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DÉVELOPPEMENTS RÉGIONAUX

Document établi par le Bureau Permanent

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REGIONAL DEVELOPMENTS

Document drawn up by the Permanent Bureau

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I. REGIONAL DEVELOPMENTS

Over the past decade the Permanent Bureau has continued to develop its activities in the field of promotion, education and training in respect of Hague Conventions at the global, regional and national levels, in close consultation and co-operation with Hague Conference Member States and States Parties to Hague Conventions. In recent years the Permanent Bureau has begun to focus efforts and initiatives at the regional levels, in particular in Latin America, in Southern and Eastern Africa and among States with legal systems based upon or influenced by Shariah law.

Further developmental work is in process in the Asia-Pacific region as well as in Western and Central Africa. These regional developments bring several dividends. They promote closer networking and co-operation among States with special cultural and linguistic ties. They bring in to the Conventions more States formerly unfamiliar with Hague Conventions. They benefit other States outside the region through the development of good practices and consistent interpretation, and thus contribute in a more general way to the successful operation of the Conventions. They permit consideration to be given to ways of adapting the Conventions to the particular legal environments shared by countries in a region.

Meetings of the Special Commission on General Affairs and Policy of the Conference have consistently expressed support for initiatives undertaken by the Permanent Bureau to promote and provide technical assistance, including the new activities in the field of education and training in support of the Judicial and Administrative Co-operation Conventions and the regional development initiatives (in 2000, 2002,[1] 2003,[2] 2004,[3] 2005,[4] and 2006[5]).

A. THE AMERICAS

Following from the Conclusions and Recommendations agreed at the December 2004 Latin American Judges' Seminar on the *Hague Convention of 25 October on the Civil Aspects of International Child Abduction*,[6] the Permanent Bureau has developed a Special Programme for Latin American States focused on reinforcing the operation of the Hague Conventions and promoting the participation of Latin American States in the work of the Hague Conference.

Mr Goicoechea, a former member of the Argentine Central Authority designated under the 1980 Hague Convention, has assumed the role of Hague Conference Liaison Legal Officer for Latin America and has undertaken certain measures to support the regional efforts to strengthen the effective implementation and operation of the Conventions and to

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[1] "Note on the current status of work relating to the monitoring of the Hague Conventions on Judicial and Administrative Co-operation", Preliminary Document No 25 of April 2002 for the attention of Commission I (General Affairs and Policy of the Conference) of the Nineteenth Session – April 2002.

[2] See "Strategic Plan Update", Preliminary Document No 3 of March 2003 for the attention of the Special Commission of April 2003 on General Affairs and Policy of the Conference.

[3] See "Strategic Plan Update", Preliminary Document No 14 of February 2004 for the attention of the Special Commission of April 2004 on General Affairs and Policy of the Conference.

[4] See "Strategic Plan Update", Preliminary Document No 22 of February 2005 for the attention of the Special Commission of March / April 2005 on General Affairs and Policy of the Conference.

[5] See "Strategic Plan Update", Preliminary Document No 1 of February 2006 for the attention of the Special Commission of April 2006 on General Affairs and Policy of the Conference.

[6] Attended by more than 90 Judges, Central Authority officials and other experts from 19 States in the Americas. The Seminar, held in Monterrey, Mexico, 1-4 December 2004, was co-organised by the Hague Conference, United States Department of State (Office of Children's Issues), Organization of American States, Law School of *Instituto Tecnológico y de Estudios Superiores de Monterrey*, American Bar Association Latin American Law Initiative Council, Texas-Mexico Bar Association, and the International Centre for Missing and Exploited Children. The Conclusions and Recommendations from The Latin American Judges' Seminar on the 1980 Hague Convention on the Civil Aspects of International Child Abduction are available on the website of the Hague Conference at < www.hcch.net > –> "Child Abduction Section" –> "Judicial Seminars on the International Protection of Children".

implement the Special Programme for Latin American States.[7] This arrangement has been made with the generous assistance of the Argentine Ministry of Foreign Affairs.

Phase I of the Special Programme (April 2005-June 2006) concentrated efforts on providing technical assistance to States in Latin America in respect of implementation of the Hague Children's Conventions, particularly through visits to Central Authorities and convening national and international judicial seminars, in consultation and co-operation with the national governments of each State. In the context of the Special Programme, the Permanent Bureau assisted with and presented at judicial and interdisciplinary seminars on the Hague Conventions in 12 States, organised and principally funded by the national governments involved.[8] A second major Seminar for Latin American Judges was held in The Hague in December 2005 with the generous assistance of the Hague Forum for Judicial Expertise.[9] Phase I of the Special Programme resulted in the establishment of a regional judicial / Central Authority network, regional expansion of INCADAT and *The Judges' Newsletter*.

Phase II of the Special Programme (July 2006-June 2007) has seen an increased focus on all Hague Judicial and Administrative Co-operative Conventions. Special Programme Phase II visits to States in Latin America assisted in (i) increasing the visibility of the work of the Hague Conference in the region; (ii) assessing the operation of Hague Conventions within each State; (iii) identifying obstacles to effective implementation and discussing ways in which those obstacles may be removed; (iv) supporting and encouraging the implementation of Children's Conventions; (v) facilitating the participation of Latin American States in Special Commission Meetings; (vi) encouraging the accession to and ratification of Hague Conventions with special focus on judicial and administrative co-operation; (vii) providing information in respect of Hague Conventions currently being examined in certain States; (viii) reinforcing links with officials, judges and others with responsibility under the Hague Conventions; (ix) developing links with international organisations dealing with matters covered by Hague Conventions.

In respect of co-operation with other regional organisations, links with MERCOSUR,[10] IBERO-AMERICA[11] and, in particular, the Organization of American States / *Instituto Interamericano del Niño* (IIN) have been strengthened. On 11 June 2006 at the seat of the IIN in Montevideo, the Secretary General of the Hague Conference on Private International Law and the Officer in charge of the Office of the IIN signed an Agreement of Co-operation between the two organisations.[12] The Agreement sets out ways in which the two organisations might co-ordinate in the execution of activities concerning the Inter-American Program of Co-operation to Prevent and Remedy Cases of International Abduction of Children by One of their Parents in parallel with the Hague Special

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[7] See Annex I: Special Programme for Latin American States: Phase II Review: April 2006-March 2007 for a detailed description.

[8] Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Honduras, Mexico (Tijuana), Panama, Paraguay, Peru, Uruguay.

[9] The Hague Conference and the Hague Forum for Judicial Expertise co-organised The Hague Project for International Co-operation and the Protection of Children: Operation of the Hague Children's Conventions and Cross-Border Protection of Children within Latin America, held in The Hague 28 November-3 December 2005. The Seminar was attended by 18 Judges from 16 States in the Americas. See Conclusions and Recommendations agreed at Seminars at < www.hcch.net > -> "Child Abduction Section" – "Judicial Seminars on the International Protection of Children".

[10] On 10 November 2006 the Ministers of Justice of MERCOSUR and Chile and Bolivia signed a Declaration promoting the approval by MERCOSUR and Associates States of the 4 Hague Judicial and Administrative Conventions, as well as the adoption of any necessary decision needed for their effective implementation. See the Hague Conference website at < www.hcch.net > -> "Latest developments". See Annex I for detailed information.

[11] See Annex I for detailed information.

[12] See the Hague Conference website < www.hcch.net > -> "Latest developments". See Annex I for detailed information.

