

## DÉVELOPPEMENTS RÉGIONAUX

*document établi par le Bureau Permanent*

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## REGIONAL DEVELOPMENTS

*document drawn up by the Permanent Bureau*

*Document préliminaire No 10 d'octobre 2006  
à l'intention de la Cinquième réunion de la Commission spéciale  
sur le fonctionnement de la Convention de La Haye du 25 octobre 1980  
sur les aspects civils de l'enlèvement international d'enfants  
(La Haye, 30 octobre – 9 novembre 2006)*

*Preliminary Document No 10 of October 2006  
for the attention of the Fifth meeting of the Special Commission  
to review the operation of the Hague Convention of 25 October 1980  
on the Civil Aspects of International Child Abduction  
(The Hague, 30 October – 9 November 2006)*

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## I. REGIONAL DEVELOPMENTS

Over the past decade the Permanent Bureau has continued to develop its activities in the field of promotion, education and training in respect of Hague Conventions at the global, regional and national levels, in close consultation and co-operation with Hague Conference Member States and States Parties to Hague Conventions. In recent years the Permanent Bureau has begun to focus efforts and initiatives at the regional levels, in particular in Latin America, in Southern and Eastern Africa and among States with legal systems based upon or influenced by Shariah law.

Further developmental work is in process in the Asia-Pacific region as well as in Western and Central Africa. These regional developments bring several dividends. They promote closer networking and co-operation among States with special cultural and linguistic ties. They bring in to the Conventions more States formerly unfamiliar with Hague Conventions. They benefit other States outside the region through the development of good practices and consistent interpretation, and thus contribute in a more general way to the successful operation of the Conventions. They permit consideration to be given to ways of adapting the Conventions to the particular legal environments shared by countries in a region.

Meetings of the Special Commission on General Affairs and Policy of the Conference have consistently expressed support for initiatives undertaken by the Permanent Bureau to promote and provide technical assistance, including the new activities in the field of education and training in support of the Judicial and Administrative Co-operation Conventions and the regional development initiatives (in 2000, 2002,<sup>1</sup> 2003,<sup>2</sup> 2004<sup>3</sup> and 2005<sup>4</sup>).

### A. THE AMERICAS

Following from the Conclusions and Recommendations agreed at the December 2004 Latin American Judges' Seminar on the *Hague Convention of 25 October on the Civil Aspects of International Child Abduction*,<sup>5</sup> the Permanent Bureau has developed a Special Programme for Latin American States focused on reinforcing the operation of the Hague Conventions and promoting the participation of Latin American States in the work of the Hague Conference.

Mr Ignacio Goicoechea, a member of the Argentine Central Authority designated under the 1980 Hague Convention has assumed the role of Hague Conference Liaison Legal Officer for Latin America and has undertaken certain measures to support the regional efforts to strengthen the effective implementation and operation of the Conventions and to implement the Special Programme for Latin American States.<sup>6</sup> This arrangement has been made with the generous assistance of the Argentine Ministry of Foreign Affairs.

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<sup>1</sup> Note on the current status of work relating to the monitoring of the Hague Conventions on Judicial and Administrative Co-operation, Prel. Doc. No 25 of April 2002 for the attention of Commission I (General Affairs and Policy of the Conference) of the Nineteenth Session – April 2002.

<sup>2</sup> See Strategic Plan Update, Prel. Doc. No 3 of March 2003 for the attention of the Special Commission of April 2003 on General Affairs and Policy of the Conference.

<sup>3</sup> See Strategic Plan Update, Prel. Doc. No 14 of February 2004 for the attention of the Special Commission of April 2004 on General Affairs and Policy of the Conference.

<sup>4</sup> See Strategic Plan Update, Prel. Doc. No 22 of February 2005 for the attention of the Special Commission of March / April 2005 on General Affairs and Policy of the Conference.

<sup>5</sup> Attended by more than 90 Judges, Central Authority officials and other experts from 19 States in the Americas. The Seminar, held in Monterrey, Mexico, 1-4 December 2004, was co-organized by the Hague Conference, United States Department of State (Office of Children's Issues), Organization of American States, Law School of *Instituto Tecnológico y de Estudios Superiores de Monterrey*, American Bar Association Latin American Law Initiative Council, Texas-Mexico Bar Association, and the International Centre for Missing and Exploited Children. The Conclusions and Recommendations are available on the website of the Hague Conference at: < www.hcch.net > – Child Abduction Section – Judicial Seminars on the International Protection of Children. See Annex III.

<sup>6</sup> See Annex I for a detailed description of Phase I and Phase II of the Special Programme.

