

Doc. pré. No 5
Prel. Doc. No 5

mars / March 2001

Liste récapitulative des points soulevés et des recommandations faites en réponse au questionnaire sur le fonctionnement pratique de la Convention de La Haye du 25 octobre 1980 sur les aspects civils de l'enlèvement international d'enfants (Doc. pré. No 1)

établie par le Bureau Permanent

* * *

Checklist of issues raised and recommendations made in response to the Questionnaire concerning the practical operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (Prel. Doc. No 1)

drawn up by the Permanent Bureau

*Document préliminaire No 5 de mars 2001
à l'intention de la Commission spéciale de mars 2001*

*Preliminary Document No 5 of March 2001
for the attention of the Special Commission of March 2001*

Permanent Bureau of the Conference . Scheveningseweg 6 . 2517 KT The Hague . Netherlands

TABLE OF CONTENTS

	Page
INTRODUCTION	5
THE ROLE AND FUNCTIONS OF CENTRAL AUTHORITIES	5
(a) General issues of communication, co-operation and information exchange among Central Authorities	5
(b) Locating the child	6
(c) Securing the voluntary return of the child or bringing about an amicable settlement (including mediation)	6
(d) The role of the Central Authorities in providing or facilitating the provision of legal aid and advice	7
(e) The role of the Central Authorities in initiating or facilitating the institution of proceedings for the return of the child	7
(f) The role of the Central Authorities (requested and requesting) in securing the safe return of the child	8
(g) The role of the Central Authorities in making arrangements for organising or securing the effective exercise of rights of access	9
(h) The maintenance of statistics	9
(i) Promoting best practices among Central Authorities	10
SECURING STATE COMPLIANCE WITH CONVENTION OBLIGATIONS	10
(a) The accession process and acceptances of accessions under Article 38	11
(b) Relevant criteria in deciding upon acceptance of accession	11
(c) Monitoring the Convention and mechanisms for addressing alleged violations	13
(d) Assistance (including training for Central Authority staff, judges, practitioners, etc) for States Parties in implementing the Convention and meeting Convention obligations	14
JUDICIAL PROCEEDINGS, INCLUDING APPEALS AND ENFORCEMENT ISSUES	14
(a) Courts organisation	14
(b) Provision for legal representation	15

(c) Speed of Hague procedures, including appeals.....	15
(d) Manner of taking evidence, especially in relation to Article 13 defences.....	18
(e) Procedures for hearing the child, and determining whether the child objects to return	18
(f) Methods and speed of enforcement	19
 INTERPRETATION OF KEY CONCEPTS.....	 20
(a) Habitual residence (Article 3).....	20
(b) Rights of custody (Articles 3 and 5).....	21
(c) Grave risk of physical/psychological harm (Article 13, paragraph 1 <i>b</i>)	21
(d) Intolerable situation (Article 13, paragraph 1 <i>b</i>)	22
(e) Consent and acquiescence (Article 13, paragraph 1 <i>a</i>).....	22
(f) The one-year period and the settlement of the child in the new environment (Article 12)	23
(g) The actual exercise of rights of custody (Article 3, paragraph 1 <i>b</i> and Article 13 <i>a</i> , paragraph 1)	23
(h) Rights of access	23
(i) Protection of human rights and fundamental freedoms (Article 20).....	23
 ISSUES SURROUNDING THE SAFE AND PROMPT RETURN OF THE CHILD (AND THE CHILD'S PRIMARY CARETAKER, WHERE RELEVANT)	 24
(a) Safe harbour orders, mirror orders and undertakings, including questions of international jurisdiction and the enforcement of orders	24
(b) Criminal proceedings and immigration issues	25
(c) Direct judicial communications – their feasibility and limits, and the development of a network of liaison judges	27

PROCEDURES FOR SECURING CROSS-FRONTIER ACCESS/CONTACT (INCLUDING CONTACT BETWEEN THE CHILD AND THE LEFT-BEHIND PARENT PENDING A DECISION ON RETURN OR FOLLOWING A DECISION NOT TO RETURN THE CHILD)	29
MISCELLANEOUS AND GENERAL	29
(a) Promoting best practices generally	29
(b) The International Child Abduction Database (INCADAT)	29
(c) Judicial conferences and networking	29
(d) Decisions on relocation	29
(e) Research	30
(f) Encouraging further ratifications and accessions	30
(g) Non-Hague States and bilateral arrangements	30

INTRODUCTION

This Checklist follows the order of the draft agenda for the fourth meeting of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*. It identifies in summary form many of the issues and concerns which have been raised, as well as the suggestions and recommendations made, in the responses to the Questionnaire concerning the practical operation of the Convention of 1980 (Prel. Doc. No 1). Not all the responses were received in time for them to be taken into account. At certain points the Checklist also includes observations by the Permanent Bureau.

We have tried to take account of those responses received by 10 March 2001. Because of the short time within which this document had to be prepared, there will inevitably be omissions. It is our intention that the Report on the Special Commission, to be drawn up by the Permanent Bureau, will reflect the wealth of material provided in the responses, including those which arrived late. By 20 March 2001, 45 responses had been received. The Permanent Bureau would like to express its appreciation for the enormous efforts which have gone into the production of these responses.

THE ROLE AND FUNCTIONS OF CENTRAL AUTHORITIES

(a) General issues of communication, co-operation and information exchange among Central Authorities

Structural issues

- ?? Implementing legislation
- ?? Designation of Central Authorities
- ?? Links between Central Authorities and other relevant agencies
- ?? Resources made available to Central Authorities
- ?? Qualification and training of staff

Communication and co-operation in respect of individual cases

- ?? Information on progress of cases
- ?? Acknowledgement of receipt of application
- ?? Lack of response to requests or communications
- ?? Communication involving use of diplomatic channels
- ?? Excess formality even in urgent cases
- ?? Loss or misplacement of files
- ?? Language and translation issues

Information exchange

- ?? Need for information on the law of States Parties
- ?? Need for information on legal aid, judicial systems and social services

General

Many concerns were expressed about delays and excessively complex procedures used by Central Authorities in processing cases, in responding to communications, and in referring cases to court.

Differences of opinion have arisen between Central Authorities as to whether a case is within the scope of the Convention.