Programme for Latin American States, including through the development of activities for actors involved in implementing the legal instruments. It is to this end that the first joint IIN-HCCH Meeting was convened on 10 November 2006 in The Hague immediately following the Fifth Special Commission to review the practical operation of the 1980 Hague Convention. The joint meeting for States in the Americas focused on addressing concrete actions to implement agreed Conclusions and Recommendations from the Special Commission and identified topics to be developed by two working groups with a view to presentation and discussion at the 2007 Inter-American Meeting.[13] This work includes a detailed examination of the 1996 Hague Convention in the Latin American context, and the development of a regional model procedural law to facilitate implementation of the 1980 Hague Convention.

Phase III of the Special Programme (July 2007-June 2008) will provide support in respect of the Hague Children's Conventions with a special focus on: (i) implementation of some of the Conclusions and Recommendations of the Fifth meeting of the Special Commission to review the practical operation of the 1980 Hague Convention and to consider some implementation issues concerning the 1996 Hague Convention,[14] and of the Inter-American Expert Meeting;[15] (ii) implementation of some of the Conclusions and Recommendations of the Second Special Commission meeting to review the practical operation of the 1993 Hague Convention, as well as (iii) continuing to promote interest and involvement in the region in the final stages of the negotiations on the new Hague Convention on the International Recovery of Child Support and other forms of Family Maintenance. The Programme will also encourage and assist States in the development of internal procedures to assist in the effective functioning of the Hague Judicial and Administrative Co-operation Conventions.

The increased involvement of Latin American States in the work of the Hague Conference has been viewed positively in the region, and the increased use of Spanish in communications and at meetings of the Special Commission has removed barriers and facilitated this involvement. Additionally, the co-operation offered by Judges and Central Authority officials at the various seminars and meetings promoted the helpful exchanges on practice and operational issues. It is to this end that the constructive dialogues will assist the Permanent Bureau of the Hague Conference to better address the concerns faced by countries in Latin America and, as a result, to strengthen the worldwide efforts to increase the international legal frameworks designed to protect children.

B. SOUTHERN AND EASTERN AFRICA

To respond to the exponential growth of the geographical span and number of States and individuals affected by cross border child protection issues the Permanent Bureau has been carrying out exploratory work in Southern and Eastern Africa in the context of the Hague Project for International Co-operation and the Protection of Children in the Southern and Eastern African Region on the role of the Hague Conventions in the practical implementation of the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

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[13] See "Conclusions and Recommendations of the Inter-American Expert Meeting on International Child Abduction" at – < www.hcch.net > -> "Child Abduction Section" –> "Judicial Seminars on the International Protection of Children". See Annex I for detailed information.

[14] See in particular Conclusion 1.9.3 from the Fifth meeting of the Special Commission to review the operation of the 1980 Convention, available on the Hague Conference website at < www.hcch.net > -> "Conventions" -> "Convention 28" -> "Practical Operation Documents".

[15] Available on the Hague Conference website at < www.hcch.net > -> "Conventions" -> "Convention 28" -> "Practical Operation Documents".

In co-operation with the Hague Forum for Judicial Expertise, and supported by the African Union and the UN Committee on the Rights of the Child, a Judicial Seminar was held in The Hague which involved principally Judges from Southern and Eastern Africa.[16] The support expressed by the Governments of the Republic of South Africa and the Republic of Kenya was also central to the success of the Seminar. Discussions focused on identifying ways to lend support to existing efforts to improve the cross-border protection of children in the Southern and Eastern African Region; examining cross-border legal, administrative and judicial co-operation on child protection issues which are particularly relevant to the region (including the trafficking, exploitation, abduction and sale of children, as well as custody, access and child support) some of which have been exacerbated by the HIV / AIDS pandemic; and considering ways in which The Hague could lend support to the practical implementation of principles set out in the *UN Convention on the Rights of the Child* and the *African Charter on the Rights and Welfare of the Child*, either through existing Hague Conventions, application of Hague techniques, or adaptation of Hague techniques to particular countries in the region.[17]

Agreement was reached on Conclusions and Recommendations which set out in particular two areas in which the Hague model would be useful for African countries in the practical implementation of the UNCRC and the African Charter:[18]

(1) the development of Central Authority structures (to play a key role in inter-governmental co-operation for the protection of children in cross-border situations, including cases of trafficking), as well as

(2) the development of Judicial Networks, supported by a legal infrastructure which includes the Hague Children's Conventions addressing international child abduction, intercountry adoption, and parental responsibility and measures for the protection of children.

This initiative was a prelude to a broader regional conference which the Permanent Bureau plans to organise in Africa in late 2007. The object will be to discuss similar themes before a broader audience which will include policy makers, the judiciary, legal and other professionals and academics. It is hoped that the outcome of the subsequent conference would be a set of proposals suggesting for States in sub-Saharan Africa how the Hague Children's Conventions may be of help in protecting children in cross-frontier contexts, and how they may be implemented in a way which respects local conditions and cultures, and which takes account of issues of capacity, especially the problem of access to legal services and procedure.[19]

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[16] Held in The Hague, 3-6 September 2006. Judges and experts from Cameroon, Ethiopia, Kenya, Lesotho, Malawi, Mauritius, the Netherlands, Nigeria, Rwanda, South Africa, Tanzania, Uganda, Zambia, Zimbabwe, the African Union and from Unicef attended the Seminar.

[17] It was underlined that the Hague approach focuses on the protection of the child in the civil rather than criminal realm. The Hague "techniques" include the establishment of systems of co-operation between authorities in the different countries at administrative and judicial levels, the development of agreed approaches to competence to take protective measures in respect of children, systems for the mutual recognition and enforcement of such measures, and post-Convention services (establishing Central Authority and judicial networks, judicial seminars, implementation assistance).

[18] See "Conclusions and Recommendations of The Hague Project for International Co-operation and the Protection of Children in the Southern and Eastern African Region" at < www.hcch.net > -> "Child Abduction Section" -> "Judicial Seminars on the International Protection of Children".

[19] See the Conclusion agreed at the 4th World Congress on Family Law and Children's Rights, Cape Town, South Africa (March 2005) "There is a need to explore the potential benefits of the Hague Children's Conventions for a much wider range of States – including in particular the States in sub-Saharan Africa. With appropriate measures of implementation, (which respect culture and take account of issues of capacity, and in particular the problem of access to legal services and procedures), the Hague Children's Conventions offer a structure for improving inter-State co-operation in the region to protect children at risk in cross-frontier contexts, and they provide access to a rapidly developing global network of judges and other professionals who are devoted to the common protection of children."

Preliminary research has begun into possibilities for joint regional initiatives in the francophone Western and Central African States in respect of the Hague Judicial and Administrative Co-operation Conventions. A first Judicial Conference will be held in The Hague in August 2007, co-funded by the Embassy of France and the Hague Forum for Judicial Expertise.

C. NON-HAGUE CONVENTION STATES – THE "MALTA PROCESS"

The Hague Conference has been asked to keep under review the development of bilateral arrangements between Hague and non-Hague States which provide remedies, or promote co-operation, in the context of cross-frontier parental abductions or parental disputes over contact with children. A Research Paper on this subject was presented at a Special Commission meeting in the Hague in October / November 2002, called to review a number of aspects of the operation of the 1980 Convention. That Paper surveys 11 of the existing bilateral arrangements involving Australia, Egypt, Belgium, Morocco, Tunisia, Canada, Lebanon, France and Algeria.

That initial review suggested that the bilateral arrangements which at the moment are having most success are those which offer procedures for promoting and facilitating agreed solutions between the family members concerned. The paper also pointed out that what was lacking was an effective legal structure to provide a framework within which agreement can be negotiated safely and fairly, which is capable of giving effect to such agreements and which will provide remedies where agreement is not possible.

