there was a problem faced in particular by women going to another country and being susceptible to suffering the same abuse as in

¹⁸ For a range of global examples of national legislation see Prel. Doc. No 7 of March 2012 and Prel. Doc. No 4 B of March 2013 (*supra*, notes 3 and 6).

¹⁹ See: < <http://sgdatabase.unwomen.org> >. See a table of protection order legislation found as of February 2012 in Prel. Doc. No 7 of March 2012, Annex I (*supra*, note 3).

²⁰ See reported types of issuing authorities in Prel. Doc. No 7 of March 2012 and Prel. Doc. No 4 B of March 2013 (*supra*, notes 3 and 6).

²¹ The two instruments are *Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order* (the “2011 EU Directive”) and the 2013 EU Regulation. It was explained that initially a single instrument was proposed to cover all types of protection measures. However, because of legal basis issues under European Union law it was necessary to split the initiative into two instruments, one in relation to criminal matters and one in relation to civil matters. See Prel. Doc. No 7 of March 2012 and Prel. Doc. No 4 B of March 2013 for further information on the two instruments (*supra*, notes 3 and 6).

²² *E.g.*, the oldest system represented at the meeting, the full faith and credit provisions of the United States of America federal *Violence Against Women Act of 1994* (re-authorised 2000, 2005, 2013; hereinafter, “VAWA”), takes this approach.

²³ The 2011 Istanbul Convention does not specify the type of issuing authority for protection orders required to be made available in States Parties (*supra*, note 16).

²⁴ *Directive 2012/29/EU of The European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime*, and replacing Council Framework Decision 2001/220/JHA.

the country of origin, and thus mechanisms for the cross-border recognition and enforcement of protection orders were needed. It was acknowledged that the world is moving towards extending protection orders to victims beyond just domestic violence (e.g., to types of violence covered by the 2011 Istanbul Convention, among others).

17. In Canada, recent work concerning the recognition and enforcement of foreign protection orders was deemed to be necessary due to the growing ease of international travel and the extreme risk posed to an individual if a foreign protection order could not be enforced "on-the-spot".

18. Within the United States of America it was noted that federal legislation²⁵ mandating mutual recognition of protection orders between states has existed since 1994. In the cross-border context within the United States of America, it was recognised that many victims do not function within a single state, but cross territorial boundaries to work, to visit family, or to move to escape abuse. The provisions for the cross-border recognition and enforcement of out-of-state protection orders were imperative to ensure safety "in the middle of the night", but also "in the middle of the day" when an individual is at work and, for example, an abuser knows that the police will not enforce or know about an existing order from another state.

19. The backdrop of globalisation and increased movement of people framed the experts' discussion. It was observed that more and more nationals are residing and travelling abroad, and citizens are demanding protection in cross-border circumstances.²⁶ High cross-border mobility rates in such regions as southern Africa and in Asia,²⁷ among others, were noted.

20. It was observed that protection of children and women (including from violence²⁸) is among the highest priorities on the international agenda.²⁹ At the national level, it was shared that the protection of victims in individual States is of high priority, and an expert noted that in South Africa there are constitutional protections of women from violence.

Global dimensions

21. It was noted that while significant European work³⁰ in this area has recently been undertaken, there is as yet no global instrument which includes other parts of the world. It was shared that those working with victims of violence, for example in shelters for victims of domestic violence, are frequently dealing with victims from abroad and with

²⁵ *Supra*, note 22.

²⁶ A recent high profile case in Asia (between China and the United States of America) was highlighted, as well as European citizen demands for mechanisms.

²⁷ *E.g.*, it was noted that it is estimated that 250 million Chinese citizens will be travelling abroad within 10 years (in contrast to 100 million in 2013), and there are currently 50 million "ethnic Chinese" living abroad.

²⁸ *E.g.*, see *General Assembly, Report of the Independent Expert of the United Nations Study on Violence against Children (A/61/299; 29 August 2006)*, *General Assembly, In-Depth Study on All Forms of Violence against Women: Report of the Secretary General (A/61/122/Add.1; 6 July 2006)* and *infra*, note 50.

²⁹ It was noted that the Permanent Bureau is in contact with a number of international organisations and agencies that are custodians or commentators on various international human rights norms or instruments relevant to this field of law, including the United Nations Office on Drugs and Crime (UNODC), the United Nations Special Rapporteur on Violence against Women, and the Secretariat of the Council of Europe, all of which wish to be kept informed and / or to comment on this Agenda item at the Hague Conference.

³⁰ Notably the 2011 EU Directive, the 2013 EU Regulation and the 2011 Istanbul Convention. Art. 62 of the 2011 Istanbul Convention mandates international co-operation for the enforcement of protection orders among States Parties.

global connections — issues are not regionally limited. It was observed that “violence against women and domestic violence” are global problems which do not stop at international borders. It was suggested that the Country Profile (see below, para. 68) would be useful in this respect to fill in the global gaps in information resources in this area of law.