Suggestions and recommendations

- ?? General reaffirmation of support for the conclusions of the First, Second and Third Special Commissions, subject to some concern about financial and resource implications.
- ?? Each Central Authority should provide information on laws and procedures in their respective States, including details of child protection/welfare agencies and, where applicable, how "mirror orders" can be made and enforced.
- ?? Find ways to improve liaison between Central Authorities.
- ?? States Parties to develop a Guide to Best Practice (see below).

(b) Locating the child

- ?? Locating agencies not linked to Central Authorities
- ?? Lack of sense of urgency
- ?? Lack of assistance in locating the child
- ?? Need for requesting Central Authority to provide full information concerning the child

(c) Securing the voluntary return of the child or bringing about an amicable settlement (including mediation)

Actions taken by some Central Authorities prior to filing return petition

- ?? Letter of request for return sent to respondent parent
 - Direct contact by the Central Authorities with respondent parent
 - Risk of flight considered
- ?? Orders from the competent court sought (e.g. non-removal order)
- ?? Mediation services provided
- ?? Provision of information, counselling and social services
- ?? Reliance on counsel, parent or outside agencies to negotiate

- ?? To avoid delay, some Central Authorities send the Letter of request for return simultaneously with the filing of the return petition.

Suggestions and recommendations

- States Parties to develop a Guide to Best Practice (see below).

(d) The role of the Central Authorities in providing or facilitating the provision of legal aid and advice

Various practices of Central Authorities

- ?? Information provided on methods of obtaining legal aid and advice, and options for assistance
- ?? Applications for legal aid facilitated
- ?? Referral to reduced fee or *pro bono* attorney
- ?? Representation by the Central Authorities or State Attorneys
- ?? Return proceedings free of cost
- ?? Legal costs met by Central Authorities or Legal Aid Offices

General

Many concerns were expressed about delays resulting from the required payment of retainers for legal representatives in the requested State.

Legal aid for access and relocation applications is not always available.

Means/merits tests for legal aid can cause delay.

Suggestions and recommendations

- See information document provided by the Netherlands.
- States Parties to develop a Guide to Best Practice (see below).

(e) The role of the Central Authorities in initiating or facilitating the institution of proceedings for the return of the child

Role of Central Authorities

Many Central Authorities do not participate in any phase of the proceedings. However, in some States the Central Authority is the applicant in the proceedings, or represents the applicant parents or is present as *amicus curiae*.

The issue arises whether direct involvement in the return proceedings may conflict with other responsibilities of the Central Authority, for example bringing about an amicable settlement.

Suggestions and recommendations

- States Parties to develop a Guide to Best Practice (see below).

(f) The role of the Central Authorities (requested and requesting) in securing the safe return of the child

The levels of service provided by Central Authorities in this area differ considerably. Below are listed some of the different practices:

Notification of child protection bodies

- ?? Obligation to ensure notification
- ?? Notification only when concerns are raised by the court or the Central Authority in the requested or requesting State
- ?? No obligation to ensure notification

Provision of information in the requesting State

- ?? Information on legal, financial, protection and other resources available to returning parent
- ?? Some Central Authorities provide information to the left-behind parent
- ?? Information packet available to the taking parent as part of the application for return

Facilitate contact with bodies providing such resources

- ?? Contact is facilitated where possible
- ?? Intervention often limited to referring the parents to information and services available

Care for the child pending custody proceedings

- ?? Arranging to whom the child is entrusted for return
- ?? Arranging where and with whom the child stays after return until custody is decided
- ?? Co-ordination between the Central Authorities and child protection authorities of the requested and requesting State to ensure the safety of the child

Assistance for returning parent

- ?? Support, advice or information to a parent who accompanies the child on return
- ?? Access to social services and counselling
- ?? Funding of the return

Assistance in ensuring respect for undertakings

- ?? Mirror orders or safe harbour orders encouraged
- ?? Competent court and relevant bodies are informed
- ?? Practical assistance and information available to the parent
- ?? Undertakings enforceable in limited circumstances

Suggestions and recommendations

- ?? Close co-operation between judges and Central Authorities to ensure that the court's order includes appropriate safeguards and protections for the child's return, especially when abuse and violence allegations are raised.
- ?? Central Authorities should provide advice on obtaining protective orders to a parent accompanying the child on return.
- ?? Conditions or undertakings should be enforceable in both the requested and requesting State (note that 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* is relevant in this context).
- ?? Central Authorities should facilitate prior consultation between courts and parties as appropriate to discuss the reasonableness of the proposed conditions of return.
- ?? States Parties should devise and introduce collaborative measures to protect the welfare interests of returned children and returning parents.
- ?? States Parties to develop a Guide to Best Practice (see below).

(g) The role of the Central Authorities in making arrangements for organising or securing the effective exercise of rights of access

See "Transfrontier Access/Contact and the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction", Preliminary Document No 4 of February 2001.

(h) The maintenance of statistics

In general, respondents were in favour of Central Authorities maintaining accurate statistics and of making returns of annual statistics to the Permanent Bureau.

There is a need to avoid the collection of meaningless or misleading statistics, and to recognise the resource limitations of Central Authorities.

The issue arises of resources for the Permanent Bureau to enable the establishment and maintenance of a database containing all the annual statistics, enabling trends to be monitored.

Suggestions and recommendations

- ?? All Central Authorities are encouraged to return annual statistics.
- ?? The tracking of Hague outcomes on a global basis is encouraged.
- ?? States Parties to develop a Guide to Best Practice (see below).

(i) Promoting best practices among Central Authorities

The development of a Guide to Best Practice among Central Authorities has been suggested. This would be of particular assistance to new Contracting States. The following issues need to be considered:

?? *Content of the Guide*

The Guide would presumably use as its basis the conclusions and recommendations already reached by the three previous meetings of the Special Commission, as well as those agreed during this meeting.

In this regard, respondents in general have re-affirmed support for the conclusions of the First, Second and Third meetings of the Special Commission.

?? *Method of developing the Guide*

One possible approach is for a group of experts to be established who, after appropriate research and consultation with Central Authorities, and with the assistance of the Permanent Bureau, would draw up a draft to be submitted for approval at a future Special Commission.

Resource implications need to be considered.

SECURING STATE COMPLIANCE WITH CONVENTION OBLIGATIONS

Among the serious problems of non-compliance reported by respondents, were:

- ?? non-implementation of the Convention into domestic law,
- ?? Central Authority not identified,
- ?? refusal to assist in locating a child,
- ?? no reply to return request,
- ?? Article 16 not respected, despite protest of requesting Central Authority,
- ?? unjustified use of Article 13,
- ?? inordinate delays in relation to the processing of applications, court procedures and enforcement of orders,
- ?? insufficient sanctions for breach and non-enforcement of return / access orders,
- ?? inability to prevent removal of child following return order,

- ?? undue and unnecessary formality with respect to documentation,
- ?? inability to obtain access pending decision on return.