It was therefore felt that there was a need to intensify the search for common legal principles, which would constitute the beginning of a rule of law for those States that are not yet ready to join the 1980 or 1996 Hague Conventions.

It is in this context that a first Judicial Conference on Cross-Frontier Family Law Issues involving certain Hague Convention States and certain non-Hague States from within the Islamic tradition, was organised by the Hague Conference on Private International Law in collaboration with the Government of Malta, and was held in St. Julian's, Malta, from 14-17 March 2004. This first Malta Judicial Conference was attended by nearly 50 experts including senior judges, high ranking government officials from 14 States and 4 Organisations.[20]

The first Malta Conference moved towards the approval of the common set of principles, embodied in a Declaration made by those present. These principles contain possible building blocks for the development of a legal framework – "a rule in the Law". There is for example recognition of the need to develop common jurisdictional standards and to give mutual respect to decision made on those bases. There is recognition too of the fact that speed is of essence in cases where parent and child have been separated. The Declaration also recognises the importance to continue the process of dialogue, with the assistance of the Hague Conference in co-operation with other international organisations, with a view to the progressive elaboration and implementation of the conclusions embodied in the First Malta Declaration.[21]

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[20] Attended by Algeria, Belgium, Egypt, France, Germany, Italy, Lebanon, Malta, Morocco, the Netherlands, Spain, Sweden, Tunisia, United Kingdom, European Commission, Council of the European Union, International Social Service and Reunite.

[21] See the Declaration: The Malta Judicial Conference on Cross-Frontier Family Law Issues at < www.hcch.net > -> "Child Abduction Section" –> "Judicial Seminars on the International Protection of Children".

A Second Malta Judicial Conference was held from 19 to 22 March 2006 and was attended by 80 experts including senior judges, high ranking government officials and CentralAuthority personnel from 19 States, the Commission, the Parliament and the Council of the European Union and several non-governmental organisations.[22]

The Second Malta Conference discussed and built upon the conclusions contained in the First Malta Declaration and considered, in particular the:

- possible common basis for the exercise of jurisdiction in respect of child protection matters;
- idea of establishing a Central Authority as a focal point for inter-State co-operation; issues of information exchange and training (including judicial training);
- way to ensure that international child protection matters are dealt with in each country by officials and judges with the necessary experience and expertise;
- development of mechanisms which promote agreed solutions between the parties; range of measures which may be employed to prevent conflicts from arising; and
- next possible steps to be taken at the multilateral level to develop the legal infrastructure necessary for effective cross-frontier child protection.

The Second Malta Declaration, approved by all participants, reaffirms and endorses the principles contained in the First Malta Declaration. Particularly important is that the Second Declaration notes the fact that several States are now considering implementation of the uniform rules of jurisdiction as set out in the *Hague Convention of 19 October of 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children*. It also recognises, among others, the important initiative of several States to create specialised family courts and the movement towards concentration of jurisdiction.[23]

The Malta Process has been seen to advance development of a co-operative framework for the resolution of difficult cross-border family disputes involving States from within the Islamic tradition, with a focus on the protection of cross-frontier rights of contact / access of parents and their children and the problems posed by the parental abduction of children between the States concerned.

The Malta principles, embodied in the two Declarations, are part of a continuing dialogue. The involvement of the judiciaries of the countries concerned in that dialogue is essential if the process is to continue to bear fruit.

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[22] Attended by Algeria, Australia, Belgium, Canada, Egypt, France, Germany, Indonesia, Lebanon, Libya, Malaysia, Malta, Morocco, the Netherlands, Sweden, Tunisia, Turkey, United Kingdom, United States of America, European Commission, European Parliament, Council of the European Union, International Social Service, International Centre for Missing and Exploited Children and Reunite.

[23] See Declaration Second Malta Judicial Conference on Cross-Frontier Family Law Issues at < www.hcch.net > -> "Child Abduction Section" –> "Judicial Seminars on the International Protection of Children".

The Permanent Bureau is currently discussing with the Egyptian authorities the possibility of holding in Cairo a Judicial Conference focusing on the themes addressed within the "Malta process". The proposal being discussed is one which would involve a wider rangeof "non-Hague Convention" countries, particularly from the Arab world. This would open the possibility of discussing regional initiatives as well as continuing to develop and broaden support for the principles contained in the Malta Declaration. The Judicial Conference would be held at the Supreme Constitutional Court in Cairo in the early part of 2008.

D. ASIA-PACIFIC

The Australian Attorney-General's Department (the national organ for Australia and Central Authority for Hague Conventions) has proposed a 3-day conference to discuss Hague Conventions and involving countries of the Asian and Pacific regions. The conference will be jointly organised by the Hague Conference and the Australian Attorney-General's Department. The Australian Government is generously providing the funding for the conference, to be held in Sydney from 27 – 29 June 2007. The purpose of the conference is to stimulate discussions between the States of the region on the effective implementation and operation of the Hague Children's Conventions and the Judicial and Administrative Co-operation Conventions. For those States which are not party to some or any of the Hague Conventions under discussion, the opportunity will exist to describe the cross-border disputes or situations which may be resolved by the Hague Conventions and to demonstrate the advantages of becoming party to the Conventions. The conference will expand on issues raised at a similar conference held in Malaysia in 2005[24] and will also examine some of the issues discussed at the Malta I and II conferences.

II. POST-CONVENTION WORK OF THE PERMANENT BUREAU

As the regional development work of the Hague Conference continues to expand, so too in parallel does the growth of the Hague Conference, both in its membership and in the Contracting States to the Conventions. In addition to the 65 Member States,[25] 59 non-Member States are now, as Parties to one or more Hague Conventions, part of the Hague Conventions' network. This profound transformation of the Hague Conference into a global organisation has brought with it the need for new initiatives in respect of co-operative mechanisms, regional developments, and the provision of "post-Convention" support services.

The post-Convention work co-ordinated by the Permanent Bureau is designed to support the effective and widespread implementation of Hague Conventions, particularly those which establish systems of judicial and / or administrative co-operation (*e.g.* those dealing with international protection of children and families and international legal co-operation). This post-Convention work, which now occupies well over 60% of the time and resources of the Permanent Bureau, ranges from treaty administration to the provision of technical assistance, and from monitoring and review to work to promote and develop the full potential of the Conventions in different regions of the world.

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[24] The 2005 international seminar was organised by the Attorney General's Chambers of Malaysia in collaboration with the Malaysian Ministry of Women, Family and Community Development. The Seminar was designed to promote international judicial and administrative co-operation among the countries in the Asia Pacific region and to provide a better understanding of the implementation of various Hague Conventions in the context of the different legal systems in the Asia Pacific, including the Shariah system.

[25] Since early 2001, the Hague Conference (HCCH) has seen its membership grow by more than 40%. The total population of the new Member States well exceeds 500 million people. In addition, three States have been admitted as Members and amendments to the Statute of the Conference pave the way for membership of the European Community.

The "post-Convention" work of the HCCH, which is now one of its recognised hallmarks, has been supported by Member States for good reasons. Three, in particular, may be recalled:

(1) Hague Conventions (particularly those involving judicial and administrative co-operation) are practical working instruments which, for their effective operation, require careful implementation at the national level. In the absence of an international body to provide authoritative interpretations of, or to enforce obligations under, the Hague Conventions, continuing efforts are needed to ensure their consistent interpretation and efficient functioning within the States Parties.

