

## **Questionnaire concerning the practical operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction***

(Including questions on 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*)

### **The role and functions of Central Authorities**

**Please note that the United Kingdom comprises three separate legal jurisdictions England/Wales, Scotland, and Northern Ireland, each of which has its own Central Authority. These replies relate only to England/Wales, and Northern Ireland; Scotland is filing a separate reply. The duties of the Central Authority for England and Wales are carried out by the International Child Abduction and Contact Unit [the ICACU] located within the Office of the Official Solicitor and Public Trustee. The Official Solicitor has administrative responsibility for the ICACU. The Northern Ireland Court Service is the Central Authority for Northern Ireland. Any distinctions in practice and law between the two Central Authorities have been highlighted in the replies.**

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

**There are difficulties in achieving effective communication with some Central Authorities.**

**The Central Authorities send most communications by fax or e-mail correspondence but does not generally scan in documents for e-mail attachment.**

**E-mail is particularly helpful where:**

- there are significant time differences
- where Central Authorities do not have a fax number which operates outside business hours, or
- where the fax line is also being used as a telephone line.

**Fax is the preferred option when supporting documentation is being sent, with originals to follow by post. If original documents are required urgently then courier service or airmail is preferred.**

**It would be helpful if, when an outgoing application is being sent, the transmitting Central Authority could state their preferred form of communication and their policy on e-mail correspondence. Provided the "out of office" assistant is used (giving alternative contact details) then the absence of the recipient has not been problematic.**

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

**The Central Authorities note that in some cases requested States are slow**

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<sup>1</sup> See the Guide to Good Practice – Part I on Central Authority Practice, Chapter 1.3.3.

to initiate Convention proceedings for the following reasons:

- inadequate financial and staff resources to enable Convention proceedings to be brought expeditiously;
- the requested Central Authority spends time exploring issues and requesting evidence which may more properly go toward custodial issues between the parents and which should be remitted to the courts of the requesting State.
- the child has first to be located and the police, who may have more pressing priorities, are relied upon to search for and locate abducted children.

The UK Central Authorities prefer to issue the Hague application on an immediate basis so that, if necessary, orders can be obtained within the proceedings to assist with location (for example, disclosure orders) and in order to ensure close case management by the court.

The absence of documents relating to the applicable law as to rights of custody, when applications are submitted can delay the commencement of proceedings in the requested State but such difficulties are normally resolved through co-operation.

Communication between Central Authorities can break down when regular progress reports are not provided.

3. Does your Central Authority maintain a website and / or a brochure / information pack? (Please provide the web address or check if the information on the Hague Conference website is accurate, see < [www.hcch.net](http://www.hcch.net) > → Child Abduction Section → Links to related websites). If so, does the website and / or brochure / information pack contain the following information as recommended by the Special Commission of 2001:

#### **England/Wales**

Information about the ICACU is available on the website for the Office of the Official Solicitor and Public Trustee.

The Official Solicitor's website was [www.offsol.demon.co.uk](http://www.offsol.demon.co.uk). It has recently changed to [www.officialsolicitor.gov.uk](http://www.officialsolicitor.gov.uk).

#### **Northern Ireland**

The current web address on the Hague Conference website for Northern Ireland is incorrect. The web address for Northern Ireland is [www.courtsni.gov.uk](http://www.courtsni.gov.uk). Information provided on child abduction on Northern Ireland's web address is under review and will be updated shortly.

It has been suggested that it would be helpful if Central Authorities put in links on their websites to NGOs around the world who offer advice, information and support to parents.

- a) *the other Contracting States in relation to whom the Convention is in effect;*

**Yes**

- b) *the means by which a missing child may be located;*

**Yes**

c) *the designation and contact details for the Central Authority;*

**England/Wales:**

**Yes for each of the Central Authorities for the following:**

- **England & Wales,**
- **Scotland,**
- **Northern Ireland,**
- **the Isle of Man,**
- **the Falkland Islands,**
- **the Cayman Islands,**
- **Montserrat, and**
- **Bermuda**

**Northern Ireland:**

**Yes**

d) *application procedures (for return and access), documentary requirements, any standard forms employed and any language requirements;*

- **Yes.**
- **Whilst English is not the required language, it is the preferred and expected language. The application forms downloadable from the websites are only available in English. If applications are made in languages other than English that will lead to delay, pending translation.**

e) *details, where applicable, of how to apply for legal aid or otherwise for the provision of legal service;*

**Yes**

f) *the judicial procedures, including appeals procedures, which apply to return applications;*

**Yes**

g) *enforcement options and procedures for return and access orders;*

**Information is available about the enforcement of contact (access) orders. Information in relation to frequently asked questions is also available.**

h) *any special requirements which may arise in the course of the proceedings (e.g. with regard to matters of evidence);*

**England/Wales:**

**Yes**

**Northern Ireland**

**Not at present.**

- i) *information concerning the services applicable for the protection of a returning child (and accompanying parent, where relevant), and concerning applications for legal aid for, or the provision of legal services to, the accompanying parent on return;*

**Information about public funding (legal aid) is available.**

- j) *information, if applicable, concerning liaison judges”?*

**Not at present.**

**England/Wales**

**It is intended that the Official Solicitor’s website will be amended to provide this information.**

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? [Note: Questions 20-22 deal with the subject of mediation.]