Statistical bases

22. The experts observed that, at this time, there is an absence of specific statistics at the international level as to the number of cases worldwide which would benefit from cross-border mechanisms with respect to protection orders, because: 1) recently established systems within Europe have not yet begun operation and data collection has not commenced³¹ (and in any case data would be regionally limited); and, 2) it is difficult to pinpoint the collection agent who would collect such data (*e.g.*, the police, the courts) and other practical difficulties. An expert clarified that it would indeed be challenging to collect statistics under their system of enforcement of foreign protection orders because enforcement would generally take place “in the field” without criminal charges, as the police initially simply request individuals to stay away from or leave the vicinity of a person or place.³²

23. It was noted that in the United States of America, when developing federal legislation (VAWA) on the cross-border recognition and enforcement of protection orders, reliance was not placed on such statistical data because of similar challenges in capturing police records or statistics. Federal legislators in the United States of America relied upon reported anecdotal cases and upon statistics on the number of protection orders issued in individual states, combined with statistics on movement across state borders to visit relatives, to work and for other reasons.

24. The experts agreed that it was clear that the national data on the incidence of domestic violence and access to protection orders, as well as the increase in mobility of persons across jurisdictions internationally and within regions, is such that there is obviously a need for international mechanisms in this area.

25. It was noted that there are well-established statistics by international and national bodies with respect to prevalence rates for the various harmful behaviours addressed by protection orders. Recent World Health Organisation global prevalence statistics report that 35% of women worldwide have experienced intimate partner violence or non-partner sexual violence, with as many as 38% of murders of women worldwide being committed by an intimate partner.³³ The 2006 United Nations Secretary General’s study on violence against children concluded that “violence against children happens everywhere, in every country and society and across all social groups. [...] While some violence is unexpected and isolated, most violent acts against children are carried out by people they know and should be able to trust: parents, boyfriends or girlfriends, spouses and partners, schoolmates, teachers and employers”.³⁴ The United Nations Office on Drugs and Crime (UNODC) suggests a conservative estimate of the crime of human trafficking as affecting 2.4 million victims globally at any given time.³⁵ In relation to

³¹ Provisions of the 2013 EU Regulation and the 2011 Istanbul Convention stipulate the collection or reporting of statistics.

³² Several experts also noted that demand for mechanisms in this area is related to the efficacy of any solutions offered. If an effective, simple and accessible international system is offered, then there is a greater likelihood that more victims will use it.

³³ *Fact Sheet No 239: Violence Against Women*, World Health Organization Media Centre (Oct. 2013), < <http://www.who.int/mediacentre/factsheets/fs239/en/> >.

³⁴ *Report of the Independent Expert of the United Nations Study on Violence against Children (supra, note 28)*, summary of findings at: < <http://www.unviolencestudy.org/> >.

³⁵ *Factsheet on Human Trafficking*, United Nations Office on Drugs and Crime (UNODC), < http://www.unodc.org/documents/human-trafficking/UNVTF_fs_HT_EN.pdf >.

forced marriage, in the United Kingdom alone 5000-8000 cases of forced marriage were reported in 2009,³⁶ and in some States early and forced marriage can make up a significant proportion of total marriages.³⁷

26. Recent global mobility statistics affirm that the mobility of persons across international borders has continued to intensify. Recent United Nations statistics show that more people than ever are living abroad, with 232 million—or 3.2 % of the world's population—living outside of their countries of origin.³⁸ This number is in contrast to 174 million in 2000 and 154 million in 1990. Additionally, these figures do not include the high global rates of short-term, cross-border travel that would also be relevant in developing policy in this area of law.

27. In terms of reported cases at the international level, it was noted that non-governmental organisations with victim support services are reporting serious international cases where mechanisms are needed in relation to protection orders in cross-border circumstances.³⁹

Lack of global mechanisms

28. With the current lack of global mechanisms in this field, the experts highlighted the undue burdens and barriers presently faced by those seeking immediate protection through a national protection order when they move or travel abroad, and the potentially serious effects on the mobility rights and / or quality of life and safety of the protected person.

29. It was noted that at the international level under most existing general rules of private international law, it usually takes substantial resources in terms of time and money (*i.e.*, including procuring expertise) to secure recognition and enforcement of foreign judgments. Individuals already in a vulnerable situation and with few or modest means would likely be implicated on a regular basis in relation to protection orders. Experts also highlighted potential issues of delay of having a foreign order recognised, which could take months, thus undermining protection from an immediate threat. Several experts noted that the violent history of a perpetrator or findings of a court in this respect in a first jurisdiction was important background for authorities in a foreign jurisdiction, and such information could be lost if a protection order from the first jurisdiction was not recognised and enforced.

30. In terms of the possibility of getting a fresh protection order in a foreign jurisdiction under current conditions, experts reported differing circumstances in their respective jurisdictions. Several jurisdictions reported that an individual could get a fresh national protection order quite quickly (*e.g.*, within 48 hours) while others reported that it would

³⁶ *Forced Marriage – Prevalence and Service Response*, Research Report No. DCSF-RR128 (July 2009), < https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/222192/DCSF-RR128.pdf >.

³⁷ *E.g.*, in Georgia (17%), Turkey (14%) and Ukraine (10%), among others. *Early and Forced Marriage – Facts, Figures, and What You Can Do*, Plan UK, < <http://www.plan-uk.org/early-and-forced-marriage/> >.

³⁸ *Population Facts No 2013/2: The Number of international migrants worldwide reaches 232 million*, United Nations Department of Economic and Social Affairs (UN-DESA), September 2013.

