

**DÉVELOPPEMENTS PRÉSENTS ET FUTURS
DE SYSTÈMES DES TECHNOLOGIES DE L'INFORMATION
EN SOUTIEN AUX CONVENTIONS DE LA HAYE**

Note établie par le Bureau Permanent

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**PRESENT AND FUTURE DEVELOPMENTS
OF INFORMATION TECHNOLOGY SYSTEMS
IN SUPPORT OF HAGUE CONVENTIONS**

Note submitted by the Permanent Bureau

*Document préliminaire No 3 de février 2006
à l'intention de la Commission spéciale d'avril 2006
sur les affaires générales et la politique de la Conférence*

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on General Affairs and Policy of the Conference*

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INTRODUCTION

1. The Hague Conference has developed a unique system of post-Convention services to monitor the operation of the Hague Conventions, to assist Contracting States with their effective implementation and to promote consistency and the adoption of good practices in the daily operation of the Conventions. These services include, *inter alia*, maintaining an international network of Central Authorities and other bodies charged with implementing the Conventions; providing technical assistance to States on matters of implementation; and, encouraging consistent practices and uniform interpretation of the Conventions through promotion of electronic case law, statistical and case management databases.

2. The impact of new technologies has resulted in an explosion of new products and services, borderless knowledge sharing and communications. During the last five years, through Recommendations and Conclusions adopted, at Special Commissions to review the practical operation of certain Hague Conventions, by Member States and States Parties to these Hague Conventions, the Hague Conference has been developing information technology systems in support of certain of its Conventions and post-Convention services.

3. This document presents the information technology systems currently developed and under development by the Permanent Bureau, sometimes in partnership, and future possibilities that these systems could offer for other Hague Conventions.

INCADAT

4. The International Child Abduction Database INCADAT¹ (< www.incadat.com >) has been established by the Permanent Bureau with the objective of making freely accessible many of the leading decisions rendered by national courts in respect of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*. It contains more than 800 summaries of decisions in English and French (and very soon in Spanish) and the text of these decisions in their original language. INCADAT also includes a section providing information on non-Hague Convention child abductions such as bilateral treaties and case law. Judges, Practitioners, Central Authorities, researchers and others around the world use INCADAT.

5. The Fourth Meeting of the Special Commission to Review the Operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (22-28 March 2001), concluded that Contracting States should be encouraged to collaborate with the Permanent Bureau to explore possible sources of funding (including partnership funding) or material assistance to assist in the completion of INCADAT and to secure its position for the future. Several States and private individuals, through voluntary contributions, have played a role in the development of INCADAT. As a result of the special increase in the regular Budget of the Hague Conference in Financial Year L (2004-2005), it has been possible to place on a secure footing the maintenance and development of INCADAT.

6. In the future, case law databases should also be developed for, among others, the *Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, the *Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters*, 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*

¹ See the INCADAT description at Annex A.

Protection of Children, the Hague Convention of 13 January 2000 on the International Protection of Adults, the Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions, the Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations, the Hague Convention of 30 June 2005 on Choice of Court Agreements or the new Convention on the International Recovery of Child Support and other Forms of Family Maintenance – thus ultimately providing a continuation in electronic form of the famous series “*Les nouvelles Conventions de La Haye*”, Vols. I-V, T.M.C. Asser Instituut, Martinus Nijhoff Publishers.

INCASTAT – ICASTAT

7. The Fourth Meeting of the Special Commission to review the practical operation of the 1980 Child Abduction Convention (22–28 March 2001), concluded that Central Authorities should be encouraged to maintain accurate statistics concerning the cases dealt with by them under the Convention, and to make annual returns of statistics to the Permanent Bureau in accordance with the standard forms established by the Permanent Bureau in consultation with Central Authorities. The Special Commission also endorsed the Permanent Bureau’s plan to establish a statistical database on International Child Abduction (INCASTAT) as a complement to the INCADAT database, and encouraged Contracting States to consider methods by which the resources for the project may be made available.