(a) The accession process and acceptances of accessions under Article 38

Existing practice

A minority of Contracting States accept accessions without carrying out any enquiries. Among the reasons given are that the Convention should have the broadest possible application. The large majority of Contracting States now undertake some enquiries (see below) before accepting an accession, and, in one case, the policy of automatic acceptance is under review. In a number of these States, assessment procedures have been introduced within recent years. One State adopts a "wait and see" policy. Among reasons given for applying an assessment procedure are:

- ?? it cannot be assumed without question that the legal and welfare systems of the newly-acceding State are satisfactory,
- ?? it is wrong to give parents false hopes,
- ?? the process has an educational effect.

There is not a standard process for assessment. In many States, the Ministry of Foreign Affairs, or its equivalent, is involved in seeking the relevant information and making the decision on acceptance.

(b) Relevant criteria in deciding upon acceptance of accession

The factors considered relevant in making an assessment are mainly legal but also sometimes political. The principal criteria are:

- ?? the ability of the acceding State to meet Convention obligations,
- ?? appropriate implementing legislation,
- ?? the existence of a functioning Central Authority.

In addition, a number of States make enquiries into the effectiveness, accessibility and compatibility of the legal system as well as the social and child protection services available generally.

On the question of the possible drawing up of a standard questionnaire to be submitted to each newly-acceding State, the responses fall into three broad categories:

- (1) A minority of six respondents were opposed to the idea or had doubts about its usefulness.
- (2) The large majority of respondents agreed with the idea. Most of these considered that this would be helpful to States in deciding whether to accept an accession and that it would establish some degree of uniformity in the process. Some respondents

stressed the educational function of the exercise and one State felt that, when combined with information on best practice, this would encourage acceding States to consider the problems of implementation more comprehensively and at an earlier stage.

- (3) One State suggested that the criteria should be "membership" criteria and that the Permanent Bureau should evaluate responses to the questionnaire.

Based on the suggestions made by respondents, the Permanent Bureau has constructed the following draft questionnaire which is put forward simply to help structure further discussion within the Special Commission.

I Implementing legislation

- (a) *Is implementing legislation necessary to bring the Convention into force in domestic law?*
- (b) *If so, has the necessary legislation been enacted, and is it in force?*

II Central Authority

- (a) *The designation and contact details of the Central Authority.*
- (b) *Contact persons within the Central Authority, languages spoken, contact details for each and hours available (NOTE: the Permanent Bureau already seeks much of the above information and makes it available to Contracting States on the Hague Conference web site¹).*
- (c) *Is the Central Authority in a position to carry out all of the functions set out in Article 7 of the Convention?*

III Judicial procedures

- (a) *Which courts / administrative bodies within your system have been given jurisdiction to consider applications for return orders under the Convention?*
- (b) *What measures exist to ensure that return applications will be dealt with expeditiously at first instance and on appeal?*
- (c) *What facilities are available to foreign applicants to assist them in bringing their applications before the courts, and in particular is legal aid available and, if so, on what conditions?*

IV Enforcement procedures

What procedures exist for the enforcement of:

- (a) *a return order?*
- (b) *a contact order?*

¹ <http://www.hcch.net>

V Substantive law

- (a) *What are the legal criteria by which custody and contact determinations are made?*
- (b) *Is there a difference in the legal status of mothers and fathers in custody or contact cases?*

VI Social services and child protection services

Please describe the services which exist for the assessment, care and protection of children in the context of international child abduction.

The question has been asked whether the Permanent Bureau should be asked to administer such a questionnaire and communicate the responses to the Contracting States that wish to receive them. If so, should the Permanent Bureau have any role in evaluating the responses, or in requesting further information where this seems to be needed?

The question arises of the possible use of the questionnaire by States that have already acceded to the Convention and are concerned to expedite the process of acceptance by other Contracting States.

(c) Monitoring the Convention and mechanisms for addressing alleged violations

Special Commissions

The majority view is that the present cycle of Special Commission meetings (at four year intervals) to review the practical operation of the Convention is satisfactory.

There is substantial support for the holding of additional meetings, conferences, Special Commissions or working group meetings to focus on specific issues.

The issue of assistance to less-wealthy States to attend Special Commissions and other meetings is raised.

Mechanisms for addressing alleged violations

The following are among the suggestions made in the responses:

- a report on under-performance should be compiled from complaints surfacing in the questionnaire,
- each Contracting State should prepare an annual report on the functioning of the Convention,
- the Permanent Bureau should create a standard complaint form,
- States should lodge an annual report on serious violations,
- there should be additional monitoring through the Permanent Bureau,
- there should be established a central body or commission for receiving grievances, gathering and evaluating relevant information, offering guidance and assistance and publicising flagrant breaches,

- there should be a representative committee to review court decisions in a non-binding way,
- the United Nations Committee on the Rights of the Child should be asked to monitor the 1980 Convention.

(d) Assistance (including training for Central Authority staff, judges, practitioners, etc) for States Parties in implementing the Convention and meeting Convention obligations

The need for additional training of personnel involved in the operation of the Convention (including, for example, judges, Central Authority personnel and practitioners) is widely endorsed by respondents.

The idea of developing a model code of practice is supported by a number of States as a means of assisting new Member States in implementing the Convention effectively.

The need to provide assistance to newly-acceding States in implementing the Convention and in training relevant personnel is recognised by some States. In this respect it is suggested by one State that Contracting States generally should support the Hague Children's Project and, by another State, that assistance should be given to the Permanent Bureau in implementing a programme of initial training for new Member States.

Among the other suggestions are:

- the holding of regional conferences in under-performing States,
- the provision of help for less-wealthy States,
- the translation of scholarly works into languages of under-performing States,
- the "twinning" of a newly-acceding State to an existing State Party which would provide assistance and advice.

JUDICIAL PROCEEDINGS, INCLUDING APPEALS AND ENFORCEMENT ISSUES

(a) Courts organisation

In a small number of Contracting States, there is no concentration of jurisdiction and there are no special arrangements with regard to the hearing of Hague cases. The reasons given include the small number of applications involved per year or lack of legislation on the matter. One State considers that concentration of jurisdiction is inappropriate because of the need for courts to be accessible to the parties. However, in several of these States, concentration of jurisdiction or other arrangements are under consideration.