³⁹ *E.g.*, see also the case studies shared in Prel. Doc. No 7 of March 2012, Section 2 (*supra*, note 3) and cases reported in response to the non-governmental organisation survey in Prel. Doc. No 4 B of March 2013, Annex II (*supra*, note 6).

be difficult, very difficult or not possible for an individual to be given a new protection order. It was noted that there could be problems such as establishing an evidentiary base in the new jurisdiction and establishing personal or subject matter jurisdiction (*e.g.*, one expert noted that violence would have to be committed on the territory of that jurisdiction for a new order to be established). The experts underlined the importance of facilitating access to information about how to access services in a foreign jurisdiction, including how to establish a new protection measure, if appropriate.

31. It was also noted that victims in general found it very challenging to be recognised as a victim of violence in a first jurisdiction, and they should not have to start such a difficult process again in a foreign jurisdiction if they move. It was suggested that victims should be guaranteed a level of minimum protection in all countries.

The Hague 1980 and 1996 Conventions

32. The experts noted that neither the 1980 Child Abduction Convention⁴⁰ nor the 1996 Child Protection Convention⁴¹ directly address the needs of a parent who may accompany a child under the 1980 Child Abduction Convention upon a return order.⁴² For example, a taking parent who may be a victim of violence or other harmful behaviour and who would be accompanying a child to the State of habitual residence of the child subsequent to a wrongful removal or retention of the child.⁴³ It was observed by some experts that undertakings or mirror orders sometimes employed in these circumstances were not often available, could be expensive to procure and were often not effective.⁴⁴

33. The experts agreed that a new international instrument in the field of the recognition and enforcement of protection orders would mitigate and reduce the exposure of children to violence under the operation of the 1980 Child Abduction Convention,⁴⁵ and more generally, could provide enhanced protection⁴⁶ for children from

⁴⁰ The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.

⁴¹ The Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.

⁴² The potential usefulness of the 1996 Child Protection Convention in these circumstances was mentioned, as it was reported that at least one jurisdiction was using this Convention to also protect an accompanying parent. However, it was considered that such a liberal interpretation of the 1996 Convention could not be presumed to be common or widespread.

⁴³ See *supra*, para. 2, referring to a recent Special Commission Conclusion welcoming work in this area in relation to the operation of the 1980 Child Abduction Convention. For additional background on this topic, see: "Domestic and Family Violence and the Article 13 "Grave Risk" Exception in the Operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: a Reflection Paper," Prel. Doc. No 9 of May 2011 for the attention of the Special Commission of June 2011, available on the Hague Conference website at < www.hcch.net > under "Specialised Sections" then "Child Abduction Section" then "Sixth Special Commission Meeting" then "Preliminary Documents". The April 2012 Council concluded and recommended "to establish a Working Group, composed of a broad range of experts [...] to develop a Guide to Good Practice on the interpretation and application of Article 13(1) b) of the 1980 Child Abduction Convention, with a component to provide guidance specifically directed to judicial authorities". The development of this Guide to Good Practice, with the assistance of the Working Group, is currently in progress.

⁴⁴ As to the efficacy of undertakings see, for example, research cited in Prel. Doc. No 9 of May 2011, *ibid.*, at para. 145, reporting that in one study sample there was non-compliance with *all* of the undertakings which related to violence / non-molestation.

⁴⁵ As explained in para. 32. The harmful effects of exposure of children to domestic violence between parents are now widely recognised. See Conclusion and Recommendation No 42 of the Sixth Special Commission to review the 1980 Child Abduction and 1996 Child Protection Conventions (*supra*, note 2) and the United Nations Committee on the Rights of the Child, General Comment No 13 (2011), at p. 9. Studies have also found strong correlations between spousal abuse and child abuse, and between spousal homicide and child homicide (see Prel. Doc. No 9 of May 2011, *ibid.*, at para. 20).

⁴⁶ *E.g.*, *inter alia*, if a new instrument in this field were to include mechanisms for the enhanced / immediate enforcement of foreign orders to better address circumstances of imminent harm.

violence and from other harmful circumstances like forced marriage and human trafficking, among others.

Definitions of violence

34. The experts acknowledged current international standards developed with respect to definitions and types of violence, for example, those covered by modern protection orders⁴⁷ and the now-established recognition of the effects of the exposure of children to domestic violence.⁴⁸ In the cross-border context, experts underlined that an understanding of a history of violence or threats by a perpetrator or potential perpetrator were crucial to correctly understand the importance of the enforcement of protection orders in a foreign jurisdiction. For example, a perpetrator who committed violent acts and made death threats in a foreign jurisdiction could still pose a serious risk to a victim if “only” found to be following and harassing a victim in the new jurisdiction.

Economic impacts

35. Experts acknowledged that there was an economic basis for further international work in this area. It was shared that as background to the federal legislative work in this field in the United States of America (VAWA), it was determined from the outset that the lack of special mechanisms for the cross-border recognition and enforcement of protection orders for victims of violence had broader economic implications. Such lack of continuous protection of victims had an impact on their health (with associated costs), their ability to go to work and to participate in society. It was understood that the interest in legislating in this area went beyond the two parties and was of interest to society at large.

Need for further work in this area

36. On the above bases, the experts concluded that there is a need for further work in this area, given the high international priority to prevent and mitigate violence.