8. During the last 18 months, with the assistance of several voluntary contributions made by Member States, the Permanent Bureau has been in the process of developing INCASTAT. The electronic statistical database will be launched during spring 2006. It will be located in a secured area of the Hague Conference website where the more than 90 Central Authorities designated under the 1980 Child Abduction Convention, through a secured Internet communication, will be invited to reproduce their Annual Statistical Forms (A1-2 and B1-2) under the 1980 Convention. The system will also allow Central Authorities to generate statistical analysis and graphs of different kinds. INCASTAT however still requires funding for its implementation and to secure its continued development in the future.²

9. Statistical databases could be developed in the future for other Conventions such as the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*, 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* or the new Convention on the International Recovery of Child Support and other Forms of Family Maintenance.

10. In this respect, the Second Meeting of the Special Commission on the practical operation of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (17-23 September 2005) welcomed the development of the draft forms for the gathering of general statistical information and underlined the importance for States Parties to submit general statistics to the Permanent Bureau using these forms on an annual basis. The Permanent Bureau has secured enough voluntary funding to develop in the near future the statistical database on Intercountry Adoption (ICASTAT). However, ICASTAT will also require additional funding for its implementation and to secure its continued development.

² See Prel. Doc. No 5, Financial Year LII (1 July 2006–30 June 2007), Proposed Supplementary Budget and Explanatory Notes – *March 2006*, Item I.A.3.

iChild

11. In partnership with WorldReach Software Canada, the Permanent Bureau, in consultation with interested States,³ has completed the development of the iChild software.⁴ iChild is an electronic case management tool, which may eventually be used on a day-to-day basis by the many of the 90 Central Authorities designated under the 1980 Child Abduction Convention located around the world. Available in English, French and Spanish, this tool is designed to store and keep track of all essential information concerning a child abduction case. This system will help considerably to improve standards of case management to lead the way towards paperless child abduction case management. The system will help significantly to improve communication between Central Authorities; it will lead to greater consistency in practice in the different States. iChild will also be used to generate the Annual Statistical Forms (A1-2 and B1-2) relating to the 1980 Convention. In this regard, iChild is a complement to INCASTAT.

12. With regard to the development of iChild and INCASTAT, the Special Commission concerning the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (27 September to 1 October 2002) recognised the work begun by the Permanent Bureau, with the support of the Canadian Government and WorldReach. The Special Commission encouraged the Permanent Bureau to continue these efforts in co-operation with Contracting States and their Central Authorities.

13. In November 2005, the *iChild* pilot project was officially launched for a period of one year, with the participation of Central Authorities from Argentina, Australia, Canada (Ontario and Quebec), the Netherlands, New Zealand and Panama.⁵ An evaluation of the system will be undertaken during the Fifth Meeting of the Special Commission to review the practical operation of the Child Abduction Convention (tentatively scheduled for October-November 2006). Upon the successful completion of the pilot, invitations will be made to other Central Authorities to implement the system. Additional funding is however required in order to ensure during at least a one-year period the promotion and implementation of the system, including a help-desk for Central Authorities.⁶

14. Similar case management systems could be developed for other Hague Conventions such as the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*, 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* or the new Convention on the International Recovery of Child Support and other Forms of Family Maintenance.

iSupport

15. In the context of its work in relation to the development of a new Convention on the International Recovery of Child Support and other Forms of Family Maintenance, the Permanent Bureau, in co-operation with a public servant from the *Ministère de la Justice*

³ The following States have participated in the first phase of the pilot: Argentina, Australia, Canada (British Columbia and Quebec), Germany, China (Hong Kong SAR), Ireland, New Zealand, Panama, South Africa, Spain, Sweden, Switzerland, United Kingdom (Scotland) and United States of America (NCMEC). The following States have participated in the second phase of the pilot: Argentina, Australia, Canada (British Columbia and Quebec), Germany, Ireland, Netherlands, New Zealand, Sweden and Switzerland.

