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DOCUMENT D'INFORMATION

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INFORMATION DOCUMENT

drawn up by the Permanent Bureau

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for the attention of the Special Commission of September/October 2002*

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1. THE INTERNATIONAL CHILD ABDUCTION STATISTICAL DATABASE (INCASTAT)

The Permanent Bureau now collects annual statistics from a large number of the 73 States Parties to the 1980 Convention. The establishment of an electronic database to contain these statistics, which would be accessible through the website of the Hague Conference, has the following objectives:

- ~~EE~~ to make the statistical information provided by Contracting States readily accessible to all those States, as well as to researchers and other interested persons;
- ~~EE~~ to make it possible to identify trends in cases arising under the Convention concerning, for example, the number of cases being handled under the Convention and their outcomes in the different Contracting States.

It is the Permanent Bureau's view that it cannot expect States Parties to continue to provide annual statistics unless these statistics are made available promptly and in a form which allows the tracking of general trends. This view was supported by Recommendation 1.15 of the Fourth Meeting of the Special Commission to review the Operation of the *Hague Convention of 1980 on the Civil Aspects of International Child Abduction*:

"The Special Commission endorses the Permanent Bureau's plan to establish a statistical database as a complement to the International Child Abduction Database, and encourages Contracting States to consider methods by which the resources for the project may be made available."

1.1 Status of the project

Since the Fourth meeting of the Special Commission in March 2001, the Canadian Government has generously donated hardware and WorldReach Software Company has donated software to assist in developing the statistical database. WorldReach is a Canadian company, which has developed a consular software package called COSMOS for Canada and COMPASS for the UK.

COSMOS is a database and a case management tool for consular operations in the Canadian Department of Foreign Affairs and International Trade. It is designed to link Canadian missions located around the world. The system works using either a private network, an Intranet or the Internet to link users at missions to a central application server. This software has been designed with the input of the Consular Affairs Bureau of Canada's Department of Foreign Affairs and International Trade. More information on the Software can be found on the company's website at <<http://www.worldreachsoftware.com>>.

COSMOS has a specific module called iChild for tracking child abduction cases, which could be adapted for Central Authorities' case management and statistical reporting. The iChild child abduction module currently covers: abductions into Canada; abductions out of Canada; access cases into Canada; access cases out of Canada; child custody cases; child welfare cases. Hague and non-Hague cases can therefore be managed on one program but separate reports may be generated as required.

The iChild software is one option for developing INCASTAT at low cost. It is currently being adapted and tested at the Permanent Bureau to determine its suitability for collecting statistics for INCASTAT. Following these tests, it is hoped that site trials can take place in certain Central Authorities.

The Special Commission Meeting from 27 September to 1 October 2002 provides the opportunity to introduce the concept to Contracting States and to begin the process of consideration.

If iChild is adopted by the Permanent Bureau as the foundation for INCASTAT, States party to the Convention will of course be encouraged to utilise the software to achieve maximum efficiency and uniformity in collecting abduction statistics. Central Authorities will then also be able, if they so wish, to use iChild as a case management tool as well as for collecting statistics. However, the Permanent Bureau understands that many factors will need to be considered before a decision to accept or use the software can be taken by individual countries.

If iChild is adopted, there would appear, at this stage, to be three possible options for Central Authorities which agree to use the software:

(1) *Option A – Centrally Hosted Operation (Central Server)*

In a centrally hosted environment there would be only one version of the application and one database server physically residing in The Hague at the Permanent Bureau's offices. This database would house all of the data entered by any Central Authority using iChild to record and track their child abduction cases. Security in the software would ensure control by individual Central Authorities over their own data. The Permanent Bureau would extract agreed data, on a non-identifying basis, which would be used to generate statistical information.

(2) *Option B – Individually Hosted Operations (Local Servers)*

In this option each country that participates in the use of iChild would have its own database and application/web server residing in the location of their choice. Each database would house all of the data entered by that country only. The Permanent Bureau would extract or be sent the relevant statistics on a periodic basis.

(3) *Option C – Combination of Central & Individually Hosted Operations*

The third option is a hybrid of the first two, to accommodate the situation where the countries that want to share costs and do not have an issue with the data being in a central database can do so, while other countries host their own application and database servers.