C) Policy orientations of future work

Victim protection and deterrence

37. The experts highlighted that any future work in this area should forefront the importance of victim protection and harm prevention principles. Victims or potential victims should have their mobility rights protected and should be able to move or travel with security and “peace of mind”. An international instrument in this area could provide “specific deterrence” with a system for “on-the-spot” enforcement of a foreign protection order for the benefit of the victim or potential victim, and also “general deterrence” to persons causing risk, such that they understand that there will be consequences for violating a protection order abroad.⁴⁹

⁴⁷ See Conclusion and Recommendation No 2 of the meeting of the Experts’ Group and *supra*, note 13.

⁴⁸ See *supra*, note 45.

⁴⁹ Experts noted that like the 1980 Child Abduction Convention, such a new instrument could serve as a broader prevention tool to deter generally, in cross-border circumstances, the harmful behaviours covered by protection orders.

38. It was noted that under most systems currently in place or soon to come into effect for the cross-border recognition and enforcement of protection orders, enforcement of a foreign protection order was in accordance with the law of the place of enforcement, and thus could vary. It was noted that the system which had been in place for the longest, the 1994 VAWA legislation in the United States of America, had benefitted from education and training of system actors in order to ensure the proper enforcement of foreign orders.

Liability protection for enforcement and due process rights

39. It was reported by experts that most jurisdictions already had liability protection for law enforcement officers for the good faith enforcement of protection orders. It was noted that recent legislation in Canada specifically provided for liability protection for enforcement officers of foreign or out-of-province protection orders in order to ensure clarity and comfort to enforcement officers, and to eliminate any hesitation in the swift enforcement of orders.

40. Experts agreed that appropriate due process rights of the person causing the risk should be provided for in any international instrument. It was noted that the various models for the cross-border recognition and enforcement of protection orders possessed a variety of approaches in this respect, and included mechanisms to ensure that proper notification of the defendant was effected, due process was adhered to in the issuing jurisdiction, and / or that the defendant otherwise had an opportunity to challenge the enforcement of a foreign protection order. There was discussion as to the importance of ensuring that the person causing the risk was appropriately notified of the existence, terms, geographical reach and penalties for breach of a protection order.

Victim orientations

41. Experts took as a central policy orientation that any new international instrument should not place an undue burden on a victim / protected person who seeks to have a protection order recognised and enforced abroad, as such individuals are by definition in a circumstance of heightened vulnerability. Any mechanisms should be made accessible and practically focused on ensuring the safety needs of a victim or potential victim.

42. It was also noted that there is an internationally accepted benchmark applicable in this field where it is incumbent on States to abide by the "due diligence standard" to address violence against women, requiring the existence of proactive measures to combat all forms of violence.⁵⁰ The due diligence standard includes measures of prevention and protection of women from violence, both of which are addressed by protection orders.

43. Experts suggested that the existence of an instrument in this field, like the 1980 Child Abduction Convention in relation to international child abductions, would assist in highlighting principles for dealing with victims of domestic violence and other victims of violence in cross-border circumstances. Such a framework establishing, for example,

⁵⁰ See Art. 4 (c and d) of the United Nations General Assembly *Declaration on Elimination of Violence against Women* (A/RES/48/104; 20 December 1993), and also *Report of the Special Rapporteur on violence against women, its causes and consequences*, Commission on Human Rights (Integration of the Human Rights of Women and the Gender Perspective: Violence against Women), "The Due Diligence Standard as a tool for the Elimination of Violence against Women" (E/CN.4/2006/61; 20 January 2006), mentioning restraining and protection orders at pp. 11-12.

principles of avoidance of delay, confidentiality for victims and rapid referrals to support services, would be a useful international tool upon which subsequent educational and good practices for relevant system actors could be built.

Other matters

44. Experts discussed other important practical matters which would need to be addressed in any future work, including issues of language barriers and the protection of personal data.

45. With respect to addressing language barriers, experts discussed a number of potential solutions, including an international enforcement certificate, model forms, a Central Authority system and a Country Profile (see summary of discussion in relation to these tools, below).

46. With respect to the protection of personal data, of particular importance to study further would be the confidentiality of information in relation to those protected by a protection order: for example, information in relation to their whereabouts and specific address. It was noted that in one State, even if a victim chooses to register a protection order in another jurisdiction, such registration is not made publically available as would be the case with other decisions, in order to avoid pursuit by a dangerous perpetrator, among other concerns.

D) Discussion of possible solutions

47. Experts based this part of their discussion principally on the number of existing models for the recognition and enforcement of foreign protection orders.⁵¹ Experts discussed the potential advantages and disadvantages of various solutions which might form part of a future international instrument in this field. Experts concurred that any future work should include the further study of the various advantages and draw-backs of potential solutions.

“On-the-spot” / immediate enforcement

i) On the simple presentation of the foreign order

48. The “Canadian model”⁵² was discussed at length, as a model where emphasis is clearly placed on the immediate enforcement of a foreign protection order without formality. It was noted that a time of high risk of violence or death for a victim or

potential victim of violence occurs when the police have been called to the scene by an individual who feels threatened, and then leave if they are unable to enforce a protection order.

49. As background, it was explained that in the development of Canadian policy in this area, it was realised that the concept of an immediately-enforceable “emergency order” is the overriding principle, in order to provide for the urgent protection of potential victims. From a policy perspective, a careful balancing of interests was carried out in designing the solution. Critically, the protection orders in question primarily address the separation of two individuals causing risk to one another, do not bear on any final rights (e.g., financial, property, parental) and are not criminal sanctions. Rather, two individuals are separated on a temporary basis in order to avoid a potentially violent situation. The person causing the risk can subsequently challenge the enforcement of the

⁵¹ VAWA, the Uniform Act and the 2013 EU Regulation, among others.

