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Special Focus

The Sixth Meeting of the Special Commission
on the Practical Operation of the 1980 Hague
Child Abduction Convention and 1996 Hague
Child Protection Convention, Part II, 25-31
January 2012



Pour la version française, retourner la Lettre 

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* **Special Focus** *

Report of Part II of the Sixth Meeting of the Special Commission on the Practical Operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention, 25-31 January 2012

drawn up by the Permanent Bureau

1. Introduction

In preparation for the Sixth Meeting of the Special Commission on the practical operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (the 1980 Convention) and 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 (the 1996 Convention), it was decided that the subjects to be covered were too extensive for one meeting. The exceptional decision was made for the first time to hold the Special Commission in two separate parts, with the first part taking place from 1 to 10 June 2011 and the second part seven months later from 25 January to 31 January 2012.

Part I of the Special Commission ("the 2011 Special Commission (Part I)") addressed primarily the practical operation of the Conventions, including the activities of Central Authorities, the draft Practical Handbook on the 1996 Convention (Prel. Doc. No 4), judicial communications and networking (Prel. Docs Nos 3 A, 3 B and 3 C), and the draft Guide to Good Practice on Mediation under the 1980 Convention (Prel. Doc. No 5).¹ A report of the 2011 Special Commission (Part I) can be found in Volume XVIII of the Judges' Newsletter.

It was initially decided that Part II of the Special Commission ("the 2012 Special Commission (Part II)") would primarily consider the issue of the desirability and feasibility of a protocol to the 1980 Convention. In anticipation of Part II, the Permanent Bureau circulated in December 2010 to Members of the Hague Conference and Contracting States to the 1980 Convention, a questionnaire on the desirability and feasibility of a protocol to the 1980 Convention ("Questionnaire II",

Prel. Doc. No 2)² inquiring about several potential topics for inclusion in any protocol.

As a result of the discussions that took place during the 2011 Special Commission (Part I), the responses to Questionnaire II³ and consultations with Members, it appeared that it would not be possible to achieve consensus on asking the Council on General Affairs and Policy of the Conference (the "Council") for a mandate to proceed with a protocol to the 1980 Convention. However, there were three areas where there appeared to be substantial support for further work: cross-border recognition and enforcement of mediated agreements; legal basis for cross-border direct judicial communications; and allegations of domestic violence in the context of return proceedings. The agenda for the 2012 Special Commission (Part II) therefore focused on these specific areas of further work in connection with the 1980 and 1996 Conventions, as well as on the matters originally scheduled for discussion at Part II of the meeting: that is, international family relocation (Prel. Doc. No 11), the future of the "Malta Process" and the role of the Hague Conference in monitoring and supporting the 1980 and 1996 Conventions (Prel. Doc. No 12). A Guide to Part II of the Sixth Meeting of the Special Commission (Prel. Doc. No 13)⁴ was prepared and circulated prior to Part II.

The 2012 Special Commission (Part II) took place in The Hague from 25-31 January 2012 and included more than 240 experts and observers from 67 States and 13 organisations. 59 of the States were Contracting States to the 1980 Convention and 32 of the States were Contracting States to the 1996 Convention. Four States were neither Members of the Hague Conference nor Contracting States to either Convention, but were invited to participate in the meeting as observers, namely Iran, Pakistan, Qatar and Saudi Arabia. Representatives from one intergovernmental organisation and 12 non-governmental organisations also participated as observers. Among the participants were 56 judges from 34 States, including 29 members of the International Hague Network of Judges from 23 States. Ten States,⁵ one intergovernmental organisation⁶ and one non-governmental organisation⁷ had not participated in the 2011 Special Commission (Part I).

¹ See also the Report of the 2011 Special Commission (Part I), "Conclusions and Recommendations and Report of Part I of the Sixth Meeting of the Special Commission on the practical operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction and 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", Prel. Doc. No 14 of November 2011 for the attention of the Special Commission of January 2012, available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention".

² "Questionnaire on the desirability and feasibility of a protocol to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction", Prel. Doc. No 2 of December 2010 for the attention of the Special Commission of June 2011, available on the Hague Conference website *ibid*.

³ All responses are available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention".

⁴ "Guide to Part II of the Sixth Meeting of the Special Commission and consideration of the desirability and feasibility of further work in connection with the 1980 and 1996 Conventions", Prel. Doc. No 13 of November 2011 for the attention of the Special Commission of January 2012, available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention".

⁵ This number includes 7 States invited as Members of the Conference and / or Contracting States to the Conventions (Andorra, Bulgaria, Italy, Republic of Moldova, Slovenia, Sri Lanka, and Trinidad and Tobago) and 3 Non-Member States invited as observers (Iran, Pakistan and Qatar).

⁶ The United Nations Children's Fund (UNICEF).

⁷ The Inter-American Bar Association (IABA).

Six Preliminary Documents drawn up by the Permanent Bureau were prepared for the 2012 Special Commission (Part II). Two Information Documents were also made available to participants of the Special Commission. These documents are all available on the Hague Conference website at < www.hcch.net > under “Work in Progress” then “Child Abduction”.

The Permanent Bureau provided an update as to the status of the 1980 and 1996 Conventions. There were two new Contracting States to the 1980 Convention since June 2011,⁸ bringing the total to 87. Since June 2011, the 1996 Convention had entered into force in Denmark, Malta and Portugal, bringing the total to 33 Contracting States, with a further six signatory States (the remaining five European Union Member States and the United States of America).⁹

Experts from Japan and Korea reported on the steps taken with regard to the 1980 Convention in their respective States and the significant progress made towards becoming Contracting States.

2. Cross-Border Recognition and Enforcement of Mediated Agreements

The Permanent Bureau recalled that the Hague Conference had a long history of working in the field of cross-border mediation in family matters. It indicated that the Council on General Affairs and Policy in April 2008 asked the Permanent Bureau, as a first step, to commence work on a Guide to Good Practice on the use of mediation in the context of the 1980 Convention.¹⁰

The Permanent Bureau noted that the discussions of the 2011 Special Commission (Part I) revealed practical challenges concerning the enforceability of mediated agreements. It highlighted that mediation is a tool which may touch upon not only the issue of the return of the child but also other issues such as custody or maintenance. It then explained that these multiple issues could, in turn, cause practical challenges, especially as to questions of jurisdiction of different courts. It stated that although the 1996 Convention, as well as the 2007 Convention, may assist parents in achieving recognition of their agreed upon solution in a cross-border dispute concerning children in all Contracting States, these Conventions may not offer a satisfactory solution where the agreement covers matters which fall outside the scope of one or both Conventions, or when the relevant Conventions are not in force in both countries.

⁸ Guinea and the Russian Federation.

⁹ Greece ratified the 1996 Convention shortly after the 2012 Special Commission (Part II), on 7 February 2012; the 1996 Convention will enter into force for Greece on 1 June 2012. Montenegro also ratified the 1996 Convention shortly after the 2012 Special Commission (Part II), on 14 February 2012. The 1996 Convention will enter into force for Montenegro on 1 January 2013.

¹⁰ See Conclusions and Recommendations adopted by the Council on General Affairs and Policy of the Conference (1-3 April 2008), p. 1, 3rd para., available at < www.hcch.net > under “Work in Progress” then “General Affairs”. The Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction Part V – Mediation (hereinafter ‘Guide to Good Practice on Mediation’) is currently being finalised.

The Permanent Bureau underlined that the recognition and enforcement of mediated agreements can be a lengthy, cumbersome and expensive process. It therefore suggested the need to explore the desirability and feasibility of further work in this field and, in particular, in connection with the development of private international law rules.

Finally, the Permanent Bureau indicated that a new free-standing private international law instrument concerning mediated agreements in family law could also assist families more generally with respect to agreements containing a combination of different family law issues in a cross-border situation. The instrument could offer an efficient way to render such agreements binding and enforceable in the different legal systems concerned.

Potential further work on recognition and enforcement of mediated agreements

A large number of experts expressed their support for mediation and for further work on enforcing mediated agreements. Some experts emphasised that mediation does not run counter to the objective of expeditious procedures set out in the 1980 Convention, but on the contrary, provides for the timely resolution of conflicts.

A few experts expressed some reservations regarding the possibility of engaging in further work on recognition and enforcement of mediated agreements. Some experts indicated that the 1996 Convention should be given the opportunity to operate before a decision is taken to determine whether another binding instrument is necessary. States were accordingly encouraged to join the 1996 Convention.

An expert from the United States of America expressed concern that further work on mediation would divert the attention and resources of the Hague Conference away from the original purpose of the 1980 Convention, namely the expeditious return of the child. The Secretary General recalled that mediation covered several family law issues and that it needed to be envisaged in a broader context than the 1980 Convention. He also indicated that the discussions concerned cases where the parties had already achieved an agreement and thus there was no interference with the regular procedure under the 1980 Convention.

In spite of these few reservations, the majority of experts recommended the establishment of an exploratory expert group on mediated agreements. A few experts requested that the Expert Group undertake a preliminary assessment as to the nature and extent of problems in the recognition and enforcement of agreements, including agreements resulting from mediation. It was also suggested that the Expert Group should take into account the framework of the 1980 and the 1996 Conventions as well as the 2007 Convention in order to identify potential gaps and to refer these findings to the Council on General Affairs and Policy.

An expert from the European Union indicated that a global instrument on mediated agreements would have added value for the Member States of the European Union in

their relations with other States. The expert stressed the importance of the implementation of existing measures such as the publication of the draft Guide to Good Practice on Mediation. It was also indicated that an EU Directive (Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters) containing rules on the enforceability of mediated agreements was adopted in 2008.

Several experts agreed that the work of the Expert Group should not only address mediated agreements but should cover all types of agreements obtained through alternative dispute resolution mechanisms. An expert from Canada noted that Preliminary Document No 13 was clear on this point and that this discussion on mediation was taken to include other processes which lead to an amicable resolution of disputes.

Some experts considered that the Expert Group should be composed of experts in private international law to reflect the fact that its work would address legal issues. A few observers emphasised that the Expert Group should also include experts in non-judicial settlements and related issues, in order for the Expert Group to benefit from the broadest expertise possible.

The Special Commission recognised that, in the course of international child disputes, the parties may enter into agreements settling their dispute, and therefore recommended that exploratory work be undertaken to identify legal and practical problems that may exist in the recognition and enforcement of such agreements, taking into account the implementation and use of the 1996 Convention.¹¹ To this end, the Special Commission recommended that the Council on General Affairs and Policy consider authorising the establishment of an Expert Group to carry out further exploratory research, which would include identification of the nature and extent of the legal and practical problems in this area, including, specifically, jurisdictional issues and would evaluate the benefit of a new instrument in this area, whether binding or not.¹²

3. Direct Judicial Communications (1980 and 1996 Hague Conventions)

The Permanent Bureau introduced the topic by highlighting that, over the last fifteen years, direct judicial communications under the 1980 Convention have developed "organically". The Permanent Bureau recalled that, in June 2011, at the 2011 Special Commission (Part I), the General Principles for Judicial Communications (hereinafter "General Principles")¹³

¹¹ See Conclusion and Recommendation No 76 of the 2012 Special Commission (Part II).

¹² See Conclusion and Recommendation No 77 of the 2012 Special Commission (Part II).

¹³ "Emerging rules regarding the development of the International Hague Network of Judges and draft general principles for judicial communications, including commonly accepted safeguards for direct judicial communications in specific cases, within the context of the International Hague Network of Judges", drawn up by the Permanent Bureau, Prel. Doc. No 3 A of March 2011 for the attention of the Special Commission of June 2011, available on the Hague Conference website at < www.hcch.net > under "Work in Progress" then "Child Abduction". During the 2011 Special Commission (Part I), it was decided to change the term "rules" to the term "guidance". The Emerging Guidance and General Principles for Judicial Communications were developed in consultation with a group of experts, the majority of whom were members of the International Hague Network of Judges.

were endorsed.¹⁴ However, the General Principles do not include a legal basis for judges to engage in direct judicial communications. The Permanent Bureau highlighted that, at the 2011 Special Commission (Part I), the delegation from Switzerland submitted Working Document No 4¹⁵ and that this submission was followed by a discussion as to whether there was an interest in developing a legal basis for such communications in a binding instrument.

At the request of experts at the 2011 Special Commission (Part I), the Permanent Bureau prepared an overview of this topic in Preliminary Document No 3 D. The document was developed following an analysis of the information in the Country Profiles and responses to questionnaires. While most States indicated that no legal basis was needed, several States indicated that they needed a legal basis to engage in direct cross-border judicial communications. The Permanent Bureau recalled that a number of States reported having an interest in developing a binding instrument.

The Permanent Bureau outlined four options: (1) a binding international instrument to provide for judicial communications between judges in cases involving international child abduction; (2) a broader binding instrument which contains a basis for judicial communications and other matters concerning the international protection of children; (3) a binding instrument that would cover all legal issues related to communications, as well as the topics in the General Principles; and (4) a legal foundation only within domestic law. The Permanent Bureau recalled that during the 2011 Special Commission (Part I), the experts considered it premature to legislate with respect to the content of the General Principles, preferring to wait to see how these principles are implemented by States and used by judges.

Potential legal instrument providing a basis for the use of direct cross-border judicial communication

Many experts indicated that there was no need for a binding international instrument at this time. An expert from the United States of America stressed that providing a legal basis for direct judicial communications was more properly a

¹⁴ See Conclusion and Recommendation No 68 of the 2011 Special Commission (Part I).

¹⁵ Work. Doc. No 4 provided as follows:

"The Special Commission promotes, without prejudice to more specific principles, further examination of legal rules, in view of a later approval, as follows –

1. Each Contracting State shall designate one or more judges having as task to promote co-operation amongst the competent authorities of that State and to facilitate communications and the exchange of information between these authorities and those of other Contracting States in situations to which the Convention applies.

2. The Central Authority or the judicial authority, seised with the request for return, may, if the situation of the child and the review of the conditions of its return so require, request any authority of another Contracting State which has relevant information to communicate such information.

3. The Central Authority or the judicial authority, seised with the request for return, may in individual cases, if the situation of the child and the review of the conditions of its return so require, take measures for the protection of the child upon its return and enquire in particular about the measures which the competent authorities of the State where the child was habitually resident immediately before its removal or retention can take for the protection of the child upon its return."

matter of domestic law. An expert from the European Union stated that it was premature to discuss binding international rules and that a more flexible approach should be adopted. Some experts noted the difficulty in developing, adopting and effectively implementing a binding international instrument.

On the other hand, an expert from Switzerland stressed the importance of an international legal basis for judicial communications. She suggested the inclusion in a future binding instrument of a provision that would oblige Contracting States to provide for direct judicial communications. Another expert from Switzerland added that a legal basis should address specifically the type of information judges could share and whether judges could discuss the merits of the case. An expert from Germany noted the benefit of a binding international instrument in ensuring international reciprocity, which could not be achieved through domestic law alone.

Many experts expressed support for the International Hague Network of Judges (IHNJ) and emphasised the need to strengthen and expand it. Several experts commented on the challenges posed by the lack of designations of Network Judges by certain States. An expert from the United Kingdom proposed taking more initiatives on a regional basis to encourage the growth of the Network. An expert from Uruguay, supported by experts from several other States, suggested formally recognising the role of the IHNJ as being essential to the effective operation of the 1980 Convention.

Many experts expressed again, as in the 2011 Special Commission (Part I), support for the General Principles, their further development and their prompt dissemination.

Experts from some States indicated that it was desirable to have a legal basis to facilitate the designation of a judge to the IHNJ and to authorise the use of direct judicial communications. An expert from the Republic of Korea noted that the basic characteristics of the role of the IHNJ judge would first need to be determined before any domestic legislation could be introduced.

Some experts advised taking a cautious approach to discussing the development of an international instrument on judicial communications. An expert from Japan indicated that any such discussion should take into account the need to protect judicial discretion. An expert from France highlighted that

judicial practices differ depending on the particular legal system of a country. She noted that in civil law countries the rules of procedure are strict, making direct judicial communications difficult.

Many experts supported the development of soft law tools such as a 'guide to good practice' on direct judicial communications to assist judges. An expert from Israel emphasised that the most important issues to be dealt with were the scope of direct judicial communications and the uniformity of practices, noting that the lack of formalism allowed flexibility. An expert from Brazil suggested the creation of a group of experts composed of judges, Central Authority officials and government officials to develop a guide to good practice.

Observers from NGOs drew attention to other issues. An observer from the United States-Mexico Bar Association (USMBA) underlined that it was important to protect the rights of the parties and that the role of the IHNJ judge should be clearly defined. An observer from the International Association of Women Judges (IAWJ) noted the need to clarify whether justiciable or only non-justiciable issues could be the subject of direct judicial communications. An observer from the Association of International Family Judges (AIFJ) introduced Working Document No 9, explaining that it was drafted in June 2011 and expressed what its members felt were important for the future development of international family law. It was circulated for the information of the other experts, but there was no further discussion.

The Chair concluded the discussion by highlighting that there was no consensus to proceed at this time with the development of an international binding instrument on direct cross-border judicial communications, but that there was support for consideration to be given to the inclusion of a legal basis in the development of any relevant future Hague Convention.¹⁶ There was consensus to promote the use of the Emerging Guidance and General Principles on Judicial Communications; to continue to encourage the strengthening and expansion of the International Hague Network of Judges; and to maintain an inventory of domestic legal bases relating to direct judicial communications.¹⁷

¹⁶ See Conclusion and Recommendation No 78 of the 2012 Special Commission (Part II).

¹⁷ See Conclusion and Recommendation No 79 of the 2012 Special Commission (Part II).