(2) As the circle of HCCH Member States and non-Member parties to Conventions expands, more and more of the newly interested States come without the know-how gained through involvement in the negotiation process. Capacity building may be needed to help such States absorb, implement and correctly apply these instruments. (This is not to say that the "established" Hague States do not also sometimes require such support.)

(3) Many of the Hague Conventions depend for their success on the development of close co-operation between States Parties, as well as on the building of mutual confidence and trust between judiciaries and administrative bodies in the different countries. Nothing contributes more to the growth of this co-operation and trust than a firm understanding that Convention obligations will be promptly and efficiently discharged by States Parties. It is for this reason too that the Member States of the HCCH have accepted that it is in their interests for Convention supports to be provided also to non-Member States which are Parties to the Hague Conventions.

The development of the Conference's post-Convention services reaches another milestone this year with the establishment of an administrative facility supporting a systematic approach for new and ongoing programmes – the Hague Conference International Centre for Judicial Studies and Technical Assistance. The Centre will operate as an integral part of the post-Convention activities of the Permanent Bureau and will provide much needed logistical support for, and will help to systematise, programmes to support the implementation of Hague Conventions.

This development strengthens the capacity of the Hague Conference in its continuing efforts to ensure the effective implementation of its Conventions through the provision of training and technical assistance. The Centre will also provide additional administrative support for many of the regional activities mentioned in this document.

A N N E X E S

THE SPECIAL PROGRAMME FOR LATIN AMERICAN STATES

BACKGROUND

A programme to promote and support effective implementation of the Hague Judicial and Administrative Co-operative Conventions in Latin America was initiated during Financial Year L (July 2004-July 2005). Phase I, implemented under the Supplementary Budget during Financial Year LI (July 2005-June 2006), focused on convening national and international judicial seminars and visits to Central Authorities to provide implementation assistance to Latin American States, in particular, in respect of the Hague Children's Conventions.[1] Phase II of the Special Programme (July 2006-June 2007) has seen an increased focus on all Hague Judicial and Administrative Co-operative Conventions.[2] Special Programme Phase II visits to States in Latin America assisted in (i) increasing the visibility of the work of the Hague Conference in the region; (ii) assessing the operation of Hague Conventions within each State; (iii) identifying obstacles to effective implementation and discussing ways in which those obstacles may be removed; (iv) supporting and encouraging the implementation of Children's Conventions; (v) facilitating the participation of Latin American States in Special Commission Meetings; (vi) encouraging the accession to and ratification of Hague Conventions with special focus on judicial and administrative co-operation; (vii) providing information in respect of Hague Conventions currently being examined in certain States; (viii) reinforcing links with officials, judges and others with responsibility under the Hague Conventions; (ix) developing links with international organisations dealing with matters covered by Hague Conventions.

PHASE II REVIEW: APRIL 2006-MARCH 2007

Phase II, implemented under the Supplementary Budget during Financial Year LII (July 2006-June 2007) focused on supporting the Hague Children's Conventions and Judicial and Administrative Co-operation Conventions. Phase III will see a continued focus on the Conventions and a concentration on following up advances made in Phase II.

A. Objectives of Phase II

Phase II of the Special Programme endeavoured to:

Provide technical assistance to Latin American States in respect of implementation of Hague Conventions, in particular the Conventions concerning the cross-border protection of children addressing international child abduction (including the issue of access), intercountry adoption, and matters of child protection,[3] as well as on the ongoing discussions related to a worldwide Convention on international child support and other forms of family maintenance.

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[1] The *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction;* the *Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption;* and the *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*. Discussions also addressed ongoing discussions related to the international recovery of child support and other forms of family maintenance.

[2] In particular, the *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents;* the *Convention of 15 November 1965 on the Service Abroad of Extrajudicial Documents in Civil or Commercial Matters;* the *Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters;* and the *Convention of 25 October 1980 on International Access to Justice.*

[3] *Supra*, note 1.

Promote and provide information and assistance in respect of the relevant Hague Conventions on Judicial and Administrative Co-operation (legalisation, service of documents, taking of evidence, access to justice).[4]

Offer technical assistance to Latin American States in respect of Seminars for Judges, Government Officials, Central Authority Officers and other professionals with responsibility for implementing Hague Conventions.

Encourage twinning of Central Authorities as a way to strengthen the operation of the Hague Conventions.

Promote participation of Latin American States in the work of the Hague Conference (participation at Meetings of the Special Commission and preparations for such meetings – responses to questionnaires and statistical surveys; use of HCCH practical tools – INCADAT, INCASTAT and the iChild case management system, Guides to Good Practice, *The Judges' Newsletter*).

Facilitate accessibility of information concerning operation of the Hague Conventions, including increasing the visibility of the work of the Hague Conference in Latin America.

Continue to develop and promote the work of the Hague Conference in the Spanish language.

Improve generally the operation of the Hague Conventions within the region and between countries in the region and other Contracting States around the world.

B. Implementation of Phase II

1. Provide technical assistance to Latin American States in respect of implementation of Hague Conventions, in particular the Conventions concerning the cross-border protection of children addressing international child abduction (including the issue of access), intercountry adoption, and matters of child protection, as well as on the ongoing discussions related to a worldwide Convention on international child support and other forms of family maintenance.

<u>The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (17 Latin American States Parties)</u>

The Liaison Legal Officer assisted with the dissemination and implementation of the Conclusions and Recommendations from the 2005 Judicial Seminar – Operation of the Hague Children's Conventions and Cross-Border Protection of Children within Latin America (Hague Forum for Judicial Expertise, The Hague, The Netherlands) and the 2004 Latin American Judges' Seminar on the 1980 Hague Convention (Monterrey, Mexico) as well as the Recommendations and Guides to Good Practice adopted by the 2001, 2002 and 2006 Special Commissions.

In Phase II intensive preparations ensued in respect of the Fifth meeting of the Special Commission to study the operation of the 1980 Hague Convention and to consider some implementation issues concerning the 1996 Hague Convention (October / November 2006).

[4] *Supra*, note 2.

A special concentration was made in following-up the Questionnaires sent by the Permanent Bureau in preparation for the Special Commission, in particular Preliminary Document No 1 of April 2006 – Questionnaire concerning the practical operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. Replies were received by 12 States in Latin America – 70% of Latin American State Parties. Other follow-up related to preparatory questionnaires addressing (i) statistics for the survey made by Cardiff University; (ii) enforcement of foreign orders; and (iii) newly acceding States.[5]

In July 2006 a conference call for Latin American Central Authorities was organised and co-ordinated to prepare the Special Commission and the Inter-American Expert Meeting. Fifteen Latin American States participated on the conference call – nearly 90% of Latin American State Parties. Each participant addressed the main obstacles for the implementation of the Convention in their State, and presented useful recommendations in order to overcome such obstacles. This information was duly considered by the Permanent Bureau in preparing the agenda and preliminary work for the Special Commission and the Inter-American Expert Meeting.

Research was made into regional developments in respect of (i) the use of mediation to facilitate resolution of child abduction, custody and access cases; and (ii) national and regional initiatives developing procedural law in respect of child abduction cases.

There was significant and active participation of Latin American States at the Special Commission. 13 Latin American States were represented – approximately 76%. A regional proposal made by 11 Latin American States was also presented, underlining solid regional communication and co-operation.[6]

The Latin American Special Programme was highly appreciated by delegates from Latin America and other regions around the world. The Conclusions and Recommendations of the Fifth meeting expressly welcomed the advances made by the Permanent Bureau in further expanding the influence and understanding of the Hague Conventions through the Latin American Programme. The appointment of the Liaison Legal Officer was also welcomed as an important tool to strengthen the operation of the Convention in the region.