In several countries, jurisdiction has been concentrated or other special arrangements exist. For example, jurisdiction may be limited to the superior court level, or to a specialised family court, or to otherwise specified courts or judges.

Suggestions and recommendations

The draft recommendation

"calling upon States Parties to consider the considerable advantages to be gained from a concentration of jurisdiction in a limited number of courts"

was supported by 26 States. 5 States did not support it.

Comments on the recommendation included:

- ?? complicated/not possible in practice,
- ?? need for the creation of a specialised court division, groups of judges and lawyers,
- ?? not always necessary as regards number of applications,
- ?? judicial training/education is needed where consolidation not possible/realistic,
- ?? depends on factors that are different from one country to another.

(b) Provision for legal representation

See above under "The role of the Central Authority in providing or facilitating the provision of legal aid and advice".

(c) Speed of Hague procedures, including appeals

In several States, special rules of civil procedure have been enacted giving effect to the obligation (Article 2) to use the most expeditious procedures available. Often priority is given to Hague cases.

In many States the Central Authority plays a key role in maintaining the momentum of applications by, for example:

- ?? keeping close contact with legal counsel and the court,
- ?? providing judges with necessary information,
- ?? seeking the intervention of Presidents of courts if necessary,
- ?? keeping in contact with the persons involved,
- ?? examining applications to verify if the requirements are fulfilled,
- ?? updating information as requested,
- ?? exercising control over the progress of cases,
- ?? seeking a date for a hearing,
- ?? asking the court/judge for reasons for delay, if any.

The degree of control exercised by judges over the progress of court proceedings through the management of cases appears to differ from one jurisdiction to another.

A number of techniques are used to ensure a speedy outcome to Hague proceedings, for example:

- ?? strict timetabling,
- ?? the setting of a timetable within which the decision must be made together with a right to request reasons if a delay occurs,
- ?? limitations on oral evidence.

The time taken to process and decide appeals differs considerably from one State to another. The delays sometimes involved are a source of serious concern.

Among the techniques employed to limit the delays arising from appeals are the following:

- ?? limitations on the time within which an appeal may be lodged,
- ?? appeal possible only with the permission of a judge,
- ?? limitations on the grounds of appeal (for example, error of law is sometimes the only ground accepted),
- ?? limitation on the admission of new evidence on appeal,
- ?? time limits within which an appeal should be completed,
- ?? limitation to written appeal procedure.

There are wide divergences between Contracting States in relation to many of the above.

Suggestions and recommendations

The draft recommendation

"underscoring the obligation of States Parties to process return applications expeditiously, and making it clear that this obligation extends also to appeal procedures"

was supported by 28 States. 2 States did not support it.

Comments on the recommendation included:

- ?? importance of Article 11,
- ?? depends on particularities of legal system,
- ?? Hague proceedings should be given priority,
- ?? inadequate application and supporting documents sent by requesting State cause delay.

The draft recommendation

"calling upon trial and appellate courts to set and adhere to timetables that ensure the speedy determination of return applications"

was supported by 30 States. 2 States did not support it.

Comments on the recommendation included:

- ?? as far as compatible with domestic law,
- ?? suggestion of timetable to process return applications expeditiously,
- ?? observation that delays are not always attributable to courts but also to parties in providing documents,
- ?? might not be in the interests of the child.

The draft recommendation

"calling for firm judicial management, both at trial and appellate levels, of the progress of return applications"

was supported by 30 States. 2 States did not support it.

Comments on the recommendations included:

- ?? unclear, because courts are independent,
- ?? as far as compatible with domestic law,
- ?? direct involvement of the judiciary in the Special Commission is a good idea,
- ?? rules providing a timetable for firm judicial management,
- ?? need for specialist judiciary.

With regard to the draft recommendation

"proposing any other measures to improve the efficiency and speed with which applications are processed",

measures proposed include:

- ?? specific training programmes/measures for judges/welfare officers/police dealing with Hague applications on international child abduction,
- ?? avoiding delays by finding a way to handle return requests if applicant is ineligible for legal aid/assistance/representation,
- ?? creation of a central body to monitor efficiency and speed of process,

- ?? regular contact between Central Authorities and judges, and between courts and parties,
- ?? importance of decisions under Article 15 being taken quickly,
- ?? asking from the beginning the abducting parent his/her intentions regarding Article 13 defences, and gathering information available to transmit to the Central Authority,
- ?? merits of allocating a judge for each case from the initial stages to completion.

(d) Manner of taking evidence, especially in relation to Article 13 defences

Although States generally accept that Article 13 defences should be interpreted strictly and narrowly, the responses show that significant differences exist, especially with regard to the burden of proof under Article 13 and the degree of control exercised over the admission of oral evidence.

In a number of countries, Hague proceedings are now conducted primarily on the basis of written submissions and evidence. In order to expedite proceedings, rules have been developed in some countries (often by the judiciary) to define and limit the circumstances in which oral evidence may be admitted. Much may depend on the issue. For example, in some jurisdictions oral evidence is more likely to be admitted if the issue is one of consent/acquiescence. In other States, no special rules exist. In many systems, the judge has a degree of discretion.

(e) Procedures for hearing the child, and determining whether the child objects to return

Objections which the child has to return are taken into consideration in all States, subject to the child's age and maturity (Article 13, paragraph 2)

In most States the judge is not under an obligation to hear the child personally, though in some States this obligation may arise when the child reaches a certain age (generally between 10 and 12).

Separate representation for the child in Hague proceedings appears to be very exceptional.

In many countries the child's objections/views will be ascertained by a child health or welfare professional (for example, a social worker, court welfare officer or psychologist), who will report the child's objections/views to the court. In some countries arrangements are made to enable this to be done rapidly, with an oral report being made to the court. There are also a number of countries in which the judge may personally interview the child, usually in the judge's private room.

The factors which are considered in evaluating the child's views include:

- the age, maturity and understanding of the child,
- whether the child objects to return per se,

- whether setting aside the child's objections might be damaging to the child,
- the strength of the child's objections,
- the degree to which the child's views may have been influenced by the abducting parent.

The objections of a very young child are generally not determinative.