Participants to Part II of the Sixth Meeting of the Special Commission on the Practical Operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention, 27 January 2012

4. Domestic and Family Violence in the context of Return Proceedings and under Article 13(1) b) of the 1980 Convention

The Permanent Bureau recalled that the Conclusions and Recommendations of the 2011 Special Commission (Part I) affirmed support for promoting greater consistency in dealing with domestic and family violence allegations in the application of Article 13(1) b).¹⁸ These Conclusions and Recommendations also indicated that the discussion on three specific proposals concerning future work in this area was to be deferred to Part II.¹⁹ The first proposal was drawn up by certain Latin American States and included, among other items, the drafting of a Guide to Good Practice on the implementation of Article 13(1) b).²⁰ The second proposal, made by Canada,²¹ suggested establishing a working group, with experts drawn in particular from the International Hague Network of Judges, to consider the feasibility of developing an appropriate tool to assist in the consideration of the grave risk of harm exception. A third proposal by the Permanent Bureau suggested that a group of experts, in particular, judges, Central Authorities and experts on the dynamics of domestic and family violence, develop principles or a practice guide on the treatment of domestic and family violence allegations in the context of return proceedings.²²

The Permanent Bureau reported that the responses of States to Questionnaire I²³ revealed that most responding Contracting States dealt with domestic violence allegations in at least a minority of cases under Article 13(1) b). Moreover, in response to Questionnaire II,²⁴ nearly all States indicated that guidance and further training in the application of Article 13(1) b) would be useful, particularly on matters such as safe return. A number of States, however, had indicated opposition to developing binding provisions on this topic in the context of a protocol to the 1980 Convention.

Referring experts to the relevant documentation²⁵, the Permanent Bureau invited the 2012 Special Commission

¹⁸ See Conclusion and Recommendation No 37 of the 2011 Special Commission (Part I).

¹⁹ See Conclusion and Recommendation No 38 of the 2011 Special Commission (Part I).

²⁰ Work. Doc. No 1.

²¹ Work. Doc. No 2.

²² See Prel. Doc. No 9 at para. 151.

²³ "Questionnaire concerning the practical operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction and 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", Prel. Doc. No 1 of November 2010 for the attention of the Special Commission of June 2011, available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention".

²⁴ Prel. Doc. No 2.

²⁵ "Domestic and family violence and the Article 13 'grave risk' exception in the operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: A reflection paper", Prel. Doc. No 9 of May 2011 for the attention of the Special Commission of June 2011, available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention"; Prel. Doc. No 13 at paras 62 to 69; Work. Docs Nos 1 and 2 and Annexes 2 and 3 to Prel. Doc. No 14.

(Part II) to consider, in connection with further work on this topic, the following issues: (1) The scope of any future work – whether it should be limited to domestic and family violence within the context of Article 13(1) b) or whether it would be beneficial to have a broader consideration of Article 13(1) b); (2) who should be involved in any Working Group and how such a Working Group would be structured; and (3) if tools should be developed, at whom should they be aimed.²⁶

Potential soft law tools promoting a consistent application of Article 13(1) b)

The experts emphasised that further work should be carried out to promote a consistent interpretation of Article 13(1) b). Some experts noted that a consistent application of this exception is important to ensure the safety of the child. An expert from Germany added that the differences in national case law may affect the strategies chosen by taking parents in pleading an Article 13(1) b) defence. Following further discussion, the experts agreed that such work should take the form of a non-binding instrument.

Certain aspects of the project were discussed, particularly the nature of any potential soft-law tool, its objectives, its scope, and the composition of the Working Group.

An expert from Canada suggested that the three proposals deferred for consideration from Part I be 'merged' into one, with the recommendation that a Working Group could be tasked to produce a guide to good practice on the interpretation and application of the Article 13(1) b) exception. She explained that the publication could be a "hybrid" guide, serving multiple users, with a section directed to judges and a separate section directed to Central Authorities.

Many experts expressed their support for the proposal of the Canadian delegation, as amended. However, concerns were expressed by an expert from Switzerland who raised a number of questions on the proposal put forward, such as the scope of such a guide and whether further approval of the completed document by a Special Commission or the Council on General Affairs and Policy would be necessary.

An expert from Canada indicated that the purpose of the guide would be to circumscribe the international implementation and operation of Article 13(1) b) and to examine the place of Article 13(1) b) in the context of the 1980 Convention. She indicated that the guide would also provide guidance to Central Authorities when requests are being considered and allegations of domestic and family violence arise. She noted that it is the usual practice that guides recommended during Special Commissions are reviewed by following Special Commissions and that the Council on General Affairs and Policy is made aware of this work.

An expert from Spain stated that there was nothing new in providing guidance and information to judges on the application of an instrument. In this regard, he noted that, for example, a guide had already been developed within

²⁶ See Prel. Doc. No 13, at para. 69.

the European Union to promote the implementation of the Brussels IIa Regulation. He indicated that a guide to good practice concerning the application of Article 13(1) b) would be very well received by judges of the 27 Member States of the European Union. He underlined that all non-binding measures are welcome.

Many experts expressed their support for this position and insisted on the importance of providing judges with information to help them make a decision, as they ultimately deal with the application and interpretation of Article 13(1) b). Several experts added that it was nevertheless imperative to safeguard the fundamental principle of the independence of judges.

The majority of experts considered that any future work should not be limited to allegations of domestic and family violence within the context of Article 13(1) b), but should include all situations of 'grave risk of harm', such as mental illness, criminal behaviour or drug and alcohol abuse. Several experts explained that limiting the examination of Article 13(1) b) to domestic violence could lead to a different standard being applied to cases where domestic violence is alleged.

An expert from the European Union noted that the European Union was working on the subject of domestic violence. She explained that in 2011, the European Commission brought forward a package of legislative proposals concerning the rights of victims of crime and that one part of these proposals related to the mutual recognition, between Member States, of civil measures providing protection to victims of violence, including domestic violence. However, she indicated that the European Union endorsed the view that domestic violence should not be distinguished from other issues which may arise in the context of an Article 13(1) b) defence.

An expert from Canada recalled a proposal made by Canada in April 2011 to the Council on General Affairs and Policy to undertake preliminary work to consider the possibility of an instrument on the recognition and enforcement of foreign civil protection orders. She noted that the Hague Conference was undertaking this preliminary work and that this might be of use in return cases involving domestic violence.

A few experts indicated that further work on the application of Article 13(1) b) should take into consideration existing tools addressing domestic violence such as the 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women. An expert from Mexico noted that strengthening these existing tools may avoid risk to the child when the child is ordered to be returned.

Several observers made suggestions as to the content of a guide. A few observers proposed including research on the outcomes for children who have been returned as a result of proceedings brought under the 1980 Convention, particularly those children where a defence has been raised under Article 13(1) b). Reference was made to the work undertaken by ISS in following outcomes for children cared for in kinship placements.

An observer from the International Law Association (ILA) drew the attention of experts to an academic study in the United States of America submitted to the National Institute of Justice²⁷ which noted cases of children being returned to abusers.

An observer from the International Social Service (ISS) indicated that consideration should be given to four areas in drawing up any guide to good practice: (1) the gathering of evidence and how it is to be collected in light of the time constraints which return proceedings involve; (2) how to appropriately analyse the available evidence to ensure consistency; (3) the question of whether appropriate protective measures can be taken in the country to which the return of the child is sought; and (4) the need for authorities in the country to which the child is to be returned to be informed of the future plan for the child so as to ensure the appropriate monitoring of the child upon return. Moreover, the expert stressed that Article 13(1) b) should be applied only when there is objective evidence.

An observer from the United States – Mexico Bar Association (USMBA) disagreed that proof of domestic or family violence under Article 13(1) b) should be limited to 'objective evidence', explaining that the real-life situations of persons implicated sometimes made it very difficult to obtain such evidence. Finally, an observer from the ISFL pointed out various issues which should be explored by the expert group: the determination of the child's State of habitual residence,²⁸ how Central Authorities can ensure the confidentiality of the information they obtain concerning a possible victim of domestic violence, the differences in practices between States concerning, in particular, the definition of domestic violence and finally, the issue of the efficacy of undertakings.

An expert from Canada indicated that the Working Group might include experts from the judiciary and the legal profession, as well as experts in other fields such as on the dynamics of domestic and family violence and mental health. She emphasised that the group should have the expertise necessary to enable it to fulfil its aims. A majority of experts supported this position.

The Chair concluded that there was broad support for work to be undertaken to promote consistency in the application of Article 13(1) b). There was overwhelming support for the proposal by Canada, as amended to take into account the other proposals, to examine the application of Article 13(1) b) through a non-binding guide which would respect the institutional and individual independence of the judiciary and take into account existing legislation on the grave risk exception. This guide would not be limited to cases where allegations of domestic and family violence were raised, but would include the application of Article 13(1) b), and would take into account existing documents and work done on the topic, including that by some observers.

²⁷ Prel. Doc. No 9 at para. 1. This study is summarised in Annex I of Prel. Doc. No 9.

²⁸ She gave the example of one study, cited in Prel. Doc. No 9 (see the study *ibid.*), in which it is indicated that 40% of those who had fled domestic violence stated that they considered their habitual residence to be coerced.

There was broad support for the recommendation to the Council on General Affairs and Policy that it authorise the establishment of a Working Group composed of judges, Central Authorities and cross-disciplinary experts to develop a Guide to Good Practice on the interpretation and application of Article 13(1) b), with a component to provide guidance specifically directed to judicial authorities, taking into account the Conclusions and Recommendations of past Special Commission meetings and Guides to Good Practice.²⁹

The Special Commission noted that the evaluation of the evidence and the determination of the grave risk of harm exception (Art. 13(1) b)), including allegations of domestic violence, are an exclusive matter for the authority competent to decide on the return, having due regard to the aim of the 1980 Convention to secure the prompt and safe return of the child.³⁰

The Special Commission recommended that further work be undertaken to promote consistency in the interpretation and application of Article 13(1) b) including, but not limited to, allegations of domestic and family violence.³¹

5. International Family Relocation

The Permanent Bureau began by providing a brief definition of international family relocation that is the long-term move (i.e., a change of habitual residence) to another country by a parent with his or her child. The Permanent Bureau indicated that it was occurring more frequently in the international context as parents moved to follow jobs or relationships or return "home". It noted that the growing trend in many countries towards separated parents having joint parental responsibilities and an active involvement in a child's life even after the dissolution of a relationship, created further concerns when one parent wished to relocate to another country.

The Permanent Bureau then described the manner in which the subject of international family relocation had emerged in the work of the Hague Conference, that is, in relation to transfrontier contact issues. It indicated that two Conclusions and Recommendations of the 2006 Special Commission covered the subject and encouraged "all attempts to seek to resolve differences among the legal systems so as to arrive as far as possible at a common approach and common standards

as regards relocation".³² The Permanent Bureau continued by mentioning the Washington Declaration on International Family Relocation adopted during the International Judicial Conference on Cross-border Family Relocation ("the Washington Declaration") which took place in March 2010 and which was co-organised by the Hague Conference and the International Centre for Missing and Exploited Children (ICMEC).³³ The Permanent Bureau underlined that this 2012 Special Commission (Part II) meeting was one of the first significant discussions on international family relocation in a Special Commission.

The Permanent Bureau further explained that the preliminary research presented in Preliminary Document No 11 showed the diversity of approaches taken by national laws on the issue. The Permanent Bureau outlined that these differences related mainly to three areas: (1) the circumstances in which it may be necessary for a parent to obtain a court order for permission to relocate with a child; (2) the differences between the procedures followed and the factors taken into account by the court seised; and (3) the approach taken by the court to guarantee and secure the contact rights of the remaining parent.³⁴

The Permanent Bureau finally suggested that experts might want to consider the need for further comparative study to be undertaken and whether a working group should be established to consider the possible options for future work.

National approaches to international family relocation

Experts proceeded to offer examples of the various methods of treating international family relocation cases under their relevant domestic law. Several experts indicated that relocation was subject to specific legislation in their domestic law. An expert from the United Kingdom (England and Wales) described the jurisprudential approach adopted in his jurisdiction. An expert from Venezuela explained that the courts seised considered many factors in addition to the best interests of the child. Many other experts stated that their national law did not contain such provisions, as relocation was considered not as an independent issue but as part

²⁹ Conclusion and Recommendation No 82 of the 2012 Special Commission (Part II).

³⁰ Conclusion and Recommendation No 80 of the 2012 Special Commission (Part II).

³¹ Conclusion and Recommendation No 81 of the 2012 Special Commission (Part II). During the adoption of the Conclusions and Recommendations, an expert from Switzerland asked for confirmation that it was the intention of the drafters of the paragraphs related to Article 13(1) b) that the issues to be addressed by a new guide to good practice would have a relatively wide scope, in particular focusing on 13(1) b) issues, but also including safety issues arising under the Convention. The Chair of the Special Commission and the Chair of the Drafting Advisory Committee confirmed that the intention was to recommend the development of a guide to good practice with a comprehensive focus.

³² See "Conclusions and Recommendations of the Fifth 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 and the practical implementation 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 (30 October – 9 November 2006)" (the "2006 Special Commission"), available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention", Conclusions and Recommendations Nos 1.7.4-1.7.5.

³³ The full text of the declaration is available on the Hague Conference website at < www.hcch.net > under "News & Events" then "2010". The presentations given during the Washington Conference were published in The Judges' Newsletter on International Child Protection, Special Edition No 1, International Judicial Conference on Cross-Border Family Relocation, 23-25 March 2010, Washington, D.C., 2010, available on the Hague Conference website at < www.hcch.net > under "Publications" then "Judges' Newsletter".

³⁴ See in relation to this topic the Transfrontier Contact Concerning Children – General Principles and Guide to Good Practice (Jordan Publishing, 2008), Sections 8.1-8.4, available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice".

of the broader issue of custody. An expert from Germany explained that if the parents shared custody of the child, the judge would deal with the relocation request by granting custody to one parent, in whole or in part.

The experts shared their experiences in connection with this issue, including who would bear the burden of convincing the decision-maker. A few experts explained that under the domestic law, the burden of proof was placed on the relocating parent who must show that the move is in the best interests of the child. The variety of national approaches was exemplified by the intervention of the expert of the United States of America, who explained that there was no consensus among the 50 states within the United States of America on most aspects of relocation cases, including the burden of proof. She underlined that trials were long and very difficult.

Despite these different approaches, the majority of experts stated that their domestic law required the relocating parent to obtain the consent of the other parent or, in the absence thereof, a judicial authorisation, before moving abroad with the child. Many experts explained that this requirement was due to the fact that parental authority was shared by both parents under their national law.

An expert from Israel indicated that the draft legislation which is being introduced in his jurisdiction provided for a preliminary notice of 90 days to be given by the parent wishing to relocate to the other parent. He noted that in case of disagreement, the dispute would be brought to mediation before being heard by a judge.

The majority of experts stated that the “best interests of the child” was the paramount consideration in relocation disputes. In this regard, many experts indicated that judges consider factors such as the desire of the parent to live abroad, the real motives for the move and the soundness of this project, the degree of involvement of each parent in the child's life, the agreements reached previously in relation to custody matters, the possibility for the child to maintain a meaningful relationship with both parents, the protection of the child from physical and emotional harm, and the views of the child. With regard to the last factor, an expert from Belgium indicated that in her jurisdiction, a child under 12 years of age was generally not questioned in order to avoid any conflict of loyalty.

An expert from New Zealand stressed that the broad discretion given to judges in his jurisdiction resulted in very varied outcomes and created legal uncertainty.

Several experts acknowledged that relocation decisions were the most difficult decisions a judge had to make, and that balancing the different interests was difficult. An expert from Belgium added that it was difficult to know how the child would adapt to the new environment and that, in such cases, there was no “good decision”.

A few experts noted recent developments in their national case-law. An expert from the United Kingdom (England and Wales) described the jurisprudential approach adopted in his

jurisdiction where the court generally grants permission to relocate unless it is contrary to the welfare of the child. He explained that there has been recently a significant softening of this traditional approach in order to reflect that in an increasing number of cases, custody of a child is shared. A few other experts described an opposite trend, explaining that since recent jurisprudential shifts, the parent who did not relocate could not easily prevent the other parent from moving.

Some experts noted that the polarisation of the parties made relocation cases difficult to settle through mediation. Other experts disagreed and insisted that mediation should not be excluded from the relocation issue.

An observer from International Parental Child Abduction Support Foundation (IPCAS) noted the abundance of social science research in the area which often reveals the serious consequences of international relocation for families. Various studies were cited, such as the research currently being undertaken by Professor Marilyn Freeman or by Dr Robert George of Oxford University, as well as the preliminary collaborative work currently being undertaken between experts in the United Kingdom and New Zealand.

Potential soft law instrument concerning handling of family relocation cases

The majority of experts did not support the development of a binding instrument on the issue of international family relocation. Many experts underlined that relocation was a matter of substantive domestic law and that a binding instrument would be outside the scope of the work of the Hague Conference.

A few experts added that it would be difficult to find, within the Hague Conference, a common standard of substantive law. An expert from the United Kingdom (England and Wales) affirmed that in reality there was only one principle, that of the best interests of the child, and that all other elements were simply factors to be weighed in the balance to reach a decision as to a particular child. He explained that it was this weighing of factors that would cause difficulties in finding common ground among different States.

Many experts described the Washington Declaration and Preliminary Document No 11 as very valuable sources of insight and guidance into the issue and encouraged their dissemination. A few experts suggested that the Washington Declaration be viewed as a basis for further development into a guide or general principles. An expert from the United Kingdom (England and Wales) emphasised that the Washington Declaration should be regarded as a “first step” rather than a completed exercise.