Phase I of the Special Programme (April 2005-June 2006) concentrated efforts on providing technical assistance to States in Latin America in respect of implementation of the Hague Children's Conventions, particularly through visits to Central Authorities and convening national and international judicial seminars, in consultation and co-operation with the national governments of each State. In the context of the Special Programme, the Permanent Bureau assisted with and presented at judicial and interdisciplinary seminars on the Hague Conventions in 12 States, organised and principally funded by the national governments involved.<sup>7</sup> A second major Seminar for Latin American Judges was held in The Hague in December 2005 with the generous assistance of the Hague Forum for Judicial Expertise.<sup>8</sup>

Special Programme Phase I visits to States in Latin America assisted in (i) increasing the visibility of the work of the Hague Conference in the region; (ii) assessing the operation of Hague Conventions within each State; (iii) identifying obstacles to effective implementation and discussing ways in which those obstacles may be removed; (iv) providing information in respect of Hague Conventions currently being examined in certain States; (v) encouraging the accession to and ratification of Hague Conventions; and (vi) reinforcing links with officials, judges and others with responsibility under the Hague Conventions. The Programme has resulted in the establishment of a regional judicial / Central Authority network, regional expansion of INCADAT and *The Judges' Newsletter*. Importantly this initiative has reinforced the operation of the Hague Conventions and promoted the participation of Latin American States in the work of the Hague Conference.

Phase II of the Special Programme (July 2006-June 2007) has seen an increased focus on all Hague Judicial and Administrative Co-operative Conventions. The Programme anticipates further co-operation with States in Latin America, including initial visits to States which were not made during Phase I and follow-up visits from Phase I as recommended in the individual State reports.<sup>9</sup>

In respect of co-operation with other regional organizations, links with MERCOSUR,<sup>10</sup> IBERO-AMERICA<sup>11</sup> and, in particular, the Organization of American States / *Instituto Interamericano del Niño* (IIN) have been strengthened. On 11 June 2006 at the seat of the IIN in Montevideo, the Secretary General of the Hague Conference on Private International Law and the Officer in charge of the Office of the IIN signed an Agreement of Co-operation between the two organisations. The Agreement sets out ways in which the two organisations might coordinate in the execution of activities concerning the Inter-American Program of Cooperation to Prevent and Remedy Cases of International Abduction of Children by One of their Parents in parallel with the Hague Special Programme for Latin American States, including through the development of activities for

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<sup>7</sup> Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Honduras, Mexico (Tijuana), Panama, Paraguay, Peru, Uruguay.

<sup>8</sup> The Hague Conference and the Hague Forum for Judicial Expertise co-organised The Hague Project for International Co-operation and the Protection of Children: Operation of the Hague Children's Conventions and Cross-Border Protection of Children within Latin America, held in The Hague 28 November-3 December 2005. The Seminar was attended by 18 Judges from 16 States in the Americas. See Conclusions and Recommendations agreed at Seminars at – < [www.hcch.net](http://www.hcch.net) > - Child Abduction Section – Judicial Seminars on the International Protection of Children, also at Annex II.

<sup>9</sup> In the first quarter of Phase II the Liaison Legal Officer has met with officials in Bolivia at the Ministry of Justice and in Peru with Judicial Officials. Meetings with officials in Honduras and Venezuela have been planned for early 2007. A Judicial Seminar organized by the Brazilian Central Authority will be convened in December 2006.

<sup>10</sup> At the October 2006 Mercosur Technical Commission Meeting (Meeting of the Ministers of Justice) in respect of a discussion on the Hague Judicial and Administrative Co-operation Conventions.

<sup>11</sup> At the October 2006 VIII Ibero-American Conference of Ministers and High Responsible for Childhood and Adolescence (*VIII Conferencia Iberoamericana de Ministros – Ministras y Altos Responsables de Infancia y Adolescencia*) "Migration and its effects on Children Rights" in respect of the Hague Children's Conventions and in particular the 1996 Hague Convention.

actors involved in implementing the legal instruments. It is to this end that the first joint IIN-HCCH Meeting will be convened on 10 November 2006 in The Hague immediately following the Fifth Special Commission to review the practical operation of the 1980 Hague Convention. The joint meeting for States in the Americas will focus on addressing concrete actions to implement any agreed Conclusions and Recommendations from the Special Commission and identifying topics that should be developed by a working group with a view to presentation and discussion at the 2007 Inter-American Meeting.

