

**WORKING PARTY ON MEDIATION
 CONFERENCE CALL ON THURSDAY 29 OCTOBER 2009**

MEETING REPORT

Participants	
AUSTRALIA	Ms Toni PIRANI
CANADA	Ms Lillian THOMSEN <i>(Co-chair of the Working Party)</i>
EGYPT	Mr Amr Abd EL-MOATY
FRANCE	Ms Ankeara KALY
GERMANY	Mr Eberhard CARL
MALAYSIA	Ms Lailatul Zuraida HARUN
PAKISTAN	Mr Justice Tassaduq Hussain JILLANI <i>(Co-chair of the Working Party)</i>
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND	Mr Alan SHAW
UNITED STATES OF AMERICA	Ms Lisa VOGEL
INDEPENDENT MEDIATION EXPERTS	Ms Denise CARTER (reunite) Ms Lorraine FILION (AIFI)
PERMANENT BUREAU	Mr William DUNCAN
Members of the Working Party not participating in the Conference call of 29 October 2009	
INDIA	Mr Justice Vikramjit SEN
JORDAN	Mr Akram S. Harahsheh
MOROCCO	
INDEPENDENT MEDIATION EXPERT	Mr Justice Saeduzamman SIDDIQUI

AGENDA
Working Party on Mediation
in the context of the Malta Process

Conference-call
29 October 2009

1. Central contact points
 - *Inquiries undertaken by members of the Working Party in their jurisdiction*
 - *Further steps*
2. Case histories
 - *Discussion of case histories submitted by members of the Working Party*
3. Enforcement of mediated agreements
 - *Discussion of responses to the Questionnaire II*
4. Working Party – work programme
 - *Possible development of guidelines on standards and access to mediation in cross-border family disputes involving children*
 - *Future work*

The Working Party is co-chaired by Ms Thomsen (Canada) and Mr Jillani (Pakistan). In order to simplify the communication in the conference calls, Ms Thomsen and Mr Jillani have agreed to chair alternate conference calls; the second conference call on Thursday 29 October 2009 was chaired by Mr Jillani.

The Chair welcomed all participants and started the conference call with a general introduction and a roll call. He then explained that he would address the English language line first for interventions / comments / questions and then the French line.

The Chair opened the meeting and asked the participants about new developments in their jurisdiction regarding the first issue on the agenda, the establishment of central contact points, which in the last conference call had been identified as an issue of high importance. He said that in Pakistan the idea of establishing such a central contact point had been approved by the Chief Justice and that the idea had been conveyed to the ministry concerned, which had agreed to create a central contact point by opening an Office on International Co-operation and International Law in the very near future.

Mr Carl (Germany) restated the importance of the establishment of a central contact point. He said that, as stated in the last conference call, three different authorities in Germany would be concerned with child abduction cases: for Hague Convention cases the competent authorities are the Federal Office of Justice in Bonn and the Ministry of Justice in Berlin, whereas non-Hague cases are dealt with by the Foreign Ministry. He explained that the work is quite well co-ordinated between these three authorities. These authorities would have ongoing consultations to encourage non-governmental organisations to establish one central entry point for mediation. Such a central contact point at the non-governmental level could fulfil also other tasks than governmental organisations. He also emphasised that the co-operation between judges was of very high importance in this regard and he drew attention to the different judges' networks such as the International Hague Network of Judges.

Ms Pirani (Australia) said that she had taken over the role of representative for Australia from Ms Kathy Leigh, who had moved to another department. She explained that she, herself, would work in the family law branch at the Attorney General's Department, a body providing assistance for international and domestic family law cases. Regarding the issue of central contact points she explained that the situation in Australia was very similar to that in Germany, since Australia would also draw a distinction between contact points for Hague and non-Hague cases. She said that they would consider facilitating a single central entry point. She emphasised that in Australia there would also be strong non-governmental groups providing information on possible mediation.

Ms Thomsen (Canada) said that the situation in Canada was similar. She explained that possible solutions would be discussed between the Central Authority, competent for Hague cases, and the Foreign Ministry, competent for non-Hague. She welcomed the idea promoted by Germany to establish a central entry point on a non-governmental level.

Mr El-Moaty (Egypt) agreed with the importance of central contact points and emphasised that Egypt already had a central contract point for international family disputes involving children. He explained that the Department of International and Cultural Cooperation at the Egyptian Ministry of Justice would serve as a "Central Authority" which would receive requests through diplomatic channels, from embassies or directly from the parties involved in family disputes. He said furthermore that in parallel to that, the Good Offices Committee would serve as a point of contact; in fact, after examination by the Department of Co-operation many cases would be referred to the Good Offices Committee.