A few experts suggested that further work could be undertaken by an expert group to determine whether an instrument is necessary in this area but there was not sufficient support for an experts group. An expert from Switzerland underlined that the relocation issue should also be viewed within the context of all other topics under consideration, including

recognition and enforcement of mediated agreements and direct judicial communications.

Many experts underlined that although relocation is a domestic law issue, it has potential private international law implications. It was explained that relocation cases often raise the problem of the recognition and enforcement of contact agreements or decisions. In this respect, several experts recalled the importance of the 1996 Convention which notably provides for the advance recognition of parenting orders (Art. 24). Thus, many experts agreed that the 1996 Convention was the principle solution and supported greater participation in the 1996 Convention. An expert from the European Union added that within the European Union, the Brussels IIa Regulation (Council Regulation (EC) No 2201/2003 of 27 November 2003) provides helpful rules of jurisdiction in international relocation cases.

The Special Commission recognised that the Washington Declaration provides a valuable basis for further work and reflection.³⁵ Moreover, the Special Commission noted support for further comparative study being undertaken of the different approaches adopted in various legal systems to international family relocation in relation to private international law issues.³⁶ Finally, the Special Commission recognised the use of the 1996 Convention in international family relocation, and encouraged States that have not yet done so to consider ratification of, or accession to, the Convention.³⁷

6. Future of the Malta Process

The Permanent Bureau introduced the topic by recalling the history of the Malta Process as outlined in various Preliminary Documents prepared by it and the declarations issued by the three previous Malta Conferences.³⁸ It also acknowledged the activities of the Working Party on Mediation in the context of the Malta Process and welcomed its 'Principles for the establishment of mediation structures in the context of the Malta Process'.³⁹

The Permanent Bureau noted some desire to explore whether the initial "building blocks" in place to develop a "rule of law" between States could be further enlarged and developed outside of the context of mediation structures. There were different views on how to approach this: to create smaller

³⁵ Conclusion and Recommendation No 83 of the 2012 Special Commission (Part II).

³⁶ Conclusion and Recommendation No 84 of the 2012 Special Commission (Part II).

³⁷ Conclusion and Recommendation No 85 of the 2012 Special Commission (Part II).

³⁸ Such topic was briefly reviewed in Part I of the Sixth Meeting of the Special Commission. See: Prel. Doc. No 14 at paras 259-269. See also Prel. Doc. No 13 at paras 77-81; Prel. Doc. No 12 at paras 88-96; "Regional Developments", Prel. Doc. No 10 of October 2006, pp. 7-9; Info. Doc. No 8, pp. 1-14. All of these documents are available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings on the practical operation of the Convention".

³⁹ "The 'Principles for the establishment of mediation structures in the context of the Malta Process' and the accompanying Explanatory Memorandum", Prel. Doc. No 6 of May 2011, available on the Hague Conference website *ibid*, pp. 1-13. See also Conclusion and Recommendation No 60 of the 2011 Special Commission (Part I).

regional groups, to involve more non-Contracting States, to conduct projects relating to questions of jurisdiction and to examine other governmental structures. In this context, the Permanent Bureau sought input from States on how to move forward,⁴⁰ taking into account the value of the three declarations issued by the previous conferences in Malta and the possibility of supporting a Fourth Conference, to be held in late 2012 or early 2013.

The expert from Malta outlined the rapid progress and increasing number of States and institutions involved in the Malta Process and indicated that it would welcome holding a fourth Conference in Malta. Several experts and observers recognised the work done by the Working Party on mediation and welcomed a continued dialogue on the matter.

Several experts believed that the work to be undertaken should be more focused on assistance to particular States to address the problems between non-Contracting States to the Conventions and Contracting States. To this end, experts emphasised the need for concrete results and more commitment on the part of governmental entities, not just the judiciary. A number of other experts proposed the designation of Central Contact Points, including their extension to States not yet involved. Finally, a great number of experts supported the organisation of a Fourth Malta Conference.

The Special Commission agreed to support the continuation of the Malta Process, and encouraged greater involvement of government representatives in the Process.⁴¹

7. Report on the Services and Strategies provided by the Hague Conference in relation to the 1980 and 1996 Conventions

The Permanent Bureau introduced Preliminary Document No 12 which offered an overview of the services and strategies provided by the Hague Conference to support the practical operation of the 1980 and 1996 Conventions.⁴² It noted that some of these services had already been discussed during the 2011 Special Commission (Part I)⁴³ and briefly recalled the Conclusions and Recommendations reached at that meeting.⁴⁴ It then turned to the services which were not directly addressed during the 2011 Special Commission (Part I), namely the organisation of Special Commission meetings, conferences, seminars and trainings, responding to requests for assistance, INCADAT, INCASTAT, iChild and a new question concerning the role of the Permanent

⁴⁰ See Prel. Doc. No 12 of December 2011 at paras 105-108.

⁴¹ Conclusion and Recommendation No 86 of the 2012 Special Commission (Part II).

⁴² This document summarised the comments about services received from States in response to Prel. Docs Nos 1 and 2 (Questionnaires I and II). See also Prel. Doc. No 13, paras 82-87.

⁴³ See Prel. Doc. No 14 in the following areas: developing guides to good practice (paras 165-168), developing handbooks and implementation checklists (paras 169-176), maintaining country profiles for the 1980 Convention (paras 30-32), developing and updating standard forms (paras 26-29) and facilitating and supporting direct judicial communications (paras 196-215).

⁴⁴ Conclusions and Recommendations Nos 10, 14, 19, 21-27, 38(a) and (c), 40, 52-55, 58-59, 66, 68 and 72 of the 2011 Special Commission (Part I).

Bureau in monitoring and ensuring compliance with the 1980 and 1996 Conventions. It invited experts to give their views particularly on the latter question, bearing in mind the financial constraints and limited resources available.

Many experts expressed their general appreciation for the work of the Permanent Bureau, particularly in relation to the encouragement of co-operation between States and the promotion of accessions to the 1980 and 1996 Conventions.

A significant number of experts supported the post-Convention services provided by the Hague Conference, which aim to promote the effective implementation and practical operation of the 1980 and 1996 Conventions. Experts emphasised the importance of the Permanent Bureau's work in organising seminars, meetings, conferences and trainings at a national, regional and global level, especially between the judiciary. Several experts also expressed appreciation for the maintenance of the Hague Conference's website and the databases of INCADAT and INCASTAT. One expert commented that the completed Country Profiles for the 1980 Convention are very useful tools.

Various experts thanked and encouraged the continued work of the Latin American Regional Office. Other experts welcomed the establishment of an Asia Pacific Regional Office in the Hong Kong Special Administrative Region of the People's Republic of China.

In relation to the idea of the Permanent Bureau taking a stronger role in monitoring compliance with the Conventions, several experts expressed their reservations regarding the idea, which they feared would have an impact on the traditional, neutral position of the Permanent Bureau.

Consideration was also given to the role of the Permanent Bureau in responding to requests from governments, Central Authorities, lawyers and individuals. Some experts indicated that the Permanent Bureau should not deal with requests from individuals and should only respond to Central Authority requests. The Permanent Bureau reminded experts that the responses to requests from individuals represent only a portion of its work and that it generally refers individuals to the relevant Central Authorities (or other competent authority, in the case of non-Contracting States). It also mentioned that it is working on a Frequently Asked Questions (FAQ) section on its official website to attempt to reduce the number of requests for information received from individuals.

Various experts noted that given the limited nature of available resources, the Permanent Bureau should prioritise its services.

The Special Commission recommended that the Permanent Bureau continue its work in supporting the effective practical operation of the 1980 and 1996 Conventions. In particular, it was recommended that the Permanent Bureau should encourage regional activities, including conferences, seminars and trainings, where requests for assistance are received from individuals, provide general information concerning

the relevant competent authority(ies), and consider ways to enhance the effectiveness of Special Commission meetings to review the practical operation of the 1980 and 1996 Conventions.⁴⁵ It further supported the continued work of the Latin American Regional Office and the development of a Regional Office in the Asia Pacific region.⁴⁶

INCADAT (The "International Child Abduction Database")

The Permanent Bureau recalled the Conclusions and Recommendations of the 2006 and 2011 (Part I) Special Commissions⁴⁷ where the Special Commission had welcomed the efforts of the Permanent Bureau in relation to the use and the development of information technology systems in support of existing and draft Hague Conventions in the areas of legal co-operation and family law. These Conclusions and Recommendations encouraged Member States to collaborate actively with the Permanent Bureau in the development and maintenance of these systems and to explore possible sources of funding. The Permanent Bureau thanked the many States which had supported these efforts by contributing to the Conference's supplementary budget, as well as the other partners for their contributions.

The Permanent Bureau briefly summarised the history of INCADAT which was established in 1999 in order to provide accessibility for all Convention actors and users to leading decisions rendered by national courts in respect of the 1980 Convention. It noted that INCADAT currently contains summaries of more than 1000 decisions from more than 40 jurisdictions in English and French and, to a large extent, in Spanish. It further indicated that in April 2010, a new version of INCADAT was launched introducing, amongst other new features, a "Case Law Analysis" section regarding key topics of the 1980 Convention.

The Permanent Bureau stated that it was working on the enlargement of INCADAT's coverage and, in this respect, would like to increase the number of leading decisions from already represented States, as well as to extend the database to include case law from not yet represented Contracting States. It also noted the importance of building and servicing a stable and reliable network of INCADAT "Correspondents" (i.e., suitably qualified persons around the globe who could contribute case summaries to INCADAT) and the need to hold an INCADAT Correspondents meeting in The Hague. The Permanent Bureau highlighted that all these initiatives involve an allocation of resources which is increasingly difficult within the Permanent Bureau.

The Permanent Bureau noted that the overwhelming majority of responses to Questionnaire I⁴⁸ indicated

⁴⁵ See Conclusion and Recommendation No 87 of the 2012 Special Commission (Part II).

⁴⁶ See Conclusion and Recommendation No 88 of the 2012 Special Commission (Part II).

⁴⁷ See Conclusion and Recommendation No 1.1.16 of the 2006 Special Commission and Conclusion and Recommendation No 56 of the 2011 Special Commission (Part I).

⁴⁸ See Prel. Doc. No 12 at para. 46.

that INCADAT was a very helpful resource and stated that it was particularly valuable for judges and lawyers in practice. It reminded experts that INCADAT could never be an exhaustive resource on case-law under the 1980 Convention. It underlined that the database was a resource offered to all, for free, and that comparisons with commercial databases were therefore unrealistic, bearing in mind the huge resources such databases have at their disposal.

An expert from Switzerland highlighted the importance of having accurate information placed online, so as to provide a reliable tool. An expert from Germany encouraged quicker uploading of decisions suggested by States to INCADAT's editorial team. Other experts noted that INCADAT illustrated that States still had fundamental differences in interpreting and implementing the 1980 Convention and emphasised the importance of INCADAT for achieving the uniform interpretation and application of the 1980 Convention. An expert from the United Kingdom highlighted its benefits, practical effectiveness and further commended the work of the INCADAT Legal Consultant, Professor McElevay.

Many experts highlighted the usefulness of INCADAT and expressed their support for its maintenance. An expert from the United States of America supported the recommendation from the 2011 Special Commission (Part I) concerning exploring the possible extension of INCADAT to 1996 Convention cases.⁴⁹ However, an expert from Germany disagreed on the latter proposal, due to financial constraints and the increased difficulty of the subject matter. Various experts expressed the need for a greater allocation of resources to the database.

⁴⁹ See Conclusion and Recommendation No 56 of the 2011 Special Commission (Part I).

The Permanent Bureau invited Professor Peter McElevay, INCADAT Legal Consultant, to discuss the revisions and additions made to INCADAT, the new version of which was launched in April 2010. He began his report by reminding experts that the core objective of INCADAT was to make available the case law of as many jurisdictions as possible, in order to promote the uniform interpretation and application of the 1980 Convention. He stressed that INCADAT cannot guarantee a uniform interpretation of the Convention: that is a matter for the courts themselves. INCADAT simply makes the information available. He explained that decisions of particular importance were included and that these were neutrally selected. He highlighted that INCADAT was a free service which could not provide the same level of sophistication offered by commercial databases. He indicated that the summaries annexed to the decisions only presented the facts, the outcome and the reasoning of the courts in a concise, carefully examined and neutral manner. He added that the name of the summary's author was supplied and that a link to the text of the original decision was included wherever possible.

He noted that so far efforts to recruit correspondents had not generated a significant contribution of summaries. He encouraged greater cooperation in this matter. He noted the future launching of an online module that would facilitate the transfer of decisions from correspondents to the editorial team. He also indicated that a new edition of the Correspondents' Guide would soon be available. He then referred to the new feature of the "Case Law Analysis" section of the database. Finally, he stressed that despite very limited resources, INCADAT was a tool of high quality.

The Special Commission took note of Professor McElevay's report on INCADAT which stressed that future improvements to INCADAT are subject to available resources.⁵⁰

⁵⁰ See Conclusion and Recommendation No 89 of the 2012 Special Commission (Part II).



Group picture taken in front of the Peace Palace of participants to Part II of the Sixth Meeting of the Special Commission on the Practical Operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention, 27 January 2012

8. Conclusions and Recommendations

Adopted by the Sixth Meeting of the Special Commission (Part II)

Recognition and enforcement of agreements

76. Recognising that, in the course of international child disputes, the parties may enter into agreements settling their dispute, the Special Commission recommends that exploratory work be undertaken to identify legal and practical problems that may exist in the recognition and enforcement abroad of such agreements, taking into account the implementation and use of the 1996 Convention.
77. To this end, the Special Commission recommends that the Council on General Affairs and Policy consider authorising the establishment of an Expert Group to carry out further exploratory research, which would include identification of the nature and extent of the legal and practical problems in this area, including, specifically, jurisdictional issues and would evaluate the benefit of a new instrument in this area, whether binding or not.

Direct judicial communications

78. The Special Commission supports that consideration be given to the inclusion of a legal basis for direct judicial communications in the development of any relevant future Hague Convention.
79. In relation to future work, the Special Commission recommends that the Permanent Bureau:
- promote the use of the Emerging Guidance and General Principles on Judicial Communications;
 - continue to encourage the strengthening and expansion of the International Hague Network of Judges; and
 - maintain an inventory of domestic legal bases relating to direct judicial communications.

Article 13(1) b) of the 1980 Convention, including allegations of domestic and family violence

80. The Special Commission notes that the evaluation of the evidence and the determination of the grave risk of harm exception (Art. 13(1) b)), including allegations of domestic violence, are an exclusive matter for the authority competent to decide on the return, having due regard to the aim of the 1980 Convention to secure the prompt and safe return of the child.
81. The Special Commission recommends that further work be undertaken to promote consistency in the interpretation and application of Article 13(1) b) including, but not limited to, allegations of domestic and family violence.
82. The Special Commission recommends that the Council on General Affairs and Policy authorise the

establishment of a Working Group composed of judges, Central Authorities and cross-disciplinary experts to develop a Guide to Good Practice on the interpretation and application of Article 13(1) b), with a component to provide guidance specifically directed to judicial authorities, taking into account the Conclusions and Recommendations of past Special Commission meetings and Guides to Good Practice.

International family relocation

83. The Special Commission recognises that the Washington Declaration⁵¹ provides a valuable basis for further work and reflection.
84. The Special Commission notes support for further work being undertaken to study and gather information concerning the different approaches adopted in various legal systems to international family relocation, in relation to private international law issues and the application of the 1996 Convention.
85. Recognising the value of the 1996 Convention to international family relocation, States that have not yet done so are encouraged to consider ratification of or accession to the Convention.

The Malta Process

86. The Special Commission supports the general continuation of the Malta Process and a Fourth Malta Conference and suggests that future emphasis be placed on the involvement of government representatives in the Process.

The services and strategies provided by the Hague Conference on Private International Law in relation to the 1980 and 1996 Conventions

87. The Special Commission recommends that the Hague Conference on Private International Law, through its Permanent Bureau, continue its current work to support the effective practical operation of the 1980 and 1996 Conventions and, in this regard, the Permanent Bureau should:
- focus on the promotion, implementation and effective practical operation of the 1980 and 1996 Conventions;
 - encourage regional activities including conferences, seminars and training;
 - where requests for assistance are received from individuals, provide general information concerning the relevant competent authority(ies); and
 - consider ways to enhance further the effectiveness of Special Commission meetings to review the practical operation of the 1980 and 1996 Conventions.

⁵¹ Resulting from the International Judicial Conference on Cross-Border Family Relocation held in Washington, D.C., United States of America from 23 to 25 March 2010, co-organised by the Hague Conference on Private International Law and the International Centre for Missing and Exploited Children, with the support of the United States Department of State.

88. The Special Commission notes the strong support for the continuing work in strengthening the Latin American Regional Office and in developing a Regional Office in the Asia Pacific region.
89. The Special Commission takes note of the report of Professor McEleavy (INCADAT Legal Consultant) which, in answering concerns expressed as to the quality of the database, stressed that continued enhancements are being made to INCADAT but that future improvements are subject to available resources.
90. The Special Commission takes note of Information Document No 7 on the expansion of INCASTAT and acknowledges that work should continue subject to supplementary funding.
91. The Special Commission welcomes the continuing work on iChild carried out by the Hague Conference and WorldReach Canada.
92. The Special Commission agrees that the Hague Conference will not continue its work on the model consent to travel form (Prel. Doc. No 15) and that the Permanent Bureau should inform ICAO of this decision.

Judicial Communications

This volume of The Judges' Newsletter features extracts of annual reports of the Dutch Office of the Liaison Judge – International Child Protection (BLIK) (1 January 2011 – 1 January 2012), the German Members of the International Hague Network of Judges (1 January 2011 – 31 December 2011), and the Office of the Head of International Family Justice for England and Wales (1 January 2011 – 31 December 2011). Articles from other Members of the International Hague Network of Judges on their judicial communication experiences and practices are always welcome additions to The Judges' Newsletter. If you would like to share your experiences through The Judges' Newsletter please do not hesitate to contact the Permanent Bureau.