## B. SOUTHERN AND EASTERN AFRICA

In response to the exponential growth of the geographical span and number of States and individuals affected by cross border child protection issues the Permanent Bureau has been carrying out exploratory work in Southern and Eastern Africa in the context of the Hague Project for International Co-operation and the Protection of Children in the Southern and Eastern African Region - the role of the Hague Conventions in the practical implementation of the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

In co-operation with the Hague Forum for Judicial Expertise, and supported by the African Union and the UN Committee on the Rights of the Child, a Judicial Seminar was held in The Hague which involved principally Judges from Southern and Eastern Africa.<sup>12</sup> The support expressed by the Governments of the Republic of South Africa and the Republic of Kenya was also central to the success of the Seminar. Discussions focused on identifying ways to lend support to existing efforts to improve the cross-border protection of children in the Southern and Eastern African Region; examining cross-border legal, administrative and judicial co-operation on child protection issues which are particularly relevant to the region (including the trafficking, exploitation, abduction and sale of children, as well as custody, access and child support) some of which have been exacerbated by the HIV/AIDS pandemic; and considering ways in which The Hague could lend support to the practical implementation of principles set out in the *UN Convention on the Rights of the Child* and the *African Charter on the Rights and Welfare of the Child*, either through existing Hague Conventions, application of Hague techniques, or adaptation of Hague techniques to particular countries in the region.<sup>13</sup>

Agreement was reached on Conclusions and Recommendations which set out in particular two areas in which the Hague model would be useful for African countries in the practical implementation of the UNCRC and the African Charter:

- (1) the development of Central Authority structures (to play a key role in inter-governmental co-operation for the protection of children in cross-border situations, including cases of trafficking), as well as
- (2) the development of Judicial Networks, supported by a legal infrastructure which includes the Hague Children's Conventions addressing international child abduction, intercountry adoption, and parental responsibility and measures for the protection of children.

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<sup>12</sup> Held in The Hague, 3-6 September 2006. Judges and Experts from Cameroon, Ethiopia, Kenya, Lesotho, Malawi, Mauritius, The Netherlands, Nigeria, Rwanda, South Africa, Tanzania, Uganda, Zambia, Zimbabwe, the African Union and from UNICEF attended the Seminar. See Conclusions and Recommendations agreed at Seminars at – < [www.hcch.net](http://www.hcch.net) > - Child Abduction Section – Judicial Seminars on the International Protection of Children, also at Annex IV.

<sup>13</sup> It was underlined that the Hague approach focuses on the protection of the child in the civil rather than criminal realm. The Hague "techniques" include the establishment of systems of co-operation between authorities in the different countries at administrative and judicial levels, the development of agreed approaches to competence to take protective measures in respect of children, systems for the mutual recognition and enforcement of such measures, and post-Convention services (establishing Central Authority and judicial networks, judicial seminars, implementation assistance).

This initiative was a prelude to a broader regional conference which the Permanent Bureau plans to organise in Africa in 2007. The object will be to discuss similar themes before a broader audience which will include policy makers, the judiciary, legal and other professionals and academics. It is hoped that the outcome of the subsequent conference would be a set of proposals suggesting for States in sub-Saharan Africa how the Hague Children's Conventions may be of help in protecting children in cross-frontier contexts, and how they may be implemented in a way which respects local conditions and cultures, and which takes account of issues of capacity, especially the problem of access to legal services and procedure.<sup>14</sup>

Preliminary research has begun into possibilities for joint regional initiatives in the francophone Western and Central African States in respect of the Hague Judicial and Administrative Co-operation Conventions.

### C. NON-HAGUE CONVENTION STATES FROM THE ISLAMIC WORLD

The Hague Conference has been asked to keep under review the development of bilateral arrangements between Hague and non-Hague States which provide remedies, or promote co-operation, in the context of cross-frontier parental abductions or parental disputes over contact with children. A Research Paper on this subject (drawn up by Caroline Gosselain) was presented at a Special Commission meeting in the Hague in October / November 2002, called to review a number of aspects of the operation of the 1980 Convention. That Paper surveys 11 of the existing bilateral arrangements involving Australia, Egypt, Belgium, Morocco, Tunisia, Canada, Lebanon, France and Algeria.

That initial review suggested that the bilateral arrangements which at the moment are having most success are those which offer procedures for promoting and facilitating agreed solutions between the family members concerned. The paper also pointed out that what was lacking was an effective legal structure to provide a framework within which agreement can be negotiated safely and fairly, which is capable of giving effect to such agreements and which will provide remedies where agreement is not possible.

It was therefore felt that there was a need to intensify the search for common legal principles, which would constitute the beginning of a rule of law for those States that are not yet ready to join the 1980 or 1996 Hague Conventions.