⁵² The Uniform Act, cited *supra*, note 12.

order, after the real or perceived danger has passed for the person requesting protection. It was decided that the protection of the immediate safety of the victim or potential victim clearly outweighed any temporary inconvenience caused to the respondent.

50. The above approach was applied to the enforcement of protection orders among Canadian provinces, and due to the ease of cross-border foreign travel, it was considered important to include foreign protection orders in the system for the immediate protection of victims.

51. It was explained that enforcement officers are enabled by legislation to make a *prima facie*, good faith presumption of the validity of a foreign order, rather than placing undue reliance on the various formalities which would normally be applicable in the recognition and enforcement of a foreign decision. No formal registration of the foreign protection order is required,⁵³ and therefore an individual may simply present the foreign order to the enforcement officer. The foreign order will be deemed a judgment of the relevant Canadian provincial court and will be immediately enforceable as such. If the respondent subsequently seeks to challenge the enforcement of the order (*e.g.*, its validity or scope of application) he or she may do so in accordance with the relevant rules of court.

52. As part of the policy background to such an approach, it was considered proper to make a presumption in the first instance that the foreign court which established the foreign protection order "got it right," in the establishment of such an order in accordance with their procedures (including due process rights), rather than to presume the opposite.⁵⁴

53. In terms of mechanics of enforcement, upon presentation of the foreign protection order, the initial enforcement mechanism by the police would be to simply enforce by separating the individuals concerned based on the terms of the order. However, if these terms are subsequently not obeyed, the police would then have the authority to enforce for breach of a court order, in accordance with domestic law. It was explained that an important part of the Canadian legislation was that there should be no liability for police officers who enforce an order immediately in good faith.

54. Experts asked about the issue of foreign protection orders written in foreign languages, and an enforcement officer's approach in such a case. It was noted that the enforcement officers do not receive special training to recognise foreign judgments, but must rather rely on a good faith assessment of the circumstances, including consultation with the person requesting protection. Such an approach was deemed appropriate based on the balance of interests / risk assessment, as described above.

55. The approach taken under federal legislation of the United States of America, VAWA, which ensures the cross-border recognition and enforcement of protection orders among territorial sub-units of that State, echoed a number of the key policy goals of the Canadian legislation. It was noted that subsequent to its initial implementation in 1994, relevant VAWA provisions were amended so as to clarify that a protection order from another state is immediately enforceable *without* prior registration. Similar to the Canadian model, the individual protected by the protection order can simply present the out-of-state order to the enforcement officer for it to be enforced.

⁵³ A protected person may, however, choose to register a protection order in accordance with the usual procedures for the recognition and enforcement of foreign judgments.

⁵⁴ It was noted that the legislator could list foreign jurisdictions to be excluded from the enforcement regime, but that no such exclusions had yet been listed.

ii) *On the simple presentation of the order accompanied by a multilingual enforcement certificate and / or e-certificate*

56. Features of the recent European Union model addressing civil protection orders, the 2013 EU Regulation, were also explored by the experts. It was explained that the recent Regulation in this field was developed within the frame of a particular history specific to the European Union and the many instruments that have been developed in the European Union context. The European Union approach is based on mutual trust among Member States.

57. The 2013 EU Regulation provides a system where, subsequent to the establishment of a national protection order, a certificate can be applied for in that Member State. Such a certificate cannot be issued unless certain procedural safeguards have been met (*i.e.*, due process rights of the defendant are respected). Once completed, the certificate can then be recognised and enforced throughout all other participating European Union Member States. Enforcement is in accordance with the law of the enforcing State. The defendant does not have the opportunity to appeal the certificate or the terms of the original order in the other Member States where enforcement is sought. However, recognition can be refused if deemed contrary to public policy or because of an irreconcilable decision given or recognised in the State addressed.

58. It was noted that the European certificate is limited to a maximum duration of 12 months, includes *ex parte* orders in its scope,⁵⁵ and its specific factual details (*e.g.*, details of a specific address relevant to enforcement) can be adjusted in the Member State of enforcement. The benefits of using such a certificate were noted as including assistance in addressing language barriers, mitigating potential misunderstandings as to the exact terms of a foreign order and ensuring that the due process rights of the defendant have been respected.

59. It was observed that the person benefitting from a protection order in one Member State of the European Union would have to know of the existence of such a European certificate in order to apply for the certificate. However, it was suggested that a judge or other authority could bring the availability of the certificate to the attention of an individual whose case or situation has an international element.

60. Some experts expressed concern as to whether the requirement for a protected person to apply for a European certificate to ensure that their national protection order would be valid in other Member States of the European Union was an undue burden on the victim. It was suggested that if such a model were used at the international level, it could be conceived as a system where: 1) on every issuance of a domestic protection order, an international certificate was automatically issued; or 2) an international certificate was issued upon demand by the person protected by a domestic order or by the person's advocate(s) (and / or could be suggested *ex officio* by a competent authority).

Advance establishment of protection orders

61. The experts discussed the benefit of making available applications or other mechanisms such that an individual could request the "advance establishment" of a protection order in a foreign jurisdiction to which a move or travel is planned. An example of such an application for the establishment of a decision in a foreign jurisdiction from abroad is found in the Hague 2007 Child Support Convention.⁵⁶

⁵⁵ Orders referred to as *ex parte* or temporary / emergency orders are those which are usually issued upon the request of the plaintiff without prior notice to or hearing of the defendant. The defendant is notified and given an opportunity to be heard subsequent to the issuing of the order.

