

QUESTIONNAIRE CONCERNING THE PRACTICAL OPERATION OF THE HAGUE CONVENTION OF 25 OCTOBER 1980 ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

RESPONSE BY THE DELEGATION OF THE NETHERLANDS

The role and functions of Central Authorities

1. Have any difficulties arisen in practise in achieving effective communication with other Central Authorities? In particular, how are “modern rapid means of communication”, used by your Central Authority in order to expedite communications, bearing in mind the requirements of confidentiality?

Response:

Yes, some Central Authorities do not acknowledge within due time the receipt of an application. Furthermore it is hard – in general – to get into contact with some Central authorities. Especially south European authorities and for example the Central Authority in Brazil and Thailand have the tendency not to react in due time to an application made. The Dutch Central Authority has communicated about such problems with aforementioned Central authorities and progress is expected.

The Dutch Central Authority first sends its requests to the other Central Authority by fax in order to expedite the proceedings. The original application form (for the return of a minor or for international access) is sent by priority mail to the Central Authority abroad. The necessary translations will be sent afterwards, as soon as they are received. In this way the requested Central authority is already informed about the necessary steps it will need to take in compliance with the Convention. Further communications with requested Central authorities normally take place by e-mail or fax message. In case of emergency, information is asked or given by telephone. In general, we believe that abovementioned way of communicating is pleasant for both the requesting and the requested Central authority.

2. Are there any other problems of co-operation with other Central Authorities to which you wish to draw attention?

Response:

A few Central Authorities need regular reminders to achieve that the return of a minor is ordered or international access is granted. A more active approach of these Central Authorities is desirable.

3. Does your Central Authority maintain a website and / or a brochure / information pack? If so, does the website and / or brochure / information pack contain the following information as recommended by the Special Commission of 2001?

Response:

Yes, information about our Central Authority is given at the general website of the Ministry of Justice; www.justitie.nl. The Dutch Central Authority also maintains a brochure containing the information as mentioned under sub a to g. Information as mentioned under sub h, i and j is given if applicable in the pending procedure.

4. What measures does your Central Authority undertake to encourage voluntary returns and amicable resolutions, and how do you seek to ensure that these negotiations do not lead to undue delay in return proceedings?

Response:

The Dutch Central Authority is under the obligation first to request the abducting parent to voluntarily comply with the application for the return of the child, unless it considers immediate action to be essential, or if there are serious grounds to suspect that the person with whom the child is staying will not voluntarily comply with the request. A letter is sent to the abductor containing the request to return the child/children voluntarily. In this letter the abducting parent is also requested to contact the other parent or the Central Authority to discuss the possibility of reaching an agreement with respect to the residence of the child/children. Furthermore a warning is given, as an incentive, that if the abductor does not let the child/children return or is not prepared to enter into a mutual agreement with the other parent, legal proceedings will be initiated. The abductor is allowed a term of about ten days to respond. If no reaction is given, or if it is negative, a formal petition is filed with the competent court.

The request for voluntary return usually does not lead to undue delay in return proceedings. Usually, because in more than half of the cases an answer is received. After first contact with the abducting parent the Central Authority attempts to mediate between the parents. Depending on the circumstances of the case, negotiations take up one week to more or less two months. If negotiations between parties are protracted, return proceedings are (already) initiated in order to encourage the abductor to enter into an agreement with the other parent within due time.

5. In accordance with the Guide to Good Practice – Part I on Central Authority Practice, has your Central Authority shared its expertise with another Central Authority or benefited from another Central Authority sharing its expertise with your Central Authority?

Response:

No, generally expertise is not shared with other Central Authorities. The Dutch Central Authority has however developed a good understanding with certain Central Authorities, such as the Australian and Belgian Central Authorities, so that valuable information about proceedings or legal developments in our countries is shared.

Court proceedings

6. Do you have any special arrangements whereby jurisdiction to hear return applications is concentrated in a limited number of courts or judges? Are such arrangements being contemplated?