⁴ The iChild User Guide is available upon request from the Permanent Bureau.

⁵ See the News Release at < [Hwww.hcch.nHet](http://www.hcch.nHet) > under "Latest Developments" and "News & Events" "2005".

⁶ See Prel. Doc. No 5, Financial Year LII (1 July 2006–30 June 2007), Proposed Supplementary Budget and Explanatory Notes – *March 2006*, Item I.A.3.

du Gouvernement du Québec (Canada) on a part-time secondment to the Permanent Bureau,⁷ is examining the possibility to develop an electronic case management system for the future Convention. In addition to the management of cases, the system could provide instructions to banks with regard to electronic transfer of funds and could send and receive secured online applications under the Convention. The Forms Committee of the Special Commission on Child Support and other Forms of Family Maintenance is developing forms in this respect and assistance is provided by UNCITRAL for the development of medium-neutral provisions to ensure that these applications can be transmitted electronically. The system could also generate the required statistics as part of the means of monitoring the operation of the Convention. Once the text of the Convention is adopted, the Permanent Bureau, in consultation with interested States, could initiate the establishment of functional and technical requirements in order to launch an invitation to tender and to start raising the necessary funding to build the system. The drawing-up of a blue print of the system would require additional resources for a period of at least one year.⁸

e-Apostille

16. The *e-Apostille Pilot Program* (e-APP) is a joint initiative of the Hague Conference on Private International Law (HCCH) and the National Notary Association of the United States of America (NNA).⁹ The purpose of the e-APP is to further strengthen the efforts towards the implementation and the promotion of an effective, low-priced, safe and sound system of electronic Apostilles (e-Apostilles) and electronic Registers of Apostilles (e-Registers). The e-APP is designed to illustrate how the conclusions and recommendations of the *2003 Special Commission meeting on the practical operation of the Hague Apostille Convention*¹⁰ and the *First International Forum on e-Notarization and e-Apostilles*¹¹ can be applied in practice by using currently available technology. The Special Commission and the Forum had, among other things, concluded that the spirit and letter of the Convention do not constitute an obstacle to the usage of modern technology and that the Convention's application and operation can be further improved by relying on such technologies. As a result, both the Special Commission and the Forum encouraged the development and application of e-Apostilles and e-Registers.

17. The e-APP is neither intended nor designed to favour one specific technology over another; its objective merely is to demonstrate how currently available technology allows for the practical implementation and operation of e-Apostilles and e-Registers. The suggested model will require the use of digital certificates so as to provide, in particular, integrity, authentication and non-repudiation.

18. The e-APP will be officially launched at the *2006 Special Commission on General Affairs and Policy of the HCCH*, to be held from 3-5 April.

19. The suggested model for the issuance of e-Apostilles will use Adobe® Acrobat® out-of-the-box PDF-technology (the rough data, however, will be in XML-format). Educational material explaining the purpose and use of the suggested model will be

⁷ See the secondment agreement examples in Annex B.

⁸ See Prel. Doc. No 5, Financial Year LII (1 July 2006–30 June 2007), Proposed Supplementary Budget and Explanatory Notes – *March 2006*, Item I.A.8.

⁹ *Idem*, Item I.A.B.12.

¹⁰ See the Conclusions and Recommendations of the 2003 Special Commission, available on the *Apostille Section* of the HCCH website at < [Hwww.hcch.net](http://www.hcch.net)H >.

¹¹ See the International Forum on e-Notarization and e-Apostilles, available on both the *Apostille Section* of the HCCH website at < [Hwww.hcch.net](http://www.hcch.net)H > and the NNA website at < [Hwww.nationalnotary.org](http://www.nationalnotary.org)H >.

produced. Both the suggested model and educational materials will be available free of charge to interested States and parties.

20. The suggested model will include the possibility for a competent authority to establish and operate a secure e-Register of Apostilles (independently of whether the Apostille certificates have been issued in electronic or paper form); the e-Register has to be made available and accessible on-line.