It is in this context that a first Judicial Conference on Cross-Frontier Family Law Issues involving certain Hague Convention States and certain non-Hague States from within the Islamic tradition, was organised by the Hague Conference on Private International Law in collaboration with the Government of Malta, and was held in St. Julian's, Malta, from 14-17 March 2004. This first Malta Judicial Conference was attended by nearly 50 experts including senior judges, high ranking government officials from 14 States and 4 Organisations.<sup>15</sup>

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<sup>14</sup> See the Conclusion agreed at the 4<sup>th</sup> World Congress on Family Law and Children's Rights, Cape Town, South Africa (March 2005) "There is a need to explore the potential benefits of the Hague Children's Conventions for a much wider range of States – including in particular the States in sub-Saharan Africa. With appropriate measures of implementation, (which respect culture and take account of issues of capacity, and in particular the problem of access to legal services and procedures), the Hague Children's Conventions offer a structure for improving inter-State co-operation in the region to protect children at risk in cross-frontier contexts, and they provide access to a rapidly developing global network of judges and other professionals who are devoted to the common protection of children."

<sup>15</sup> Attended by Algeria, Belgium, Egypt, France, Germany, Italy, Lebanon, Malta, Morocco, the Netherlands, Spain, Sweden, Tunisia, United Kingdom, European Commission, Council of the European Union, International Social Service and Reunite.

The first Malta Conference moved towards the approval of the common set of principles, embodied in a Declaration made by those present. These principles contain possible building blocks for the development of a legal framework – “a rule in the Law”. There is for example recognition of the need to develop common jurisdictional standards and to give mutual respect to decision made on those bases. There is recognition too of the fact that speed is of essence in cases where parent and child have been separated. The Declaration also recognises the importance to continue the process of dialogue, with the assistance of the Hague Conference in co-operation with other international organisations, with a view to the progressive elaboration and implementation of the conclusions embodied in the First Malta Declaration.

A Second Malta Judicial Conference was therefore held from 19 to 22 March 2006 and was attended by 80 experts including senior judges, high ranking government officials and Central Authority personnel from 19 States, the Commission, the Parliament and the Council of the European Union and several non-governmental organizations.<sup>16</sup>

The Second Malta Conference discussed and built upon the conclusions contained in the First Malta Declaration and considered, in particular the:

- possible common basis for the exercise of jurisdiction in respect of child protection matters;
- idea of establishing a Central Authority as a focal point for inter-State co-operation; issues of information exchange and training (including judicial training);
- way to ensure that international child protection matters are dealt with in each country by officials and judges with the necessary experience and expertise;
- development of mechanisms which promote agreed solutions between the parties; range of measures which may be employed to prevent conflicts from arising; and
- next possible steps to be taken at the multilateral level to develop the legal infrastructure necessary for effective cross-frontier child protection.

The Second Malta Declaration, approved by all participants, reaffirms and endorses the principles contained in the First Malta Declaration. Particularly important is that the Second Declaration notes the fact that several States are now considering implementation of the uniform rules of jurisdiction as set out in the *Hague Convention of 19 October of 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children*. It also recognises, among others, the important initiative of several States to create specialised family courts and the movement towards concentration of jurisdiction.

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<sup>16</sup> Attended by Algeria, Australia, Belgium, Canada, Egypt, France, Germany, Indonesia, Lebanon, Libya, Malaysia, Malta, Morocco, the Netherlands, Sweden, Tunisia, Turkey, United Kingdom, United States of America, European Commission, European Parliament, Council of the European Union, International Social Service, International Centre for Missing and Exploited Children and Reunite.

The Malta Process has been seen to advance development of a co-operative framework for the resolution of difficult cross-border family disputes involving States from within the Islamic world, with a focus on the protection of cross-frontier rights of contact / access of parents and their children and the problems posed by the parental abduction of children between the States concerned.

The Malta principles, embodied in the two Declarations, are part of a continuing dialogue. The involvement of the judiciaries of the countries concerned in that dialogue is essential if the process is to continue to bear fruit.

#### **D. ASIA-PACIFIC**

The Australian Attorney-General's Department (the national organ for Australia and Central Authority for Hague Conventions) has proposed a 3-day conference to discuss Hague Conventions and involving countries of the Asian and Pacific regions. The conference will be jointly organised by the Hague Conference and the Australian Attorney-General's Department. The Australian Government is generously providing the funding for the conference, to be held in Sydney in June 2007. The purpose of the conference is to stimulate discussions between the States of the region on the effective implementation and operation of the Hague Children's Conventions and the Judicial and Administrative Co-operation Conventions. For those States which are not party to some or any of the Hague Conventions under discussion, the opportunity will exist to describe the cross-border disputes or situations which may be resolved by the Hague Conventions and to demonstrate the advantages of becoming party to the Conventions. The conference will expand on issues raised at a similar conference held in Malaysia in 2005 and will also examine some of the issues discussed at the Malta I and II conferences.