Inter-American Expert Meeting on Child Abduction

On 10 November 2006 the first Inter-American expert meeting jointly organised by the Inter-American Children's Institute (IIN) and the Hague Conference on Private International Law was convened in The Hague.

This meeting was a concrete action generated from the co-operation agreement entered into between the Inter-American Children Institute and the Hague Conference in June 2006.[7]

The Meeting was convened in order to establish priorities for the implementation of the Recommendations and Conclusions from the Fifth Special Commission together with the implementation of the Inter-American Program of Cooperation to Prevent and Remedy Cases of International Abduction of Children by One of their Parents (AG/RES. 2028 (XXXIV-0/04) (the "Inter-American Program"). The meeting was attended by national experts from Argentina, Brazil, Chile, Dominican Republic, Ecuador, Mexico, Panama, Peru, United States of America and Uruguay.

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[5] New responses to the Hague Questionnaire for newly acceding States were received from Guatemala, Honduras and Panama.
[6] See Working Document No 15.
[7] See the Hague Conference website at < www.hcch.net > -> "Latest developments".

The Conclusions from the meeting generated two working groups.[8] The first working group is charged with developing a regional model law of procedure which should facilitate the national implementation of the Child Abduction Conventions. The second working group is mandated to produce an analysis from the American perspective of the 1996 Hague Convention, so as to facilitate the understanding of the instrument and its possible impact in the national legal systems.

The meeting also prioritised topics which should be addressed in depth during the 2007 Expert Meeting on child abduction which will be organised by the IIN with the support of the Hague Conference.

The Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (15 Latin American State Parties)[9]

The Liaison Legal Officer assisted with the dissemination and implementation of the Conclusions and Recommendations from the Second meeting of the Special Commission on the practical operation of the 1993 Intercountry Adoption Convention (September 2005).

The Intercountry Adoption Implementation Assistance Programme

As a result of a 2006 contribution by the Government of the Netherlands, the Hague Conference has recently launched the Intercountry Adoption Implementation Assistance Programme, which is designed to provide technical assistance to States that have signed or that are contemplating becoming Party to the 1993 Hague Intercountry Adoption Convention. In its beginning phases the Hague Conference has offered to provide technical support and assistance directly to Guatemala and to the Republic of Kenya. Both States have accepted the proposal.

In respect of the 1993 Hague Convention in Guatemala, further to the action plan generated during the 2005 visit of the Secretary General and the Liaison Legal Officer[10] the Guatemalan Congress is still to approve the law to confirm the legal effect of the Convention within Guatemala's legal order. During 2006 the Liaison Legal Officer has followed up intensively with Guatemalan Authorities. Under the new Intercountry Adoption Implementation Assistance Programme, a fact-finding mission developed by HCCH Principal Legal Officer Jennifer Degeling and HCCH Liaison Legal Officer for Latin America Ignacio Goicoechea has been planned for March 2007. The mission will identify the key implementation issues and actors involved, as well as resource and training needs.

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 (1 Latin American State Party)[11]

Conclusions of the Fifth Special Commission to review the 1980 Hague Convention and to consider some implementation issues concerning the 1996 Hague Convention recommended the Permanent Bureau to continue to make every effort to assist States in their consideration of the 1996 Convention and to promote its widespread ratification.

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[8] See Annex.
[9] New developments: On 22 November 2006 the Dominican Republic acceded to the Convention. Uruguay has recently designated its Central Authority for this Convention.
[10] Reported at the April 2006 Special Commission on General Affairs and Policy of the Conference.
[11] New developments: In Paraguay The National Secretariat for Childhood and Adolescence has recommended the incorporation of the Convention to the Ministry of Foreign Affairs. In Uruguay the Convention has been sent to Congress for its approval.

The Inter-American Expert Meeting also addressed the 1996 Convention. Experts considered that there was not sufficient knowledge in the region about the Convention and that it would be advisable to undertake an analysis from the American perspective so as to facilitate the understanding of the instrument and its possible impact in the national legal systems. It was therefore agreed that the HCCH / IIN would form an expert group to produce a document addressing the mentioned issues. The working group has already been convened and is being co-ordinated by the Hague Liaison Legal Officer.

The Secretary General and the Hague Liaison Legal Officer presented and promoted the 1996 Convention to MERCOSUR Human Rights Authorities in charge of the implementation of the "*Niños Sur Initiative*" and raised awareness as to the benefits of the 1996 Convention in protecting child victims of international trafficking.

The Liaison Legal Officer also participated and presented the 1996 Convention at the VIII Ibero-American Conference of Ministers and High Responsible Officers for Infancy and Adolescence (*VIII Conferencia Iberoamericana de Ministros – Ministras y Altos Responsables de Infancia y Adolescencia*), "Migration and its effects on Children Rights", which took place in Montevideo on 6-7 October 2006.

International Recovery of Child Support and other forms of Family Maintenance

There was a significant participation of Latin American States at the June 2006 Special Commission in respect of the preparation of the Global Instrument on the International Recovery of Child Support and other Forms of Family Maintenance.[12] Over the course of the year discussions with Latin American Authorities indicated strong support for the Hague Maintenance project. The high level of participation at Special Commissions was viewed as a particularly important statement of the regional need for the future convention. It should be noted that all the Latin American States that did not participate at the Special Commission have expressed interest in the Convention, and many are closely following the project.

2 Promote and provide information and assistance in respect of the relevant Hague Conventions on Judicial and Administrative Co-operation[13] (legalisation, service of documents, taking of evidence, access to justice).[14]

MERCOSUR

During 2006 the Judicial and Administrative Co-operation Conventions were widely promoted in the region, and in particular within MERCOSUR meetings. The Secretary General's participation at the MERCOSUR and Associates Meeting of Ministers of Justice in June 2006 facilitated the work developed during the second part of the year in Brazil which promoted and facilitated the study of the Judicial and Administrative Co-operation Conventions.

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[12] Argentina, Brazil, Costa Rica, Chile, Dominican Republic, Ecuador, Guatemala, Mexico, and Uruguay.

[13] *Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents*; *Hague Convention of 15 November 1965 on the Service Abroad of Extrajudicial Documents in Civil or Commercial Matters*; *Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters*; *Hague Convention of 25 October 1980 on International Access to Justice*.

[14] New developments: In Colombia, Law 1073 was approved on 31 July 2006 in respect of the Hague 1965 Service Convention. In Costa Rica the Apostille Convention is before Congress for its approval. Study of the four Conventions is being undertaken in Brazil by the Ministry of Justice and in Uruguay by the Ministry of Foreign Affairs.

HCCH First Secretary Christophe Bernasconi and HCCH Liaison Legal Officer for Latin America Ignacio Goicoechea participated in respect of the Judicial and Administrative Co-operation Conventions at a meeting of the Technical Commission of the MERCOSUR and Associates Meeting of Ministers of Justice, held in Curitiba in October 2006. Discussions with MERCOSUR delegates addressed the important role that the Hague Judicial and Administrative Co-operative Conventions could occupy in the region. Discussions alsotouched on incorporation of the Conventions into legal systems and ways in which the Permanent Bureau could provide further information and assistance.