Response:

No, there are no such special arrangements. Return applications are dealt with by the children's judges within the 19 district courts in the Netherlands. It is not considered appropriate to designate specialised courts as it is not deemed in the interests of the defending party nor in the interests of the child that they have to go to court outside their own district. The court of the place of residence of the child is competent to take any provisional protective measures that may be required.

It is the same court which would be competent in other family proceedings with respect to the

same parents and child, if those proceedings were instituted.

7. What measures exist to ensure that Hague applications are dealt with promptly (Article 7) and expeditiously (Article 11)? In particular:

a) Are there set timetables at both trial and appellate level to ensure the speedy determination of return applications?

b) What special measures / rules exist to control or limit the evidence (particularly oral evidence) which may be admitted in Hague proceedings?

Response:

a) Yes. The Dutch Implementing Act, article 13, paragraph 2 states that a request to a return order shall be given priority. An appeal against a return order must be lodged within two weeks of the date of the order (the usual time limit for orders in family law matters is two months). The time limit for appeal against an order of the Appellate Court is four weeks as of the date of the order.

b) In general written proof needs to be provided by the abducting parent to prove any of the exceptions under article 12 or 13 of the Convention are applicable. In most cases the Central Authority is successful in recommending the court not to grant a party's request for extensive examinations by the Child Care and Protection Board, or by witnesses (except as far as the exception of article 13, section 2, is concerned). Only in rare cases will the courts allow oral evidence, since providing oral evidence will often delay a ruling. In general the Dutch court system is characterized by the preparation of cases by an exchange of written documents. In the subsequent hearing only a short oral explanation is given in addition to the papers submitted by the parties. These hearings take on average 1 to 1,5 hours.

8. What measure exist to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers? Do such measures lead to delays?

Response:

All incoming return applications are handled by the Central Authority. It also provides the parent whose child is abducted with all necessary legal advice. The Central Authority represents the applicant in the court proceedings. Such representation is free of charge.

9. In what circumstances and by what procedures / methods are children heard in Hague proceedings? In particular how will a determination be made as to whether a child objects to return, and in what circumstances might judges refuse to return a child based on his or her objections?

Response:

Children who have reached the age of 12 years or older are heard as a matter of principle. Children of this age are (according to Dutch law) considered to have reached an age and degree of maturity at which it is appropriate to take account of its views as meant in Article 13 of the Convention. The children's judge is however able to also hear a child of the age of 9, 10 or 11. If the judge believes this child has reached a degree of maturity equal to that of a 12 year old, he may base a decision to refuse the return of the child on the child's opinion only.

The child/children are heard (alone) by the children's judge in his private chambers to ensure

the child/children feel secure enough to express their honest opinion. In the court proceedings no oral statements of the children are revealed by the children's judge. The court only reports briefly about what has been discussed with the child. If a child strongly objects to giving an oral statement, he/she is allowed to give a written statement as well.

With respect to the final decision on the petition for return; current practice is that if a child of twelve years and older does not want to return and puts forward reasonable grounds, its opinion will lead to a refusal of the return. In general, siblings are not separated. So when the return of the older brother or sister is dismissed on the present exception, the younger children are allowed to remain in the Netherlands as well.

10. How has Article 20 of the Convention been applied in your State? Are you aware of an increase in the use of this Article, bearing in mind that the Statistical Survey of all cases in 1999 found no case in which this exception to return was successfully invoked?

Response:

Article 20 of the Convention was invoked several times before the Dutch courts but unsuccessfully.

Legal issues and interpretation of key concepts

11. Please comment on any Constitutional procedures or principles which make it difficult to implement the Hague Convention fully.

Response:

There are no constitutional procedures or principles which make it difficult to implement the Hague Convention fully.

12. Are there any important developments in legislation, case law or procedural law relevant to the operation of the 1980 Convention to which you wish to draw attention? Please could you provide us with an electronic copy of relevant legislation if possible?