**The UK Central Authorities and the external solicitors to whom cases are referred encourage parties to try and resolve their differences without the necessity of a contested hearing. The solicitors instructed on behalf of the applicant issue proceedings immediately following referral. If appropriate such negotiations take place concurrently with the return proceedings rather than as a preliminary stage to the application being issued. If the respondent indicates a willingness to return the child voluntarily the proceedings are concluded with a consent order.**

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?<sup>2</sup>

**The Central Authorities are willing to share information about practice and procedure in the spirit of co-operation and do so regularly in the context of specific cases.**

**Good working relationships exist between the separate Central Authorities within the United Kingdom.**

**England/Wales:**

**The ICACU has offered to share expertise with Jersey: the applicable legislation in Jersey came into force on 1 January 2006. The ICACU had a discussion about a year ago about sharing expertise with South Africa and agreed in principle to do so although no effective sharing has yet taken place.**

**Court proceedings**<sup>3</sup>

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?

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<sup>2</sup> See, in particular, Chapter 6.5 on twinning arrangements.

<sup>3</sup> See Guide to Good Practice – Part II on Implementing Measures, chapters 5 – 7.

Yes.

**England/Wales:**

All Hague applications within England and Wales are heard by a Judge of the Family Division of the High Court sitting at the Royal Courts of Justice in London.

**Northern Ireland:**

International Child Abduction cases are almost exclusively dealt with by the Head of the Family Division of the High Court. If for some reason he is unavailable then most likely the case will be heard by another Family Judge.

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?

**England/Wales**

Whilst there is no formal set timetable the listing officer ensures that Hague applications are listed for hearing very quickly and the established general rule is as follows:

- once the initial application is made, it is fixed for hearing 7 days later;
- if a defence is raised the application is listed for directions within 21 days;
- in order to accommodate this, and given the pressure on court lists, the proceedings are listed "at risk" which means that there is a possibility that on the day of hearing a Judge may not be able to accommodate the hearing due to the pressure of other hearings - if this happens a further hearing is fixed for shortly thereafter.

Adjournments are limited by rules of court [Family Proceedings Rules 1991 rule 6.10] to a maximum of 21 days so that the court exercises control over the progress of a case.

The ICACU also notes that Article 11(3) of the Brussels II revised regulation provides as between Member States of the European Community, that a court to which an application for return of a child is made under the Convention, the court shall act expeditiously in proceedings on the application, using the most expeditious procedures available in national law and without prejudice to this, shall, except where exceptional circumstances make this impossible, issue its judgment no later than six weeks after the application is lodged.

Permission to appeal is required. The permission application should be made to the first instance Judge if possible and if not to the Court of Appeal. If permission is refused by the first instance Judge, the application can be renewed to the Court of Appeal.

Any Notice of Appeal has to be filed within 21 days of the date of the first instance decision.

Convention cases are given priority. The Court of Appeal office will try to refer the application for permission to appeal either on the day of issue or within 24 hours to a Lord Justice of Appeal (generally the Head of International Family Law). The Lord Justice of Appeal will give listing directions including deciding whether the application for permission to appeal and the appeal should be heard together so that the permission stage and the substantive appeal hearing take place on the same day.

Ordinarily an appeal will be determined within 6 weeks of the grant of permission to appeal.

The final appellant stage is an appeal to the House of Lords. This rarely occurs.

The Court of Appeal has recently given guidance as to the administrative process to be adopted by the court, in order to ensure that proceedings governed by the Convention and the Brussels II revised regulation are determined within the 6 week time limit imposed by Article 11(3) of the regulation: Vigreux v Michel and Michel [2006] EWCA Civ 630; INCADAT HC/E/UKe 829.

#### Northern Ireland:

An application for a return order will include a date for an initial hearing which will be four to five days after the proceedings have been issued. At this hearing, the Family Judge will fix the timetable by which the affidavit evidence will be submitted. He will also set a further date for review prior to hearing so that any outstanding issues can be prepared and finally a date for the case to be determined. This date is normally six weeks from the date of issue of the proceedings.

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

#### England/Wales

Directions for the filing of evidence are given by the Judge hearing the case. The parties may file affidavit evidence [Family Proceedings Rules 1991, rule 6.7] but there is no right under the court rules to call oral evidence. In Re F (A Minor) (Child Abduction) [1992] 1 FLR 548, INCADAT HC/E/UKe 40 it was held that the admission of oral evidence should be allowed sparingly, since there was a danger that if oral evidence was generally admitted it would become impossible for cases to be dealt with expeditiously and the purpose of the Convention would be frustrated.

Oral evidence may be required if there is a possibility of a non-return order but is the exception rather than the rule. It is not ordinarily necessary to hear oral evidence to consider an Article 13 defence as oral evidence is not consistent with the summary nature of a procedure which is neither designed nor intended to determine the detail of factual issues between the parents. Where however the issue is consent or acquiescence and the written evidence appears evenly balanced oral evidence may be heard.

### **Northern Ireland**

**The Family Judge will deal with any request for oral evidence and/or any other expert evidence at the interim review hearing which takes place approximately three weeks after the issue of the proceedings. At the initial hearing and any other hearing, the Family Judge takes the opportunity to remind the parties that it is only in exceptional cases and upon a separate application that oral evidence will be considered and admitted.**

8. What measures 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?

**The Central Authorities maintain a panel of solicitors with expertise in child abduction.**

### **England/Wales**

**The ICACU assesses the incoming application on receipt and if it meets the requirements refers the application to a panel solicitor within 24 hours. The solicitor is then responsible for applying for a certificate of public funding for legal representation and thereafter for progressing the application including the instruction of counsel. Public funding for applications brought under Article 12 (custody) is non-means and non-merits tested (free) for the applicant (not for the respondent) and available on an urgent basis. Public funding for applications brought under Article 21 (access) is subject to means and merits tests, that is the applicant's income and capital must be below the financial threshold set by the Legal Services Commission, and his/her case must be considered to have a good prospect of success.**

### **Northern Ireland**

**Upon receipt of instructions from the Central Authority, emergency legal aid is available by telephone. Upon receipt of copies of the instructions from the Central Authority and an outline of the case by the solicitor handling the application on behalf of the Central Authority, legal aid will then formally be made available to the party applying for the child's return. It is our experience that Legal Aid deal with requests for additional cover in terms of retention of Senior Counsel/other experts (e.g. a child psychiatrist), quickly and efficiently and their involvement would not lead to delays.**

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?