As a result of the discussions and analysis carried out by delegates with the Permanent Bureau's assistance, on 10 November 2006 the Ministers of Justice of MERCOSUR and Chile and Bolivia signed a Declaration promoting the approval by MERCOSUR and Associates States of the four Hague Judicial and Administrative Conventions, as well as the adoption of any necessary decision needed for their effective implementation.[15] This Declaration has been expressly welcomed by the Presidents of MERCOSUR and Associates States during the XXXI Meeting of the "*Consejo del Mercado Común*" held in Brazil, 18-19 January 2007.

e-APP

The e-APP has raised interest in several Latin American States. First Secretary Christophe Bernasconi introduced the e-APP at the MERCOSUR meeting in Curitiba, Brazil and during his visits to Argentina, Brazil, and Chile. Government officials were highly interested in the project and are studying possible means of incorporating these technologies into their systems.

It should be noted that Colombian Authorities have been pioneers in the e-APP project, and Colombia has been the first State in the world to receive and accept an e-Apostille.

3. Offer technical assistance to Latin American States in respect of Seminars for Judges, Government Officials, Central Authority Officers and other professionals with responsibility for implementing Hague Conventions. Encourage twinning of Central Authorities as a way to strengthen the operation of the Hague Conventions.

Several important judicial seminars were convened in the region in 2006 which were supported to some extent by the Hague Conference. Each of the seminars touched upon the twinning of Central Authorities:

i) Mexico-United States of America Bi-national Seminar on Child Abduction: Participation by Mexican and United States Judges as well as both Central Authorities. Hague Legal Officer Mayela Celis participated on behalf of the Hague Conference.

ii) Peruvian Judicial Seminar on Child Abduction: Central Authorities from Chile and Argentina co-ordinated the participation of Judges from these countries at the Peruvian Seminar. The Liaison Legal Officer assisted with and presented at the Seminar.

iii) Brazilian Judicial Seminar on Child Abduction: Participation of Central Authorities from: Argentina, Brazil, Israel, Germany, Norway, Paraguay, United States of America and Uruguay. The Liaison Legal Officer assisted with and presented at the Seminar.

[15] See the Hague Conference website at < www.hcch.net > -> "Latest developments".

Non-State Party

The Liaison Legal Officer visited Bolivia and met with Authorities dealing with child abduction. Bolivia is a Party to the 1989 *Inter-American Convention on the International Return of Children*; Bolivia is also a Party to the 1993 Hague Convention.

Upon the invitation of the Hague Conference, Bolivia participated at the Fifth meeting of the Special Commission on the 1980 and 1996 Hague Conventions. Bolivian Authorities showed interest in the work of the Hague Conference and indicated that they were currently studying possible accession to the 1980 Child Abduction Convention.

4. Support participation of Latin American States in the work of the Hague Conference (INCADAT; INCASTAT and case management; Guides to Good Practice;* The Judges' Newsletter*; participation at meetings of the Special Commission; responses to questionnaires and statistical surveys).

In the past few years there has been a significant increase in participation by Latin American States in the work of the Hague Conference. This increase was illustrated by the number of Latin American participants attending the 2006 Special Commissions, the number of responses to the Permanent Bureau's questionnaires, and the level of participation of Latin American experts in working groups.

International Child Abduction Database (INCADAT)

2006 has been a crucial year in developing INCADAT for Latin American States. The entire database has been translated and is fully available in the Spanish Language. In addition a system has been created by which Latin American Central Authorities are able to submit their jurisprudence to the Hague Liaison Officer for summarising and uploading on to the database. These additions have enriched the database and facilitated use by Spanish-speaking Judges and Central Authorities. Phase III of the Latin American Programme foresees efforts to increase the number of Latin American cases in the database as well as the promotion of its use by regional users.

Hague Judicial Liaison Network

In respect of the Hague Judicial Liaison Network, Liaison Judges are now operating in Argentina, Brazil, Mexico and Uruguay. Liaison Judges from Brazil, Mexico and Uruguay participated at the Fifth meeting of the Special Commission on the 1980 Hague Convention.

The Inter-American Expert Meeting underlined the value of the Hague Judicial Liaison Network and the process of judicial communications. The existence of Hague Liaison Judges in the region was considered a positive development and advantages recognised that such a designation brought to co-operation in international child protection.

Experts recommended that the HCCH / IIN explore means to develop judicial networks and judicial communications, as well as the advantages of co-ordinating actions with other existing regional judicial networks. Phase III of the Special Programme for Latin America includes this mandate within its objectives. An initiative was also presented by the Brazilian Liaison Judges, Jorge Antonio Maurique and Mónica Jacqueline Sifuentes Pacheco de Medeiros, in respect of creating a regional judicial network. Attention will be given to this proposal and its possible linking with the Hague global network of Judges as well as with other regional judicial networks.

iChild

Experts at the Inter-American Expert Meeting welcomed the iChild initiative and expressed their interest in the iChild software, which is currently being considered byseveral Central Authorities as a possible tool for case management and generating statistics. Phase III of the Special Programme for Latin American States will assist States in their assessment and where necessary implementation of this tool.

The Judges' Newsletter on International Child Protection

A considerable increase in contributions by Latin American experts has been seen in *The Judges' Newsletter*. The number of Latin American Judges receiving the hard copy of the Newsletter has also increased significantly. The Hague Liaison Legal Officer assisted with the Spanish language edition, and provided regional updates and current relevant topics of interest.

Participation at and preparation for meetings of the Special Commissions

In respect of the Special Commission on the 1980 and 1996 Conventions and the Special Commissions for the preparation of the Global Instrument on the International Recovery of Child Support and other forms of Family Maintenance, focus included contact in respect of questionnaires, preliminary documents (assistance with translation into Spanish), distribution of documents and facilitating participation in respect of travel. The active participation by delegates from Latin America during the Special Commissions contributed to the successful outcome to, and conclusions agreed at, both meetings.

5. Facilitate accessibility of information concerning operation of the Hague Conventions, including increasing the visibility of the work of the Hague Conference in Latin America.[16]

Convention of 5 July 2006 on the Law Applicable to Certain Rights in respect of Securities held with an Intermediary

The Hague Securities Convention received special attention in the region during Phase II of the Latin American Special Programme. First Secretary Christophe Bernasconi presented the Convention and led discussions at various events with key actors of the respective financial markets organised in Brazil (16 April 2006), Argentina (29 September 2006), Chile (2 October 2006) and in Mexico (10 October 2006). Notably the Legal Committee of the American Central Securities Depositories Association (ACSDA) has recommended to their Assembly to promote the incorporation of the Hague Convention to the American legal systems.

[16] New developments: In Brazil the Securities Commission has recommended the signing of the Hague Securities Convention. In Mexico the board of Indeval (Mexican Securities Depositary) has formally recommended the signing of the Hague Convention to the Ministry of Foreign Affairs.

HCCH Membership

The increased accessibility of information in Latin America has significantly increased the visibility of the work of the Hague Conference in Latin America. It should be noted that Costa Rica and Colombia are in the process of accepting the Statute of the Hague Conference, Ecuador's admission to the Hague Conference is currently being considered, and El Salvador and Guatemala are currently considering their possible membership.

6. Develop and promote the work of the Hague Conference in the Spanish language.

With a view to increasing the visibility of the work of the Hague Conference in Latin America, focus has included facilitating accessibility of information concerning operation of the Hague Conventions and, as a direct parallel, development of the work of the Hague Conference in the Spanish language.

The Liaison Legal Officer has assisted with the translation of numerous documents into Spanish, including co-ordination of INCADAT into Spanish, as well as translating into English documents and information provided by different Latin American States which were considered within the Conference's preparatory work for many meetings.