Response:

The Supreme Court considered that a decision of a judicial authority of the State of the habitual residence of the child that was obtained in accordance with Article 15 of the 1980 Convention cannot be passed over on the sole ground that the decision was a result of a procedure in which one of the parties was not heard. However, the Supreme Court considered that it is up to the judicial authority of the requested State to decide upon the return of the child. The judicial authority of the requested State should therefore consider not only declarations or decisions, but all facts and circumstances that were raised in the procedure and it can, as a result of its findings, pass over such declarations or decisions (HR 18 March 2005, NJ 2005, 563; LJN: AR7440).

See also the response to question 13 and the response to question 60.

13. Please indicate any important developments since the Special Commission of 2001 in your jurisdiction in the interpretation of Convention concepts, in particular the following:

a) rights of custody (Articles 3a) and 5a));

- b) habitual residence (Articles 3a) and 4));**
- c) rights of access (Article 5b));**
- d) the actual exercise of rights of custody (Articles 3b) and 13 (1a));**
- e) the settlement of the child in his / her new environment (Article 12(2));**
- f) the one year period for the purpose of Article 12;**
- g) consent or acquiescence to the removal or retention of the child (Article 13(1a));**
- h) grave risk (Article 13(1b));**
- i) exposure to physical or psychological harm (Article 13(1b));**
- j) intolerable situation (Article 13(1b));**
- k) the child objects to being returned (Article 13(2);**
- l) fundamental principles relating to the protection of human rights and fundamental freedoms (Article 20).**

Response:

In the Netherlands most return applications are finally decided by the Courts of first instance. Questionable interpretations of Convention concepts by these courts have been annulled by the Courts of Appeal. Since 1 January 2002, four cases were brought to the Supreme Court. In one case the claim was declared inadmissible as the period for lodging an appeal with the Supreme Court had exceeded (HR 31 March 2006, NJ 2006, 232). The other three cases concerned the application of Articles 3, 13-15 of the 1980 Convention.

a. rights of custody: There are no important developments in the interpretation of the Convention concept of the rights of custody. In the questionnaire in 2001 it was already noted that the Dutch courts have no particular difficulty in accepting the situation with respect to custody according to the law of the requested State (see Questionnaire 2001, response to question 2:8). One case is known in which the Court of Appeal (in summary proceedings) decided that the question whether the removal of the children from Spain to the Netherlands was in breach of rights of custody attributed to the father under Spanish law, should be examined by an independent expert in Spain (Gerechtshof Arnhem, 26 August 2003, LJN: AJ3344).

b. habitual residence: As was already noted in the questionnaire in 2001, there is a tendency in the Dutch case law to weigh the intention of the parent to establish himself only temporarily in another State (see Questionnaire 2001, response to question 2:8). In one case known, the child had lived in a State for about ten months at the time of removal, but it was not considered that the child had his/her habitual residence in that State, because the mother did not have intentions to live in that state permanently (Gerechtshof Amsterdam, 19 May 2005, LJN: AT8047).

c.-f. There are no important developments in the interpretation of the Convention concepts of the rights of access, the actual exercise of rights of custody, the settlement of the child in his/her new environment and the one year period for the purpose of Article 12.

g. consent or acquiescence to the removal or retention of the child: When both parents exercise the rights of custody, the parent who opposes the return of the child is under the obligation to produce prima facie evidence and, if necessary, to establish, depending on the given facts in the procedure, that the other parent has consented the removal or retention of the child (Supreme Court, 18 October 2002, NJ 2003, 345, LJN: AE5804).

h.-j. Article 13 paragraph 1 sub b is generally interpreted restrictively (e.g. Supreme Court, 18

October 2002, NJ 2003, 345, LJN: AE5804). However, one case is known in which the concept of grave risk of article 13 paragraph 1 b was given a broad interpretation (Gerechtshof Amsterdam, 3 November 2005, LJN: AV0718). In this case the Court of Appeal decided the child should not return to its habitual residence as the mother could not return together with her young child (age 2). The mother alleged she could not re-obtain a residence permit in the state of habitual residence of the child. Therefore the court denied the request for the return of the child, because the return would constitute a grave risk for the child, as it would be separated from its primary carer and would reside in the state of habitual residence without its mother. It is further noted that questions were raised as to the ability of the requesting father to take care of the child alone. The court was not convinced the father would be able to do so and concluded that the return of the child was not in the best interest of the child.