### **England/Wales:**

**There is no prescribed procedure. Children are generally heard, if appropriate, through an interlocutor – normally the Children and Family Court Advisory and Support Service [CAFCASS] established in 2001, the website address for which is [www.cafcass.gov.uk](http://www.cafcass.gov.uk). The CAFCASS reporter meets with the child and reports back to the court on the child's wishes and feelings either orally or in writing depending upon the time available.**

**The weight given to the child's views will depend upon the child's age and understanding and whether or not his/her views have been genuinely**

arrived at. If the court finds that the child's objections have been influenced by the views of the defendant parent who may be vehemently opposed to any return, little or no weight will be attached to his/her expressed views.

Although the child may be joined as a party to the proceedings at the discretion of the court and be separately represented, it is only in exceptional circumstances where the facts disclose that it would be inappropriate for the child to be heard through a CAFCASS reporter that the court will consider joining the child as a party and ordering separate representation - Re J (Abduction: Child's Objection to Return) [2004] 2 FLR 64, INCADAT HC/E/UKe 579.

#### Northern Ireland

In cases where the defendant is alleging that the child objects to a return and the Family Judge is satisfied that the child is of an age when such objection needs to be considered, he may order that the child is seen by a child psychiatrist and/or some other suitably qualified individual to report on the child's concerns and objections.

The child's age and level of emotional maturity are factors when considering whether or not the child's objections are sufficient to prevent a return. That child's relationship with any other siblings is also a factor to be taken into account.

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?

**This Article was not included in Schedule 1 to the Child Abduction and Custody Act 1985 and does not therefore have the force of law in England and Wales. Nor does it have the force of law in Northern Ireland.**

#### 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.

**None identified.**

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?

**The revised Brussels II regulation [Council Regulation (EC) No 2201/2003] is directly effective and concerns jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility within the Member States of the European Community.**

#### England/Wales

The law in England and Wales with regard to rights of custody is primarily governed by the Children Act 1989 which came into force in 1991 and which created the concept of "parental responsibility" meaning all the rights, duties and powers, responsibilities and authorities which by law a parent of a child has in relation to the child and his property.

The Adoption and Children Act 2002 has amended the Children Act 1989 to extend the class of persons who may have automatic parental responsibility or who may acquire parental responsibility by formal agreement or court order (the changes impact on step-parents, prospective adoptive parents where a child has been placed under a placement order and "special guardians" - the latter are a new concept introduced by the 2002 Act).

The Civil Partnership Act 2004 came into force on 5 December 2005 and amends the Children Act 1989 and the Adoption and Children Act 2002 to reflect the creation of the new status of civil partnership and to allow civil partners to acquire parental responsibility in specified circumstances.

The most significant of the changes is with regard to unmarried fathers. The Children Act 1989 provides that when a child's parents are married they both have parental responsibility but when the father is not married to the mother, he does not have parental responsibility simply by being the father. The unmarried father may acquire parental responsibility and therefore custody rights by court order or by formal agreement with the mother (a parental responsibility agreement) and now, with effect from 31 December 2003, if both parents jointly register the birth of their child.

Electronic copies of the Children Act 1989, the Adoption and Children Act 2002 and the Civil Partnership Act 2004 are available on the website for the Office of Public Sector Information, the address for which is [www.opsi.gov.uk](http://www.opsi.gov.uk).

#### Northern Ireland

The law in Northern Ireland with regard to rights of custody is primarily governed by the Children (NI) Order 1995, which corresponds broadly to the Children Act 1989 and similarly created the concept of parental responsibility.

The Family Law Act (NI) 2001 amended the Children (NI) Order 1995 to enable an unmarried father to acquire parental responsibility if the child's birth is jointly registered and to allow a step parent to acquire parental responsibility.

The Civil Partnership Act 2004 similarly amended the Children (NI) Order 1995 to reflect the creation of the new status of civil partnership and to allow civil partners to acquire parental responsibility in specified circumstances.

The position in respect of acquisition of parental responsibility by unmarried fathers is the same as in England and Wales.

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:

The replies below relate to the jurisdiction of England/Wales; the courts in Northern Ireland would have regard to the case law in England and Wales

in relation to the interpretation on Convention concepts.

- a) rights of custody (Article 3 *a*) and 5 *a*));

Please see the reply to question 12 above with regard to legislative development. Developments in the common law are referred to below.

**Inchoate rights of custody:**

**Re B (A Minor) (Abduction)** [1994] 2 FLR 249 where the court held that the rights within Art 3 may extend to “inchoate rights of those who are carrying out duties and enjoying privileges of a custodial or parental character which, though not yet formally recognised or granted by law, a court would nevertheless be likely to uphold in the interests of the child”

Further developments in the area of inchoate rights of custody are referred to below:

A person with whom a child is placed on a long-term placement with the authority to make decisions may acquire custody rights, as will an unmarried father with no parental responsibility if he lives in the same household and exercises parental rights for a period of time - **Re G (Abduction: Rights of Custody)** [2002] 2 FLR 703, or where his rights have been confirmed - **Re E (Abduction: Rights of Custody)** [2005] 2 FLR 759.

A court may have a right of custody at the relevant time in the sense that it has a right to determine the child's place of residence, provided that it has acquired “custody rights” - **Re E (Abduction: Rights of Custody)** [2005] 2 FLR 759. It acquires rights of custody when its jurisdiction is invoked in respect of matters within the meaning of the Convention. The date on which its jurisdiction is invoked is at the latest when proceedings are served, or in special cases before then - **Re H (Abduction: Rights of Custody)** [2000] 1 FLR 374 HL, INCADAT HC/E/UKe 268.