#### **II. POST-CONVENTION WORK OF THE PERMANENT BUREAU**

As the regional development work of the Hague Conference continues to expand, so too in parallel does the growth of the Hague Conference, both in its membership and in the Contracting States to the Conventions. In addition to the 65 Member States,<sup>17</sup> 59 non-Member States are now, as Parties to one or more Hague Conventions, part of the Hague Conventions' network. This profound transformation of the Hague Conference into a global organisation has brought with it the need for new initiatives in respect of co-operative mechanisms, regional developments, and the provision of "post-Convention" support services.

The post-Convention work co-ordinated by the Permanent Bureau is designed to support the effective and widespread implementation of Hague Conventions, particularly those which establish systems of judicial and / or administrative co-operation (e.g. those dealing with international protection of children and families and international legal co-operation). This post-Convention work, which now occupies well over 60% of the time and resources of the Permanent Bureau, ranges from treaty administration to the provision of technical assistance, and from monitoring and review to work to promote and develop the full potential of the Conventions in different regions of the world.

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<sup>17</sup> Since early 2001, the Hague Conference (HCCH) has seen its membership grow by more than 40%. The total population of the new Member States well exceeds 500 million people. In addition, three States have been admitted as Members and amendments to the Statute of the Conference will pave the way for membership of the European Community.

The “post-Convention” work of the HCCH, which is now one of its recognised hallmarks, has been supported by Member States for good reasons. Three, in particular, may be recalled:

(1) Hague Conventions (particularly those involving judicial and administrative co-operation) are practical working instruments which, for their effective operation, require careful implementation at national level. In the absence of an international body to provide authoritative interpretations of, or to enforce obligations under, the Hague Conventions, continuing efforts are needed to ensure their consistent interpretation and efficient functioning within the States Parties.

(2) As the circle of HCCH Member States and non-Member parties to Conventions expands, more and more of the newly interested States come without the know-how gained through involvement in the negotiation process. Capacity building may be needed to help such States absorb, implement and correctly apply these instruments. (This is not to say that the “established” Hague States do not also sometimes require such support.)

(3) Many of the Hague Conventions depend for their success on the development of close co-operation between States Parties, as well as on the building of mutual confidence and trust between judiciaries and administrative bodies in the different countries. Nothing contributes more to the growth of this co-operation and trust than a firm understanding that Convention obligations will be promptly and efficiently discharged by States Parties. It is for this reason too that the Member States of the HCCH have accepted that it is in their interests for Convention supports to be provided also to non-Member States which are Parties to the Hague Conventions.

## **A N N E X E S**

## THE SPECIAL PROGRAMME FOR LATIN AMERICAN STATES

### INTRODUCTION

Following from the Conclusions and Recommendations agreed at the 2004 Latin American Judges' Seminar on the *Hague Convention of 25 October on the Civil Aspects of International Child Abduction* (held in Monterrey, Mexico, 1-4 December 2004),<sup>1</sup> the Permanent Bureau has developed a Special Programme for Latin American States focused on reinforcing the operation of the Hague Conventions and promoting the participation of Latin American States in the work of the Hague Conference. Certain measures have been undertaken to support the regional efforts to strengthen the effective implementation and operation of the Conventions.

Mr Ignacio Goicoechea, a member of the Argentine Central Authority designated under the 1980 Hague Convention, has assumed the role of Hague Conference Liaison Legal Officer for Latin America to implement the Special Programme for Latin American States. This arrangement has been made with the generous assistance of the Argentine Ministry of Foreign Affairs. During the previous year on behalf of the Permanent Bureau Mr Goicoechea has provided technical assistance to States in Latin America in respect of implementation of Hague Conventions, particularly through visits to Central Authorities and convening judicial seminars, in consultation and co-operation with the national governments of each State. This programme has practically implemented many of the conclusions arising from the 2004 Monterrey Seminar.