As there was only one decision to this effect, this is not believed to be an important development in the Dutch case law regarding article 13 paragraph 1 b.

k. the child objects to being returned: See the response to question 9, last paragraph. In one case the Court of first instance decided not to hear the children, who were younger than 12 years old, as it did not want them to feel disloyal to either one of their parents (Rechtbank Roermond, 9 March 2005, LJN: AT0705).

l. There are no important developments in the interpretation of article 20 of the Convention since the Special Commission of 2001. See also the response to question 10.

Direct international judicial communication

14. Please describe any developments in the area of direct international judicial communication.

Response:

In 2005, in anticipation of the entry into force of the Act concerning the application of the Brussels II bis Regulation and the 1996 Hague Protection Convention, liaison judges were appointed by the Dutch Council for the Judiciary. These liaison judges are members of the informal network of liaison judges within the Hague Conference.

Immigration / asylum / refugee matters

15. Have you any experience of cases in which immigration / visa questions have arisen as to the right of the child and / or the abducting parent to re-enter the country from which the child was abducted or unlawfully retained? If so, how have such issues been resolved?

Response:

Yes, there have been cases in which the abducting parent had problems re-entering the country of habitual residence of the child, because his or her visa had expired. During legal proceedings or shortly afterwards these problems were solved by providing the abducting parent with all (the information about the) documents (she/he needed to apply for a valid visa.

16. Have you any experience of cases involving links between asylum or refugee applications and the 1980 Convention? In particular, please comment on any cases in

which the respondent in proceedings for the return of the child has applied for asylum or refugee status (including for the child) in the country in which the application for return is to be considered. How have such cases been resolved?

Response:

Yes. One case is known in which a mother asked asylum for herself and her child in the Netherlands. After asylum was granted the father applied to the Central Authority's intervention for the return of his child. The Central Authority denied its intervention. The Court in the asylum procedure had judged – in short – that mother and child would be at grave risk in their country of origin. The Dutch Central Authority therefore concluded that the exception of Article 13 b was – without question – applicable so that the return of the minor to its habitual residence should not be ordered.

Furthermore there have been cases in which problems of asylum arose in return proceedings before a court. In those cases the validity of travel documents and asylum permits were expired. The Dutch embassy abroad arranged the necessary travel documents to permit parent and child to return to the Netherlands and once in the Netherlands the parent(s) had to apply for a new permit.

17. Have you any experience of cases in which immigration / visa questions have affected a finding of habitual residence in the State from which the child was removed or retained?

Response:

No.

18. Have you any experience of cases in which immigration / visa questions have inhibited the exercise of rights of access?

Response:

No.

Criminal proceedings

19. Please comment on any issues that arise, and how these are resolved, when criminal charges are pending against the abducting parent in the country to which the child is to be returned.

Response:

If criminal charges are pending against an abducting parent in the country to which the child is to be returned, the other parent is always requested to withdraw his or her charges so that the abducting parent is allowed to accompany the child back to the country of its habitual residence. No case is known in which the other parent refused to withdraw these charges.

Mediation

20. Are there any programmes of mediation available in your State for parents or other persons involved in Hague Convention cases? Please describe these, indicating *inter alia* the methods employed to ensure that mediated agreements are enforceable and respected by the parties, as well as the availability of, and training opportunities for, international mediators.

Response:

No special programmes of mediation for the purpose of the Hague Convention exist.

Parents are sometimes – if mutually agreed – referred to a mediator to solve their issues concerning the habitual residence of the child or concerning the right of access. From the beginning of 2006 Family law courts – in all cases – urge parents to seek information and discuss the possibility of mediation to enter into an access agreement.

21. How do you ensure that mediation procedure do not unduly delay proceedings for the return of the child?

Response:

Mediation procedures can only be scheduled within the timeframe of the return proceedings. Mediation procedures are therefore always short term and usually exist in a few, intense sessions with a family law mediator.