The Dutch Office of the Liaison Judge International Child Protection (BLIK)

Report from 1 January 2011 to 1 January 2012

1. Introduction

The following article is a summary of the Report on the activities of the Dutch Office of the Liaison Judge International Child Protection (BLIK) from January 2011 to January 2012. A first presentation of BLIK's activities was made in Volume XV of the Judges' Newsletter.

BLIK has performed the duties of a liaison judge since its creation on 1 January 2006. It has since then acquired a position of permanent importance as a centre of expertise and an advisory body in the field of international child protection for judges in the Family Divisions of Dutch District Courts. It is a mainstay of the Family Division of the District Court of The Hague which over the years has heard a large number of cases relating to aspects of private international law.

2. Developments in 2011

2.1 Continuation of cross-border mediation

The report begins by discussing the developments in 2011. One of them is the continuation of the use of cross-border mediation in international child abduction cases. The procedure was developed in the pilot mediation programme which took place in 2009 and 2010, and was presented in the previous issue of the Judges' Newsletter (Volume XVIII).

Those involved in the mediation process have managed to make considerable progress in speeding up the return application procedure. Pre-trial court hearings have clearly contributed to the quality of full court hearings and speedy case processing times. In the majority of cases in which a full court hearing took place, a decision was given directly after the hearing. Further, in several cases a full court hearing was not necessary since the parents had reached a settlement during the mediation which was arranged at the pre-trial hearing. In cases in which no full settlement could be reached, the positive outcome was that

parents tried to get on speaking terms with each other again and aimed to come to an amicable settlement of their disputes after having battled each other fiercely for years. Mostly, this ultimately resulted in a partial settlement, the arrangements for which were laid down in a partial agreement or mirror agreement. In 2011 the District Court of The Hague heard twenty-six return applications. In sixteen cases a pre-trial review hearing took place and, of these, fourteen cases were referred to mediation. In three of these cases, however, mediation did not actually take place. Six out of eleven cases referred to mediation resulted in full settlements. In these cases arrangements concerning the child's place of residence, his or her contact with the non-resident parent and his or her upbringing were laid down in a settlement agreement, after which the Central Authority withdrew the pending return application.

In view of the success of mediation and pre-trial hearings, the District Court of The Hague will continue with pre-trial court hearings and referrals to mediation in international child abduction cases in 2012, the cost of which will be partially funded by the Ministry of Security and Justice. Parties entitled to free legal aid will be requested to pay an income-related fee for the cross-border mediation. Parties not qualifying for free legal aid may be eligible for subsidised mediation.

2.2 Preliminary draft amendment

Another important development in 2011 was that the Dutch Parliament approved proposed amendments to the Dutch International Child Abduction Implementation Act and the Dutch International Child Protection Implementation Act.

One amendment is the concentration of jurisdiction at first instance. As of 1 January 2012, the District Court of The Hague will have sole jurisdiction to hear return applications under the 1980 Hague Convention, and consequently jurisdiction on appeal will lie with the Court of Appeal of The Hague. Appeal to the Dutch Supreme Court in return cases has been limited as of 1 January 2012 to appeal in cassation on a point of law.

The amended Implementation Act now also sets out that the first instance decision will suspend any appeals lodged, unless the court decides otherwise in the child's best interest, either on request or on its own initiative.

Finally, as of 1 January 2012 the Central Authority no longer has powers of legal representation for the left-behind parent in international child abduction cases under the 1980 Hague Convention. The Central Authority now has a mediating role in child abduction cases. If parents fail to reach a settlement they are referred to an attorney who in turn may present the case to the court.

2.3 Coming into force of the 1996 Hague Child Protection Convention

The 1996 Hague Child Protection Convention⁵² came into force for the Netherlands on 1 May 2011 after ratification

⁵² 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.

by the Netherlands on 31 January 2011. It replaces the 1961 Hague Convention concerning the powers of authorities and the law applicable in respect of the protection of infants in relations between its Contracting States. BLIK has received many questions about possible conflicts between the 1961 and the 1996 Hague Conventions in cases where parental responsibility was granted before or after the coming into force of the 1996 Convention.

3. The legal framework

Chapter 2 of the report presents the legal framework in which BLIK operates: the 1980 Hague Convention on the Civil Aspects of International Child Abduction; the 1980 European Custody Convention;⁵³ the Brussels IIa Regulation;⁵⁴ the 1996 Hague Child Protection Convention; the Dutch International Child Abduction Implementation Act and the Dutch International Child Protection Implementation Act.

4. The duties and activities of BLIK

Chapter 3 outlines the duties and activities of BLIK, whose main task is to support the Liaison Judges in the performance of their duties. The Liaison Judge serves as a contact point for Dutch judges who hear child abduction cases or other cases involving aspects of international child protection, and who want to contact a foreign judge, as well as for foreign judges who want to contact a Dutch judge in this respect. BLIK also serves as a help desk and knowledge centre for Dutch judges and runs a website which is only available to the judiciary.

5. Cases handled by BLIK

Chapter 4 gives an overview of the cases handled by BLIK. In 2011 twenty-six return applications and three other cases involving aspects of international child protection were filed before the District Court of The Hague. The Court also rendered seven decisions in cases that had been initiated in 2010, six of which were return applications. Out of the 26 return applications, the parties chose mediation in fourteen cases, but in three cases the mediation never took off. In four cases mediation did not result in a settlement, in one case a partial settlement was reached which was laid down in a mirror agreement. Mediation resulted in full settlements between the parents in six abduction cases, after which return applications were withdrawn. Liaison requests were made to BLIK by three foreign judges and one Central Authority, all from Member States of the European Union. The BLIK Help desk answered 12 information requests by Dutch District Courts. The Liaison Judges and other staff members of BLIK attended eight conferences and international meetings in 2011.

⁵³ European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children of 20 May 1980.

⁵⁴ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

6. Other

Finally, the report also provides information in chapters 5 and 6 concerning the staff and finances of BLIK. For a complete version of the report, we invite you to contact BLIK at Liaisonrechter.internationale.kinderbescherming@rechtspraak.nl

The German members of the International Hague Network of Judges

Report from 1 January 2011 to 31 December 2011

Sabine BRIEGER

Judge at the District Court Pankow/Weissensee

Martina ERB-KLÜNEMANN

Judge at the District Court Hamm

1. Introduction

This article is a summary of the Report on the activities from January to December 2011 of Sabine Brieger and Martina Erb-Klünemann, the two German members of the International Hague Network of Judges (IHNJ). Ms Brieger was appointed as second German member of the IHNJ on 20 June 2011. Both judges are also members of the European Judicial Network in civil and commercial matters (EJN), but the report only concerns their activities as part of the IHNJ.

The IHNJ is more and more widely known in Germany. The German courts with special jurisdiction according to the International Family Law Procedure Act (Internationales Familienrechtsverfahrensgesetz) are mostly familiar with the IHNJ and make frequent use of it. The two German members of the IHNJ also regularly take an active part in the biannual Hague Child Abduction Convention seminar organized by the German Federal Office of Justice for the 22 specialised Family courts and the regional appeal courts (Oberlandesgerichte) in Germany.

On the other hand, the over 620 German Family Courts without special jurisdiction often do not know about the IHNJ or the work of its German members. Several initiatives are currently being undertaken in order to disseminate information about the IHNJ and the EJN more widely.

Up to now, the requests made to the German members of the IHNJ were predominantly from other German colleagues (outgoing requests). The overall feedback was very positive and most Judges described this service as being very useful and were very thankful for the help provided.

2. The activities of the German members of the IHNJ

2.1 Establishing connections

The main task of the members of the IHNJ is to provide help and information to the German and foreign judges who face

questions with regard to a specific family law case involving an international element and who turn to the German members of the IHNJ. This work is guided by the Recommendations developed by the “Joint Conference of the European Commission and the Hague Conference on Private International Law” (Brussels, 15-16 January 2009) and by the “Sixth Meeting of the Special Commission on the practical operation of the 1980 and 1996 Hague Conventions” (The Hague, 1-10 June 2011).

A typical case starts with a telephone enquiry from a German Judge. If needed, the German member of the IHNJ explains her role and helps to formulate the questions to be sent to the foreign judge. The German member of the IHNJ also draws attention to the question of the involvement of the parties and providing information to them, as well as to the proper filing of all information concerning the request with the member of the IHNJ. The request is then sent to the foreign member of the IHNJ, usually by email. Knowing other members from the IHNJ personally, through meeting at conferences for example, has proven very helpful and an accelerating factor. So far, all contacted German and foreign judges have agreed to direct judicial communications. Typically, the foreign member of the IHNJ will give the German member of the IHNJ the contact information of the foreign judge. The German member of the IHNJ will then get in touch with the foreign judge, as most German judges wish that the answer to their request would also go through the channel of the German members of the IHNJ, mostly for language reasons.

The German members of the IHNJ received 37 requests in 2011 (compared to 13 in 2010), mostly from German courts (29 requests). The requests mainly concerned the United States of America, Switzerland, Turkey, and the United Kingdom. Most requests were dealt with within one day. The requests which involved establishing contact with a foreign judge were dealt with within 4 days at most.

The cases in which a foreign member of the IHNJ could be contacted were dealt with the most efficiently, which shows the importance of designating a member of the IHNJ in all countries.

The cooperation with the German Central Authority as well as with some other contacted Central Authorities was always very good and mutually beneficial. Central Authorities could for example sometimes provide help where no member of the IHNJ had been designated in the other country.

2.2 Seminars and conference

The German members of the IHNJ are regularly invited to and participate in seminars and conferences in Germany and abroad on the topic of international child protection and direct judicial communications. Participation in these conferences is also important in order to exchange practical experiences and meet other Network Judges or otherwise interesting contact persons. Ms Erb-Klünemann had the chance in June 2011 to participate as a member of the German delegation at Part I of the Special Commission on the practical operation of the 1980 and 1996 Hague Conventions, which was certainly a highlight of 2011.

2.3 Building and maintaining contacts

Participating in international seminars and conferences is a great way to get to know personally more and more colleagues from the IHNJ and “unofficial” liaison judges from all over the world, as well as German and foreign judges, members of Central Authorities, government offices, the Permanent Bureau, NGOs and academics in the area of international family law.

There are synergies between the IHNJ and the EJM and it is therefore highly recommended, as expressed in paragraph 8 of the Recommendations of the Joint Conference of the European Commission and the Hague Conference on Private International Law, to designate the same judge or judges to both the IHNJ and the EJM, as is the case in Germany.

3. Instruction sheet

An instruction sheet was developed in order to ensure quick and easy processing of information requests. This instruction sheet is reproduced at the end of this article.

Instructions concerning direct judicial communications

On the basis of the Recommendations of the “Joint Conference of the European Commission and the Hague Conference on Private International Law”, 15-16 January 2009, Brussels

You have contacted the Judicial Networks with a request for support in establishing a contact abroad.

As German member of the IHNJ we will endeavor to help you, together with our foreign colleagues. To this end, we need the following information from you, preferably by e-mail:

1. Please share your own exact contact details including telephone number and e-mail address.
2. Explain shortly the facts of the case which form the background of your request. Give as many details as possible concerning any ongoing foreign proceedings, including the name of the court, the date and the file number.
3. Please be as specific as possible when framing your questions.
4. Indicate who, according to you, should answer these questions.

If your question is a general one concerning foreign law or procedure, the foreign member of the IHNJ may well be in a position to directly give you a general answer.

If you would like to contact the competent judge abroad, please inform us accordingly and share all the information you have in order to identify the judge. If available, please give us the judge's name, the exact denomination of the court and its address, and any other contact details, as well as the file number of ongoing proceedings.

5. Which means of direct judicial communication would you prefer? Please answer the following questions:
 - a. Would you like as far as possible to communicate

- directly with your foreign colleague? Which foreign languages do you speak?
- b. Or would you like that all communications go through the member of the IHNJ?
6. When do you need an answer to your questions?

Please note that the attempt to establish contact and undertake direct judicial communication must be done in a transparent way. It is therefore recommended to inform the parties and to record all related information and documents in the case file.

We will inform you as quickly as possible about the progress of our efforts.

The German members of the European Judicial Network in civil and commercial matters and of the International Hague Network of Judges.

The Annual Report of the Office of the Head of International Family Justice for England and Wales: A Brief Summary

by Victoria Miller

The 2011 Annual Report of the Office of the Head of International Family Justice for England and Wales (hereinafter "the Office") was published in April 2012.

Since the Office's creation in April 2005 it has delivered both the objectives of the Head of International Family Justice and a service to judges and practitioners both within the jurisdiction and in other jurisdictions transiently troubled by a pending case with an English dimension. The Office is effectively a helpdesk for international family law in England and Wales, in particular handling requests to establish judicial contact between an English court and foreign court in a given case. Its role is to support cross border judicial collaboration and to enhance the expertise necessary for handling the large number of cases relating to aspects of international family law. The aim: to speed up the unwieldy judicial and administrative processes that cause even more heartbreak when, say, the child is in one country and the agonised parent is left behind.

Direct judicial communications, via the Office, have delivered excellent results for families across the globe. Lord Justice Thorpe, the Head of International Family Justice for England and Wales, has dedicated a great deal of time and effort to ensuring effective worldwide judicial collaboration and is, to the outside world, the visible representative of our Family Justice System. As a result of Lord Justice Thorpe's hard won contacts, many of which are personal, following meetings at international conferences, we are able to make diplomatic contact with judges from other jurisdictions. It is these relationships that have generated the mutual confidence and trust required to ensure a growing worldwide commitment to the facilitation of International Family Justice.

Year on year the Office has seen a significant rise in the number of requests for its liaison function, namely requests to establish judicial communications between an English court and a foreign court. When the Office was created in 2005 we had just 3 cases, in 2008 it was 50, in 2010 it was 92 and in 2011 it rose to 180, a 96% increase on 2010. The 180 cases concerned 51 jurisdictions across the globe. 83% of the cases referred to the Office were from an internal source (we class requests as internal when they come from the judiciary, practitioners and government departments within the jurisdiction). 59% of the requests for assistance came from practitioners, often directed by the Judge. Those cases concerned a variety of matters including child abduction, relocation and care proceedings. The request is usually acknowledged within 24 hours, a communication is then sent to the requisite International Hague Network Judge or European Judicial Network Judge and, on average, a response is received from the Network Judge within 12 days.

As found in previous years, more cases concerned Europe than any other part of the world with 75 cases in total. This amounts to 42% of the total number of cases referred to the Office in 2011, a figure which has grown significantly from the 26% and 25% recorded in 2008 and 2010 respectively. This may, in part, be as a result of economic migration and free movement of persons within Europe.

So far this year (up to 21st June 2012) we have had 142 new requests for judicial liaison in relation to specific cases. If this pattern continues unabated it will lead to 300 new cases in 2012. A 67% increase on 2011. What the figures in this summary do not illustrate is the number of cases that we are still assisting with from previous years. At present there are 38 cases from 2011 alone that the Office is still assisting with. Therefore the Office has assisted with at least 180 cases so far this year. Below are a few examples of the type of cases that we assisted with 2011.

Case A

The English High Court was hearing an Anglo-Norwegian child abduction case concerning two children, both girls, aged 6 and 3. The father was Norwegian and the mother was English. The mother brought the children to the UK by stealth in September 2010 – an admitted wrongful removal. The only defence raised was under Article 13(b) on the basis that a return would impact adversely upon the mother's health and consequently upon the children. An adult psychiatrist advised that the mother was suffering from an Adjustment Disorder which was likely to worsen if she were required to return to Norway unless appropriate measures were put in place to protect her from real or perceived threat. A number of specific interventions were suggested by the psychiatrist so as to ameliorate the situation and mitigate any negative effects upon the mother's mental health if she returns to Norway. The lawyers were working upon securing the father's agreement to a number of protective measures.

Several questions arose in relation to the matter and the English High Court Judge hearing the case requested the assistance of the Office in finding out information from the

International Hague Network Judge in Norway. The questions sent were as follows:

1. How long would an application for relocation take to conclude on the basis that both sides would desire a speedy process?
2. Could the mother apply for interim permission, pending the final hearing, to relocate to England?
3. Are the courts in Norway able to provide the mother with protective orders as appropriate? For example, injunctions restraining the father from harassment and so on.
4. What view would the courts in Norway take of undertakings offered to the English court so as to ensure a 'soft landing' for the return?
5. Would the parents be entitled to legal aid to litigate the relocation question as well as residence and contact?

The questions were dispatched along with a case summary and the liaison judge provided a detailed response within 24 hours of the request being sent. Following this information the English court made a return order which was subsequently upheld by the Court of Appeal and the Supreme Court.

Case B

The case concerned two children who travelled to Kenya for their mother's funeral and were subsequently wrongfully retained by their maternal grandparents. On the application of the father the children were made Wards of the English court and various orders were made for their return, all of which had been thwarted. It was hoped that with the agreement of the maternal grandparents the children would be returned. However the grandparents obtained a Guardianship order in the children's court in Nairobi.

The Office contacted the International Hague Network Judge in Kenya and asked for her assistance in bringing to the attention of the Kenyan judge the English court orders. The Network Judge held a meeting with the Director of Children's Services in Kenya and requested the implementation of the English court orders. Soon after the Director obtained an order from the children's court for the return of the children and the children were returned.

The speed with which we were able to resolve these two cases is illustrative of the excellent service that the Office provides and the collaboration fostered between network judges.