The Permanent Bureau also organised, under the aegis of The Hague Forum for Judicial Expertise, an advanced judicial seminar for Latin American States, as a follow-up to the Monterrey Seminar. The seminar, held in The Hague in late November / early December 2005, involved 18 judges from the Americas<sup>2</sup> and concentrated on issues of international and regional child protection, including in particular child abduction and transfrontier access / contact between parents and children. Experts were asked to assist in setting up a national contact point for their country in respect of Hague child abduction and child protection matters in the context of the developing Hague International Network of Liaison Judges.<sup>3</sup>

Special Programme Phase I visits to States in Latin America assisted in (i) increasing the visibility of the work of the Hague Conference in the region; (ii) assessing the operation of Hague Conventions within each State; (iii) identifying obstacles to effective implementation and discussing ways in which those obstacles may be removed; (iv) providing information in respect of Hague Conventions currently being examined in certain States; (v) encouraging the accession to and ratification of Hague Conventions; and (vi) reinforcing links with officials, judges and others with responsibility under the Hague Conventions.

Visits indicated that the increased involvement of Latin American States in the work of the Hague Conference has been viewed positively in the region, and the increased use of Spanish in communications and at meetings of the Special Commission has removed barriers and facilitated this involvement. Additionally, the co-operation offered by judges and Central Authority officials at the various seminars and meetings promoted the helpful exchanges on practice and operational issues. It is to this end that the constructive

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<sup>1</sup> The Conclusions and Recommendations are available on the website of the Hague Conference at: < [www.hcch.net](http://www.hcch.net) > – Child Abduction Section – Judicial Seminars on the International Protection of Children.

<sup>2</sup> Judges from the following States attended the Seminar: Argentina, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Mexico, Panama, Paraguay, Peru, Uruguay and Venezuela as well as from Canada and the United States of America.

<sup>3</sup> The Conclusions and Recommendations are available on the website of the Hague Conference at: < [www.hcch.net](http://www.hcch.net) > – Child Abduction Section – Judicial Seminars on the International Protection of Children.

dialogues will assist the Permanent Bureau of the Hague Conference to better address the concerns faced by countries in Latin America and, as a result, to strengthen the worldwide efforts to increase the international legal frameworks designed to protect children. Phase II of the Special Programme (July 2006-June 2007) will see an increased focus on all Hague Judicial and Administrative Co-operative Conventions. The Programme anticipates further co-operation with States in Latin America, including initial visits to States which were not made during Phase I and follow-up visits from Phase I as recommended in the individual State reports. See Preliminary Document No 5 for the attention of the Special Commission of April 2006 on General Affairs and Policy of the Conference (at Annex B) for detailed information in respect of Phase II (Supplementary Budget and Explanatory Notes, Financial Year LII (1 July 2006 – 30 June 2007)).

## **PHASE I REVIEW: APRIL 2005-MARCH 2006**

A programme to promote and support effective implementation of the Hague Judicial and Administrative Co-operative Conventions in Latin America was initiated during Financial Year L (July 2004-July 2005). Phase I, implemented under the Supplementary Budget during Financial Year LI (July 2005-June 2006), focused on convening national and international judicial seminars and visits to Central Authorities to provide implementation assistance to Latin American States, in particular, in respect of the Hague Children's Conventions.<sup>4</sup> Phase II will see an increased focus on all Hague Judicial and Administrative Co-operative Conventions (July 2006-June 2007).<sup>5</sup>

### **A. Objectives of Phase I**

Phase I of the Special Programme endeavoured to:

*Provide technical assistance to Latin American States in respect of implementation of Hague Conventions, in particular the Conventions concerning the cross-border protection of children;*

*Offer technical assistance to Latin American States in respect of seminars for Judges, Government Officials, Central Authority Officers and other professionals with responsibility for implementing Hague Conventions;*

*Encourage twinning of Central Authorities as a way to strengthen the operation of the Hague Conventions;*

*Support participation of Latin American States in the work of the Hague Conference (INCADAT; INCSTAT and case management; Guides to Good Practice; *The Judges' Newsletter*; participation at Meetings of the Special Commission; responses to questionnaires and statistical surveys);*

*Facilitate accessibility of information concerning operation of the Hague Conventions;*

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<sup>4</sup> The Convention of 25 October 1980 on the Civil Aspects of International Child Abduction; the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption; and the 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. Discussions also addressed ongoing discussions related to the International Recovery of Child Support and other forms of Family Maintenance.

<sup>5</sup> In particular, the Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents; the Convention of 15 November 1965 on the Service Abroad of Extrajudicial Documents in Civil or Commercial Matters; the Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters; and the Convention of 25 October 1980 on International Access to Justice.

*Increase visibility of the work of the Hague Conference in Latin America;*

*Develop and promote the work of the Hague Conference in the Spanish language.*

**B. Implementation of Phase I**

**1. Provide technical assistance to Latin American States in respect of implementation of Hague Conventions, in particular the Conventions concerning the cross-border protection of children**

During phase I of the Special Programme the Secretary General of the Hague Conference on Private International Law, accompanied by the Liaison Legal Officer for Latin America, made official visits to Brazil, Colombia and Guatemala. Over the course of Phase I the Liaison Legal Officer for Latin America, Mr Ignacio Goicoechea, visited 15 States, including Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Mexico, Panama, Paraguay, Peru and Uruguay.