22. Do you have any other comments relating to mediation in the context of the 1980 Convention either at a preventive stage or when a removal or retention has occurred?

Response:

Without prejudice to the Central Authority's own responsibility in this matter under article 7, second paragraph, sub c, of the convention, facilitating access to mediation will be one activity of the "Centrum Internationale Kinderontvoering" which was set up on the initiative of a few private organisations and receives a subsidy from the Ministry of Justice. The centre started its activity on 1st June, 2006.

Training and education

23. Do you have any comments relating to how judicial (or other) seminars or conferences at the national, regional and international levels have supported the effective functioning of the Convention?

In particular, how have the conclusions and recommendations of these seminars or conferences, had an impact on the functioning of the 1980 Convention?

Response:

Seminars and conferences (at any level) have had the effect of making the substance of the 1980 Convention known to a broader public. During such seminars developments in law and jurisdiction is often discussed with the result that people working with the Convention are updated about recent developments.

24. Can you give details of any training sessions / conferences organised in your country, and the influence that such sessions have had?

Response:

In the Netherlands the Ministry of Foreign Affairs educates its personnel on a yearly basis about the scope and substance of the Convention.

Training sessions are also given to lawyers and police officers about the functioning of the Convention and as to what duties and capacities they have under the Convention. These trainings are given by staff members of the Dutch Central Authority. Furthermore regular

training sessions are organised by the Training Institute for the Judiciary. Also a meeting of (children's) judges is organised once a year to discuss rulings under the Convention and developments in law concerning the Convention.

Ensuring the safe return of children where issues such as domestic violence and abuse are raised

25. Is the issue of domestic violence or abuse often raised as an exception to return in child abduction cases? What is the general approach of your courts to such cases and, in particular, how far do they investigate the merits of a claim that such violence or abuse has occurred?

Response:

Yes, this exception is frequently invoked. This claim however needs to be well grounded with legal evidence by the parent invoking it, otherwise it will be dismissed by the children's judge.

26. What procedures and measures are in place in your State to secure the safe return of the child (and the accompanying parent, where relevant) where issues of (alleged) domestic violence or abuse are raised?

Response:

If allegations of domestic violence and abuse concerning a family in the Netherlands are made in a procedure abroad, the Child Care and Protection Board will investigate these allegations in order to secure the safety of the child once it has returned in the Netherlands. If necessary the Child Care and Protection Board can also advise or urge the Dutch court to take protection measures.

In the interest of the child requests and suggestions by foreign authorities will be communicated to the competent authorities in the Netherlands, who may convert these into measures which can appropriately be taken in the Netherlands.

27. To what extent are your courts entitled and prepared to employ "undertakings" as a means of overcoming obstacles to the safe return of the child? Please describe the subject matter of undertakings required / requested.

Response:

If a request to this effect is received from abroad, the Child Care and Protection Board can be asked to investigate if there are obstacles to a safe return of the child to the Netherlands and how these can be overcome. One function of the network of liaison judges in matters of international child protection is to promote direct communication between courts in different states which are involved in the same case. The recent appointment of liaison judges in the Netherlands might help promote the practice of undertakings.

28. Will your courts / authorities enforce or assist in implementing such undertakings in respect of a child returned to your jurisdiction? Is a differentiation made between undertakings by agreement between the parties and those made at the request of the court?

Response:

No cases are known in which the Dutch courts or authorities were asked to enforce

undertakings made before a foreign court. Most measures taken by courts or authorities to ensure a child's safety, such as an investigation by the authorities responsible for the child's welfare, can only be implemented in the country which ordered the measure.

If after the return of a child to the Netherlands a case concerning the child is brought before the Dutch Family Court, the undertakings made in a foreign country during return proceedings may play a role in the Dutch proceedings, provided the content is clear. In principle, parties remain obliged by their previous undertakings and agreements, unless the new situation gives rise for a new amicable agreement or an overruling court order.

29. To what extent are your courts entitled or prepared to seek or require, or as the case may be to grant, safe harbour orders or mirror orders (advance protective orders made in the country to which the child is to be returned)?