Ms Vogel (United States of America) said that the situation in the United States of America was very similar to that of other Hague Convention Contracting States: Hague cases and non-Hague outgoing cases would be dealt with by the Department of State and non-Hague incoming cases by the NGO NCMEC. She emphasised, however, that in regard to mediation no formalised procedures would be in place. She said that only where a party to a family dispute requests information on mediation would the party be directed to relevant services. She pointed out that they would also be interested in looking into the possibility of giving the task of a central entry point regarding mediation to a non-profit organisation.

Ms Harun (Malaysia) introduced herself and explained that she was replacing Mr Disa for this conference call only. She said that Malaysia would welcome the establishment of a central contact point but that further internal consultations were needed in this regard. She said that currently mediation services in Malaysia were offered by a number of bodies, such as the Legal Aid Bureau, the Ministry for Women, Family and Community Development, the Bar Council and the Department of Islamic Judiciary; the latter only dealing with cases where the parties are Muslims. She highlighted that the mediation services offered in Malaysia would focus on domestic mediation and that these services were currently not co-ordinated through a central point.

Mr Shaw (United Kingdom) said that, as stated in the last conference call, the situation in the United Kingdom would be as in other Contracting States to the Hague Child Abduction Convention: Hague child abduction cases are dealt with by the Ministry of Justice, non-Hague cases are dealt with by the Foreign Ministry. He pointed out that discussions on how to establish a central entry point were ongoing between the involved ministries. He also drew attention to the fact that in the United Kingdom there would be no formal mechanism in place to refer people to mediation.

Ms Carter (Independent expert) said that reunite would regularly receive referrals of cases from the Foreign and Commonwealth Office, but on the other hand, also referrals from courts and self referral cases. She said that, in a way, reunite already acts as a central contact point for mediation in the United Kingdom. She highlighted that it was important to open the contact point to both parties involved in child abduction cases: the left behind parent and the abducting parent.

Ms Kaly (France) said that Hague Convention cases in France were dealt with by the Department of Justice and that the Civil Aid Department would assist parents with finding mediation services for their cases. In addition, the Office for Co-operation in International Civil and Commercial Matters (*Bureau de l'entraide civile et commerciale internationale, "BECCI"*) also provides assistance with international family mediation and can guide applicants to mediation services. She also stated that in non-Hague convention cases, left-behind parents can contact the Ministry of Foreign Affairs and can also apply to the BECCI for assistance with mediation.

Ms Filion (Independent expert) explained the role of the organisation AIFI, which brings together different actors involved in mediation in international family disputes, such as lawyers, psychologists, social workers, mediators and other practitioners in different countries. She explained that the AIFI would itself not provide mediation services but that they would refer parties in need of mediation to relevant mediation services. In this regard, she emphasised that it was very important to define criteria for mediation training as well as to provide a list of mediators. She furthermore drew attention to the work done by the AIFI Working Party with regard to mediation standards and their production of a Good Practice Guide in 2008. Furthermore, she stated that, in May 2009, the AIFI established an international working group whose mandate is to:

- Define the criteria for the exercise of international family mediation;
- Define the skills specific to the performance of international family mediation;
- Develop content-specific training;
- Set the ethical framework (with reference to the AIFI's Guide Good Practice 2008);
- Describe models of practice;
- Compile a list of international family mediators.

This group will submit its report in April 2010. Ms. Filion will be happy to share the conclusions and recommendations of these experts with this committee.

The Chair thanked all participants for their remarks, turned to the item "case histories" on the agenda and referred to Mr Duncan for an overview on the material received by the Permanent Bureau from the participants.

Mr Duncan (Permanent Bureau) stated that the Permanent Bureau had received case histories from Canada, France, Australia, Germany, Denise Carter and thus the United Kingdom as well as from Lorraine Filion. He drew attention to the fact that for reasons of confidentiality the Permanent Bureau had not uploaded the relevant documents to the Hague Conference website, but only circulated the case histories among the Working Party members. He highlighted that although the individual cases had been anonymised, the circumstance of the cases might make it possible to identify the individual families concerned. Mr Duncan stated that the Permanent Bureau had not received any case histories from the non-Contracting States. He made it clear that it was very important to see the full picture and he therefore suggested delaying the discussion of the case histories until the next Working Party conference call. He asked the participants who had not yet submitted case histories to do so as soon as possible.

The Chair supported Mr Duncan's suggestion and said that unless there would be any further comments from the participants he would move on to the next agenda item.