Strong support was expressed by the National Authorities in all States visited for the Special Programme for Latin America.

*International child abduction*

During the course of each visit the Liaison Legal Officer for Latin America met with Central Authorities designated under the 1980 Convention to discuss the Convention's operation, identify any difficulties experienced in its implementation and facilitate the provision of information regarding services developed by the Hague Conference, including INCADAT, INCSTAT, iChild, *The Judges' Newsletter* and Guides to Good Practice. During the course of visits to 12 States the Liaison Legal Officer assisted with and presented at judicial and interdisciplinary seminars on international child abduction.<sup>6</sup>

*Intercountry adoption*

The Liaison Legal Officer for Latin America met with 9 Central Authorities designated under the 1993 Convention to discuss the September 2005 Second Meeting of the Special Commission on the practical operation of the Convention.<sup>7</sup> Meetings prior to September 2005 focused on preparatory work for the Special Commission; meetings subsequent to September 2005 focused on follow-up to its agreed Conclusions and Recommendations. Discussion also addressed ways in which the Permanent Bureau could provide assistance in respect of Convention implementation. In visits to States which are not Party to the 1993 Convention, meetings were held with Authorities with responsibility for international adoption to underline positive developments that could accompany becoming Party to the Convention.<sup>8</sup>

*International protection of children*

Meetings with National Authorities as well as judicial and interdisciplinary seminars addressed the important role that the 1996 Convention could occupy in the region, in particular the clarification of jurisdiction, applicable law and enforcement of foreign

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<sup>6</sup> Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Honduras, Mexico (Tijuana), Panama, Paraguay, Peru, Uruguay.

<sup>7</sup> Brazil, Costa Rica, Colombia, Ecuador, El Salvador, Guatemala, Panama, Peru. Meetings were also held in Uruguay, which has not yet formally designated a Central Authority.

<sup>8</sup> Dominican Republic, Honduras, Nicaragua.

judgements, which often arise in international custody and access cases, and become central issues in cases of international child abduction. Discussions addressed incorporation of the Convention into legal systems and ways in which the Permanent Bureau could provide further information and assistance.<sup>9</sup>

*International recovery of child support and other forms of family maintenance*

Discussions with National Authorities indicated strong support for the project on International Recovery of Child Support and other forms of Family Maintenance. The participation by Costa Rica, El Salvador, Nicaragua and Guatemala at the Third Meeting of the Special Commission on the International Recovery of Child Support and other Forms of Family Maintenance, held at The Hague in April 2005, was viewed as a particularly important statement of the regional need for the future convention.

*Apostille, service, evidence and access to justice*

Meetings with Officials in several States addressed the important role that the Hague Judicial and Administrative Co-operative Conventions could occupy in the region. Discussions touched on incorporation of the Convention into legal systems<sup>10</sup> and ways in which the Permanent Bureau could provide further information and assistance.<sup>11</sup>

**2. Offer technical assistance to Latin American States in respect of Seminars for Judges, Government Officials, Central Authority Officers and other professionals with responsibility for implementing Hague Conventions**

*International child abduction*

*National seminars*

As indicated *supra* during the course of visits to 12 States the Liaison Legal Officer presented at judicial and interdisciplinary seminars on international child abduction.<sup>12</sup> The seminars addressed a wide range of Convention issues, primarily through the use of hypothetical cases, including custody, access, exceptions to return and the best interest of the child concerns, as well as the need for expeditious procedures under the Convention and internal procedure considerations. Specific conclusions were agreed at 2 national judicial seminars.<sup>13</sup>

*International seminars*

With a view to implementation of the Conclusions from the 2004 Latin American Judges' Seminar on the 1980 Hague Convention (Monterrey, Mexico), in December 2005 18 Judges from Argentina, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Mexico, Panama, Paraguay, Peru, United States of

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<sup>9</sup> Brazil, Chile, Colombia, Mexico, Panama, Uruguay.

<sup>10</sup> Chile, Costa Rica, Honduras.

<sup>11</sup> Brazil, Colombia, Uruguay.

<sup>12</sup> Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Honduras, Mexico (Tijuana), Panama, Paraguay, Peru, Uruguay.

<sup>13</sup> Dominican Republic and Uruguay.