21. The e-APP stretches over a period of four years. The ultimate goal at the end of the fourth year is that half of the States Party to the Apostille Convention (number of States Party in January 2006: 87) will issue and accept e-Apostilles and operate electronic Registers.

Annex A



THE INTERNATIONAL CHILD ABDUCTION DATABASE (INCADAT)

The International Child Abduction Database (INCADAT) has been established by the Permanent Bureau of the Hague Conference on Private International Law with the object of making accessible many of the leading decisions rendered by national courts in respect of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*. INCADAT is used by judges, Central Authorities, legal practitioners, researchers and others interested in this rapidly developing branch of law. INCADAT has already contributed to the promotion of mutual understanding and good practice among the 75 States Parties to the Convention, essential elements in the effective operation of the 1980 Convention.

INCADAT provides access to summaries to more than 800 of the leading child abduction cases, in English and French. Work is currently underway to complete a Spanish version of INCADAT, including Spanish translation of summaries and search mechanisms. A special effort is being made to collect important case law from Spanish-speaking countries.

The summaries, which are set out on a standard form, provide the basis for any search of the database. They highlight the name of the case, the date of the judicial decision, the judges involved, the name of the court, the level of that court, (whether first instance, appellate, or superior appellate), the States involved, the Articles of the Convention or implementing legislation referred to, and those relied on, as well as the ruling of the court (where each of the above fields are permitted and known). The summaries contain a brief synopsis of the facts of the case and of the order made.

The key element of each summary is the section dealing with the legal basis of the judicial decision. For ease of use, this section has been divided into eighteen different categories: aims of the Convention, removal and retention, rights of custody, habitual residence, consent, acquiescence, Article 13(1) *b*), undertakings, Article 20, objections of a child to a return, Article 12(2), rights of access, interpretation of the Convention, role of the Central Authorities, procedural matters, legal doctrine, non-Convention case and issues relating to return. These categories correspond with the main provisions and concepts within the Convention.

Finally, the summary standard form contains a section entitled "references" where users are referred to other judicial decisions where a similar or contrasting view has been upheld and also to academic or other relevant commentaries. Most summaries entered on the database are accompanied by the full text of the decision in its original language. These cases are available in a text format which may be printed or downloaded.

A "detailed search" allows a search by any of the sections, identified above, which are contained within the summary standard form. For example, a user might click on the 'legal basis' section and scroll down to category 10 to identify all decisions on INCADAT where a consideration was given to the objections of a child to a return. A user may however make a more refined search by specifying only those decisions which were made by superior appellate courts, or indeed decisions where the requested State was, for example, Argentina. A "search by State" provides a listing of all INCADAT summaries for each requested State.

INCADAT also contains summaries and full text versions of selected non-Convention case law. Where abducted children are not habitually resident in a Convention State or are wrongfully removed to or retained in non-Convention States the legal response will vary greatly depending on the jurisdiction seized of the case. The aim of the Non-Hague Convention Child Abduction Home Page is to facilitate understanding of the wide range of responses which have been adopted to deal with this problem and to encourage best practice in the treatment of these difficult cases. Regional and bilateral conventions have been concluded which provide general, and in certain instances very specific remedies to custodians whose children have been removed or retained abroad. In some States there has been an evolution of a highly developed common law response to non-Convention child abduction cases. Furthermore there have recently been meetings of judges and policy makers at regional and bilateral levels which have led to declarations of good practice and memoranda of understanding with regard to the treatment of non-Convention child abduction cases. The non-Hague Convention Child Abduction Home Page provides links to a wide range of instruments and documents which are of relevance in the resolution of such cases.

INCADAT may be accessed directly at < www.incadat.com > or via the Hague Conference website at < www.hcch.net > under the 1980 Child Abduction Convention Section.