⁵⁶ The Hague *Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* (the "2007 Child Support Convention"). See Art. 10(1) d).

62. Requests for advance establishment would have to be in accordance with the law of the jurisdiction where establishment is sought—for example, any laws pertaining to the assumption of jurisdiction of the foreign court or other competent authority. The experts discussed various circumstances where this type of request would be useful, for instance, when the person causing the risk resides in the foreign jurisdiction where establishment is sought, or in appropriate circumstances under the 1980 Child Abduction Convention when a return to the country of habitual residence of the child is ordered and an accompanying parent would like a protection order established in advance of return.⁵⁷ Experts discussed examples of other circumstances where such a mechanism may be useful, for example, in a forced marriage or a human trafficking situation where an individual has been induced or coerced to travel to a foreign State and is returning to a country of origin or usual residence.⁵⁸

Advance recognition of protection orders

63. The experts likewise discussed the utility of making available applications or other mechanisms giving a protected person who is already in possession of a protection order the option of having the protection order recognised in a foreign jurisdiction in advance of a move or travel.⁵⁹ The advance recognition of the order, in accordance with the legal system where recognition is sought, might include the registration of the decision for enforcement or a declaration of enforceability of a decision, and could be done by direct request to a court, or through a Central Authority system.⁶⁰ As with a mechanism for advance establishment, experts noted that such an advance recognition mechanism could be useful in the context of the operation of the 1980 Child Abduction Convention⁶¹ and in other circumstances such as forced marriage and human trafficking. Experts noted that such an option for the advance recognition of a foreign protection order would not preclude an individual from seeking any additional or supplementary protection or services available under the national law of the place to which they were travelling.

64. Experts noted that because of the urgent safety needs of some at-risk individuals for whom a protection order is established, most “traditional” methods or general rules of private international law for the recognition and enforcement of a foreign order (*e.g.*, involving a series of procedural steps, and / or not providing for a system of immediate enforcement) would usually not be appropriate in this area of law pertaining to cross-border victims of violence, and could be prohibitively expensive and subject to considerable delay. However, it was acknowledged that in some specific circumstances, for instance in cases where a long-term move was planned well in advance, and a facilitative general instrument was available (for example, the “Lugano Convention”⁶²), using such a general instrument could be useful.

65. It was noted that under the 2011 EU Directive in criminal matters in this area, a system had been established where a certificate specifying the protection measure is

⁵⁷ See discussion, *supra*, paras 32-33.

⁵⁸ See, *e.g.*, provisions on ensuring the physical safety and the safe repatriation of victims of trafficking (Arts 6 and 8) in the United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000.

⁵⁹ The 1996 Child Protection Convention, Art. 24, provides for an “advance recognition” mechanism whereby any interested person may request a decision (from the competent authorities where the decision is to be recognised and / or enforced) on the recognition or non-recognition of a foreign measure of protection from another Contracting State.

⁶⁰ The 2007 Child Support Convention provides for direct requests to competent authorities for the recognition and enforcement of a maintenance decision or for such applications to be handled by Central Authorities (see Art. 10(1) a)).

⁶¹ See discussion, *supra*, paras 32-33.

⁶² *Convention of 30 October 2007 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters*.

transmitted between the Central Authorities of two Member States. An individual can request in advance to have the certificate transferred so that when the individual arrives, protection and / or knowledge of the terms of the protection measure by State authorities is already assured.

Central Authorities

66. Experts observed that there were a number of possible roles a Central Authority or other national “contact point” system could play under any future instrument (see Conclusion and Recommendation No 24, Part I, above). It was noted that one of the recent cross-border systems for the recognition and enforcement of protection measures establishes a Central Authority system.⁶³

67. In particular, the potential utility of such a system from the perspective of victims’ access to justice in cross-border circumstances was emphasised. Central Authorities might provide referrals to providers of (specialised international) legal assistance, as well as general information as to the relevant law and procedures in their State or jurisdiction, in order to mitigate difficulties for individuals to “navigate” a foreign legal system. A Central Authority might also be a point of contact for rapid referrals to already-established victim services, governmental or non-governmental, in order to benefit individuals in need of (urgent) specialised support in cross-border circumstances.⁶⁴

Country Profile

68. The experts welcomed the Draft Country Profile⁶⁵ prepared by the Permanent Bureau, underlining the importance of providing access to information for victims, their legal advisors and other victim advocates. Several experts suggested that the section of the Country Profile dealing with the types of protection orders available in a given jurisdiction and information as to how to make an application (“Protection Order Regimes / Types of Orders Available in Your State / Jurisdiction and Applications for Establishment of National Protection Orders”) should appear at the beginning of the Country Profile. The Draft Country Profile was prepared in such a way that it would be useful if used in conjunction with any future instrument, including if the latter established a Central Authority or another sort of national “contact point” system. Experts noted that such a Country Profile would be helpful as a tool to collect further information as to this area of law in various jurisdictions globally, as many areas of the world do not yet have such information readily available.