**Generally:**

A provision in an order that a child is not to be removed from the jurisdiction of a State without the prior approval of the court or the written agreement of the parties confers “rights of custody” for Convention purposes on the non-custodial parent (**Re P (Abduction: Consent)** [2004] 2 FLR 1057, INCADAT HC/E/UKe 591).

Where an issue is raised regarding whether the foreign law gives the applicant custody rights or not, the court will determine the issue on expert evidence adduced before it (see **Re JB (Child Abduction) (Rights of Custody: Spain)** [2004] 1 FLR 796). Where the court is faced with conflicting expert evidence, it is for the applicant to prove his rights under the relevant foreign law.

- b) habitual residence (Article 3 *a*) and 4);

There are two features which must be proved to establish "habitual residence" namely that the person was present in a place or country (i) voluntarily, and (ii) for settled purposes, and, with a settled intention - Al Habtoor v Fotheringham [2001] 1 FLR 951; Re D (Abduction: Habitual Residence) [2005] 2 FLR 403 and Re M (Abduction: Habitual Residence: Relocation) [2005] Fam Law 441.

- c) rights of access (Article 5 *b*));
- d) the actual exercise of rights of custody (Article 3 *b*) and 13(1) *a*));

H v M [2005] EWCA Civ 976: In determining whether or not rights of custody were being exercised by the applicant immediately prior to the child's removal, the court was required to apply the autonomous law of the Convention and not English law. The autonomous meaning was to be determined in accordance with English law as the law of the court whose jurisdiction had been invoked under the Convention. However the Convention could not be construed differently in different jurisdictions: it had to have the same meaning and effect under the laws of all contracting States. In any case which involved the construction of an Article of the Convention the answer was to be found in the international jurisprudence of the contracting States.

- e) the settlement of the child in his / her new environment (Article 12(2));
- f) the one year period for the purposes of Article 12;
- g) consent or acquiescence to the removal or retention of the child (Article 13(1) *a*));

Re P (Abduction: Consent) [2004] 2 FLR 1057, CA, INCADAT HC/E/UKe 591: where consent is in issue, the burden of proof shifts to the person who is opposed to the return of the child to prove, on the balance of probabilities, that the removal was by consent

- h) grave risk (Article 13(1) *b*));

Re S (Abduction: Custody Rights) [2002] 2 FLR 815, INCADAT HC/E/UKe 469: the court considered the risk of harm posed by reason of terrorist attacks and held that the issue was whether there was a risk of specific harm to the particular child and not whether there was a general risk of harm.

- i) exposure to physical or psychological harm (Article 13(1) *b*));

Article 13(b) names three risks, interlinked by the use of the word "otherwise". The proper course for the court when considering an Article 13(1)(b) defence is to consider the grave risk of harm as a discrete question and then consider the Article in the round, asking if the risk of harm was established to the extent that led one to say that the child would be placed in an

intolerable situation if returned: Re S (A Child) [2002] EWCA Civ 908, INCADAT HC/E/UKe 469.

Re H (Children)(Abduction: Grave Risk) [2003] EWCA 355, INCADAT HC/E/UKe 496: the threshold that had to be crossed when an Article 13(b) defence was raised was a high one and difficult to surmount. Even if the threshold was crossed the court retained a discretion as to whether to return the child.

TB v JB (Abduction: Grave Risk of Harm) [2001] 2 FLR 515: where fear of violence from the applicant is alleged as a basis to establish grave risk of psychological harm to the children, the court will take into account measures which the alleging party could reasonably be expected to take in the requesting country to protect herself and her children against the applicant.

Re B (Abduction: Grave Risk) [2005] EWHC 2988 (Fam): where it is alleged that the applicant has breached conditions attached to an order made by a court in the requesting state, the proper course should be to return the children for that court to consider the issues raised on a renewed application.

- j) intolerable situation (Article 13(1) *b*));

**Please see the reply to (i) above.**

- k) the child objects to being returned (Article 13(2)); (see also question 9)

**Please see the reply to question 9.**

Zaffino v Zaffino [2005] EWCA Civ 1012, INCADAT HC/E/UKe 813: In the exercise of the discretion arising under Article 13 the court must balance the nature and strength of the child's objections against both the Convention considerations (including comity and respect for the judicial processes in the requesting State) and also general welfare considerations.

- l) fundamental principles relating to the protection of human rights and fundamental freedoms (Article 20). (See also question 10)

**Please see the reply to question 10.**

### **Direct international judicial communication**

14. Please describe any developments in the area of direct international judicial communication. If your country has responded to the 2002 Questionnaire on direct international judicial communication please describe any developments in this area since your response was made. (The Questionnaire is available on the website of the Hague Conference at: < [www.hcch.net](http://www.hcch.net) > → Child Abduction Section → Questionnaire & Responses).

**In January and September 2003 the Judges of the United Kingdom entered into an agreement with the Judges of Pakistan (generally known as the Pakistan Protocol). Essentially the protocol introduces a jurisdictional rule**

to determine which state has primary jurisdiction and ensure the reciprocal enforcement of the orders of the primary jurisdiction. The protocol also provides for the appointment of a liaison judge for each state. Internally all Anglo/Pakistani cases are reported to the Liaison Judge in London and, where appropriate, referred to the Liaison Judge in Islamabad for his assistance. Some fifty cases a year are reported internally. In March 2006 the operation of the protocol was reviewed at a further meeting between the judges of the United Kingdom and the judges of Pakistan. A number of refinements of the protocol were agreed.