The Permanent Bureau is continuing, in consultation with WorldReach, to study the implications of the different options including issues of data security and costs. The Permanent Bureau wishes to express its gratitude to the Canadian government and to WorldReach for their generous contribution to the advancement of this project.

1.2 Demonstration of iChild at the Special Commission

WorldReach will be present at the Special Commission to demonstrate its iChild software. This demonstration is scheduled for 5.30 p.m. on Friday 27 September 2002.

WorldReach will be able to answer questions about the iChild software. However, the issues concerning how INCASTAT could be developed from iChild and how the database will be managed from the perspective of the Permanent Bureau and Central Authorities are not yet ripe for any lengthy discussion at the Special Commission. A detailed information paper describing Options A, B and C will be distributed at a later date when the Permanent Bureau has made a decision on whether to proceed with this software, and if so, which option for implementation would be most acceptable to both the Permanent Bureau and the Contracting States.

Please note that as the project is in its early stages, there is no expectation that any issues raised for discussion can necessarily be resolved at this Special Commission.

2. THE JUDGES' NEWSLETTER ON INTERNATIONAL CHILD PROTECTION

The Judges' Newsletter, now published bi-annually by the Permanent Bureau of the Hague Conference on Private International Law, has the objective of promoting co-operation, communication and the exchange of ideas between judges and others who deal with international child protection cases. The Newsletter is now distributed to more than 300 judges and Central Authorities appointed under the *Hague Convention of 1980 on the Civil Aspects of International Child Abduction* around the world.

The Newsletter is structured around the advice and contributions to the Newsletter by its International Board of Judicial Advisers and by judges and professionals throughout the 73 States signatory to the Convention. The Board includes The Right Honourable Lord Justice Mathew Thorpe (England and Wales), The Honourable Justice Joseph Kay (Australia), His Honour Judge Patrick Mahony (New Zealand), The Honourable Justice James Garbolino (United States of America), The Honourable Jacques Chamberland (Canada), H.E. Justice Antonio Boggiano (Argentina), The Honourable Mrs Justice Catherine McGuinness (Ireland), Professor Siegfried Willutzki (Germany), The Honourable Elisa Pérez-Vera (Spain) and The Honourable Marie-Caroline Celeyron-Bouillot (France).

Butterworths, international legal publishers, have provided generous assistance by publishing and distributing the Newsletter free of charge.

3. A STATISTICAL ANALYSIS OF APPLICATIONS MADE IN 1999 UNDER THE HAGUE CONVENTION OF 25 OCTOBER 1980 ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

The Final Report of the Statistical Analysis of Applications made in 1999 under the 1980 Convention (Preliminary Document No 3 from March 2001) by Professor Nigel Lowe, Sarah Armstrong and Anest Mathias is now available in English, French and Spanish on the Hague Conference website (<<http://www.hcch.net/e/Convention/reports28e.html>>).

The funding for this valuable and timely research, including the costs of translation into French and Spanish, was generously provided by the Nuffield Foundation.

4. THE INTERNATIONAL CHILD ABDUCTION DATABASE (INCADAT)

4.1 Introduction

Since the Hague Convention on the Civil Aspects of International Child Abduction entered into effect, over 1,500 decisions based upon, or referring to, the Convention have been reported. In a significant number of those decisions, the judge or authority applied the Convention with little access to important decisions from other parts of the world. As with any international treaty it is essential that the Convention is subject to consistent interpretation throughout its 73 States Parties. This is a matter of particular importance as the geographical scope of the Convention expands to include States all parts of the globe.

To facilitate the goal of consistent interpretation, the Hague Conference established in 1999 the International Child Abduction Database (INCADAT), a database of significant decisions concerning the Convention. INCADAT is being used not only by judges and Central Authorities but also by legal practitioners, researchers and others. It is already contributing to the promotion of mutual understanding and good practice, essential elements in the effective operation of the 1980 Convention.