Ms Carter (Independent expert) drew attention to the fact that the case histories submitted by reunite also contained two case histories of non-Hague cases, one with Algeria and one with Egypt, which could be helpful.

Mr Carl (Germany) said that the reunite case histories he had received would refer to memoranda of understanding, but that those had not been attached. He asked whether it would be possible to receive these memoranda.

Mr El-Moaty (Egypt) apologised for Egypt not having submitted case histories, but said that he had not received the message requesting for the case histories.

Mr Duncan (Permanent Bureau) promised to arrange for the resending of the relevant documents to Mr El-Moaty.

The Chair turned to the third agenda item, the responses to the questionnaire on enforceability of mediated agreements and asked Mr Duncan to summarise the responses received by the Permanent Bureau.

Mr Duncan (Permanent Bureau) said that the Permanent Bureau had received responses to the questionnaire from Canada, France, Australia, Germany, United Kingdom and the United States of America. He said that, similarly to the aforesaid regarding the case histories, it was essential to receive the answers to the questionnaire also from the non-Hague States. Summarising the responses received from the Hague States, he said that the answers showed that most jurisdictions provided for certain restrictions regarding the content of mediation agreements in family law matters, mostly designed to protect vulnerable parties, and in particular children. He emphasised that this showed the need for mediators to have some knowledge of the relevant legal systems. Regarding the second question in the questionnaire, Mr Duncan stated that the responses differed: in some countries mediated agreements could only be rendered enforceable by being turned into a court order; in other countries it was also sufficient to ensure that the agreements fulfilled the requirements of a binding contract. In respect of procedures on how mediated agreements would be approved by or registered with a court, he said that all countries that had responded to the questionnaire had specific procedures in place. He further stated that all countries had confirmed that once the agreement had been turned into a court order it is treated in the same way as a court decision. He said that the responses had, however, shown that the costs for turning a mediated agreement into a court order would differ considerably from jurisdiction to jurisdiction. He then summarised the responses to the question on the treatment of agreements mediated abroad, stating that the responses had shown that they would generally be treated in the same way as domestically mediated agreements. Regarding the question on the recognition and enforceability of mediated agreement approved by or registered with a foreign court, Mr Duncan stated that the responses had differed widely. He said that the answer to this question would usually depend on whether there would be a bilateral or multilateral agreement in place between the countries concerned. Where this was not the case, he said, it would depend on the private international law principles of the country concerned. Mr Duncan drew attention to the 1996 Hague Child Protection Convention which provides for automatic recognition of measures taken by authorities of Contracting States in respect to parental responsibility. He said that he was looking forward to receiving questionnaire answers from the non-Hague States, and thanked all those who had submitted responses.

The Chair said that it was indeed very important to know which enforcement mechanisms would be available and that he was hoping for further information on that issue from the non-Hague States. He then turned to the participants for comments.

Mr Carl (Germany) referred to the responses submitted by Germany and said he had nothing further to add.

Ms Pirani (Australia) referred to the questionnaire responses of Australia and said she had no further questions.

Ms Thomsen (Canada) referred to the questionnaire responses submitted by Canada and highlighted the fact that within Canada the costs for turning mediated agreements into court orders would differ considerably: in some parts of Canada there would be barely any costs and in others the costs could be up to 2000 Canadian Dollars.

Mr El-Moaty (Egypt) said that he had not received the questionnaire. He stated that in Egypt rules would be in place to render mediated agreements legally binding. He said that this was

done through authenticating the agreement by a court. He highlighted that, in his view, recognition and enforcement should be dealt with separately, since they are two different issues. He agreed with the conclusion that mediators needed relevant knowledge also in regard to the enforceability of mediated agreements. He drew attention to the fact that Egypt had concluded several bilateral agreements with other States and that when looking at the question of enforceability and recognition one would have to consider not only national but also international commitments.

Mr Duncan (Permanent Bureau) promised to arrange for the resending of the relevant documents to Mr El-Moaty.

Ms Vogel (United States of America) referred to the questionnaire responses submitted by the United States of America and said that they had found it very difficult to answer the questionnaire, since the different US-States had very different legal systems. She pointed out that at least in regard to enforcement of foreign custody orders the situation would be relatively uniform, since most US-States had adopted the Uniform Child Custody Jurisdiction and Enforcement Act. However, she said, analysing, the law of the US-States in regard to the enforceability of mediated agreements would be difficult and time-consuming. She said that they were still in the course of studying this issue in detail. Ms Vogel welcomed the efforts of the Working Party to explore the issue of enforceability of mediated agreements as a priority, because the effectiveness of mediation structures established by the Working Party would depend considerably on the question of whether mediation agreements could be rendered legally binding.