Response:

No such practice of Dutch courts is known to the delegation of the Netherlands. However, such practice may develop now that liaison judges have been appointed in the Netherlands.

30. Do you have any comments on the use of undertakings, mirror orders or safe harbour orders?

Response:

No comments.

31. Do you have any other comments relating to domestic violence or abuse in the context of the 1980 Convention?

Response:

No.

32. Are you aware of cases in which your authorities have refused to make or enforce an order in respect of a young child on the basis that an abducting parent who is the child's primary carer, refuses or is otherwise not in a position to return with the child?

Response:

Yes, one case is known in which the court has not ordered the return of a child. See the answer to question 13.

Standard questionnaire for newly acceding States

Questions 33 until 35 are not applicable.

The Guide to Good Practice

36. In what ways have you used the Guide to Good Practice – Part I on Central Authority Practice, Part II on Implementing Measures and Part III on Preventive Measures to assist in implementing for the first time, or improving the implementation

or operation of, the Convention in your State?

Response:

Since 1 September 2000 the Dutch Central Authority has a Protocol for the implementation and execution of measures under the Convention. Part I and Part II of the Guide to Good Practice have been incorporated in this Protocol. The Protocol gives a detailed overview of which steps the Dutch Central Authority should take in every individual case.

37. How has the Guide to Good Practice assisted your State in making policy or practical decisions related to the implementation or operation of the Convention?

Response:

The Guide to Good Practice gives our Central Authority guidelines for a better practise in fulfilling its obligations under the Convention as well as guidance in making policy decisions related to the implementation of the Convention (as is written down in the abovementioned Protocol).

38. How have you ensured that relevant authorities in your State have been made aware of, and have access to, the Guide to Good Practice?

Response:

The Netherlands has not made relevant authorities aware of, or given them access to, the Guide to Good Practice, but has done so with the abovementioned Protocol. The Protocol is available for relevant authorities which wish to receive a copy of it.

39. Do you have any comments concerning the Guide to Good Practice – Part III on Preventive Measures including how best to publicise this Part of the Guide?

Response:

The delegation of the Netherlands has taken note with much interest of Part III of the Guide to Good Practice.

40. Please describe any developments in legislation, case law or practise relating to enforcement measures and transfrontier access / contact.

Response:

Reference is made to the response by the Netherlands to the questionnaires on Access and Enforcement measures. See also the response to questions 60 and 62.

41. Are there any particular matters which you would like to see included in a Guide to Good Practice on Transfrontier Access / Contact?

Response:

No.

42. Are there any other topics that you would like to see form the basis of future parts of the Guide to Good Practice in addition to those which are already published or are under consideration?

Response:

It would be useful to have a part on enforcement measures.

43. Do you have any other comments about any Part of the Guide to Good Practice?

Response:

No comments.

44. Can you list any examples of good practice not included in the Guides?

Response:

No comments.

Standardised consent form

45. The Permanent Bureau is consulting with States and relevant authorities with regard to developing a standardised or harmonised form for obtaining consent from holders of parental responsibility when a child leaves a State. Do you have any comments about the development of such a form? Or any suggestions as to what information such a form should / should not include?

Response:

In the Netherlands there is no practice of having a formalised consent to leave. It would be interesting to learn from other countries' experience and discuss the Permanent Bureau's suggestion, which raises a number of issues.

Statistics and case management

46. Does your Central Authority maintain accurate statistics concerning the cases it deals with under the Convention, and does it submit annual returns of statistics to the Permanent Bureau in accordance with the forms established by the Permanent Bureau in consultation with Central Authorities? If not, please explain why.

Response:

Yes, since 2005 accurate annual returns of statistics are maintained by our Central Authority and submitted to the Dutch Parliament. Furthermore, the Information Service publishes these statistics and they are also published on the website www.justitie.nl. No annual returns of statistics have been submitted to the Permanent Bureau so far, but the Central Authority is willing to do so henceforth.