The Office has also seen a rise in the number of general enquiries, namely handling of requests for advice from Family Division judges and enquiries from academics, the Ministry of Justice and foreign Ministries, the Central Authority, Foreign and Commonwealth Office and charitable organisations. This may, in part, be as a result of the continuing growth in international family litigation. 65% of children born in London in 2010 had at least one foreign parent. This figure illustrates the potential for significant future growth in international family litigation.

The year 2011 was an important one for the Office. In addition to the large number of cases and enquiries referred to the

Office, between us Lord Justice Thorpe and I attended thirty conferences and seminars worldwide. In particular we both attended the Sixth Special Commission in The Hague to review the practical operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction and 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. Three and a half weeks were spent debating a wide range of issues, the product of which went to the General Affairs Committee in April 2012.

What is clear from the Report is that at the highest levels of the judiciary across the world, much work is being done behind the scenes for the benefit of many transnational families, speeding up responses, cutting delays and assisting implementation of transnational court orders.

The full report can be accessed on www.judiciary.gov.uk.

Case studies extracted from the Annual Report of the Office of the Head of International Family Justice for England and Wales (pp. 26-28)

Anglo-German child abduction

The case concerned two children who had been removed from Germany to England by their mother without their father's consent. The Office received a request from the English High Court Judge hearing the matter to contact the IHNJ in Germany regarding the meaning of a custody order that the German court had made prior to the mother removing the children. Essentially the question we asked the IHNJ in Germany was whether it was unlawful under German law, having regard to provisions of the German custody order, to change the place of residence of the child from a place in Germany to a place in England without the permission of the father or appropriate German court.

Within thirty minutes we received a response and an answer to our query; which was essentially that the mother needed the consent of the father or the court before relocating. The English court then requested an Article 15 declaration from the German court. The Office sent a further request to the IHNJ in Germany and in less than two weeks we had an Article 15 declaration. The speed in which we were able to resolve this is exceptional and no doubt down to the excellent collaboration between our two jurisdictions.

Anglo-Polish care case

This case concerned two children who were previously habitually resident in Poland but were removed from Poland by their father and uncle and brought to England. They had travelled by road and rail through Europe, including Italy and France before arriving in England. Within four

days of their arrival they were taken into police protection having been found in a make-shift shelter near live train tracks. It soon became clear that there were ongoing care proceedings concerning the children in Poland and, although the father and uncle had the consent of the mother to take the children out of Poland, they did not have the consent of the Polish social services department who had a care order for the children.

Unfortunately communication between the English and Polish social services had broken down and it was proving difficult to establish who had jurisdiction in the matter; whether the children should be returned to Poland and under what conditions. The uncertainty surrounding their legal status was, consequently, delaying making any meaningful plans for their future. Therefore the Office was contacted or assistance. We were able to reach our judicial contact point in Poland to find out information as to the present position under Polish law and set the wheels in motion for collaboration between our two agencies.

The tendency of dangerous parents to bolt when social services are exercising legitimate protective powers is all too common and much to be disregarded by demonstrating that there is no gain in flight. Judicial collaboration is required for the protection of children at significant risk of harm. We are seeing a rising number of these types of cases being referred to the Office, mostly involving Eastern-European countries.

Anglo-Australian child abduction

One of the IHNJ in Australia (there being two) requested the assistance of the Office in providing information about any criminal proceedings taken against the mother in England for removing her child to Australia without the consent of the father, the mother's lawyers having indicated to the judge that if any criminal or like proceedings have been instituted against the mother, they will seek that any return of the child (with the mother) be conditional on those proceedings being abandoned or criminal sanctions being nullified.

Within 24 hours the Office provided the judge with the information. A further request was then made for assistance in listing a hearing in the English court to consider whether

consent orders can be made to facilitate the return of the child to England. The undertakings which were sought were given by the father and were threefold. First, that he will not abuse or assault the mother. Second that he not be an informant or complainant in any criminal or like proceedings against the mother arising out of her wrongful removal of the child from the UK or seek that she be prosecuted in that respect. Third, that the father not cause any proceedings to be taken ex parte the mother or to be allocated a first or preliminary hearing date which is earlier than 16 days after the day upon which the child departs Australia. The Office liaised with the applications judge and the father's lawyers in the UK and a Consent Order was made by the English Court within 24 hours of the request being made.

The mother is now applying to relocate to Australia.

Anglo-German custody case

The case concerned a child born in Germany to unmarried parents who subsequently came to live in the UK and married. The mother appointed her mother as guardian of the child in her will. Soon after the mother died and the grandmother started proceedings concerning the child in the English court, fearing that the father may relocate with the child to Germany. The father then removed the child to Germany without the grandmother's knowledge or consent and without the courts permission and applied to the German court for sole custody. The Judge hearing the matter in Germany did not know whether she had jurisdiction under Article 8 of Brussels IIa and therefore requested the assistance of the Office for information in relation to a number of questions concerning English law on parental responsibility: What was the effect of the mothers will; who had rights of custody when the child was removed; did the father have the right to decide to move to Germany on his own or did he have to ask the grandmother or the court; what is the effect of the Wardship order made by the English court; is there a case pending in the English court; is the child still a Ward of court; and is it a case of Article 19 (2) of Brussels IIa?

The Office, having had sight of the papers in the case, was able to provide the German judge with answers to her queries which resulted in a swift conclusion to the case.

Regional Perspectives⁵⁵

The views expressed are those of the authors, not of the Permanent Bureau or the Hague Conference or its Member States.



The Work of the Hague Conference on Private International Law and its Relevance for the Caribbean Region and Bermuda

Hamilton, Bermuda, 21-24 May 2012

From 21 to 24 May 2012, 125 representatives from more than 20 States and overseas territories, international organisations as well as members of the Permanent Bureau of the Hague Conference on Private International Law (the Hague Conference) met in Bermuda to learn about the Hague Conference in general and some of the multilateral treaties that have been concluded under its auspices (Hague Conventions), as well as to discuss the relevance of these instruments to the Caribbean Region and Bermuda.

The seminar was organised by the Government of Bermuda, in collaboration with the Permanent Bureau, and with the support of the Commonwealth Secretariat.

The seminar covered each of the main areas of private international law addressed by Hague Conventions, namely (i) child protection, family and property relations, (ii) legal cooperation and litigation, and (iii) commercial, torts and financial law.⁵⁶

⁵⁵ The Permanent Bureau welcomes comments and different viewpoints.

⁵⁶ The following Conventions were discussed: Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions (Form of Wills Convention); Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents (Apostille Convention); Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Service of Process Convention); Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (Taking of Evidence Convention); Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (Child Abduction Convention); Convention of 25 October 1980 on International Access to Justice (Access to Justice Convention); Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition (Trust Convention); Convention of 1 August 1989 on the Law Applicable to Succession to the Estates of Deceased Persons (Succession Convention); Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (Intercountry Adoption Convention); 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 (Child Protection Convention); Convention of 5 July 2006 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary (Securities Convention); Convention of 30 June 2005 on Choice of Court Agreements (Choice of Court Convention); Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (Child Support Convention); and the Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations (Protocol to the Child Support Convention).

Participants appreciated the opportunity to learn, exchange information and experiences and benefited from the participation of recognized international experts such as Lord Justice Mathew Thorpe, Head of International Family Law, Court of Appeal of England & Wales; Professor David McClean, University of Sheffield (UK); Justice David Hayton, Caribbean Court of Justice, and Justice Wade Miller from the Supreme Court of Bermuda and President of the Commonwealth Magistrates' and Judges' Association.

The Regional Conference proved successful in promoting the Hague Conference work and demonstrated the usefulness of Hague Conventions to jurisdictions in the Caribbean Region. The Regional Conference unanimously adopted some useful conclusions, which are reproduced here below (also available at: <http://www.hcch.net/upload/concl2012bermuda.pdf>).

Conclusions and Recommendations

NOTING the diversity of legal traditions in the Region;

RECOGNISING that greater economic and social integration in the Region has led to an increase in cross-border transactions and cross-border movements of families and children in particular, as well as the resulting interactions between legal systems;

RECOGNISING that the Hague Conventions reinforce legal certainty and predictability, as well as the protection of individual rights and legitimate commercial interests;

RECOGNISING that 12 of the 16 Caribbean Community (CARICOM) jurisdictions are members of the Commonwealth, the participants invite the Commonwealth Secretariat to assist and support networking between the Commonwealth jurisdictions in the region in order to facilitate the cross border protection of children and families, to promote legal certainty and predictability in commercial and financial matters, and to encourage judicial and administrative co-operation through the Hague Conventions;

ACKNOWLEDGING the great benefit of co-operation between the Hague Conference and the Commonwealth in areas of common interest, as confirmed by the present seminar;

RECOGNISING the valuable opportunity that the seminar afforded to participants to:

- a) gain a better understanding of the Hague Conventions and their relevance, implementation and practical operation in the Region;
- b) appreciate how the Hague Conventions serve as a basis for furthering co-operation, communication and co-ordination between legal systems;
- c) understand the interactions between the Hague Conventions and the implementation of international human rights, as well as the promotion and facilitation of international trade and investment;
- d) exchange experiences and ideas with respect to the Hague Conventions and their relevance in the region; and

EXPRESSING the wish for similar seminars to be convened in the Region on a regular basis in the future;

The Participants

In relation to the Seminar and the Hague Conference in general:

1. Resolved to share information obtained from the Bermuda Conference with the relevant authorities of the States in the Region, as well as regional and international organisations and professional associations;
2. Recommended that each State in the Region consider becoming a member of the Hague Conference;
3. Acknowledged that membership greatly enhances the possibility of receiving technical assistance from the Permanent Bureau in relation to the implementation and practical operation of the Hague Conventions;
4. Welcomed the fact that a number of States in the Region have already become Contracting States to various Hague Conventions, and that a number of these Conventions apply to overseas territories in the Region by way of extension;
5. With respect to Conventions which are not yet applicable, encouraged each jurisdiction to actively consider the merits and assess the means of joining the Conventions by way of ratification or accession, or by having them extended to the jurisdiction, and in that respect were pleased to hear that a number of States are in the process of finalising internal procedures to join some of the Conventions discussed;
6. Encouraged each State in the Region that is a Contracting State to a Hague Convention to promote the acceptance of that Convention among other States in the Region, and, where applicable, to co-operate with the Hague Conference in its periodic reviews of the Conventions' practical operation; and
7. Encouraged Contracting States, as well as overseas territories to which Conventions apply, to share experience and harmonise the operation of these Conventions, with a view to further increasing their efficiency.

In relation to the Child Abduction Convention and Child Protection Convention:

8. Reaffirmed the relevance of these Conventions in the Region and the importance of international co-operation for the protection of children moving across borders;
9. With respect to the Child Abduction Convention, emphasised the need for swift proceedings in order to meet the Convention's objectives and ensure the safe return of children;
10. With respect to the Child Protection Convention, acknowledged the complementary nature of this instrument to the Child Abduction Convention; and
11. Recognised the value of the Hague International Network of Judges in facilitating the practical operation of both Conventions, and encouraged States and territories which have not yet done so to designate members of the Network; in this respect, the participants were delighted to hear about the upcoming formal designation of the

Hon. Mrs. Justice Norma Wade-Miller of the Supreme Court of Bermuda and President of the Commonwealth Magistrates' and Judges' Association, as member of the Network; participants also encouraged direct judicial communication among courts in the Region to the furthest possible extent.

In relation to the Inter-country Adoption Convention:

12. Recognised that intercountry adoption should only occur in accordance with the subsidiarity principle and only in the best interests of the child, and be seen as a shared responsibility of the 'States of Origin' and the 'Receiving States', to ensure the successful operation of the Convention;
13. Noted the importance of the Convention in combating the abduction, sale, and trafficking of children; and
14. Acknowledged the importance of the Convention as the appropriate legal and administrative framework for intercountry adoption.

In relation to the Child Support Convention and its Protocol:

15. Recognised the importance of the Convention as the appropriate administrative and legal framework for the recovery of child support and other forms of family maintenance; and
16. Acknowledged the role of the Convention in inviting reforms to existing systems for the recovery of child support and other forms of family maintenance.

In relation to the Form of Wills Convention:

17. Acknowledged that the Convention helpfully provides for rules favourable to upholding the formal validity of wills (*favor testamenti*) and that it enables a testator to dispose of his/her estate in a single will (i.e. avoiding the need to execute multiple wills depending on the location of property);
18. Also acknowledged that the Convention addresses the need for uniformity in decisions on the formal validity of wills across different States; and
19. Recognised the importance of the Convention as an important and relevant treaty in international estate planning.

In relation to the Succession Convention:

20. Recognised that the Convention represents an important international and mutual accommodation of both civil law and common law and practice, and that it offers pragmatic and workable solutions; and
21. Recognised that the Convention allows for effective succession planning.

In relation to the Apostille Convention:

22. Recognised that the Convention greatly facilitates the fast and efficient authentication of public documents emanating from one Contracting State to be produced in another Contracting State;

23. Recognised the role of the Convention in establishing a regulatory environment that is more conducive to foreign direct investment, as highlighted by the World Bank;
24. Recognised the increasing acceptance and use of electronic Apostilles (e-Apostilles) and electronic registers of Apostilles (e-Registers) as part of the electronic Apostille Program (e-APP), and encouraged newly acceding States as well as other Contracting States to implement this program as a means to further enhance the secure and effective operation of the Convention; and
25. Encouraged Contracting States as well as other interested States in the Region to participate in the next meeting of the Special Commission on the practical operation of the Apostille Convention, which is scheduled for 6-9 November 2012.

In relation to the Service of Process Convention and Taking of Evidence Convention:

26. Noted that these Conventions greatly simplify and expedite the transmission of requests for service of process and taking of evidence abroad, and facilitate the prompt execution of those requests;
27. With respect to the Taking of Evidence Convention, expressed the wish that relevant formalities be completed to bring the Convention into effect in all overseas territories of Contracting States; and
28. Recognised that the designation of Central Authorities is critical to the smooth and effective operation of each Convention.

In relation to the Access to Justice Convention:

29. Noted with interest the importance and broad application of the Convention to cross-border matters, including equal treatment of nationals and residents of Contracting States in respect of legal aid, security for costs, and the enforcement of cost orders.

In relation to the Trust Convention:

30. Acknowledged the importance of the Convention as an effective means to have both commercial and family trusts recognised abroad, in particular in jurisdictions where the concept of trusts is not part of domestic legislation.

In relation to the Choice of Court Convention and ongoing work on the recognition and enforcement of foreign judgments:

31. Acknowledged the benefits to cross-border business of respecting agreements to settle disputes, which arise from international commercial transactions, before the court chosen by the parties;
32. Acknowledged the importance of the Convention as an instrument to reinforce the international litigation system, in parallel to the international arbitration system, in particular the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards;
33. Acknowledged the importance of harmonised rules on

the recognition and enforcement of foreign judgments, at the regional and global level; and

34. Welcomed the decision to resume work at the Hague Conference towards common solutions on the recognition and enforcement of foreign judgments, and encouraged States in the Region to engage in this work to the furthest possible extent.

In relation to the Securities Convention:

35. Recognised the need for uniform conflict of laws rules that comport with the reality of how securities are held and transferred today (i.e., by electronic book-entry debits and credits to securities accounts);
36. Recognised further that the legal uncertainty as to the law governing the perfection, priority and other effects of transfers imposes significant friction costs on even routine transactions and operates as an important constraint on desirable reductions in credit and liquidity exposures; and
37. Acknowledged that the Convention reflects a pragmatic approach and provides legal certainty and predictability for cross-border securities transactions, thus facilitating the international flow of – and access to – capital.

The participants of the Bermuda Seminar recognised the event's success and acknowledged the exceptional organisation of the Seminar by the Government of Bermuda, in particular the Parliamentary Registry. They warmly thanked the Bermuda Government, the Permanent Bureau, and the Commonwealth Secretariat for their generosity and efficiency in staging this important and significant event. The participants also thanked the administrative and support staff for their untiring work and invaluable contribution to the success of this Seminar.

Intercountry Adoption in Africa

In just a few short years, the number of intercountry adoptions of African children has dramatically increased. Between 2003 and 2011, at least 35,000 children from Africa were adopted outside the continent, representing a 300% increase in an eight-year period.⁵⁷ These numbers are growing exponentially as other regions which were traditionally a "source" for children to adopt (Southeast Asia, the ex-USSR, Latin America) are reinforcing their legislation and encouraging national alternative care solutions for children deprived of family protection. The number of prospective adoptive parents who wish to adopt young and healthy children remains steady in the West. Being confronted with other countries' encouragement of intercountry adoption of special needs children, these candidates for adoption are turning to the African continent.

⁵⁷ See the report drawn up by the African Child Policy Forum: "Africa: The New Frontier for Intercountry Adoption", 2012. Available at < www.africanchildinfo.net > and Pr. Peter Selman (Newcastle University, UK) in "The Rise and Fall of Intercountry Adoption in the 21st Century: Global Trends from 2001 to 2010", in J. Gibbons and K. Rotabi "Intercountry Adoption : Policies, Practices and Outcomes", 2012, Farnham, Ashgate.

In many African countries, child protection systems are comparatively weak and legislation is obsolete, incomplete and / or improperly implemented. This increases the difficulty in preventing and combating the abduction, sale of and traffic in children for the purposes of adoption. This calls for a greater vigilance and respect for the principles of international treaties, such as the 1989 United Nations Convention on the Rights of the Child, the 1990 African Charter on the Rights and Welfare of the Child, and the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. Measures aimed at reversing this trend and promoting respect for the rights and interests of children in intercountry adoption include providing better information to the biological families before obtaining their consent to adoption, and an improved implementation of the principle of subsidiarity, including the reinforcement of family preservation services, the development of domestic adoption and the implementation of the safeguards contained in the 1993 Convention.