Following meetings in London in January 2004 and January 2005 in Cairo an agreement was reached between the judges with the support of the Ministers of Justice. The agreement, although differing in language from the Pakistani Protocol, has similar effect. The declaration, together with the papers presented at the judicial meetings has subsequently been published in Cairo by The Supreme Court.

In January 2005 the post of Head of International Family Law was created for the jurisdiction of England and Wales. Amongst the various responsibilities of the office is the promotion of direct international judicial communication both in specific cases and more generally. Furthermore the Head of International Family Law initiates exchanges with judges from other jurisdictions following the precedent of the Protocol and the Declaration.

To this end a judicial delegation from Bangladesh was received in London in March 2006. The process begun during the London visit will be pursued at a future meeting in Dhaka.

A similar overture to the Chief Justice of India has been received positively. He has appointed a commission, chaired by one of the judges of the Supreme Court, to advise on the feasibility and advantages of an international family law agreement between our countries.

The Foreign and Commonwealth Office has supported direct international co-operation with the judiciary in a number of States that have not ratified the Hague Convention. This includes Bangladesh, Egypt and Pakistan, reflecting the large number of cases in these countries in which we are asked to provide consular assistance. We consider the appointment of Liaison Judges in the UK and Pakistan and the judicial understanding, the UK-Pakistan Protocol on Children Matters, to have assisted in the return of a number of children abducted between our two countries. FCO has provided financial support to the two Judicial Conferences on Cross-Frontier Family Law Issues, held in Malta in March 2004 and March 2006.

### **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?

**On an occasional basis.**

**In such circumstances the Central Authorities and the external solicitors**

**liaise with the requesting Central Authority and with relevant government departments and consular authorities to try and resolve such issues.**

**In one recent case the abducting parent reported her passport as not being in her possession resulting in it being cancelled. Her passport was at that time being held by the High Court. The solicitor for the applicant parent liaised with the High Commission in London to facilitate the issue of a new passport.**

**In another case a return order was made but the requesting State party would not then accept the returning parent's travel documents or issue any travel documents to facilitate the return of the child. The returning parent was of South American origin but resident in the requesting State. It was unclear whether she had entered the requesting State legally. She had brought the child to England using a stolen British passport. The ICACU liaised with the Foreign & Commonwealth Office and Home Office to try and overcome the difficulties. The Home Office exceptionally agreed to provide a one off travel document, although the returning parent/child were not British. The requesting State has not recognised this document for the purpose of entry to the requesting State.**

**The Central Authorities would wish to encourage co-operation between States party and inter-government departmental co-operation to overcome such difficulties.**

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 a 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?

**No.**

**The reported cases have arisen in the context of non-Convention cases.**

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?

**No.**

**See the reply to 13(b) as to the requisite factors for consideration in England and Wales.**

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

**Although our Central Authorities have not experienced this difficulty, our principal NGO has experienced particular problems with the United States of America. For example, a primary carer mother abducting to the UK, child returned under Hague but due to mother's immigration status she was unable to return with the child therefore she was unable to maintain contact with the child and also had to put her case for leave to remove without being able to attend the court hearing, other than if she is eligible for a 90-day access visa.**

## **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.

### **Points for consideration when criminal charges are pending:**

- Encourages the abducting parent to remain in hiding
- Reduces the possibility of a voluntary return
- Reduces the possibility of mediation
- Could be detrimental to the child's wellbeing if one parent is imprisoned

This could be resolved by the State of habitual residence agreeing that if the child is voluntarily returned the criminal charges would be dropped.

### **England/Wales**

Commonly the High Court will seek an undertaking from the applicant parent to withdraw the criminal charges or take all practical steps to ensure that such charges are not proceeded with - the Central Authorities acknowledge that if the requesting State has initiated the proceedings, the applicant parent will not necessarily be able to require that the charges are not proceeded with.

### **Northern Ireland**

No experience of this.

## **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.

### **England/Wales**

The ICACU has recently taken part in a mediation pilot scheme set up by Reunite and funded by The Nuffield Foundation. The scheme was set up as a way of investigating whether mediation could be used to successfully resolve abduction cases by giving the parents an opportunity to discuss the practical issues affecting their children's future. The parents were invited by their legal representatives to take part in mediation. If they agreed the left behind parent was able in the majority of cases to travel to England to take part in the mediation. Under the pilot scheme the cost of travel, accommodation and the mediation was covered without cost to the parents. In a minority of cases mediation was conducted by telephone so that the left behind parent did not have to travel.

Where the parents were able to agree on issues relating to their children, the agreements went forward to both parents' lawyers for advice. If, following advice, the agreement stood, a request was made to the High Court to make a consent order reflecting the outcome.

The pilot scheme has now concluded and a full report with conclusions will be published shortly by Reunite.

**We would also wish to draw attention to the Court of Appeals ADR scheme for family appeals. Although the scheme is not mandatory, and indeed depends upon the reciprocal consent of the parties, it has proved particularly efficacious in international child abduction. Once the parties have consented to mediate the process is directed by the Court of Appeal. The Court appoints the mediator and settles any disputes as to practicalities. Hague cases clearly require a mediator with particular experience and expertise in international child disputes. Accordingly in practice the Court of Appeal invariably refers such mediations to our principal NGO, Reunite.**

**With reference to training, Reunite is currently developing a training module for mediators.**

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

**Mediation takes place over a relatively short timeframe and within the context of proceedings.**

**The Reunite Mediation Pilot Scheme offered intensive mediation for a total of 9 hours over a two-day period.**

**The mediation runs alongside the judicial process so as not to delay proceedings under the 1980 Hague Convention.**

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?