47. Does your Central Authority use any special software for case management / statistical purposes? Would your Central Authority be interested in using the new iChild software which is currently being piloted in seven Central Authorities in six Contracting States?

Response:

The Dutch Central Authority is testing a pilot of the iChild software for statistical purposes.

Publicity / debate concerning the Convention

48. Has the Convention given rise to (a) any publicity (positive or negative) in your

country, or (b) any debate or discussion in your national Parliament or its equivalent?

Response:

Yes. Both Parliament and the media take a keen interest in this matter and the Convention is not always well understood. See also the response to question 49.

49. Is the Convention having any negative effects which are causing concern?

Response:

Some issues have been raised by Members of Parliament e.g. the facilities available for the exercise of protected access, a possible compensation for costs incurred by the abducting parent in proceedings on parental responsibility following the return of the child.

50. By what methods do you disseminate information about the Convention?

Response:

See the response to question 3. The website of the Ministry of Justice contains contact details of the Central Authority. Information is provided by the Central Authority and by a brochure about international child abduction. Since 1 June 2006 information about international child abduction is also provided by the Centre for International Child abduction, a private institution.

51. Could you provide a list (including contact details and web site addresses) of non-governmental organisations in your State which are involved in matters covered by the 1980 and / or 1996 Convention?

Response:

Yes, a list of non-governmental organisations involved in matters covered by the 1980 and 1996 Convention is enclosed.

Services provided by the Permanent Bureau

52. Please comment or state your reflections on services provided by the Permanent Bureau to assist the implementation and operation of the Convention, such as:

- a) INCADAT;**
- b) the Judges' Newsletter on International Child Protection;**
- c) the bibliography of the Convention;**
- d) the Child Abduction Section on the website of the Hague Conference;**
- e) INCASTAT;**
- f) iChild;**
- g) support for national / international judicial (and other) seminars / conferences concerning the Convention;**
- h) support for communications among Central Authorities, including maintenance of updated contact details.**

Response:

The Dutch Central Authority considers the services provided by the Permanent Bureau very useful to its general practice. It would welcome access to more court decisions of other

member states on INCADAT. The Dutch Central Authority makes use especially of the information given by the Child Abduction Section on the website of the Hague Conference. The service (pilot) of iChild is still being tested by the Dutch Central Authority.

53. Have you any comments or suggestions concerning the activities in which the Permanent Bureau engages to assist in the effective functioning of the Convention?

Response:

The Malta conferences should be continued as they are an excellent means of promoting the 1980 Convention and the 1996 Convention in the Mediterranean area and elsewhere.

Compliance with the Convention

54. Are there any Contracting States with whom you are having particular difficulties in achieving successful co-operation? Please specify these difficulties.

Response:

See the response to question 2.

55. Are you aware of situations / circumstance in which there has been avoidance / evasion of the Convention?

Response:

Yes, some States have not designated a Central Authority and therefore are not able to fulfil their obligations under the Convention. In such event the Dutch government suspends its acceptance of the application of the Convention in the relationship with the State concerned until notice is received of the designation.

Non-Convention cases and non-Convention States

56. Are you aware of any troubling cases on international abduction which fall outside the scope of the Convention?

Response:

All non convention cases are in general troubling cases, mainly the cases of child abduction to a country with an Islamic legal system.

57. Are there any States that you would particularly like to see become a State Party to the Convention? Are there any States (which are not Parties to the Convention or Members of the Hague Conference) that you would like to see invited to the Special Commission meeting in October / November 2006?

Would you be willing to contribute to a fund to enable certain developing States to attend?

Response:

The Netherlands would particularly welcome the accession of Mediterranean countries to the Convention. A contribution to a fund to enable certain developing States to attend can, however, not be promised.

58. Do you have any comments on bilateral or other agreements between your State and a non-Contracting State?

Response:

The Netherlands cannot enter into bilateral agreements on the matters covered by the 1980 Hague Convention with non-Contracting States but continues its efforts to persuade those states to join the Convention, and become party to the 1996 Hague child protection Convention.