The African actors are gradually reaffirming their will to deal with questions related to child protection in a manner that is congruent with their values and traditions, by promoting informal alternative care measures and by avoiding systematic recourse to intercountry adoption for African children deprived of parental protection. Further, it is important to note that in numerous cases, filiation by full adoption does not reflect the true wishes of the biological parents who would like to maintain a bond with their child, as in the case with so-called 'simple adoptions'.

The fundamental principles and safeguards contained in the 1993 Convention were emphasised by the participants in two recent pan-African conferences, in which the Permanent Bureau of the Hague Conference on Private International Law was invited to participate. At both the Conference of sub-Saharan African Francophone Countries on the strengthening of families and alternative care measures (Dakar, Senegal, 10

and 11 May 2012) ("Conférence des pays francophones d'Afrique subsaharienne sur la mobilisation autour du renforcement de la famille et de la prise en charge alternative") and the 5th International Policy Conference on the African Child, held in Addis Abeba (Ethiopia) at the end of May 2012, there was significant awareness of the urgent need to regulate intercountry adoptions and a growing interest in the 1993 Convention, widely acknowledged to be the legal instrument of reference with regard to intercountry adoption. In this respect, the "Guidelines for Action on Intercountry Adoption of Children in Africa", drafted by the African Child Policy Forum and a group of international experts and presented in Addis Abeba, provide practical guidance and translate the rules and principles contained in the relevant international instruments, including the 1993 Convention.

To date, 13 sub-Saharan African States are Parties to the 1993 Convention. Other African countries are keenly interested, and to this end, the Permanent Bureau, through its Intercountry Adoption Technical Assistance Programme (ICATAP), participated in an awareness-raising seminar on the 1993 Convention in Cotonou (Benin) on 12 and 13 June 2012. Other States, such as the Ivory Coast, Mozambique, Namibia, Ghana and Lesotho, have approached the Permanent Bureau to request technical assistance aimed at helping them become Parties to the 1993 Convention and implement the principles and safeguards promoted by the Convention. These countries are aware that a simple ratification of or accession to the treaty would be ineffective without an in-depth national reform of their structures and procedures relevant to intercountry adoption. There remain formidable challenges for the African continent, notably in deterring improper material gains and monitoring the role of private actors in the adoption process. Faced with frequently inadequate resources or deficient child protection systems, the political will of African States to protect children deprived of parental protection and to encourage co-operation amongst stakeholders remains decisive.

Intercountry Adoption Workshop

Dakar, Senegal, 27-30 November 2012

As a follow up to the first Francophone Seminar held in The Hague (the Netherlands) in June 2009, the Permanent Bureau of the Hague Conference organised a four-day workshop on the implementation and operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, in partnership with the Governments of Belgium, Canada, France, Italy, the Netherlands and Switzerland. This meeting was intended for the Francophone States of origin in Africa and the Caribbean which are already Parties to the Convention (Burkina Faso, Burundi, Guinea, Madagascar, Mali, Mauritius, Rwanda, Senegal and Togo), and those which have shown an interest in becoming a Party to the Convention (Benin, Congo, Côte d'Ivoire, the Democratic Republic of Congo, Haiti and Niger).

The workshop took place in Dakar (Senegal) from 27 to 30 November 2012 and gathered more than 60 experts from Central Authorities and the judiciary from 15 States of origin and 6 receiving States (Belgium, Canada, Italy, France, the Netherlands, Switzerland and the United States of America), international organisations (UNICEF) and non-

governmental organisations (African Child Policy Forum, EurAdopt, International Social Service, Save the Children).

The aim of the workshop was to bring together experts and judges responsible for intercountry adoptions in different States of origin in order to increase their knowledge of the Convention, to promote its effective implementation within these States and to encourage a constructive and close co-operation with receiving States. The work programme included the sharing of experiences and good practices in a wide range of fields related to intercountry adoption. Presentations on the Convention and on its implementation in certain States were alternated with time for discussion of specific 'case hypotheticals' with the objective of promoting exchanges on questions which are often sensitive.

The workshop also encouraged States to become Party to the Convention (where this was not already the case) and to put in place the necessary structures and procedures in order to guarantee that intercountry adoptions take place in the best interests of the child.

The participants adopted "Conclusions and Recommendations" aimed at improving the practices in each of these States and underlined their wish to hold this type of meeting regularly.



Participants to the Francophone Workshop on the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Adoption, Dakar, Senegal, 30 November 2012

International Child Protection Projects

European Judicial Training Network (EJTN) – Seminar on Child Abduction

Prague, Czech Republic, 10-11 May 2012

On 10 and 11 May 2012, the European Judicial Training Network (EJTN) held its first seminar in the area of civil justice co-operation. "Family Law and Child Abduction" was the subject of the seminar which took place in Prague and was attended by 54 Judges representing all 27 Member States of the European Union.

The EJTN is the principal platform and promoter for the development, training and exchange of knowledge and competence of the European Union judiciary. Founded in 2000, EJTN develops training standards and curriculum, co-ordinates judicial training exchanges and programmes and fosters co-operation between European Union national training bodies. Since 2012, the EJTN has added the area of civil justice co-operation to its activities.

The one and a half-day seminar was divided in three parts. Part 1 focused on the legal framework and case law of the European Court of Justice and the European Court of Human Rights concerning child abduction. Presentations were made on: the 1980 Hague Child Abduction Convention and the Brussels IIa Regulation; rights of custody; the concept of habitual residence; grave risk (Art. 13 b) of the 1980 Hague Child Abduction Convention); preliminary measures in the State of origin. Part 2 consisted of workshops in which participants discussed case studies. During Part 3 presentations were made of different institutions, programmes and tools that can assist judges whilst handling return proceedings. Presentations covered: the role of Central Authorities; Network Judges and direct judicial communication; mediation; the International Child Abduction Database (INCADAT); and, the Schengen Information System (SIRENE).

The seminar was a success thanks to a well organised and experienced EJTN and well qualified speakers.

2nd Meeting of the Central American Judicial Council (CJC)

Antigua, Guatemala, 26-27 June 2012

The Central American Judicial Council (CJC) is an official body of the System of Central American Integration (SICA). Its membership is composed of the Presidencies of the Supreme Courts of: Costa Rica, El Salvador, the Dominican Republic, Guatemala, Honduras, Nicaragua,

Panamá, and Puerto Rico. The general purpose of the CJC is the integration of policies in matters of Application of Justice and Legal Certainty, through the establishment of permanent coordination channels and the adoption of institutional commitments.

The Liaison Legal Officer of the Hague Conference for Latin America, Mr. Ignacio Goicoechea, was invited to the meeting to present the Hague Children's Conventions and Legal Cooperation Conventions. The presentation was welcomed by participants who realized the importance of developing international judicial cooperation and that the work of the Hague Conference in this field would be an effective means to harmonize solutions at both the regional and global level. With regards to the Hague Conference, it was agreed that the CJC should explore the best way to follow up on these matters so as to facilitate the analysis and possible incorporation of these Conventions in the region.

Finally, it should be noted that the CJC runs a Judicial Training Centre for Central America and the Caribbean (Centro de Capacitación Judicial para Centroamérica y el Caribe), which was represented at the meeting, and showed interest in the Hague Conference's work as well as in exploring possibilities for cooperation with its International Centre for Judicial Studies and Technical Assistance.

The 2012 International Family Justice Judicial Conference

Hong Kong (28-31 August 2012)

Conclusions and Recommendations

From 28 to 31 August 2012, some 100 judges and other experts from Australia, the Bahamas, Bangladesh, Canada, China (mainland and Hong Kong Special Administrative Region, "SAR"), Cyprus, Germany, India, Indonesia, Ireland, Israel, Japan, Kenya, Republic of Korea, Malaysia, Netherlands, New Zealand, Nigeria, Pakistan, Papua New Guinea, Philippines, Singapore, Sri Lanka, Thailand, Trinidad and Tobago, Uganda, United Kingdom, United States of America, Zimbabwe, including experts from the Hague Conference on Private International Law, met in China (Hong Kong SAR) to discuss issues of international family justice, including the role of judges in resolving cross-border family disputes and, in particular, cross-border disputes involving children.

WHEREAS the participating jurisdictions:

- a) Recognise as forerunners to this Conference, the "Judicial Conference for Common Law Jurisdictions" held in Washington D.C., USA in 2000 and the "International Family Justice Judicial Conference for Common Law and Commonwealth Jurisdictions" held at Cumberland Lodge, England in 2009 and reiterate their commitment to continuing this process;
- b) Acknowledge the continuing increase in the number of

cross-border family disputes and the importance of the role of the judiciary in resolving these cases;

- c) Consider the building of mutual respect and understanding between judges as crucially important for the development of international family justice;
- d) Recognise that it is important to provide continuity in the participation of the judiciary in international family justice and that, as a result of several participants announcing their intended retirement from the judiciary or from their positions in international family justice, it will be important to ensure their succession by judges specialised in international child protection matters.

IT IS CONCLUDED THAT:

1. In accordance with Resolution (1) of the 2009 International Family Justice Judicial Conference for Common Law and Commonwealth States, the participating jurisdictions shall hold the fourth tri-annual International Family Justice Judicial Conference for Common Law and Commonwealth States in 2015. For this purpose, a Standing Working Group shall be established forthwith in order to undertake the preparations for the next Conference. It is recognised that the host country has a discretion to invite States which are not common law or Commonwealth States in their region to these meetings.
2. Adequate resources, including administrative and legal resources, should be made available to support the work of judges in international family justice. In addition, where appropriate, States should consider establishing an office to support the work of the judiciary in international family justice and, in particular, those designated as a contact in their jurisdiction for cross-border disputes, including Members of the International Hague Network of Judges (hereinafter, the "IHNJ").
3. A meeting of the IHNJ, which will coincide with the 15th anniversary of its launch, will take place at Cumberland Lodge from 17 to 20 July 2013. The meeting, for which a provisional agenda has been developed, is a welcome initiative which will enable judicial participants to discuss important issues of international family justice and cross-border judicial co-operation.
4. The future opening of the Asia Pacific Regional Office of the Hague Conference on Private International Law will be extremely valuable to promote the work of the Organisation and to assist States in the region with their consideration and implementation of the Hague Conventions. The strong presence of delegates from the Asia Pacific region at this Conference reinforces the importance of this initiative.
5. The presentations from India, Pakistan and Bangladesh in the Indian sub-continent, none a State Party to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ("the 1980 Hague Convention"), demonstrate a positive judicial approach to the resolution of cross-border family disputes in these jurisdictions which is welcomed by the Conference, as is their continuing positive consideration of accession to the Hague Children's Conventions.
6. The importance and utility of the Hague Children's Conventions for the African region should continue to be emphasised. The participants from Africa underline that the work of the Hague Conference on Private International Law in promoting the Hague Children's Conventions in the region should continue to receive support.
7. The 1980 Hague Convention requires swift procedures at all stages of an application for the return of a child: that is, at the Central Authority, trial court and any appeal stages. The participants expressed interest in the new Dutch timeframe which provides for a 6 week maximum time-limit for each of their three stages.
8. The continuing increase in the number of international family disputes across the globe highlights the importance 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 ("the 1996 Hague Convention") and similar bilateral protocols in international family law. In this respect, participants encourage those States which are not yet Party to the 1996 Hague Convention to give, or continue to give, their active consideration to it.
9. States that have not yet designated a judge to the IHNJ are encouraged to do so forthwith. The interest expressed by a number of States represented at the meeting in designating a judge to the IHNJ is welcomed.
10. States that are not yet Party to the 1980 or 1996 Hague Conventions are actively encouraged to designate a judge to the IHNJ.
11. The benefit to international child protection cases of direct judicial communications, in particular communications facilitated by Members of the IHNJ, has been demonstrated over many years. The practical experience shared during the meeting was considered to be extremely helpful to all participants. The wide dissemination of this experience internationally was encouraged.
12. The general endorsement given by the Sixth meeting of the Special Commission on the practical operation of the 1980 and 1996 Hague Conventions (Part I held from 1 to 10 June 2011, and Part II held from 25 to 31 January 2012) to the Emerging Guidance and General Principles for Judicial Communications is welcomed and judges are encouraged to refer to the Guidance and the General Principles where necessary in cases. The Guidance and General Principles should be disseminated as widely as possible internationally with a view to raising awareness of direct judicial communications generally and the safeguards available surrounding it.
13. The Central Authorities designated under the 1980 and 1996 Hague Conventions are encouraged to take a proactive view to their role under the Conventions and to fulfil their duties to the fullest extent. In this respect, Central Authorities are encouraged to provide all possible support to their International Hague Network Judge(s) where requested.
14. Where possible and appropriate, the executive should consult with the court(s) dealing with international family law matters on proposed legislation in this area which will affect the court(s).

15. Since Resolution (8) of the 2009 International Family Justice Judicial Conference for Common Law and Commonwealth States, there has been significant progress in the field of international family relocation, including the adoption of the "Washington Declaration" (resulting from The International Judicial Conference on Cross-Border Family Relocation, held in Washington D.C., USA, from 23 to 25 March 2010). The participants of this meeting see every merit in moving to a more certain system in order to resolve international family relocation disputes. The form of that system should now be given consideration. In this respect, and in light of paragraphs 83 to 85 of the Sixth meeting of the Special Commission on the practical operation of the 1980 and 1996 Hague Conventions, the conclusions of specialist academics in the field regarding guidelines, resolutions or presumptions for international family relocation are noted by the meeting. Future inter-disciplinary work in this field is encouraged.
16. The material produced as a result of this meeting will benefit the practice and procedure of the courts in the represented States. These materials will be made available electronically to participants in a form to be decided. Participants are encouraged to continue to produce relevant materials to Members of the IHNJ and other participants to the International Family Justice Judicial Conference for Common Law and Commonwealth States where relevant between the tri-annual Conferences.
17. The Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption ("the 1993 Hague Convention") instils principle into international adoption and properly regulates this sensitive area. States that are not yet Party to the 1993 Hague Convention are urged to actively consider ratification of, or accession to, this Convention.
18. The difficulties concerning the legal status of the children born as a result of international surrogacy arrangements and the broader concerns arising in respect of such arrangements, including the need to protect all parties to such arrangements from exploitation and abuse, and the need to protect the children born as a result of such arrangements, are apparent from the global jurisprudence. As a result, participants consider that there is a need to put in place regulation, at an international level, regarding international surrogacy arrangements. The meeting welcomes and strongly supports the work that the Hague Conference on Private International Law is doing in this field acknowledging the diversity in domestic laws.
19. Reaffirming the Conclusions at paragraphs 48 to 49 of the Sixth meeting of the Special Commission on the practical operation of the 1980 and 1996 Hague Conventions, and in light of the continuing jurisprudence from the European Court of Human Rights concerning the 1980 Hague Convention, participants voice concern that these judgments do not seem to appreciate the fundamental principles of this Convention.

9th German-Anglophone Judicial Conference

Thun, Switzerland (26-28 September 2012)

Chair Summaries and Conclusions

The **German-Anglophone Judicial Conference** emphasizes the importance of the following summaries by the session chairs:

Recent developments in family law (Lorenz Meyer)

On all levels and in all fields, family law looks much like a building site with especially a certain focus on custody rights. There is a tendency towards awarding joint parental custody to parents irrespective of their marital status. The length of proceedings is an essential topic: proceedings should be speedy, because children have a different perception of time than adults. That is an important consideration. While interim measures may bring temporary relief, final decisions on the merits take time. However, courts ought not to be exposed to exaggerated expectations, in particular in child abduction cases and in the State of abduction.

Diverging views were expressed as to what role sanctions should play where contact or custody rights are frustrated. Criminal measures (up to and including coercive detention) are problematical but may make sense in individual cases. Equally, it is felt that there is no sense in dispensing altogether with reactions to breaches of contact or custody orders. There are limits to what can be achieved by the imposition of pecuniary damages in this context, in particular where the defaulting parent is unable to pay. A view was expressed that it is useful for courts to have discretion to use a broad array of sanctions and tools.

Particularly in the field of custody rights, legal cultures continue to differ significantly throughout Europe. Efforts to harmonize legal regimes must take this into account.

HC 1980 and 1996: Challenges and potential (Lorenz Meyer)

The discussion reflects profoundly many aspects of the difficult relationship between the courts of the State of abduction and those in the State of origin. Open questions remain regarding the requirements of the ECtHR, which meet with both criticism and understanding. It is suggested that German and English speaking Judges from the ECtHR might be invited to a future meeting of this Conference.

International family mediation (Eberhard Carl)

The introductory paper highlights that - and how - decisions, even in proceedings under the Hague Abduction Convention can be focused on the interests of the individual child. This ought to be a central concern in mediation, but also for judges and others involved in this area. Judges play a

particularly important role in motivating parents towards mediation, but Central Authorities can also, at an earlier stage, be instrumental in making pre-trial mediation possible. Courts, the professionals involved as well as mediators need to study carefully the relevant international instruments and conventions. In this context, the new Swiss Federal Law concerning child abduction deserves particular attention because it empowers the courts to order mediation in Hague Convention abduction cases. Reports from practice have however highlighted the difficulties related to such powers, but many of these can surely be solved.

Nevertheless, unresolved questions remain regarding the international jurisdiction for, and (related to this) the international recognition of court-approved mediated agreements. Solutions in this field require flexibility, courage and new initiatives, in particular on the part of the courts.

Judicial Communication (Sabine Brieger)

In recent years, direct judicial communication has assumed an ever increasing importance. Discussion on this topic will surely continue. Its institutionalization is desirable in the interest of enhancing the trust of the parties and judges involved in the process. Direct judicial communication has a particular role to play in helping to comply with the six weeks requirement pursuant to the Brussels IIa Regulation and the requirement of speedy proceedings under the Hague Abduction Convention. Moreover, it is instrumental in the transfer of international jurisdiction pursuant to Art. 15 Brussels IIa and Art. 8 and 9 HC 1996 as well as in international relocation cases.