Strong support has been expressed, and special recognition made, by the National Authorities, Judges and delegates for the continued development of the work of the Hague Conference in the Spanish language. The provision of information in Spanish, as well as the possibility to provide Spanish interpretation at meetings of the Special Commissions and Diplomatic Sessions, has universally been acknowledged as a significant contribution towards removing a major obstacle to the effective participation of Latin American States in the work of the Hague Conference on Private International Law.

7. Improve generally the operation of the Hague Conventions within the region and between countries in the region and other Contracting States around the world.

In order to implement the Latin American Programme most effectively the Hague Liaison Legal Officer has developed contacts and explored possible methods of co-operation with relevant international, regional and national organisations.

Participation at mutual meetings and discussions on methods for regional co-operation have occurred with the Organization of American States (OAS), Inter-American Children's Institute (IIN) and OAS CIDIP VII, MERCOSUR (Meeting of Ministers of Justice and Meeting of High Authorities on Human Rights – Niños Sur), Spanish Co-operation Agency (*La Agencia Española de Cooperación Internacional – AECI*), Ibero-American Conference of Ministers and High Authorities of Infancy and Adolescence (*Conferencia Iberoamericana de Ministros – Ministras y Altos Responsables de Infancia y Adolescencia*) and Unicef.

Inter-American Children's Institute (IIN) – OAS

On 11 June 2006, at the seat of the *Instituto Interamericano del Niño* (IIN) in Montevideo, the Secretary General and the Officer in charge of the Office of the IIN signed a Co-operation Agreement between the two organisations.[17]

[17] See the Hague Conference website at < www.hcch.net > -> "Latest developments".

The Inter-American Expert Meeting on Child Abduction[18] was the first concrete action generated from this Agreement. It is expected that this broad Co-operation Agreement will provide the basis to develop fruitful actions in relation to the international protection of children in the region.

CIDIP VII – OAS (Seventh Inter-American Conference on Private International Law)

On the invitation of the Brazilian Government, the Hague Liaison Legal Officer participated at the Preparatory Meeting for CIDIP VII, held in Porto Alegre, Brazil 2-4 October 2006.

The meeting addressed: (i) the Brazilian draft proposal for an Inter-American Convention on the law applicable to some consumer contracts and consumer transactions; (ii) the US draft proposal for a Model Inter-American Law on Availability of Consumer Dispute Resolution and Redress for Consumers; and (iii) the Canadian proposal for a Model Law on Jurisdiction and Conflict of Laws Rules for Consumer Contracts.

The Hague Liaison Officer, was requested to: (i) share certain aspects of the experience of the Hague Conference's preparatory work for the Choice of Court Convention which had dealt initially with the issue of jurisdiction on consumer rights, as well as (ii) introduce the 1980 Hague Access to Justice Convention. Follow-up co-operation with CIDIP VII is anticipated.

MERCOSUR

Ministers of Justice Meeting

On the invitation of the "*Comisión Técnica*" of the Ministers of Justice of MERCOSUR and its Associate Members, the Secretary General of the Hague Conference on 8 June 2006 participated in the meeting of the Comisión in Buenos Aires.[19] The meeting was attended by high-level experts from the original MERCOSUR Member States Argentina, Brazil, Paraguay and Uruguay,[20] and from the Associate Members Bolivia, Chile, Ecuador, Peru and Venezuela.[21]

The Secretary General, accompanied by the HCCH Legal Liaison Officer for Latin America, gave an overview of the Hague Conference and its work, with particular emphasis on post-Convention services. The Secretary General also made the following suggestions for co-operation between MERCOSUR and HCCH: to (i) develop a common position within the "*Comisión Técnica*" in relation with the Conference's work in reviewing the operation of the Hague Conventions subscribed by MERCOSUR States; (ii) discuss and arrange common positions in relation with preparatory work of new Hague Conventions; (iii) organise joint meetings between the "*Comisión Técnica*" of the Ministers of Justice of MERCOSUR and its Associate Members and the Hague Conference in order to analyse the operation of certain Hague Conventions; (iv) organise training and promotion events of these Conventions within the judiciary; (v) study the compatibility between Hague Conventions and MERCOSUR Conventions, with a view to the incorporation of the Hague Conventions by MERCOSUR States and Associates as a means of harmonising regional and global legislation.

[18] See *supra* B.1.
[19] Argentina chaired MERCOSUR from 1 January to 30 June 2006.
[20] All HCCH Member States.
[21] Chile, Peru and Venezuela are HCCH Member States.

The 10 November 2006 Declaration by the Ministers of Justice of MERCOSUR, Chile and Bolivia promoting the approval of the Hague Judicial and Administrative Co-operation Conventions by MERCOSUR and Associates States, as well as adopting any necessary decision needed for their effective implementation also included the suggestions by the Secretary General in the Final Act, Annex III, under 6 adopted by the Ministers of Justice.[22] This Declaration has been expressly welcomed by the Presidents of MERCOSUR and Associates States during the XXXI Meeting of the "*Consejo del Mercado Común*" held in Brazil, 18-19 January 2007.

High Authorities of Human Rights Meeting – Niños Sur

The High Authorities of Human Rights Meeting has launched the "Initiative Niños Sur for the promotion and protection of the Rights of the infancy and adolesence". Its purpose is to promote the articulation of national efforts oriented to the implementation of the *UN Convention on the Rights of the Child* and other global and regional human rights instruments including the 1980 Hague Convention, as well as the legislative harmonisation of national laws with such instruments.

The Secretary General and the Liaison Legal Officer had met with Argentinean Human Rights Authorities (chairing the MERCOSUR Meeting) to discuss the Niños Sur initiative, and raise awareness as to the benefits that the 1996 Hague Convention could provide in respect of the protection of children at risk who have been displaced from their country of residence.

Agencia Española de Cooperación Internacional (AECI)

With a view to creating synergy the Hague Liaison Legal Officer communicated with Spanish Authorities in relation to their annual Seminars on Intercountry Adoption (Ibero-American Central Authorities for the 1993 Hague Convention) and the bi-annual Ibero-American Meeting of Central Authorities on Child Abduction (Ibero-American Central Authorities for the 1980 Hague Convention).

Ibero-American Conference of Ministers and High Authorities of Infancy and Adolescence

The *"VIII Conferencia Iberoamericana de Ministros – Ministras y Altos Responsables de Infancia y Adolescencia"*, took place in Montevideo 6-7 October 2006. The Conference, entitled "Migration and its effects on Children's Rights", gathered high level officers of the bodies which determine the policies on children's issues in the Ibero-American countries. In many cases such bodies are also the Central Authorities designated under the 1980 and / or 1993 Hague Conventions. The Hague Liaison Legal Officer participated at this meeting and presented the Hague Children's Conventions and in particular their administrative and judicial co-operation systems. The importance of the 1996 Hague Convention was stressed as a complement to the 1980 and 1993 Hague Conventions as well as its potential to protect children under trafficking and / or any other transfrontier situations of risk.

Unicef

The Hague Conference has developed fluent communication with Unicef officers with a view to exploring possible means of co-operation in the region.

[22] See the Hague Conference website at < www.hcch.net > -> "Latest developments".

8. Assist with preparation of meetings, visits and coordination requirements from officials from the Hague Permanent Bureau, including maintaining the office of the Liaison Legal Officer.

The Hague Liaison Legal Officer assisted with the preparation and co-ordination of the Secretary General's visit to Argentina and Uruguay, and First Secretary Christophe Bernasconi's visits to Argentina, Brazil and Chile.