**When reviewing the feedback from parents who participated in the Reunite Mediation Pilot Scheme, the project has proved to be successful and clearly demonstrates that there is a place for mediation in cases of international parental child abduction.**

### **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, (some of which are available on the website of the Hague Conference at: < [www.hcch.net](http://www.hcch.net) > → Child Abduction Section), had an impact on the functioning of the 1980 Convention?

**Judicial conferences at the National, Regional and International levels have proved especially fruitful in supporting the function of the Convention. At a national level judicial conferences are occasionally arranged for the specialist family judges in the three separate jurisdictions of the United Kingdom (England/Wales, Scotland and Northern Ireland).**

On a regional level the United Kingdom has pioneered conferences bringing together German speaking and English jurisdictions. The conferences are held in alternate years and the 2006 conference will be the 6<sup>th</sup> in the series. The first, in 1995, specially addressed the poor level of achieved returns in Anglo/German cases. The conference contributed substantially to the subsequent legislative reduction of the court's exercising jurisdiction in Germany from over three hundred to just over twenty. More general benefits have consistently flowed from enthusing individual judges with the underlying principles and objectives of the Convention.

A similar practice has been developed for European jurisdictions using either French or English in their courts. These exchanges have assisted the development of a Liaison Judge system for our respective jurisdictions.

On an international level in 2003 the United States in collaboration with the United Kingdom arranged a conference for judges of Common Law jurisdictions around the world. The meeting enabled judges to discuss the harmonisation of interpretation and construction of Articles of the Convention. It is to be hoped that a further Common Law Judicial Conference will be convened in the future.

The UK has consistently participated in regional and international conferences convened by the Permanent Bureau, whose work in this field has been of the highest standard.

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

In England/Wales and Northern Ireland the Judicial Studies Board organises seminars for the Judges of the Supreme Court in preparation for international family law developments.

The ICACU provided representation for 3 courses within England and Wales organised in 2005 by Reunite to increase practitioner awareness of both the Hague Convention and the Brussels II revised regulation, one for police officers based with the National Criminal Intelligence Service [NCIS], one for social workers and one for legal practitioners.

**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?

Yes.

See the reply to question 7(b). An existing finding by the courts of the requesting State that violence or abuse has occurred would be a material factor.

The court may indicate that a return order will not be made unless

**undertakings are in place to facilitate and safeguard the return of the child and returning parent and to ensure their welfare pending the courts of the requesting State being seized with the issues. Such undertakings are annexed to or recorded as recitals to the return order.**

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?

**See the reply to question 25. The Central Authority or the returning parent's solicitors may alert the requesting Central Authority to ensure that the child protection authorities in the requesting State are notified that such concerns have been raised.**

**Issues of (alleged) domestic violence or abuse will invariably be part and parcel of an Article 13(b) defence. The judge who tries the return application will not order a return unless satisfied that there will be in place in the requesting State protective measures sufficient to meet the risks arising from so much of the allegations as he has found proved. In meeting the Article 13(b) defence the applicant will be at pains to establish the nature and extent of the protective measures. In such circumstances it is of course open to the judge to make enquiry either through the Central Authority or through the Liaison Judge in the requesting State in order to satisfy himself that sufficient protective measures are available and will put in place prior to return.**

27. To what extent are your courts entitled and prepared to employ "undertakings" (i.e. promises offered by, or required of the applicant) as a means of overcoming obstacles to the safe return of the child? Please describe the subject matter of undertakings required / requested.

**See the reply to question 25.**

**Undertakings are commonly used in order to ensure the safe return of the child and to safeguard the child's welfare pending the courts of the requesting State being seized with the issues. They can be directed at issues such as:**

- **a prohibition on the requesting parent seeking to remove the child from the care and control of the returning parent pending any decision by the court of the requesting State;**
- **protection for the returning parent/child against the use or threat of violence or the use of harassment by the requesting parent;**
- **provision for the child's maintenance and accommodation pending any decision by the court of the requesting State;**
- **provision for the travel costs for the child's return;**
- **no criminal charges;**
- **exclusive use of the family home by the defendant and child;**
- **agreement that proceedings be issued either by the applicant or the returning party in relation to the protection of the child / returning parent, custody and all other issues pertaining to the parties to be brought upon the immediate return of the returning parent / child to the country of origin.**

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?

**Our courts treat formal undertakings to the court as tantamount to court orders thus undertakings to the foreign court will ordinarily be upheld and validated in this jurisdiction. It is unlikely that any differentiation would be made between consensual and imposed undertakings.**

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)?

**Given the commitment of our courts to international judicial collaboration their general approach would be fully supportive of the use of safe harbour or mirror orders. However there are doubts as to the jurisdiction of our courts to grant to a mirror order in relation to a child who is neither habitually resident nor physically present within this jurisdiction.**

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

**The implementation of the revised Brussels II regulation means that mirror orders should be unnecessary between Member States of the European Community.**

**The courts of some States party have tried in the context of a return application to use undertakings to settle broader issues between the parties rather than using them simply to address immediate needs pending the courts of the requesting State being seized with the issues.**

**In research undertaken by the Reunite Research Unit in September 2003, it was found that undertakings were broken in 66.6% (8) of the 12 cases in which they were given. See 'The Outcomes For Children Returned Following An Abduction' page 28.**

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

**It is commonly alleged within the context of an Article 13(b) defence.**

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?

**Yes. The High Court refused a return order under Article 13(b) where there was evidence of a real risk of physical danger to the children, that the children were anxious for their own safety and their mother's safety, that they had heightened emotional problems as a result of past events and that the children's psychological welfare would be put at grave risk**

beyond the normal disruption of an enforced return to their habitual residence, if a return was ordered. The mother had been the victim of an apparently pre-meditated, targeted and serious fire arm assault in the country of habitual residence (Re D (Children) [2006] EWCA Civ 146, INCADAT HC/E/UKe 818).