(f) Methods and speed of enforcement

Several States express serious concerns about delays in enforcing return orders and about cases in which enforcement has in the end proved to be impossible. It is suggested that in some countries the enforcement procedures (including possibilities of appeal) lend themselves to exploitation by an abducting parent who is determined to avoid enforcement. The following are some of the principal issues and points on which legal systems have different provisions.

Responsibilities/powers of court which orders return

There are differences in the degree of responsibility and control given to the returning court in relation to organising the practical arrangements for the return (for example, specifying the date, place, time and manner of return).

There are differences in the powers and back-up services available to the court to ensure compliance when an abducting parent appears unlikely to co-operate (for example, enlisting the assistance of the Central Authority or the police).

There are different practices with regard to the circumstances in which, and the safeguards subject to which, a postponement of enforcement may be permitted.

Separate enforcement procedures

Some States rely in the first instance on voluntary compliance and, in the event of non-compliance by the abducting parent, require the applicant parent to initiate separate enforcement proceedings. The speed and ease with which such proceedings may be commenced is critical.

Appeals

The effect of lodging an appeal against a return order differs from country to country. In many countries enforcement is possible only if the decision is final. (For differences in the grounds of and the speed of appeals, see above). It is suggested that the appeal process is often used simply to delay enforcement.

In cases where separate enforcement proceedings are necessary, possibilities for appeal may give rise to further postponement.

Practical difficulties

In some countries special provisions/programmes exist which offer assistance with travel arrangements, accommodation and costs for a returning child.

Physical enforcement

Where the child himself/herself resists enforcement, the measures which are possible differ from country to country.

Suggestions and recommendations

- Special programmes should be instituted to offer practical assistance in effecting returns.

The draft recommendation

"calling upon States Parties to enforce return orders promptly and effectively"

was supported by 32 States.

INTERPRETATION OF KEY CONCEPTS

(a) Habitual residence (Article 3)

Thirteen States report that there have been no significant developments since 1996.²

Among the issues raised in the recent cases are:

- ?? the relevance of the intentions of (including any agreements between) the parents in determining the habitual residence of the child,³
- ?? whether a child may have a habitual residence, consecutively or contemporaneously, in more than one State, for example where the family move frequently between two jurisdictions,⁴
- ?? the ease with which a child's habitual residence may change following an abduction,⁵
- ?? more generally, the speed with which a change in habitual residence may occur and the necessary degree of integration of the child into the new environment.⁶

² Austria, Bosnia and Herzegovina, Burkina Faso, Denmark, Greece, Hong Kong, Hungary, Iceland, Italy, Macau Special Administrative Region, Norway, Portugal, Switzerland.

³ *Diorinou v. Mezitis*, 2001 U.S. App. Lexis 266 (2d Cir. Jan. 9, 2001) (United States).

⁴ *Re A. (Abduction: Habitual Residence)* [1998] 1 FLR 497 [INCADAT HC/E/UK 176] (England and Wales).

⁵ *Droit de la Famille – 3713*, [2000] AZ-50078393 (SOQUIJ) (Court of Appeal) (September 8, 2000) (Canada); *in general* (Israel).

⁶ *Droit de la Famille – 3713*, [2000] AZ-50078393 (SOQUIJ) (Court of Appeal) (September 8, 2000) (Canada); *in general* (Panama, Scotland).

(b) Rights of custody (Articles 3 and 5)

Issues raised in recent cases include:

- ?? the circumstances in which a right of custody may reside in a court,⁷
- ?? whether, and in what circumstances, a *de facto* custodial person (for example, an unmarried natural father) may be deemed to have inchoate rights of custody,⁸
- ?? whether a right of access combined with a power to veto travel abroad constitutes a right of custody.⁹

NOTE: Requests under Article 15 to the authorities of the child's habitual residence for a determination that the removal was "wrongful" usually involve the question of whether the applicant has "rights of custody". These requests sometimes result in considerable delays.

(c) Grave risk of physical/psychological harm (Article 13, paragraph 1 b)

The case law generally confirms a strict and narrow interpretation of Article 13, paragraph 1 *b* with a high standard of proof required to establish a grave risk.¹⁰

In a number of cases, where the defence has been raised, the court has considered, sometimes with the assistance of the Central Authorities, whether the authorities in the requesting State can deal appropriately with any risks of harm to which the child may be exposed¹¹ (see also references elsewhere to undertakings, safe harbour orders and mirror orders). In some jurisdictions, the burden is on the abducting parent to show why the legal system of the child's habitual residence would fail to protect the child against the risk of harm pending a custody hearing.¹²

⁷ Secretary, Attorney-General's Department and Stanton, 18 December 2000, Family Court of Australia at Hobart; P and Commonwealth Central Authority, 19 May 2000, Family Court of Australia (Australia); Re H. (A Minor) (Abduction: Rights of Custody) [2000] 2 WLR 337, [2000] 2 All ER 1 [INCADAT HC/E/UKe 268] (England and Wales); H.I. v. M.G. [1999] 2 ILRM 22 [INCADAT HC/E/IE 284] (Ireland).

⁸ Vottero Furfero, Maria Antonella, case roll No. 162-2000, Eighth Juvenile Court of Santiago, March 7, 2000 (Chile); Re W.; Re B. (Child Abduction: Unmarried Father) [1998] 2 FLR 146 [INCADAT HC/E/UKe 6 and 7]; Re O. (Child Abduction: Custody Rights) [1997] 2 FLR 702 [INCADAT HC/E/UKe 5] (England and Wales); Dellabarca and Christie [1999] NZFLR 97 [INCADAT HC/E/NZ 295] (New Zealand); *in general* (Scotland).

⁹ Croll v. Croll, 229 F.3d 133 (2d Cir. 2000) [INCADAT HC/E/USf 313] (United States).

¹⁰ P and Commonwealth Central Authority [2000] FamCA 461; Director General, Department of Community Services and Marquez, Full Family Court of Australia, 30 November 2000 (Australia); *in general* (Belgium); Re C. (Abduction: Grave Risk of Physical or Psychological Harm) [1999] 2 FLR 478 [INCADAT HC/E/UKe 269] (England and Wales); T. v. T., 2 BvR 1206/98, 29 October 1998, Federal Constitutional Court of Germany [INCADAT HC/E/DE 233] (Germany); A.S. v. P.S. [1998] 2 IR 244 (Ireland); *in general* (Israel); S. v. S. [1999] 3 NZLR 513 [INCADAT HC/E/NZ 296] (New Zealand); I CKN 745/98, 7 October 1998; I CKN 992/99, 1 December 1999 (Poland); *in general* (Scotland); Blondin v. Dubois, 189 F.3d 240 (2d Cir. 1999), remanding 19 F. Supp. 2d 123 (S.D.N.Y. 1998) [INCADAT HC/E/USf 216]; Blondin v. Dubois, 2001 U.S. App. Lexis 77 (2d Cir. Jan. 9, 2001), *aff'g* 78 F. Supp. 2d 283 (S.D.N.Y. 2000) (United States).