The Argentine Ministry of Foreign Affairs has renewed its support to the Latin American Programme, assuming during the implementation of the Programme the costs of the office of the Liaison Legal Officer.

C. DEVELOPMENT OF PHASE III

Phase III of the Special Programme, to be implemented under the Supplementary Budget during Financial Year LIII (July 2007-June 2008), will provide support in respect of the Hague Children's Conventions with a special focus on: (i) implementation of some of the Conclusions and Recommendations of the Fifth meeting of the Special Commission to review the practical operation of the 1980 Hague Convention and to consider some implementation issues concerning the 1996 Hague Convention,[23] and of the Inter-American Expert Meeting; (ii) implementation of some of the Conclusions and Recommendations of the Second Special Commission meeting to review the practical operation of the 1993 Hague Convention, as well as (iii) continuing to promote interest and involvement in the region in the final stages of the negotiations on the new Hague Convention on the International Recovery of Child Support and other forms of Family Maintenance. The Programme will also encourage and assist States in the development of internal procedures to assist in the effective functioning of the Hague Judicial and Administrative Co-operation Conventions. The Programme anticipates further co-operation with States in Latin America, including follow-up visits from Phases I and II as recommended in the individual State reports.

[23] See in particular Conclusion 1.9.3 from the Fifth meeting of the Special Commission to review the operation of the 1980 Convention, available on the Hague Conference website at < www.hcch.net > -> "Conventions" -> "Convention 28" -> "Practical Operation Documents".

CONCLUSIONS AND RECOMMENDATIONS OF THE INTER-AMERICAN EXPERT MEETING ON INTERNATIONAL CHILD ABDUCTION CO-ORGANISED BY THE INTER-AMERICAN CHILDREN'S INSTITUTE AND THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

The Hague, 10 November 2006

Experts from the Inter-American Children's Institute (IIN) and the Hague Conference on Private International Law (HCCH) co-ordinated the Inter-American Expert Meeting on International Child Abduction, which was attended by national experts from the following States: Argentina, Brazil, Chile, Dominican Republic, Ecuador, Mexico, Panama, Peru, United States of America and Uruguay. The following Conclusions and Recommendations were agreed:

Central Authorities – Fluency in communications

1. Central Authorities should comply with the following time periods in their communications related to cases under the Child Abduction Conventions[1]:

a) New return or access applications: Once a new return or access application has been received the requested Central Authority should, within one week, acknowledge receipt of the application to the requesting Central Authority stating whether the received documentation is sufficient to initiate the procedure or whether further documentation / information is needed. This first communication has to do with the preliminary review performed by the requested Central Authority and does not comprise the subsequent review that may be performed by the Authority or professional who should file the case before the Court.

b) Follow up of proceedings: The requested Central Authority has the duty to keep the requesting Central Authority informed about the development of proceedings and to respond to all the information requests addressed by such Authority. The use of e-mail is encouraged as a mean of swift communication between Central Authorities. In this regard, it is advisable to use an e-mail address, which is checked on a daily basis, regardless of the absence or replacement of competent officers. Central Authorities should respond to requests received by e-mail within 48 hours from receipt. Communications received by fax or ordinary mail should be responded to within 72 hours.

c) Judgments' notifications: Requested Central Authorities shall notify judgments rendered in return or access proceedings to the requesting Central Authorities with maximum urgency indicating the applicable period of time to file an appeal. Under no circumstances should notifications be transmitted in less than 72 hours prior to the due date to file the appeal.

[1] For the purposes of this document "Child Abduction Conventions" means the 1980 *Hague Convention on the Civil Aspects of International Child Abduction* as well as the 1989 *Inter-American Convention on International Return of Children*.

Country profile

2. Central Authorities will transmit to the HCCH or the IIN (where applicable) the necessary data to complete the country profile. The HCCH / IIN will explore the best means to maintain and systematise such information, which should be easily accessible for the public. In this regard, consideration should be given to the Canadian project approved at the Fifth meeting of the 2006 Special Commission, as well as its possible linkage with the existing web tools available at the HCCH and the IIN (INCADAT/BADAJ/REDIC/Site for co-ordination of actions).

iChild

3. Experts expressed their interest in the iChild software, which will be considered by several Central Authorities as a possible tool for case management and generating statistics.

Amicable dispute resolution

4. The HCCH and the IIN take note of the importance attached by the experts to encouraging amicable resolutions in cases under the Child Abduction Convention. Experts will provide information to the HCCH about existing initiatives on this subject in their own countries, so as to co-operate with the development of the feasibility study on cross-border mediation in family matters which is currently being carried out by the HCCH. Such study will be included for consideration at the IIN Meeting in 2007[2] in order to assess its impact at the regional level.

Model law

5. Experts consider it advisable to develop a regional model law of procedure which should facilitate the national implementation of the Child Abduction Convention.

6. The HCCH / IIN will form an expert group to prepare a draft regional model law which will be co-ordinated by the Uruguayan expert, Magistrate Ricardo Pérez Manrique. The expert group will prepare a draft model, with the technical assistance of the HCCH and the IIN, which will be circulated for consultation between States in advance of the IIN 2007 meeting. This document will be included for discussion in the agenda of such meeting.

Judicial communications – Liaison Judges

7. Experts noted the value of co-ordination between Central Authorities and Judges in dealing with international child abduction cases. The existence of Liaison Judges in the region was considered as very positive and the advantages they bring to co-operation for the international protection of children were recognised.

   Experts considered advisable that the HCCH / IIN explore means to develop judicial networks and judicial communications, as well as the convenience of co-ordinating actions with other existing regional judicial networks.

[2] The Inter-American Children's Institute has confirmed that it will organise in 2007 an experts meeting on international child abduction. The dates and venue for such meeting are still to be determined, as well as the organisations and officers who should take part in this organisation.

The experts and the HCCH / IIN took note of the initiative of the creation of a regional judicial network, presented by the Brazilian liaison judges, Jorge Antonio Maurique and Mónica Jacqueline Sifuentes Pacheco de Medeiros, which should include a co-ordinator in charge of maintaining updated the nominations of liaison judges as well as their contact data and the network's activities.

8. Experts thanked and took note of the offer made by the US delegation to make available the technical means for teleconferences, existing at the US Consulates in the region, to be used in the application of the Child Abduction Convention. These services may be used in judicial communications, and might also provide the meansfor having long distance hearings through teleconferences.

Hague 1996 Convention

9. Experts considered that there was not sufficient knowledge in the region about 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*, and that it would be advisable to have available a study analysis from the American perspective so as to facilitate the understanding of the instrument and its possible impact in the national legal systems. It was therefore agreed that the HCCH / IIN would form an expert group which would generate a document addressing the mentioned issues.

IIN 2007 meeting

10. Experts suggested that the following topics should be included in the agenda for the meeting to be organised by the IIN in 2007:

- Safe return of the child
- Access
- Rehabilitation of victims
- Prevention
- Promotion of the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children*

Dissemination of Conclusions and Recommendations

11. The experts considered it advisable to inform the Central Authorities for the Child Abduction Convention of the region – which were not represented at the Inter-American Meeting – of these Conclusions, so as to allow them to adhere and / or make any suggestions or comments, which will be taken into account by the HCCH / IIN in developing the recommended actions.

Co-operation Agreement IIN-HCCH

12. Experts expressed their satisfaction at the establishment of the Co-operation Agreement between the IIN and the HCCH, which generated, as a first concrete action, this fruitful meeting. Experts encouraged the IIN and the HCCH to continue joining efforts in order to improve the international protection of children in the region.