The official designation of liaison judges in the context of the Hague Conference is desirable since it ensures the identification of a live point of contact within the Contracting States of the Hague Abduction Convention and the Hague Child Protection Convention.

Liaison judges can in particular cases serve to provide practical advice based on personal expertise or to establish a cross-border contact.

Relocation - from theory to practice (Christine Miklau)

The introductory paper highlights that along with the child's best interests, parent autonomy is an important principle and consideration in cases of international relocation. It also cautioned against setting the status quo in family relations in stone. In addition, it suggested that the reflection on the subject take into account the relocation of the parent with whom the child does not live.

The country reports show that important legislative change is imminent in Switzerland and Austria in particular. As joint custody gets widespread, coupled with possibly significant limitations of the freedom of a parent (with whom the child lives) to relocate, a surge of cases is likely to flood the court system. In this context, it would be pretentious to generally

assume that courts are in a better position to take sound decisions than parents.

To sum up, hardly a topic in the international discussion is more closely linked to the daily concerns of families and couples than international relocation. Hence, it would be all the more desirable - the drawbacks of the Special Commission on the HC 1980 and 1996 notwithstanding - to encourage international discourse and exchange of experts coming from a variety of disciplines in order to possibly achieve a more uniform approach to the solution of the problem internationally.

Marital property regimes and prenuptial agreements (Henry Abbott)

All jurisdictions had different matrimonial property regimes. A common thread was that parties were increasingly anxious to make private arrangements for the ownership and division of property during the marriage and finally, at divorce. The most recent development in this area was the decision of the Supreme Court of the United Kingdom in the England and Wales Appeal in *Radmacher* allowing the consideration of a prenuptial agreement in divorce. These arrangements in most jurisdictions did not preclude the overall supervision of the Courts in relation to aspects of fairness and meeting of needs.

The need for parties to take advice on many of these arrangements to prevent unintended harmful consequences was highlighted.

Considerable discussion focused on the difficulties posed by judges having to decide matrimonial cases in accordance with foreign law and the pros and cons of a removal of such cases to a judge who could decide them in accordance with domestic law was canvassed.

The long awaited finalisation of the draft EU regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes of March 2011 (COM/2011/0126 final) directed the debate to consider challenges (and advantages) for the courts arising there under.

The prospect of a fast developing practical Court context arising from both speakers' contributions, and the extensive and vigorous discussions thereafter, pointed strongly to the need for the "Anglophone-Germanophone" to monitor this situation in detail, and address difficulties arising in future meetings.

As in previous conferences, the **9th German-Anglophone Judicial Conference** offered, in addition to the chair summaries set out above, a multiplicity of clarifying problem-analysis as well as approaches and solutions. Three deserve particular mention:

In the framework of the 1980 Hague Convention, the return remedy is not effective unless it is swift. The Conference observes the worldwide tendency towards longer return proceedings with concern.

In the case of lawful temporary international relocation the participants observe the need for clarification, in particular in relation to the legal consequences (especially habitual residence, the question of continuing international jurisdiction and the application of the Hague Child Abduction Convention).

The participants regret the economic restrictions which have been observed in the field of mediation procedures. In particular legal aid should be available at the least in international child issues.

Thun, 8 September 2012

Hague Conference Update

As usual, please visit our website < www.hcch.net > for further information on Hague Conference related matters.

Annual meeting of the Council on General Affairs and Policy of the Hague Conference (17-20 April 2012)

A short report

The Council on General Affairs and Policy (hereafter "the Council"), composed of all Members of the Hague Conference on Private International Law, has charge of the operation of the Conference. At its last annual meeting, held in The Hague on 17-20 April 2012, the Council addressed several areas relative to family law and provided the mandate for future work by the Permanent Bureau.

Conclusions and Recommendations (excerpts)

Review of activities of the Conference

1. The Council welcomed the activities of the Conference carried out by the Permanent Bureau since the last Council meeting (5-7 April 2011).

Ceremonies for signing and ratifying of certain Hague Conventions

2. The Council witnessed the deposit by the Ambassador of the Czech Republic of the instrument of ratification of the Convention of 13 January 2000 on the International Protection of Adults; and the signing by the Ambassador

of Serbia of the Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations.

Current work

Special Commission on the practical operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention

5. The Council welcomed the successful outcome of Parts I and II of the Sixth Meeting of the Special Commission on the practical operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention and took note of the Conclusions and Recommendations of the Special Commission.
6. The Council decided to establish a Working Group, composed of a broad range of experts, including judges, Central Authorities and cross-disciplinary experts, to develop a Guide to Good Practice on the interpretation and application of Article 13(1) b) of the 1980 Child Abduction Convention, with a component to provide guidance specifically directed to judicial authorities.
7. The Council also decided to establish an Experts' Group to carry out further exploratory research on cross-border recognition and enforcement of agreements reached in the course of international child disputes, including those reached through mediation, taking into account the implementation and use of the 1996 Convention. Such work shall comprise the identification of the nature and extent of the legal and practical problems, including jurisdictional issues, and evaluation of the benefit of a new instrument, whether binding or non-binding, in this area.
8. The Council supported the further work and acknowledged that should there be a need to prioritise resources, work on the Guide to Good Practice would receive preference.



Council on General Affairs and Policy of the Conference of April 2012,
(from left to right) Mr James Ding, Mr Paul Tsang and Justice Michael Hartmann, 18 April 2012

Working Party on Mediation in the context of the Malta Process

9. The Council welcomed the Report of the Working Party on Mediation in the context of the Malta Process, as presented by the Co-Chairs, Justice Jillani of Pakistan and Mr William Crosbie of Canada, as well as the direction for future work outlined by the Co-Chairs. The Council agreed that the Working Party continue its work on the implementation of mediation structures, with the expectation of a further report on progress to the Council in 2013.

Proposal to establish an Asia Pacific Regional Office for the Hague Conference on Private International Law in the Hong Kong Special Administrative Region of the People's Republic of China

14. The Council warmly endorsed the proposal to establish an Asia Pacific Regional Office for the Hague Conference on Private International Law in the Hong Kong Special Administrative Region of the People's Republic of China. The Council noted with gratitude that funding for the Office's operation was now ensured for an initial period of three years. The future directions and the question of the financial sustainability of the Office beyond this initial period will be decided by Council in light of a comprehensive evaluation.

Future work

Accessing the content of foreign law and the need for the development of a global instrument in this area

15. The Council took note of the Conclusions and Recommendations of the European Commission – Hague Conference Joint Conference on Access to Foreign Law in Civil and Commercial Matters held in Brussels, Belgium in February 2012. The Council decided that the Permanent Bureau should continue monitoring developments but not take any further steps in this area at this point.

The application of certain private international law techniques to aspects of international migration

20. The Council accepted that the Permanent Bureau would continue to explore, in consultation with interested Members and relevant international organisations, the potential value of using certain private international law techniques in the context of international migration.

Private international law issues surrounding the status of children, including issues arising from international surrogacy arrangements

21. The Council welcomed the preliminary report drawn up by the Permanent Bureau and mandated that the Permanent Bureau continue the current work under the 2011 Council mandate and further prepare and distribute a Questionnaire in order to obtain more detailed information regarding the extent and nature

of the private international law issues being encountered in relation to international surrogacy arrangements, as well as in relation to legal parentage or "filiation" more broadly. The Questionnaire shall seek views on the needs to be addressed and approaches to be taken. The Permanent Bureau is invited to present its final Report to the Council in 2014.

Recognition and enforcement of foreign civil protection orders: A Preliminary Note

22. The Council decided that the Permanent Bureau should circulate a Questionnaire to Members in order to assess the need and feasibility of an instrument in this area, and to obtain further information on existing legislation. The Permanent Bureau shall report to the Council in 2013.

Other topics

23. The Council invited the Permanent Bureau to continue to follow developments in the following areas:
 - b) jurisdiction, and recognition and enforcement of decisions in matters of succession upon death;
 - c) jurisdiction, applicable law, and recognition and enforcement of judgments in respect of unmarried couples;

Post-Convention services and activities

27. The Council noted the endorsement of the Emerging Guidance and General Principles for Judicial Communications by the Sixth Meeting of the Special Commission on the practical operation of the 1980 and 1996 Conventions (Part I) and invited their wide dissemination.
28. In relation to the 1993 Inter-country Adoption Convention, the Council noted the significant progress made on Accreditation and adoption accredited bodies: general principles and Guide to Good Practice as well as the preparations for the informal Experts' Group on financial aspects of inter-country adoption. The Council noted the importance of technical assistance in relation to the implementation of the 1993 Inter-country Adoption Convention and the lack of funding to continue the position of the Adoption Technical Assistance Programme Coordinator.
29. The Council welcomed the achievements of the Permanent Bureau in the areas of education, training and technical assistance in relation to the Hague Conventions.

Latest Developments in Latin America

Permanent Bureau

The Hague International Network of Judges has witnessed exponential growth in the Latin American region over the last several years. The Liaison Legal Officer has been visiting

Supreme Courts in the region, explaining the aims of the Network and the role of Network Judges in assisting with proper Convention implementation. In early 2005, no Network Judges had been designated in Latin America, whereas by the end of 2011, all Latin American States that were Parties to the 1980 Child Abduction Convention had designated Network Judges. Many of these Judges have contributed to the resolution of child abduction cases, providing advice to their colleagues in their home States and abroad and have actively promoted good practices and direct judicial communications in their jurisdictions.

From 23 to 25 February 2011, the Hague Conference—in coordination with the Inter-American Children's Institute and the Mexican Ministry of Foreign Affairs—organised the Inter-American Meeting of International Hague Network Judges and Central Authorities on International Child Abduction, held in Mexico City. Participants addressed the main obstacles to implementation of the Child Abduction Convention in their States and presented useful recommendations geared towards overcoming those obstacles. Participants also stressed the importance of urgent responses between Central Authorities; promoted the use of modern technologies; acknowledged the value of Hague Conference tools (including, among others, Guides to Good Practice, the Model Law on Procedure for the Application of the Conventions on International Child Abduction and INCADAT) as well as the International Network of Judges in improving the operation of the Convention; and urged the Hague Conference and Inter-American Children's Institute to develop training courses for Central Authorities and judges (conclusions of the meeting are available at <http://www.hcch.net/upload/temp/mex2011concl.pdf>).

The Sixth Meeting of the Special Commission to review the practical operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention was naturally the most important event in this field. The significant number of Latin American delegations at the meeting and their active participation and contributions deserve to be mentioned, and can be explained, to a considerable extent, by the intense preparatory work undertaken in the region in advance of the Special Commission. Such preparatory work included the Inter-American expert meeting of February 2011 (reported above) and various conference calls among Hague Network Judges and Central Authorities (organised and coordinated by The Hague Conference Regional Office in Latin America).

On January 28, 2012, the Latin American delegations who were in The Hague attending the second part of the Sixth Meeting of the Special Commission held a meeting to discuss the Hague Children's Conventions and possible actions to promote them and/or improve their operation in the Latin American region. The meeting was very helpful and as a result of the discussions, several conclusions were drafted. In summary, it is worth noting the increased interest shown in the region for the 1996 Child Protection and the 2007 Child Support Conventions. Participants requested support in the promotion and implementation of these instruments which they considered to be beneficial for the region. In particular, with regards to the 1996 Child Protection Convention, participants suggested that it would be important for States

that were studying the instrument to receive information about how other Latin American jurisdictions have dealt with arts. 8 and 9 given that the implementation of these articles may present certain challenges for the legal systems of the region. As for the 1980 Child Abduction Convention, the need to develop specific procedural regulations to meet the swift terms of the Convention was highlighted, and the use of the Inter-American Model Law in this regard was commended. Participants suggested that sharing experiences of States that have implemented good practices such as specific procedural regulations to apply the Convention and/or that have concentrated jurisdiction in a few judges would be helpful to persuade other jurisdictions of the benefits of following such examples. In relation to the International Hague Network of Judges, participants suggested that there was a need to develop some kind of document which further explicates the role of the Hague Network Judge and the operation of Direct Judicial Communications.

The Intercountry Adoption Technical Assistance Program (ICATAP): An Update

Guatemala – The Permanent Bureau continues its co-operation with the authorities of Guatemala concerning the implementation and application of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption (hereinafter “the 1993 Hague Intercountry Adoption Convention”). At this moment Guatemala is seeking to reinforce the capacities of its authorities, through additional staffing and training.

The Chilean Central Authority on Intercountry Adoption provided technical assistance earlier this year to the Guatemalan Central Authority's (Consejo Nacional de Adopciones, CNA) multidisciplinary team in relation to the assessment of affective bonds developed between a child and the person(s) who take(s) care of him/her.

During a recent visit of the Hague Conference Liaison Legal Officer for Latin America, the Permanent Bureau discussed the need to resolve transition cases (which started under the old system) as a priority; and the possibility of starting a pilot project for the selection of a very limited number of adoption accredited bodies that would be able to assist a small number of prospective adoptive parents in the intercountry adoption of special needs children. After discussions with the relevant authorities and experts, it was decided that the Permanent Bureau will explore the possibility of collaboration on such pilot programme at the appropriate time. In addition, the Permanent Bureau will be in contact with CNA to evaluate if there is a need to provide further technical assistance in the form of training to the CNA and review of the CNA's internal regulations, and if it is the case, assess whether the Permanent Bureau would have the necessary resources to do so.

Cambodia – Intercountry adoptions are expected to resume in January 2013. Toward that end, and with the view to

increase safeguards to protect the best interests of children, the Permanent Bureau, with the support of UNICEF, has assisted authorities with the development of new adoption regulations (Prakas) on financial issues regarding adoptions and criteria on adoption accredited bodies. The Permanent Bureau is now discussing with UNICEF how to provide further training to the relevant authorities on the 1993 Hague Intercountry Adoption Convention.

Haiti – On 12 June 2012, the Haitian Parliament has voted in favour of the ratification of the 1993 Hague Intercountry Adoption Convention. The instruments of ratification remain to be deposited with the Government of the Kingdom of the Netherlands in order for the Convention to enter into force in Haiti. A Plan for technical assistance focusing on the legal and structural strengthening of the adoption system will be conducted by the Permanent Bureau in close collaboration with the Haitian authorities (and more especially the future Central Authority) and with the support of several receiving States, UNICEF and international experts.

Official opening of the Hague Conference on Private International Law Asia Pacific Regional Office in Hong Kong (13 December 2012)

On 13 December 2012, the Hague Conference on Private International Law celebrated the official opening of its new Asia Pacific Regional Office in Hong Kong. The Opening Ceremony took place in the Central District of Hong Kong

Island at the Government House, the official residence of the Chief Executive of the Hong Kong Special Administrative Region. Guests included the Secretary General of the Hague Conference, as well as a number of senior officials including the Chief Executive of the Hong Kong Special Administrative Region, Vice Minister of Foreign Affairs of the People's Republic of China, and the Secretary for Justice of the Hong Kong Special Administrative Region. Over 100 other distinguished guests, including Consuls General and representatives from over 30 countries and international organisations, also attended the event.

During the Opening Ceremony, speakers noted the role the new Asia Pacific Regional Office in Hong Kong would play in helping to increase awareness of the value of membership of the Hague Conference and in encouraging States in the Region to join Hague Conventions, which would benefit not only States in the region, but all countries connected to the Hague Conference throughout the world.

An increased Membership base in the Region would bring wider representation of a diverse range of legal traditions to the Hague Conference and help the Organisation develop new instruments better adapted to meet the needs of the Region. It will also assist in raising revenues, help to reduce expenses for the services already provided to State Parties in the Region, and facilitate ratifications or accessions to Hague Conventions by States in the Region.

The new Office in Hong Kong is the second Regional Office of the Hague Conference and the first in the Asia Pacific. The first Regional Office is located in Buenos Aires, Argentina, to serve Latin American States.



Official Opening Ceremony of the Hague Conference on Private International Law Asia Pacific Regional Office in Hong Kong, Central District, Hong Kong, 13 December 2012

The Hague Children's Conventions Status

The status of all the Hague Conventions is available on the website of the Hague Conference < www.hcch.net >, under "Conventions", then under the Convention in question, click "Status".

1980 Hague Child Abduction Convention

The Hague Conference welcomes the recent entry into force of the 1980 Hague Child Abduction Convention in **Lesotho** on 1 September 2012. Further, the Hague Conference is delighted to report that the **Republic of Korea** joined the 1980 Hague Child Abduction Convention as the 89th Contracting State. The Convention will enter into force in Korea on 1 March 2013.

The Convention has today 89 Contracting States. To check whether the Convention has entered into force between specific Contracting States, we invite you to consult the website of the Hague Conference (< www.hcch.net >) under the "Child Abduction Section", then "Contracting States".

1996 Hague Child Protection Convention

The number of Contracting States to the 1996 Hague Child Protection Convention continues to grow rapidly. The Hague Conference is very pleased to report that the **Russian Federation** and **Lesotho** are the most recent countries that acceded to the 1996 Hague Child Protection Convention. The Convention will enter into force in the Russian Federation and in Lesotho on 1 June 2013.

Furthermore, the Hague Conference welcomes the recent entry into force of the Convention in the **United Kingdom of Great Britain and Northern Ireland** on 1 November 2012. The Hague Conference is also pleased to announce that the Convention will enter into force in **Sweden** on 1 January 2013.

The Convention has today 39 Contracting States. To check whether the Convention has entered into force between specific Contracting States, we invite you to consult the website of the Hague Conference (< www.hcch.net >) under "Conventions", then "Status Charts".