¹¹ P and Commonwealth Central Authority [2000] FamCA 461 (Australia); S. v. S. [1999] 3 NZLR 513 [INCADAT HC/E/NZ 296] (New Zealand); *in general* (Scotland); Blondin v. Dubois, 189 F.3d 240 (2d Cir. 1999) [INCADAT HC/E/USf 216] (United States).

¹² P and Commonwealth Central Authority [2000] FamCA 461 (Australia); *in general* (Panama); S. v. S. [1999] 3 NZLR 513 [INCADAT HC/E/NZ 296] (New Zealand).

The draft recommendation

“that the grave risk defence under Article 13 should be narrowly construed”

was supported by 29 States. 3 States did not support it.

Some concern was expressed that judicial independence should be respected.

(d) Intolerable situation (Article 13, paragraph 1 b)

The general tendency is not to consider under Article 13, paragraph 1 *b* risks which arise from the abduction itself, for example the possibility that the abducting parent may refuse to return together with the child. However, where the abducting parent is not permitted to enter the country of the child's habitual residence, so that he/she cannot be present to contest a custody hearing, this has been held in one case to constitute an intolerable situation.¹³

The question has also arisen of whether the splitting of siblings may, in certain circumstances, constitute an intolerable situation.¹⁴

(e) Consent or acquiescence (Article 13, paragraph 1 a)

Issues considered in recent cases, include:

- ?? whether consent must be in writing,¹⁵
- ?? whether oral evidence should be heard on the issue of consent,¹⁶
- ?? whether a distinction should be drawn between passive and active acquiescence,¹⁷
- ?? the relationship between attempts at reconciliation and acquiescence,¹⁸
- ?? whether acquiescence can occur in the absence of knowledge that the removal was wrongful or that the Convention is applicable.¹⁹

¹³ State Central Authority VIC and Ardito, 29 October 1997, Family Court of Australia at Melbourne [INCADAT HC/E/AU 283] (Australia); *see, generally*, Director General, Department of Family Youth and Community Care and Bennett (2000) 26 FLR 71 [INCADAT HC/E/AU 275] (Australia).

¹⁴ Re T. (Abduction: Child's Objections to Return) [2000] 2 FLR 192 [INCADAT HC/E/UKe 270] (England and Wales).

¹⁵ Re K. (Abduction: Consent) [1997] 2 FLR 212 [INCADAT HC/E/UKe 55]; Re O. (Abduction: Consent and Acquiescence) [1997] 1 FLR 924, [1997] Fam Law 469 [INCADAT HC/E/UKe 54] (England and Wales).

¹⁶ Re K. (Abduction: Consent) [1997] 2 FLR 212 [INCADAT HC/E/UKe 55] (England and Wales).

¹⁷ Re H. and Others (Minors) (Abduction: Acquiescence) [1998] AC 72, [1997] 2 WLR 563, [1997] 2 All ER 225 [INCADAT HC/E/UKe 46] (England and Wales); *in general* (Ireland, Scotland).

¹⁸ Re H. and Others (Minors) (Abduction: Acquiescence) [1998] AC 72, [1997] 2 WLR 563, [1997] 2 All ER 225 [INCADAT HC/E/UKe 46] (England and Wales).

¹⁹ Re S. (Abduction: Acquiescence) [1998] 2 FLR 115 [INCADAT HC/E/UKe 49] (England and Wales).

(f) The one-year period and the settlement of the child in the new environment (Article 12)

Issues considered in recent cases include:

- ?? whether an abducting parent can rely on periods of time during which he/she has gone into hiding in establishing the one-year period,²⁰
- ?? whether the concept of settlement involves both physical and emotional elements,²¹
- ?? whether the idea of settlement requires that account should be taken of events that are likely to occur in the future, for example the likelihood that the abducting parent may move.²²

(g) The actual exercise of rights of custody (Article 3, paragraph 1 b and Article 13, paragraph 1 a)

Issues considered in recent cases include:

- ?? whether, by arranging for a child to be cared for by a relative, a parent is exercising a right of custody.²³

(h) Rights of access

Issues considered in recent cases include:

- ?? whether a right of custody, by its nature, includes a right of access.²⁴

(i) Protection of human rights and fundamental freedoms (Article 20)

There are very few cases in which Article 20 has been applied.²⁵

In one case, the defence succeeded where it was considered that, if the child were returned to the requesting State, the issue of custody would not be resolved in accordance with the child's best interests.²⁶ The interpretation of the law of the requesting State adopted by the requested Court was subsequently contradicted in a decision of the Supreme Court of the requesting State.²⁷

²⁰ *In general* (England and Wales).

²¹ Director General, Department of Community Services v. M. and C. and the Child Representative (1998) FLC 92-829 [INCADAT HC/E/AU 291] (Australia).

²² *In general* (Scotland).

²³ Director General, NSW Department of Community Services and Crowe, 1996 FLC 92-717 [INCADAT HC/E/AU 68] (Australia).

²⁴ Director General, NSW Department of Community Services and Odierna, 17 March 2000, Family Court of Australia at Sydney; *see, generally, Family Law Amendment of 27 December 2000* (Australia); *in general* (England and Wales, Israel); *see, generally, Children's (Scotland) Act 1995* (Scotland).

²⁵ Recent cases considering the application of Article 20 include: Director General, Department of Family, Youth and Community Care and Bennett (2000) 26 FLR 71 [INCADAT HC/E/AU 275] (Australia); A.C.W and N.C.W. v. Ireland and the Attorney General [1994] 1 ILRM 126 (Ireland); Sonderup v. Tondelli, 4 December 2000, Constitutional Court of South Africa [INCADAT HC/E/ZA 309] (South Africa); Re S., Auto de 21 abril de 1997, Audiencia Provincial Barcelona, Seccion 1a [INCADAT HC/E/ES 244] (Spain); *in general* (Sweden).