4.2 INCADAT Annual Report

On the eve of its third anniversary INCADAT now contains summaries of over 450 of the leading child abduction cases. Moreover, many of the summaries now have the full text of the case attached. The States Party within the INCADAT network include: Argentina, Australia, Austria, Canada, China (Hong Kong Special Administrative Region), Denmark, Finland, France, Germany, Hungary, Iceland, Ireland, Israel, Italy, Netherlands, New Zealand, Norway, Poland, Portugal, South Africa, Spain, Sweden, Switzerland, the United Kingdom (England & Wales, Northern Ireland and Scotland), the United States of America and Zimbabwe. It is hoped that INCADAT coverage will continue to grow to incorporate jurisprudence from more of the 73 States Parties. However, to achieve this goal it is essential that more correspondents be recruited. To facilitate the task of the correspondent a Correspondent Guide has been prepared by Peter McEleavy, Aude Fiorini and Marion Ely, Legal Consultants to INCADAT.

The Correspondent Guide has been designed to introduce INCADAT and to give instruction on how to select and prepare summaries. The preparation of a succinct yet accurate summary is far from a simple task and initially is often quite time consuming. A thorough understanding of the Convention is needed so that the most relevant and interesting sections of the case can be highlighted in the summary. Now that a corpus of case law exists and the operation of the provisions is generally understood, one of the key roles of the Correspondent is to try to identify and draw the user's attention to new developments in terms of legal analysis and judicial reasoning and of course the application of the Convention to unusual factual situations. This is what regular users will be particularly interested in. At the same time where a State's Convention jurisprudence is relatively unknown elsewhere, correspondents should be looking to provide a broad sample of the case law on all the major provisions of the Convention.

In addition to the Guide, the last year has seen the first INCADAT Correspondents' Meeting which took place on 25 September 2001 at the Permanent Bureau of the Hague Conference. This event, which was generously financed by the Netherlands government, brought together representatives from 20 States. After presentations by the late Peter Nygh, Marion Ely, Aude Fiorini and Peter McEleavy there was a most productive round table discussion chaired by William Duncan and Peter McEleavy dealing with the operation and development of INCADAT. Many suggestions were made which have led to certain alterations and improvements being made which will increase the accuracy of the summaries and ensure that the database reflects as best as possible the different legal traditions of the Contracting States included.

During the meeting significant attention was paid to the issue of making INCADAT more accessible and useful to civil law legal systems. An analysis of the problems which exist in respect of civil law judgments in the context of a database such as INCADAT, was provided by Aude Fiorini. It was agreed that correspondents from civil law jurisdictions should endeavour to refer to and gather additional information on secondary literature. It was recognised that civil law case commentaries often provide clarification and contextual information, which is absent from the actual judgments. To facilitate this task an additional field has been added to the 'legal basis' section of the database: 'legal doctrine.'

A planned development, and one for which there was support at the correspondents' meeting, is the preparation of a paper version of INCADAT. At the meeting it became apparent that many judges, even within Europe, did not have Internet access and would not be able to consult the database. A hard copy of INCADAT containing selected summaries from a wide range of States Party with short explanatory sections would therefore be of help in encouraging uniform interpretation - the primary goal of the project. At present the plan is very much in its infancy. A draft chapter has been prepared and discussions will take place with publishers soon.

INCADAT has benefited from several generous donations over the past year including contributions from the governments of Austria, Canada, China (Hong Kong Special Administrative Region), Cyprus, Netherlands, Switzerland, United Kingdom (England and Wales, Northern Ireland and Scotland) and the United States of America. Previous contributions to INCADAT have been received from the governments of Finland, Korea and Norway. Further contributions will be needed if INCADAT is to be maintained and improved as a cost-free service.

On the editorial front significant effort has been put into updating existing summaries over the course of the last year. Cross-references are made to more recently entered cases. This will make INCADAT of greater benefit to users. A new addition has been made to the INCADAT homepage to publicise new cases, which have been added. A single click on 'New Decisions' takes users to a separate page, which lists all the most recent summaries added, together with a two-line résumé and with a link to the full summary. The goal for the coming year is to be able to add all leading child abduction case law onto INCADAT within a reasonably short period from its delivery. To be able to achieve this depends however on the help and commitment of all Member States and correspondents.

On a personal note we would like to pay tribute to the late Peter Nygh. Peter was a great friend and supporter of INCADAT. He was working at the Permanent Bureau during the summer of 1999 when work began on the project and he provided very valuable assistance and comments on how the database and the summaries should be structured and presented. His interest continued thereafter and he inspired all who attended the first Correspondents' Meeting in September 2001 with his opening paper. He will be sadly missed by us and all those involved in the INCADAT project.