Other tools

69. In addition to the Draft Country Profile, the experts discussed a number of other tools which could be used in relation to possible further international work in this area. The Permanent Bureau tabled a draft model “International Enforcement Certificate,” developed on the basis of model forms used under existing Hague Conventions. Such an international certificate, presenting essential information and addressing language barriers, could form the basis for the immediate enforcement of a foreign protection order.

70. Several standard forms related to the cross-border enforcement of protection orders among territorial sub-units of the United States of America were also shared. A

⁶³ The 2011 EU Directive.

⁶⁴ *E.g.*, in relation to the types of harmful behaviours addressed by protection orders (see Conclusion and Recommendation No 2, Part I, *supra*).

⁶⁵ *Supra*, note 8.

model “Certification of Protection / Restraining Order” was presented, whose goal was to present key information and to lend support to the presumption of validity of foreign orders for law enforcement officers who must enforce, in emergency situations, orders issued in other states. A model cover page for protection orders, developed by the National Center for State Courts of the United States of America and partners in the context of the “Project Passport” initiative, was also shared. This cover page is currently used in more than half of the states of the United States of America, and presents essential data necessary for the enforcement of protection orders issued outside of the enforcing jurisdiction. The cover page is supposed to be completed with each new protection order issued.

71. The experts were also presented with two certificates, in draft form, which will be used in the context of the operation of the 2013 EU Regulation. The new Regulation stipulates that two certificates are made available: 1) a multilingual standard form for the recognition and enforcement of a protection measure in other Member States of the European Union (see Arts 4 and 5)⁶⁶; and 2) a multilingual standard form indicating the suspension, limitation or withdrawal of a protection measure (Art. 14).

72. The experts briefly discussed the potential use of electronic database technology at the international level, in order to keep a “real-time” registry of valid and enforceable protection orders. For example, a web-based international database where orders could be registered when issued nationally. If an order is subsequently presented in another State, officials would have recourse to the database to verify the order. Experts shared perspectives on the usage of databases at the national and sub-national levels, indicating that at the international level this would be an issue in need of further study. One expert noted that this area of law presented a unique opportunity to create a thoroughly modern international instrument through the full employment of technology.

E) Future work / next steps

73. The Experts’ Group agreed that an instrument would be useful in this area. There was interest to explore further the feasibility of a binding instrument which could include the three main types of mechanisms discussed, a) “on-the-spot” enforcement, b) advance establishment, and c) advance recognition, which would not be mutually exclusive, and could be supported by other tools, such as a Country Profile and model forms.

74. The form and feasibility of a future instrument, whether soft or hard law, required further study and discussion by the Experts’ Group. Experts noted the challenges which may be inherent in a purely soft law instrument(s), and noted that for effective international co-operation and an adequate international co-operation framework, a binding instrument may be preferable.

75. It was noted that in the further exploration of any new international instrument, various existing instruments, including but not limited to the recent European Union instruments, the Canadian Uniform Act, VAWA, the 1996 Child Protection Convention and others, should be analysed to draw important lessons from practical experience. Some experts cautioned that at the moment many victims worldwide are excluded from an international system in this area, and the international community should not wait too long to develop a global solution, as, for example, it would take a number of years to develop a new international Convention.

⁶⁶ See discussion, *supra*, at paras 57-60.

A N N E X E S

Experts' Group on Protection Orders
Groupe d'experts sur les ordonnances de
protection

Agenda
Ordre du jour

février / February 2014



AGENDA

The meeting of the Experts' Group will take place at the offices of the Permanent Bureau (Scheveningseweg 6, 2517 KT The Hague) from Wednesday 12 February (9.00 a.m.) to Thursday 13 February 2014 (6.00 p.m.).

This Agenda is proposed by the Permanent Bureau and is based on issues that have been identified as relevant in considering a recommendation to the Council on General Affairs and Policy as to whether the Hague Conference should explore an instrument on the recognition and enforcement of foreign civil protection orders. It is recognised that the experts may have other issues that they wish to address and as such, this Agenda will be treated with some flexibility and may need to be modified as the meeting progresses.

It is proposed that sessions will begin at 9.00 a.m. and end at 6.00 p.m. with a lunch break from 1.00 to 2.30 p.m. There will be breaks for coffee and tea during each of the sessions.

Wednesday 12 February 2014

9.00 a.m. **Opening of the meeting of the Experts' Group**

Opening remarks by Christophe Bernasconi, Secretary General of the Hague Conference on Private International Law

"Tour de table"

Introduction

Presentation by Philippe Lortie, First Secretary, and Maja Groff, Senior Legal Officer, of the mandate of the Council on General Affairs and Policy, earlier work undertaken by the Hague Conference in this area and background materials in preparation for the meeting

2013 Council mandate:

"Recognition and enforcement of foreign civil protection orders

The Council welcomed the work carried out by the Permanent Bureau and invited it to continue exploratory work, including further comparative research (such as a country profile) and investigation on the feasibility of a future instrument. The Permanent Bureau may, resources allowing, convene an Experts' Group to assist in carrying out this work".