²⁶ Auto de 21 abril de 1997, Audiencia Provincial Barcelona, Seccion 1a [INCADAT HC/E/ES 244] (Spain).

²⁷ Supreme Court of Israel, 1 July 1999, HCJ Case No 4365/97.

It may also be noted that the European Court of Human Rights has found that the Convention is compatible with the *European Convention on Human Rights and Fundamental Freedoms*,²⁸ and that the Constitutional Court of South Africa has decided that the Act incorporating the Convention into South African law is consistent with the South African Constitution.²⁹

ISSUES SURROUNDING THE SAFE AND PROMPT RETURN OF THE CHILD (AND THE CHILD'S PRIMARY CARETAKER, WHERE RELEVANT)

(a) Safe harbour orders, mirror orders and undertakings, including questions of international jurisdiction and the enforcement of orders

Undertakings

An undertaking may be roughly defined as a formal promise or agreement made usually by the applicant parent, for the purposes of guaranteeing some aspect of the welfare or safety of the returning child. The undertaking is often accepted by the court (and may be requested by the court) as a condition of issuing the return order, and may be entered on the record of the court. The use of undertakings is confined largely to common law jurisdictions. However, alternative techniques are sometimes available in civil law jurisdictions, for example the entering of an agreement between the parents onto the record of the court. The purpose of undertakings is to secure the situation of the child only up to the time when the court of the country of the child's habitual residence determines issues of custody and protection.

Matters covered by undertakings include:

- maintenance and accommodation for the child,
- payment of travel costs,
- support and accommodation for the accompanying parent,
- a promise not to pursue criminal proceedings against the accompanying parent,
- a promise, pending the full custody hearing, not to attempt to take the child away from the accompanying parent on the basis, for example, of an interim custody order,
- arrangements regarding access,
- co-operation in setting aside any prohibition on, or obstacle to, the return of the accompanying parent.

The issues surrounding undertakings have been canvassed in previous meetings of the Special Commission, *viz.*:

- whether it is permissible under the Convention for a court to make the giving of an undertaking a condition of ordering return,
- problems surrounding the enforcement of undertakings in the country to which the child is to be returned,

²⁸ See *Ignaccolo-Zenide v. Romania*, 25 January 2000, European Court of Human Rights.

²⁹ See *Sonderup v. Tondelli*, 4 December 2000, transcript, Constitutional Court of South Africa [INCADAT HC/E/ZA 309].

- what level of assistance Central Authorities should give in ensuring that undertakings are met,
- the lack of data concerning the outcome of cases in which return orders have been made subject to undertakings.

Safe harbour orders and mirror orders

A safe harbour order is one made by a court in the country to which the child is to be returned, usually on the application of the left-behind parent, to ensure any necessary protection for the returning child and/or the accompanying parent.

A mirror order is a form of safe harbour order whose contents reflect the conditions for safe return set (for example through undertakings) by the court which is seized of the application for return. The main advantage of safe harbour and mirror orders over undertakings is that they are clearly enforceable in the country to which the child is returned. However, there are only a few jurisdictions in which they are employed.

Suggestions and recommendations

- See Working Document No 1 submitted by Australia.

The draft recommendation

"that Contracting States should consider ratification of or accession to 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, to provide a basis for jurisdiction, recognition and enforcement and co-operation in respect of measures of protection of a child which are attached to return orders"

was supported by 25 States.

No State reported objections in principle to the Convention, but some States indicated that the assessment process was at too early a stage for a firm recommendation to be possible.

The draft recommendation

"that Contracting States should provide swift and accessible procedures for obtaining, in the jurisdiction to which the child is to be returned, any necessary protective measures prior to the return of the child"

was supported by 25 States. 5 States did not support it.

(b) Criminal proceedings and immigration issues

Criminal proceedings

In many, but not all, States the wrongful removal of the child by one parent is a criminal offence. The inter-relationship between Hague and criminal proceedings has been discussed in previous meetings of the Special Commission. The responses reveal

continuing concerns as to whether on balance the initiation of criminal proceedings enhances the prospect of achieving the return of the child.

In many States the institution of criminal proceedings is necessary to secure the involvement of the police authorities in helping to locate the child etc. The existence of an arrest warrant may also limit the ability of the abducting parent to move within or between States to avoid Hague proceedings. Occasionally, extradition proceedings are used to help secure the return of the child.

On the other hand, responses indicate certain negative consequences of criminal proceedings, particularly in those cases in which the abducting parent is the child's primary care-taker. These include:

- the prospects are reduced of achieving a voluntary return and attempts at mediation may be complicated,
- if the abducting parent is arrested on return, this may be damaging to the child and create obstacles to a fair hearing on the issues of custody and access,
- as a consequence, some judges will refuse on the basis of Article 13, paragraph 1 *b* to order return if criminal charges are pending,
- the problem of dealing with criminal charges tends to delay proceedings,
- criminal charges may also, if return is refused, further complicate the making of appropriate access arrangements.

Among the techniques employed for overcoming these problems are:

- direct judicial communication to secure the dropping of charges,
- undertakings given by the applicant for return not to pursue criminal charges,
- co-operation between Central Authorities and other authorities concerned to have charges set aside.

Suggestions and recommendations

Explicit or implicit in many of the responses is the view that it should be possible to have criminal charges set aside or suspended where a return would otherwise be possible, and that there should be co-operation between the relevant authorities in achieving this. This has to be balanced against the fact that in most countries prosecuting authorities enjoy considerable independence, the possibilities for influencing a decision to drop or suspend a criminal charge differ from one country to another, and in some countries there is no procedure enabling review to take place. There is also sometimes a question of whether a Central Authority has standing to make representations on the matter of criminal proceedings.

The draft recommendation

“that Contracting States should provide a rapid procedure for the review of any criminal charges arising out of a child’s abduction/unlawful retention by a parent in cases where the return of the child is to be effected by judicial order or by agreement”

was supported by 23 States. 5 States did not support it.

Immigration issues

In a number of cases difficulties have been experienced where the child and/or the abducting parent is not a national of the requesting State and has no right to re-enter it. The return order does not confer immigration benefits on the child or the accompanying parent. The question has arisen whether the inability of an accompanying parent to enter the country for the purpose of contesting custody proceedings may constitute, under Article 13 or Article 20, a reason to refuse a return order.

In some countries the problem has already been addressed by the creation of special visas issued to the accompanying parent for the purpose of contesting the issue of custody. Some States have this matter under consideration.