### **Standard questionnaire for newly acceding States**

33. If your State has acceded to the Convention have you filled out the standard questionnaire for newly acceding States? If so, have you any comments about the ease or otherwise of filling out this questionnaire? If not, can you explain why?
34. Has your State found the responses to the standard questionnaire for newly acceding States (available on the website of the Hague Conference at: < [www.hcch.net](http://www.hcch.net) > → Child Abduction Section → Standard questionnaire for newly acceding States) useful when considering whether or not to accept the accession of an acceding State? What additional information would be useful?
35. What measures, if any, do your authorities take, before deciding whether or not to accept a new accession (under Article 38), to satisfy themselves that the newly acceding State is in a position to comply with Convention obligations, and how do you ensure that this process does not result in undue delays?

### **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?

**The Central Authorities were involved in the drafting of the Guide to Good Practice. Their implementation of the Convention closely follows the Guide. The Guide to Good Practice is an extremely useful reference tool.**

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

**See response to 36 above.**

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

**See 36 above**

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?

**No**

40. Please describe any developments in legislation, case law or practice relating to enforcement measures and transfrontier access / contact. If your country has responded to the Questionnaire on Enforcement Measures distributed in July 2004 or the Consultation Paper on Transfrontier Access / Contact distributed in January 2002 please describe any developments in legislation, case law or practice since your response was made. (The Questionnaire and Consultation Paper are available on the website of the Hague Conference at: < [www.hcch.net](http://www.hcch.net) > → Child Abduction Section → Questionnaire & Responses).

**Orders made in the UK are automatically enforceable.**

41. Are there any particular matters which you would like to see included in a Guide to Good Practice on Transfrontier Access / Contact? (See "Transfrontier Access / Contact and the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction – Final Report" drawn up by William Duncan, Deputy Secretary General, Prel. Doc. No 5 of July 2002 available at: < [www.hcch.net](http://www.hcch.net) > → Conventions → Convention 28 → Practical Operation Documents.)

**See response to 43 below.**

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 (these are: Part I on Central Authority Practice; Part II on Implementing Measures; Part III on Preventive Measures as well as enforcement measures and access / contact)?

**See 43 below.**

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

**The UK Central Authorities note paragraphs 1.5.1 and 1.5.2 of the Guide to Good Practice in this regard. We would wish more emphasis to be placed on the need to initiate proceedings expeditiously following on from receipt by the Central Authority of the application. Delay in initiating proceedings is likely to be prejudicial to the outcome. Even if the child has not at that time been located the court may be able to assist in this regard, for example, by way of disclosure orders. Close case management by the court can only assist.**

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

#### **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 (see the Guide to Good Practice - Part III on Preventive Measures). 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?

The Central Authorities welcome in principle the proposal of a formal record of agreement by way of a form of consent. It would be concerned however about the imposition of a form of consent as a requirement in all cases.

The Central Authorities note that consent to removal is an exercise of parental responsibility and the imposition of a form of consent may require amendment of primary legislation.

The UK Central Authorities would suggest consideration be given to:

- whether the form of consent would give rise to an evidential presumption rather than being binding on the court of the receiving State;
- the form of consent being witnessed;
- including a declaration that all persons with "rights of custody" have entered into the form (such persons not necessarily being limited to the parents of the child);
- as to the circumstances in which the consent may be revoked and whether such revocation would also have to be in writing;
- how to safeguard against misrepresentation, undue influence or duress by the person seeking the consent;
- the need to place emphasis on the fact that the form of consent could have legal consequences and that the persons signing it should seek independent legal advice.

#### **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.

**Yes.**

**The England/Wales Central Authority's 2005 statistics are now available. The Northern Ireland Central Authority also maintain statistics and submit annual returns.**

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 7 Central Authorities in 6 Contracting States?

**The ICACU uses the same software used across the network by the litigation divisions of the Office of the Official Solicitor. It formerly considered using the iChild software but no immediate changes are contemplated. The position will be kept under review.**

**In Northern Ireland, the Central Authority does not use any special software, nor do they need any owing to the limited number of applications in the jurisdiction.**

## **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?

**Yes.**

**There is also a Child Abduction Parliamentary Working Group.**

**In Northern Ireland the benefits of the Convention have been recently highlighted in the media mainly in the context of cases involving abduction to a State which is not a party.**

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

**No.**

**Individual cases can give rise to correspondence with Members of Parliament on behalf of a constituent but such correspondence is case specific.**

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

**The England/Wales Central Authority:**

- **produces a booklet called *International Child Abduction and Contact, Advice to Parents*;**
- **sends the booklet to a parent on request;**
- **provides copies of the booklet to organisations such as Citizens Advice Bureaux on request;**
- **maintains its own pages on the Official Solicitor's website;**
- **mentions the availability of the information booklet on the website;**
- **includes on the website hyperlinks to other relevant government departments and NGOs such as the Foreign & Commonwealth Office, the Department of Constitutional Affairs, the UK Passport Agency and Reunite;**
- **gives presentations and writes articles - most recently for the Association of District Judges' bulletin.**

**The Reunite advice line refers parents to the ICACU.**

**In Northern Ireland, information is disseminated through the internet or by email.**

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 Conventions?

**Reunite  
International Child Abduction Centre  
PO Box 7124  
Leicester LE1 7XX  
United Kingdom**

Reunite's most recent research publication: *International Child Abduction: The Effects* dated May 2006 is now available.