Ms Harun (Malaysia) apologised for not having been able to submit the responses to the questionnaire yet, but indicated that they would be working on it.

The Chair pointed out that it was indeed a crucial point to have knowledge on how to render mediated agreements enforceable and that further inquiries in Pakistan were needed in this regard.

Mr Shaw (United Kingdom) referred to the questionnaire responses submitted by the United Kingdom and said he had nothing to add at this stage.

Ms Carter (Independent expert) said that reunite would be happy to share experiences in regard to agreements mediated by reunite. She explained that many of reunite's memoranda of understanding had been turned into court orders and had been mirrored in Hague States. For mediation agreements in non-Hague cases, she said that, of course, the situation was different but also in this regard many memoranda of understanding had been turned into court orders. For Hague cases she indicated that the costs would be around 1500 British Pounds. She highlighted the importance of appropriate mediator training. Finally she drew attention to the fact that reunite had succeeded to secure funding for a research project on the effectiveness of mediation, which she hoped could start by the end of this year. She said that reunite would be happy to share the results of this research with the Working Party.

Ms Kaly (France) referred to the French questionnaire responses. She said that regarding enforceability there was no difference in France between agreements mediated in Hague and non-Hague cases. However, to be enforceable the agreements must be approved by the court.

Ms Filion (Independent expert) said that, in 2006 and 2008, her Association had carried out a study of mediators offering their services in international family mediation (both in person and remotely *e.g.* via telephone/e-mail) and a topic discussed with the mediators, amongst others, was the enforceability of mediation agreements. She stated that the mediators had pointed out that costs would play an important role in this regard. She said that parties, having had to pay for the mediation and for their lawyers, might feel reluctant to pay an additional sum for turning their agreement into a court order. She pointed out that she felt that access to legal information on family matters from an independent source was very important in mediation, both during, and after, the mediation, and she highlighted the importance of mediator training

in this regard. She then asked Ms Carter whether the research that reunite will commence would also touch upon the question of enforceability.

Ms Carter (Independent expert) answered that reunite would also look at the enforceability and that she would be happy to discuss the research project in more detail with interested members of the Working Party.

The Chair thanked the participants for their contributions and turned to the last item on the agenda: the future work programme. He pointed out that, in his view, it was important for the Working Party to put the acquired information and knowledge in writing. He said that it might therefore be advisable to start work on guidelines regarding standards and access to mediation in cross-border family disputes involving children. He suggested that the two Chairs of the Working Party in co-operation with the Permanent Bureau could start work on a first draft which could then be circulated to the other Working Party members before the next conference call.

Mr Shaw (United Kingdom) welcomed the idea of commencing such work.

Mr Carl (Germany) agreed with Mr Shaw and said he supported the idea of drafting a written proposal.

Ms Pirani (Australia) said that she would also agree with the suggestion.

Mr El-Moaty (Egypt) agreed and said that further consultation would be needed.

Ms Vogel (United States of America) said that she would agree and thanked the Chairs for the offer.

Ms Harun (Malaysia) welcomed the suggestion and said she would look forward to receiving the written proposal.

Ms Carter (Independent expert) agreed pointing out that such a document would be very helpful.

Mr Duncan (Permanent Bureau) said that, in his view, it would be the logical next step to distil the discussions in written form and that the document could cover *inter alia* the establishment of entry points and the enforceability of mediated agreements. He assured the participants and the two Chairs of the Permanent Bureau's support with the drafting. He suggested that participants should feel free to send to the Permanent Bureau any comments and documents that could be helpful for the development of the written proposal.

Ms Kaly (France) also welcomed the idea.

Ms Filion (Independent expert) welcomed the idea of drafting such a document and drew attention to the current activities of the AIFI Working Party she had mentioned before. She said that the AIFI Working Party report which was envisaged to be finalised in the near future (April 2010) might be a useful source for the drafting of the document.

The Chair thanked the participants for the very useful discussions and before concluding the meeting he passed the word one last time to Mr Duncan.

Mr Duncan (Permanent Bureau) thanked the Working Party for the helpful discussions. He emphasised once again that the Permanent Bureau will be prepared to help with drafting the written proposal. As regards the date for the next Working Party conference call he suggested the first week of February 2010.

The Chair thanked the participants once more and concluded the meeting.

A note from the Permanent Bureau: Appreciation is expressed to the Canadian authorities for organising and financing the conference call.