Annex B



**General Directorate of Legal and
Legislative Affairs**



**Agreement between the General Directorate of Legal and
Legislative Affairs of the Department of Justice of Quebec and the Hague Conference
on Private International Law regarding the secondment of Me. Patrick Gingras**

[Translation by the Permanent Bureau]

The Secretary General of the Hague Conference on Private International Law (HCCH) and the General Directorate of Legal and Legislative Affairs (DGAJL) of the Department of Justice of Quebec,

aware of the mission of the HCCH to work for progressive unification of the rules of private international law and to promote international judicial and administrative co-operation in the fields of protection of the family and children, of civil procedure, and of commercial and financial law;

whereas the HCCH has requested the collaboration, by means of secondment, of experts in order to fulfil its work program;

acknowledging the importance of co-operation in order to achieve these goals;

have agreed as follows:

The DGAJL hereby agrees to second the services of Me. Patrick Gingras to the HCCH for a term of three (3) months, from 31 January 2005 to 30 April 2005.

During that secondment, Me. Gingras, under the supervision of Me. Philippe Lortie, shall collaborate in the work program described in Appendix A hereto. Furthermore, Me. Gingras shall represent the HCCH (and not Quebec) at each meeting or representative activity in relation to other countries or international organisations, and may not represent Quebec absent consent in writing from the DGAJL.

At the end of the secondment, the HCCH shall provide the DGAJL and Me. Gingras with a secondment certificate describing the tasks that he has performed.

For the purposes of this secondment, the DGAJL shall assume the regular compensation for Me. Gingras and no claim for overtime may be made. All other expenses connected with the secondment, including adequate medical coverage, shall be assumed by Me. Gingras, against his personal resources and with the financial contribution obtained from the Under-Secretariat for the government information superhighway and information resources of the Secretariat of the Treasury Board of Quebec.

The HCCH shall provide to the DGAJL the information required to keep the regular attendance record for Me. Gingras up to date.

This secondment shall be subject to Article 455 of the Collective Agreement for lawyers and notaries of the Quebec civil service.

IN WITNESS THEREOF, the parties have executed this instrument in three (3) copies, at the following dates and locations.

THE DGAJL,

(Date)

by:

Me. Danièle Montminy
Associate Deputy Minister

(City)

The HCCH,

(Date)

by :

Hans Van Loon, Secretary General
(HCCH seal)

(City)

(Date)

by:

Me. Philippe Lortie
First Secretary

(City)

Me. Patrick Gingras

(Date)

by:

(City)

Appendix A

Secondment of Me. Patrick Gingras to the Permanent Bureau of the HCCH

Description of work program (31 January 2005 to 30 April 2005)

Communications between Central Authorities using information technology¹²

- 1) Identify and describe the information technology, including in particular with respect to security and confidentiality, that may be used on a bilateral basis between Central Authorities designated pursuant to the Tentative draft Convention on the international recovery of child support and other forms of family maintenance. The legal framework for such communications shall be based on the UNCTAD model law on electronic commerce and the UNCTAD model law on electronic signatures. A parallel with the Quebec Act to establish a legal framework for information technology may also be used.
- 2) Identify and describe good practices relating to the use of the information technology identified and described under 1), having regard, inter alia, to the obligations and requirements provided for under the Tentative draft Convention on the international recovery of child support and other forms of family maintenance, and to the field of evidence and the protection of personal information.
- 3) Identify and describe the obligations and responsibilities of States, having regard, if applicable, to service-provider intermediaries, in the implementation of the information technology identified and described under 1).
- 4) Submit one or more standard agreements for implementation of the information technology identified and described under 1), integrating the good practices identified and described under 2), together with the obligations and responsibilities identified and described under 3).
- 5) Work on any other relevant feature of the proposal that may, inter alia, affect the Hague Conventions relating to international judicial and administrative co-operation.

¹² Work in line with Prel. Doc. No 9 of May 2004 on transfer of funds and the use of information technology in relation to the international recovery of child support and other forms of family maintenance, report drafted by Philippe Lortie, First Secretary, for the attention of the Special Commission meeting of June 2004 on the international recovery of child support and other forms of family maintenance.