Background materials:

- Prel. Doc. No 7 of March 2012
- Prel. Doc. No 4 A of November 2012
- Prel. Doc. No 4 B of March 2013
- Info. Doc. No 6 of March 2013

Materials prepared with a view to assist discussions of the Experts' Group:

Draft Country Profile

Discussion of policy rationales for an international instrument

- International work and instruments in this area
- Statistics / case studies
- Policy rationales, in the light of recent national and regional developments, for addressing the cross-border enforcement of protection orders (*i.e.*, Australia, Canada, New Zealand, United States of America, European Union and Latin America)

11.00 a.m. *Coffee break*

11.15 a.m. **General discussion concerning the need for swift / immediate solutions**

- "On-the-spot" enforcement of foreign protection orders
- Implementation of solutions in advance of a move or visit
- Real time access to information and / or assistance (access to justice / victim protection perspectives)
(*See draft Country Profile*)
- Other ideas

1.00 p.m. *Lunch break*

2.30 p.m. **Assessment of the need for and feasibility of possible solutions**

Immediate enforcement of foreign protection orders

- Enforcement on the simple presentation of the order
- Enforcement on the simple presentation of the order accompanied by a multilingual Enforcement Certificate and / or e-Certificate (searchable in a multilingual database)
- Liability protection for enforcement officers
(*See C.P.: Part III, Section 2.3*)
- Possibility of respondent to challenge or request review of the enforcement of the order
(*See C.P.: Part VI, Section 2*)

- Possibility to obtain information in different languages on support services available for persons seeking protection in a foreign State (e.g., contact details of enforcement authorities, legal assistance, victim services)
(See C.P.: Part I; Annex I)
- Possibility to obtain in person information / assistance (e.g., enforcement authorities, liaison with the State of origin, legal information or advice, assistance with respect to proceedings, legal representation)
(See C.P.: Part I; Part II; Annex I)

4.15 p.m. *Coffee break*

4.30 p.m. ***Advance establishment of a protection order in a foreign jurisdiction***

- Language(s) used in the State where establishment is sought
(See C.P.: Part V, Section 2.5)
- Relevant competent authority(ies)
(See C.P.: Part V, Sections 2.1 to 2.3)
- For whom protection orders are available
(See C.P.: Part V, Section 3.2)
- Against whom protection orders are available
(See C.P.: Part V, Section 3.3)
- Grounds of jurisdiction for the establishment of protection orders - national rules of jurisdiction or need for international harmonised rules?
(See C.P.: Part V, Section 5.1)
- Law applicable to establishment
(See C.P.: Part V, Section 5.2)
- Types of actions or potential actions in response to which protection orders are put in place
(See C.P.: Part V, Section 3.5)
- Types of behaviours for which protection orders are available
(See C.P.: Part V, Section 3.1)
- Types of protection orders that can be established
(See C.P.: Part V, Section 1.1)
- Possibility to challenge / review the establishment decision
(See C.P.: Part V, Sections 3.9 and 8; Part VI, Section 2)
- Possibility to obtain real time information in different languages concerning the establishment of a protection order in a foreign State
(See C.P.: Part I; Part V, Section 2; Annex I)
- Possibility to obtain in person information / assistance
(See C.P.: Part I; Part V, Section 2; Annex I)

6.00 p.m. *End of session*

Thursday 13 February 2014

9.00 a.m. **Assessment of the need for and feasibility of possible solutions (cont.)**

Advance recognition and enforcement of a foreign protection order

(See Art. 23 of the Hague 1996 Child Protection Convention)

- Language(s) used in the State where advance recognition and enforcement is sought
(See C.P.: Part IV, Section 1.3)
- Relevant competent authority(ies)
(See C.P.: Part IV, Section 1.1, 1.2 and 1.4)
- Who can seek recognition and enforcement of protection orders?
(See C.P.: Part IV, Section 4)
- Types of protection orders that can be recognised and enforced
(See C.P.: Part IV, Section 5)
- Bases for recognition and enforcement - national rules or need for international harmonised rules?
(See C.P.: Part IV, Section 2)
- Grounds for refusing recognition and enforcement - national rules or need for international harmonised rules?
(See C.P.: Part IV, Section 6)
- Possibility to challenge / review the recognition and enforcement decision - national rules or need for international harmonised rules?
(See C.P.: Part VI, Section 2)
- Possibility to obtain real time information in different languages concerning recognition and enforcement of a protection order in a foreign State
(See C.P.: Part I; Part IV, Section 1; Annex I)
- Possibility to obtain in person information / assistance
(See C.P., Part I; Part IV, Section 1; Annex I)

11.30 a.m. *Coffee break*

11.45 a.m. ***Discussion of the possible scope of a future instrument (subject matter)***

- Types of protection orders to be covered by the future instrument
(See C.P.: Part V, Section 1)
- Target policy areas: types of actions or potential actions in response to which protection orders are put in place
(See C.P.: Part V, Section 3.5)
- Types of behaviours for which protection orders are available
(See C.P.: Part V, Section 3.1)

- 1.00 p.m. *Lunch break*
- 2.30 p.m. ***Discussion of the Draft Country Profile (especially elements not already considered)***
- *See Draft Country Profile*
- Discussion of the form of a future instrument***
- *See Prel. Doc. No 4 B of March 2013, Part VI*
- 4.15 p.m. *Coffee break*
- 4.30 p.m. ***Conclusions and Recommendations and next steps***
- 6.00 p.m. *End of session*

Liste définitive des participants / Final list of participants**ÉTATS PARTICIPANTS / PARTICIPATING STATES****AFRIQUE DU SUD / SOUTH AFRICA**

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Representatives for Inter-Governmental Organisations***

CONSEIL DE L'EUROPE / COUNCIL OF EUROPE

Excusé / Unable to Attend [written comments submitted prior to meeting]

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