Suggestions and recommendations

The draft recommendation

“that Contracting States should take measures to ensure that, save in exceptional cases, the abducting parent will be permitted to enter the Country to which the child is returned for the purpose of taking part in legal proceedings concerning custody or protection of the child”

was supported by 28 States. 3 States did not support it.

(c) Direct judicial communications – their feasibility and limits, and the development of a network of liaison judges

The idea of direct communications between judges in different countries in international child protection cases is still a novel one for most jurisdictions, though the number of cases in which such communications occur is increasing. There are various concerns about the purposes, the appropriate safeguards and the practicalities of cross-frontier judicial communication in individual cases.

Examples of the purposes for which direct communications have been used are:

- to avoid conflicts in jurisdiction,
- to ensure that the court in the country to which the child is to be returned will deal promptly with the issue of custody and any other protection issues,
- to ensure that the court is aware of any undertakings which have been given,
- to attempt to resolve problems arising from outstanding criminal charges.

There is concern that direct communications between judges should not breach the principles of fair procedures, and in particular that there should be no discussion between

judges on the merits of a case on an *ex parte* basis. The following are possible safeguards:

- communications to be limited to procedural issues and the exchange of information,
- parties to be notified in advance of the nature of proposed communication,
- record to be kept of communications,
- confirmation of any agreement reached in writing,
- parties or their representatives to be present in certain cases, for example via conference call facilities.

The main practical difficulties arise from (a) lack of familiarity and an agreed structure for judicial communications, (b) the absence of any established channels of communication, and (c) language differences.

With regard to the establishment of a network of liaison judges, the idea has been canvassed and strongly supported in a number of recent international judicial seminars involving judges from both civil law and common law traditions (for example the two international seminars organised by the Hague Conference in the Netherlands in 1998 and 2000 and the Washington Common Law Judicial Conference held in 2000). Appointments of liaison judges have already been made in a few jurisdictions (England and Wales, Scotland, France, Australia, China Hong Kong Special Administrative Region only, New Zealand and Cyprus). There have also been moves at a regional level (for example within the European Union) to promote the concept.

Suggestions and recommendations

The draft recommendation

"that Contracting States should nominate a judge or other person or authority with responsibility to facilitate at the international level communications between judges or between a judge and another authority"

was supported by 19 States. 13 States did not support it.

Reasons for not supporting the draft recommendation include concern that the appointment of a liaison judge may be difficult from a structural point of view in certain jurisdictions.

Suggestions and recommendations

The draft recommendation

"that the Permanent Bureau of the Hague Conference on Private International Law should continue to explore the practical mechanisms for facilitating direct judicial communications, taking into account the administrative and legal aspects of this development"

was supported by 25 States. 5 States did not support it.

PROCEDURES FOR SECURING CROSS-FRONTIER ACCESS/CONTACT (INCLUDING CONTACT BETWEEN THE CHILD AND THE LEFT-BEHIND PARENT PENDING A DECISION ON RETURN OR FOLLOWING A DECISION NOT TO RETURN THE CHILD)

See "Transfrontier Access/Contact and the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction", Preliminary Document No 4 of February 2001.

MISCELLANEOUS AND GENERAL

(a) Promoting best practices generally

See above under "the role and functions of Central Authorities". Working Documents are expected on this subject.

(b) The International Child Abduction Database (INCADAT)

See "International Child Abduction Database (INCADAT)", Preliminary Document No 7 of March 2001, for a description of INCADAT and its current status.

Responses to the Questionnaire show strong support for this initiative of the Permanent Bureau. INCADAT is seen as an essential source of information for the judiciary, the legal profession, the Central Authorities and others interested in the operation of the 1980 Convention. It should contribute to greater consistency in the interpretation of the Convention and to the improvement of practices under the Convention. It is also viewed as a contribution to international awareness of parental child abduction.

Several respondents call for support and funding for INCADAT, as well as for the Hague Children's Project more generally.

The Contracting States which have so far contributed financially to INCADAT are the Netherlands, Norway, Canada and the United Kingdom. The Permanent Bureau wishes to stress that much wider support from Contracting States will be needed if INCADAT is to be completed and regularly updated.

(c) Judicial conferences and networking

There is general support for the holding of some judicial conferences at the national and international levels.

To assist networking between judges in different countries and to keep judges informed of international developments, the Permanent Bureau has established "International Child Protection. The Judges' Newsletter". Resources are needed if this initiative is to be maintained.

(d) Decisions on relocation

Most responses acknowledge an important relationship between relocation decisions and abductions. It is thought by some that a restrictive approach to relocation increases the

risk of child abduction, and that it may affect the willingness of judges to make return orders. Some respondents take the view that the subject is not within the scope of the Convention.

Responses show that there are wide variations in approaches to relocation applications.

Whereas most jurisdictions regard the interests of the child as the primary consideration, there are different understandings of what constitute best interests in this context. Some States place emphasis on the right of the child to continuing contact with both parents and are reluctant to allow relocation where this will disrupt contact with the non-custodial parent. Others place emphasis on the disadvantages for the child of living with a primary caretaker whose restricted movements may result in personal unhappiness, financial difficulties, and possibly the absence of any family support system.

In so far as there is any trend, the predominant movement seems to be towards a more permissive approach to parental relocation. Important factors always are the geographical distance involved in relocation and the practical possibilities of ensuring continuing and meaningful contact between the child and the non-custodial parent.

(e) Research

Permanent Bureau will report orally.

(f) Encouraging further ratifications and accessions

Permanent Bureau will report orally.

(g) Non-Hague States and bilateral arrangements

The following countries have entered into, or are considering, various forms of bilateral co-operation:

- *with Egypt:* Australia, Canada, France, Sweden, England and Wales (under consideration), Scotland (under consideration), Italy (under consideration),
- *with Lebanon:* Canada, Australia (under consideration),
- *with Morocco:* Belgium, France,
- *with Tunisia:* Belgium, France, Norway, Sweden,
- *with Algeria:* France,
- *with Slovakia:* Austria,
- *with Jordan:* Canada (under consideration).

Italy is making efforts to develop agreements with a number of Arab countries.

One respondent suggests that a number of the bilateral arrangements are very vague, set up in theory but not in practice. It is suggested that from a practical point of view, it

is necessary to ensure that the left-behind parent has a right of entry to the country where the child lives, and that the child has a right of contact with the left-behind parent which is supported by authorities in both countries.