Telephone: +44 (0) 116 2556 234 (advice line) and +44 (0) 116 2556 370  
Fax: +44 (0) 116 2556 370  
www.reunite.org

PACT [Parents and Abducted Children Together]  
PO Box 31389  
London SW11 4WY  
United Kingdom

Telephone/fax: +44 (0) 20 7627 3699  
www.pact-online.org

### 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;

**It would assist in ensuring that INCADAT is an effective resource if States party automatically referred reported case law to INCADAT. By way of example, in England and Wales the Court of Appeal refers its own judgments to INCADAT.**

b) the Judges' Newsletter on International Child Protection;

**Since its inauguration in 1998 the Judges Newsletter has proved invaluable, cementing relationships between specialist family judges around the world and demonstrating the high level of experience and expertise that international child protection requires. Hard copy distribution has been the foundation of the venture but it is easy to predict that with the increasing use of internet communication the text of the newsletter will reach an ever widening circle.**

c) the bibliography of the Convention;

d) the Child Abduction Section on the website of the Hague Conference;

e) INCASTAT (the database for the electronic collection and analysis of statistics on the Convention, which is currently being developed);

f) iChild (the electronic case management system designed by the Canadian software company Worldreach, which is currently being piloted by 7 Central Authorities in 6 Contracting States).

g) support for national / international judicial (and other) seminars / conferences concerning the Convention;

**This question has been fully considered under paragraph 23 above.**

- h) support for communications among Central Authorities, including maintenance of updated contact details.

**The Central Authorities have noted that the contact details for Central Authorities published on the Hague Conference's website are not always up to date and considers it essential to the support for communications among Central Authorities for such information to be kept up to date. Please see also the reply to question 1. It may assist if a Central Authority's preferred form of communication was similarly published on the website.**

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?

### **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.

**The ICACU has been unable to communicate successfully with Serbia & Montenegro and has achieved only very limited communication with Brazil, Macedonia, Mexico and Peru.**

**On a general basis the ICACU is concerned that co-operation is difficult when there is non-recognition of national procedures and practice and an expectation by the receiving State that procedures in the requesting State will duplicate those of the receiving State. Further even if the differences are identified and explained, this does not necessarily address that expectation. There needs to be a greater recognition that diversity of national practice and procedure does not necessarily lead to lesser standards.**

**In particular:**

**Greece – non enforcement of return order.**

**Spain – time delays and a problem with responding to requests for progress reports.**

**USA – the attorneys instructed do not necessarily have experience in the area of child abduction.**

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

**In a recent case a parent has reported that he was informed by the Central Authority of the receiving State that an application to court would not be made and requested to cede custody to the abducting parent. The ICACU are seeking to verify this information through Embassy staff.**

## **Non-Convention cases and Non-Convention States**

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

**Cases of international parental child abduction from the UK to Non-Convention States are handled by the Foreign and Commonwealth Office (FCO), who provide consular assistance to British National left-behind parents. The FCO has a specialist unit based in its Consular Directorate in London, the Child Abduction Section, to handle these cases. Since 2003 they have opened files on 344 cases of cross-frontier abductions to Non-Convention States. In these cases, if the parents cannot come to an agreement about the residence of the child and there is not a voluntary return, the left-behind parent may have to go through the courts of the other country to seek the return of their children. This can be a lengthy and costly process and the number of returns from Non-Convention States is low. Even maintaining contact between left-behind parents and children in some Non-Convention States can be very difficult.**

**We welcome ongoing dialogue between Convention and Non-Convention States, such as the Malta Conferences, on improving co-operation, mutual understanding of different legal systems and efforts to find common ground on legal principles to protect the best interests of the child.**

**Reunite has recently concluded a 2-year research project "Child Abduction and Custody Laws in the Muslim World, covering 40 States. We hope that this research will provide a better understanding of the culture and legal systems to the parent and their legal representative.**

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?

**The list of observer states set out in paragraph 2 would benefit from the addition of Egypt, Pakistan, India and Bangladesh.**

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

**Please refer to the answer to question 23 above.**

**UK-Pakistan Judicial Protocol on Children Matters – even though we see the Protocol as a positive move forward, and it has certainly assisted in the safe return of some children, we still urgently require a list of specialist lawyers approved by the Pakistani authorities as well as the Pakistani authorities considering what financial support they could offer to parents who wished to make an application for the return of their child under the Protocol.**

**In general terms, when reviewing other bi-lateral agreements between other States, it is clear that these agreements are very rarely used. To**

date Reunite has been unable to identify which government department undertakes the management and monitoring of such bi-lateral/multi-lateral agreements and been unable to access any statistical information.

59. What additional information would you find useful on the non-Hague Convention page on INCADAT available at < [www.incdat.com](http://www.incdat.com) >.

#### **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*?

**The Central Authorities note that Articles 11(2)-11(5) of the regulation prevail over the rules of the Convention.**

**Article 11(4) of Council Regulation (EC) No 2201/2003 states that a court cannot refuse to return a child on the basis of Article 13(b) of the Hague Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return. This means that the court must order the return of the child even if a return would put the child at risk provided it is satisfied by the arrangements.**

**The ICACU feels that this may give rise to possibility of a return order being made where a non-return order might otherwise have been made under Article 13(b) and would, on the same facts, still be made if the requesting State was not a Member State of the European Community.**

**Similarly the regulation imposes a requirement to hear the child within the context of a Hague application (subject only to the exception stated) stating at Article 11(2) that when applying Articles 12 and 13 of the Convention, it shall be ensured that the child is given the opportunity to be heard during the proceedings unless this appears inappropriate having regard to his or her age or degree of maturity.**

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*?

**No, the ratification of the UNCRC by the UK Government has not directly impacted on the operation of the 1980 Hague Convention.**

#### **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?

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?

**The UK's ratification of the 1996 Convention is dependant on all EU Member States ratifying together.**

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

**See response to 63 above.**

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

**See 63 above.**

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?

**See 63 above**

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