1993 Hague Intercountry Adoption Convention

The Hague Conference is very pleased to announce that **Fiji** has acceded to the Hague Convention of 29 May 1993 on the Protection of Children and Co-operation in Respect of Intercountry Adoption on 29 April 2012. The Hague Conference is also delighted to report the accession of **Lesotho** on 24 August 2012. The Convention entered into force for Fiji on 1 August 2012 and for Lesotho on 1 December 2012.

89 States are today Parties to the Convention. To check whether the Convention has entered into force between specific Contracting States, we invite you to consult the website of the Hague Conference (< www.hcch.net >) under "Intercountry Adoption Section", then "Contracting States".

2007 Child Support Convention

The Hague Conference is delighted to announce that the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance will reach an important milestone in the New Year, entering into force on 1 January 2013, subsequent to the ratification of the Convention by two States. **Albania** was the second State to ratify the Convention in September of this year, following **Norway's** ratification in 2011. The Convention will enter into force in both Norway and Albania on 1 January 2013. **Bosnia Herzegovina** has also ratified the 2007 Child Support Convention and will become the third State Party to the Convention as of 1 February 2013. The European Union (6 April 2011), the United States of America (23 November 2007), Ukraine (7 July 2010) and Burkina Faso (7 January 2009) have also signed the Convention.

Members of the International Hague Network of Judges

With 47 jurisdictions represented by 58 judges, the International Hague Network of Judges is constantly growing. We are delighted to inform you that judges from the following countries have recently been designated as members of the Network: Austria, Bulgaria, Colombia, Guatemala, Singapore, United Kingdom (British Overseas Territories – Cayman Islands), and Trinidad and Tobago.

List as of 17 December 2012

ARGENTINA

Judge Graciela TAGLE, Judge of the City of Cordoba (Juez de la Ciudad de Córdoba), Córdoba

AUSTRALIA

The Honourable Chief Justice Diana BRYANT, Appeal Division, Family Court of Australia, Melbourne (alternate contact)

The Honourable Justice Victoria BENNETT, Family Court of Australia, Commonwealth Law Courts, Melbourne (primary contact)

AUSTRIA

Dr. Andrea ERTL, Judge at the District Court of Linz (Bezirksgericht Linz), Linz

BELGIUM

Ms Myriam DE HEMPTINNE, Magistrate of the Court of Appeals of Brussels (Conseiller à la Cour d'appel de Bruxelles), Brussels

BRAZIL

Judge Mônica Jacqueline SIFUENTES PACHECO DE MEDEIROS, Federal Judge – Federal Court of Appeals (Juiz Federal – Tribunal Federal de Apelações), Brasilia

With geographical responsibility for: the Federal District of Brasília and the Federal States of Acre, Amapá, Amazonas, Bahia, Goiás, Maranhão, Mato Grosso, Minas Gerais, Pará, Piauí, Rondônia, Roraima, Tocantins, São Paulo and Mato Grosso do Sul.

Judge Jorge Antonio MAURIQUE, Federal Judge – Regional Federal Court of the Fourth Region (Juiz Federal – Tribunal Regional Federal da 4ª Região), Porto Alegre, Rio Grande do Sul

With geographical responsibility for: Rio Grande do Sul, Santa Catarina and Paraná.

BULGARIA

Judge Bogdana JELIAVSKA, Vice President of the Sofia City Court, Sofia

CANADA

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

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

CHILE

Judge Hernán Gonzalo LÓPEZ BARRIENTOS, Judge of the Family Court of Pudahuel (Juez titular del Juzgado de Familia de Pudahuel), Santiago de Chile

CHINA (Hong Kong, Special Administrative Region)

The Honorable Mr Michael HARTMANN, Justice of Appeal of the Court of Appeal of the High Court, High Court, Hong Kong Special Administrative Region

The Honourable Judge Bebe Pui Ying CHU, Court of First Instance High Court, Principal Family Court Judge, Family Court - Wanchai Law Courts, Hong Kong Special Administrative Region

COLOMBIA

Doctor José Guillermo CORAL CHAVES, Magistrate of the Civil Family Chamber of the Superior Court for the Judicial District of Pasto (Magistrado de la Sala Civil Familia del Tribunal Superior del Distrito Judicial de Pasto), Pasto

COSTA RICA

Mag. Diego BENAVIDES SANTOS, Judge of the Family Tribunal, First Judicial Circuit (Juez del Tribunal de Familia, Primer Circuito Judicial), San José

CYPRUS

The Honourable Justice George A. SERGHIDES, Doctor at law, President of the Family Court of Nicosia-Kyrenia, Nicosia

CZECH REPUBLIC

Judge Lubomir PTÁČEK, Regional Court Ústí nad Labem, Branch Office in Liberec, Liberec

DENMARK

Judge Bodil TOFTEMANN, City Court of Copenhagen (Københavns Byret), Copenhagen

DOMINICAN REPUBLIC

Judge Antonia Josefina GRULLÓN BLANDINO, Court of Children and Adolescents, National District, Civil Chamber (Tribunal de Niños, Niñas y Adolescentes, Distrito Nacional Sala Civil), Santo Domingo

ECUADOR

Dr Arturo MÁRQUEZ MATAMOROS, Provincial Judge of the Court of Appeal of El Oro (Juez Provincial de la Corte de Apelaciones de Justicia de El Oro), Machala

EL SALVADOR

Lic. Evelyn Roxana NUÑEZ FRANCO, Magistrate of the Administrative Litigation Chamber of the Supreme Court of Justice (Magistrada de la Sala de lo Contencioso Administrativo de la Corte Suprema de Justicia), San Salvador

Lic. Ana Guadalupe ZELEDON VILLALTA, Fourth Family Court of San Salvador, Integrated Judicial Centre of Private and Social Law (Juzgado 4 de Familia de San Salvador, Centro Judicial Integrado de Derecho Privado y Social), San Salvador

FINLAND

Justice Elisabeth BYGGLIN, Helsinki Court of Appeal (Helsingin Hovioikeus), Helsinki

FRANCE – NEW DESIGNATION PENDING**GABON**

Judge Jean-Pierre SOBOTCHOU, Presiding Judge, Cour de Cassation du Gabon, Libreville

GERMANY

Judge Martina ERB-KLÜNEMANN, Judge of the Family Court, District Court of Hamm (Richterin am Amtsgericht, Amtsgericht Hamm), Hamm

Judge Sabine BRIEGER, Judge of the Family Court, District Court of Pankow-Weißensee (Richterin am Amtsgericht, Amtsgericht Pankow-Weißensee), Berlin

GUATEMALA

Judge Rony Eulalio LÓPEZ CONTRERAS, First Magistrate of the Court of Appeals for Children and Adolescents (Magistrado Vocal Primero de la Sala de la Corte de Apelaciones de la Niñez y Adolescencia)

HONDURAS

Judge Belia Olmeda TORRES MERLO, Judge of First Instance for Children, Children's Court of First Instance of San Pedro Sula (Jueza de Letras de la Niñez, Juzgado de Letras Primero de la Niñez San Pedro Sula), San Pedro Sula

Judge Anny Belinda OCHOA MEDRANO, Judge of First Instance for Children, Second Children's Court of First Instance for the Department of Francisco Morazán (Jueza de Letras de la Niñez, Juzgado de Letras Segundo de la Niñez, del Departamento de Francisco Morazán), Tegucigalpa

HUNGARY

Judge dr Márta GYENGE-NAGY, Judge of the Szeged Municipal Court, Szeged

ICELAND – NEW DESIGNATION PENDING**IRELAND**

The Honourable Ms Justice Mary FINLAY GEOGHEGAN, The High Court, Dublin

ISRAEL

The Honourable Judge Benzion GREENBERGER, District Court of Jerusalem

KENYA (Non-State Party to the 1980 Convention)

The Honourable Lady Justice Martha KOOME, The High Court, Nairobi

LUXEMBOURG

Mr Serge WAGNER, Advocate-General (Avocat général), General Prosecutor's Office of Luxembourg (Parquet général du Grand-duché de Luxembourg), Luxembourg

MALTA

The Hon. Mr Justice Noel CUSCHIERI, President, Family Section of the Civil Court, Courts of Justice, Valletta

MEXICO

Lic. Adriana CANALES PÉREZ, Magistrate of the Third Family Chamber, Superior Court of Justice of the Federal District (Magistrada de la Tercera Sala Familiar, Tribunal Superior de Justicia del Distrito Federal), Mexico D.F.

Lic. Dionisio NÚÑEZ VERDIN, Judge of First Instance in Family Law (Juez de Primera Instancia en materia familiar), Jalisco

Dr Lázaro TENORIO GODÍNEZ, Judge of the First Family Chamber, Superior Court of Justice of the Federal District (Magistrado de la Primera Sala Familiar, Tribunal Superior de Justicia del Distrito Federal), Mexico D.F.

Lic. Oscar Gregorio CERVERA RIVERO, President of the Second Family Chamber, Superior Court of Justice of the Federal District (Presidente de la Segunda Sala Familiar, Tribunal Superior de Justicia del Distrito Federal), Mexico D.F.

NETHERLANDS

Judge Johan VISSER, President of the Family Law and International Child Protection Division of the District Court of The Hague, The Hague

Judge Annette C. OLLAND, Senior Judge, Family Law and International Child Protection Division of the District Court of The Hague, The Hague

NEW ZEALAND

Her Honour Chief Judge Jan-Marie DOOGUE, Chief District Court Judge, District Court of New Zealand, Wellington

NICARAGUA

Mag. María José ARÁUZ HENRÍQUEZ, First Family District Judge (Juez Primero de Distrito de Familia), Managua

NORWAY

Judge Anne Marie SELVAAG, Trondheim District Court, Trondheim

Judge Torunn Elise KVISBERG, PhD, Sør – Gudbrandsdal District Court, Lillehammer

PANAMA

Lic. Edgar TORRES SAMUDIO, Court of Children and Adolescents of the Chiriquí Judicial Circuit (Juzgado de Niñez y Adolescencia del Circuito Judicial de Chiriquí), Chiriquí

Lic. Delia CEDEÑO P., Judge of Children and Adolescents of the First Judicial Circuit of Panama (Jueza de Niñez y Adolescencia del Primer Circuito Judicial de Panamá), Panama City

PARAGUAY

Professor Dr. Irma ALFONSO DE BOGARÍN, Magistrate of the Criminal Court of Appeals for Adolescents, Capital District (Magistrada del Tribunal de Apelaciones en lo Penal de la Adolescencia de la Capital), Asunción

Abg. María Eugenia GIMÉNEZ DE ALLEN, Judge of the Court of Appeals for Children and Adolescents, Central Department (Miembro de Tribunal de Apelación de Niñez y Adolescencia del Departamento de Central), Asunción

PERU

Dra. Luz María CAPUÑAY CHÁVEZ, Superior Judge, First Family Chamber of the Superior Court of Justice (Vocal Superior de la Corte Superior de Justicia, Sala de Familia, Poder Judicial), Lima

ROMANIA

Judge Andreea Florina MATEESCU, Bucharest Tribunal, Vth Civil Section, Bucharest (primary contact)

Judge Anca Magda VLAICU, Bucharest Tribunal, IVth Civil Section, Bucharest (alternate contact)

SERBIA

Judge Djurdja NESKOVIC, Judge of the High Court, Belgrade

Judge Maja MARINKOVIC, First County Court, Belgrade

SINGAPORE

Senior District Judge FOO Tuat Yien, Family and Juvenile Justice Division, Subordinate Court, Singapore

SOUTH AFRICA

The Honourable Mrs Justice Belinda VAN HEERDEN, Supreme Court of Appeal, Bloemfontein

SPAIN

The Honourable Judge Francisco Javier FORCADA MIRANDA, Family Court of First Instance No 6 (Juzgado de Primera Instancia N° 6 de Zaragoza), Saragossa

SWEDEN

The Honourable Judge Ann-Sofie BROQVIST, Stockholm District Court (Stockholms Tingsrätt), Stockholm

TRINIDAD AND TOBAGO

The Honourable Madam Justice Allyson RAMKERRYSINGH, Family Court of Trinidad and Tobago, Port of Spain

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND**For England and Wales**

The Right Honourable Lord Justice Mathew THORPE, Judge of the Court of Appeal, Head of International Family Justice, The Royal Courts of Justice, London

For Northern Ireland

The Honourable Mr Justice Ben STEPHENS, The Royal Courts of Justice, Belfast

For Scotland

The Right Honourable Judge Lord S. Neil BRAILSFORD, Senator of the College of Justice, Outer House, Court of Session and the High Court of Justiciary, The Supreme Courts, Edinburgh

Sheriff Deirdre MACNEILL, Sheriff Court House, Edinburgh

For British Overseas Territories**Cayman Islands**

The Honourable Judge Anthony SMELLIE, Chief Justice of the Cayman Islands, Chief Justice's Chambers, Grand Cayman

Bermuda

Mrs Norma WADE-MILLER, Puisne Judge, Supreme Court of Bermuda, Hamilton

UNITED STATES OF AMERICA

The Honourable Justice James GARBOLINO, Former Presiding Judge, Superior Court of California, Roseville

The Honourable Judith L. KREEGER, Circuit Judge, Eleventh Judicial Circuit of Florida, Miami

The Honourable Peter J. MESSITTE, United States Federal District Judge, US District Court for the District of Maryland, Greenbelt

The Honourable Mary W. SHEFFIELD, Presiding Judge, Circuit Court, Rolla

URUGUAY

Dra. María Lilián BENDAHAN SILVERA, Magistrate of the First Session of the Court of Appeal of Family Affairs (Tribunal de Apelaciones de Familia de 1° Turno), Montevideo

VENEZUELA

Dra. Rosa Isabel REYES REBOLLEDO, President of the Judicial Circuit of for the Protection of Children and Adolescents for the Judicial District of the Caracas Metropolitan Area and National Co-ordinator of International Adoption (Presidente del Circuito de Protección de Niños, Niñas y Adolescentes de la Circunscripción Judicial del Área Metropolitana de Caracas y Coordinador Nacional de Adopción Internacional), Caracas

Personal Note

Hans van Loon

Secretary General

Regular readers of The Judges' Newsletter are well aware of the surge of interest in the work of the Hague Conference in Latin America stimulated by presence in the region of a permanent representative of the Conference. The remarkable achievements of the regional office in Latin America, headed by our liaison legal officer, Ignacio Goicoechea, have proven that a regional presence can be of enormous value in strengthening ties between the Hague Conference and States, citizens, authorities and courts of that particular region.

While efforts to reinforce the regional office in Buenos Aires are ongoing and the work of our liaison legal officer continues to expand and deepen, this Latin American success has not remained unnoticed in other parts of the world, in particular in the Asia Pacific Region. The need for and potential of a presence of the Conference in the region, including the benefits it might bring to the Membership of the Conference as a whole, became increasingly apparent during four large Asia Pacific ("AP") meetings organized by the Hague Conference. AP1 took place in Kota Kinabalu, Sabah (Malaysia) in 2005, AP2 in Sydney (Australia) in 2007, followed by AP3 in Hong Kong (China) in 2008, and AP4 in Manila (Philippines) in 2011.

At each of these events, States and non-State actors – intergovernmental organizations and NGO's alike – from throughout the Asia Pacific Region gathered to discuss the relevance, implementation and practical operation of a number of important Conventions of the Hague Conference within the Asia-Pacific region, and recognized the increasing relevance and importance of the Hague Conventions on private international law both regionally and in a global context.

It was the then Secretary for Justice of Hong Kong, Mr Wong Yan Lung, who on the occasion of the AP3 meeting in Hong Kong, supported the idea of an Asia Pacific Regional Office established in Hong Kong. It took several years to turn the idea into a reality, but at its annual meeting in April this year, the Council on General Affairs and Policy of the Hague Conference was in a position to endorse the Permanent

Bureau's proposal to establish an Asia Pacific Regional Office for the Hague Conference in Hong Kong. The Council noted with gratitude that funding for the Office's operation was now ensured for an initial period of three years. The future directions and the question of the financial sustainability of the Office beyond this initial period would be decided by Council in light of a comprehensive evaluation.

And so, on 13 December 2012, the Hague Conference officially opened its first Asia Pacific regional office in Hong Kong. This festive event was attended by the Chief Executive of the Hong Kong Special Administrative Region of China, the Vice-Minister of Foreign Affairs of China, the acting Secretary for Justice of Hong Kong SAR, his predecessor, and diplomatic and consular representatives from many Members of the Hague Conference based in Hong Kong. Significantly, on the same date, the Republic of Korea deposited with the Ministry of Foreign Affairs in The Hague, the depository of the Hague Conventions, its instrument of accession to the 1980 Hague Convention on the Civil Aspects of Child Abduction, which, like other Hague Conventions, such as the 1961 Apostille Convention or the 1993 Intercountry Adoption Convention, is attracting increasing interest from the Asia Pacific Region.

The establishment of the new office, which is headed by Justice Michael Hartmann from Hong Kong, constitutes a major step in the strategy of the Hague Conference aimed at bringing its mission and work closer to various regions, in this case the Asia Pacific Region. Of course, this region covers a huge geographical area and is diverse in terms of legal systems, socio-economic development, culture, religion and politics. But the Hague Conventions are all designed to bridge such differences, because they are based on a realistic respect for (legal) variety. The new office will serve as a base of operations to promote the organisation, publicise the Hague Conventions, encourage wider ratifications and accessions, and support greater understanding of these instruments. The office will also coordinate events and seminars tailored to the needs of the Asia Pacific Region. As a result, it may be hoped and expected that States and their Central and author administrative authorities and courts throughout the Asia Pacific Region and indeed throughout the world, will strengthen their relationships with one another, and that their citizens will benefit from greater legal certainty, security and protection.



Know what courts decide in International Child Abduction matters

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