59. What additional information would you find useful on the non-Hague Convention page on INCADAT?

Response:

See the response to question 52. The Dutch Central Authority would find it useful to have access to more (international) judicial documents and case law.

Relationship with other instruments

60. Do you have any comments or observations on the impact of regional instruments on the operation of the 1980 Hague Convention, for example, 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 and the 1989 Inter-American Convention on the International Return of Children?

Response:

As regards Regulation no. 2201/2003, which became effective on 1st March 2005, it is still too early to assess its impact on the operation of the 1980 Hague Convention in the Netherlands.

An Act concerning the application of this Regulation and the 1996 Hague Protection Convention came into force on 1st May 2006. This Act streamlines the procedures for the establishment of decisions and for recognition and enforcement of decisions on parental responsibility and measures of protection given under both the Regulation and the Convention. It provides for the appointment of liaison judges responsible for international judicial communication under the two instruments. The office of the liaison judges reported that so far, it has handled one case of transfer of a dossier under article 11 of the Regulation.

61. Do you have any comments or observations on the impact of international instruments on the operation of the 1980 Hague Convention, in particular, the 1989 United Nations Convention on the Rights of the Child?

Response:

In return proceedings article 20 has seldom been mentioned as ground for refusal of the return of a child to its habitual residence. It was only invoked in addition to article 13 sub b. The Dutch court did not give a decision upon article 20, but closed the matter upon article 13 sub b, that was invoked in the principal claim.

The Hague Convention of 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children

62. If the 1996 Hague Convention is in force in your State, do you have any comments regarding (a) how it has been implemented; (b) how it is operating?

Response:

The Netherlands signed the Convention as early as 1997. An Act authorizing the ratification of the Convention by the Netherlands has passed the national Parliament.

The EU Council decision concerning joint ratification of the Convention by the EU Member States has not yet been adopted as a result of a reservation made by Spain.

- (a) See the attached translation of the Act concerning the application of this Convention and Regulation No.2201/2003. As far as the Convention is concerned, this Act will become operational only after the ratification of the Convention by the Netherlands.
- (b) under the Act, the tasks and tools of the Central Authority for the Netherlands are much the same as under the 1980 Hague Convention. The Central Authority is prepared to process applications which come within the scope of the Convention as if the Convention were in force. As long as the Convention does not enter into force, the Netherlands is bound by the 1961 Hague Child Protection Convention.

63. If the 1996 Hague Convention is not in force in your State, is your State considering implementing this Convention? What are viewed as (a) the main advantages and (b) the main difficulties in implementing this Convention?

Response:

The convention has the major advantage of providing modern jurisdiction rules regarding parental responsibility and measures of protection. It sets criteria for the shift of jurisdiction after a wrongful removal or retention of the child. It provides for a complete set of rules on applicable law and a simplified regime for recognition and enforcement of decisions. Finally, it establishes administrative co-operation and thus creates certainty with respect to services to be provided, in particular in access cases.

64. Have you experienced any difficulties concerning interpretation of particular provisions?

Response:

No.

65. Would you find a Guide to Good Practice on implementation of this Convention useful?

Response:

Such a guide would be extremely useful, also for countries which have ratified the Convention but have not taken any implementing measures.

66. The Special Commission of 2001 recognised the potential advantages of the 1996 Hague Convention as an adjunct to the 1980 Hague Convention, and recommended that Contracting States should consider ratification or accession. How has your State responded to this recommendation?

Response:

See the response to question 62.

Any other matters and recommendations

67. States are invited to comment on any other matters which they may wish to raise concerning the practical operation of the 1980 Convention or the implementation of the

1996 Convention.

Response:

The delegation of the Netherlands is concerned about the fact that in some States a parent who is involved in a procedure concerning the custody of his or her child, will not always qualify for legal aid and advice.

68. States are invited to make proposals concerning recommendations to be made by the Special Commission.

Response:

See the response to question 67. The delegation of the Netherlands considers it appropriate that the Special Commission should recommend that States that are parties to the 1980 Convention should also become parties to the 1980 Hague Convention on international access to justice.

Enclosure I

Response to question 51:

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