America, Uruguay, and Venezuela met in The Hague to discuss how to improve, among the countries represented, the operation of the Hague Children's Conventions, as well as the ongoing discussions related to a worldwide Convention on international child support and other forms of family maintenance, and other Hague Conventions dealing with judicial and administrative co-operation in general. The 2005 Judicial Seminar – Operation of the Hague Children's Conventions and Cross-Border Protection of Children within Latin America (Hague Forum for Judicial Expertise, The Hague, the Netherlands) consolidated the advances made by the 2004 Monterrey Seminar and the network of Judges established in such Seminar who are committed to continued improvement in the operation of the Hague Child Abduction Convention in particular, but also more generally to international judicial and inter-State co-operation to improve international child protection.<sup>14</sup>

The Judges agreed the importance of continuing dialogue in matters of cross-border child protection within the region, including training initiatives in their countries, and to disseminate the 44 agreed Conclusions within their respective judicial and legal communities.<sup>15</sup>

**3. Encourage twinning of Central Authorities as a way to strengthen the operation of the Hague Conventions**

Several judicial seminars have been co-organised by Central Authorities in the region.<sup>16</sup>

**4. Support participation of Latin American States in the work of the Hague Conference (INCADAT; INCSTAT and case management (iChild); Guides to Good Practice; *The Judges' Newsletter*; participation at meetings of the Special Commission; responses to questionnaires and statistical surveys)**

Discussion sessions with Central Authorities and judicial seminars in respect of the operation of the Children's Conventions addressed the provision of information with regard to tools developed by the Hague Conference.

International Child Abduction Database (INCADAT): Focus included promotion of the use of the jurisprudence database; the need for assistance in developing the INCADAT Correspondent Network in Latin America; and the need for assistance in identifying and including significant case law from Latin America. Work has continued in respect of Spanish translation of INCADAT legal summaries.

International Child Abduction Statistical Database (INCASTAT) and iChild case management system: Upon request, assistance was provided to Central Authorities in respect of implementation, statistical and data entry. General information to all Central Authorities was provided in respect of computer software and availability.

Guides to Good Practice: Attention was drawn to the Guides to Good Practice under the 1980 Convention, including Parts on Central Authority Practice, Implementing Measures

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<sup>14</sup> On 22 December 2005 the Supreme Court of Uruguay nominated Judge Ricardo Perez Manrique as the national Hague Liaison Judge, as well as the Liaison Judge for family matters in the *Red Iberoamericana de Cooperación Judicial en Materia Penal y Civil* (IBERED) [Ibero American Network].

<sup>15</sup> The Conclusions and Recommendations are available on the website of the Hague Conference at: < [www.hcch.net](http://www.hcch.net) > – Child Abduction Section – Judicial Seminars on the International Protection of Children.

<sup>16</sup> Argentina and Paraguay; Costa Rica and the United States of America; El Salvador and the United States of America; Chile and the United States of America; Mexico (Tijuana) and the United States of America.

and Preventative Measures, as well as the draft Guide to Good Practice under the 1993 Convention in respect of implementation.

*The Judges' Newsletter:* Focus included distribution to Latin American Judicial Associations, assistance with the Spanish language edition, and provision of regional updates and current relevant topics of interest.

Participation at and preparation for meetings of the Special Commission: In respect of the Special Commission on Intercountry Adoption, focus included contact in respect of presentations, distribution of documents and facilitating participation in respect of travel. The active participation by delegates from Latin America during the Special Commission contributed to the successful outcome to and conclusions agreed at the meeting.

**5. Facilitate accessibility of information concerning operation of the Hague Conventions**

**Increase visibility of the work of the Hague Conference in Latin America**

**Develop and promote the work of the Hague Conference in the Spanish language**

With a view to increasing the visibility of the work of the Hague Conference in Latin America, focus has included facilitating accessibility of information concerning operation of the Hague Conventions and, as a direct parallel, development of the work of the Hague Conference in the Spanish language. In order to strengthen and promote this facet of the Special Programme, exploration is ongoing into possible methods of co-operation with other international and regional organisations, and ways in which mutual efforts could be co-ordinated.

Participation at mutual meetings and discussions on methods for regional co-operation have occurred with UNICEF, Organization of American States (OAS), Inter-American Children's Institute (IIN), *La Agencia Española de Cooperación Internacional (AECI)*, *Red Iberoamericana de Cooperación Judicial en Materia Penal y Civil (IBERED)* [Ibero American Network], MERCOSUR and the UN Committee on the Rights of the Child.

Strong support has been expressed, and special recognition made, by the National Authorities and Judges in all States visited for the continued development of the work of the Hague Conference in the Spanish language. The provision of information in Spanish, as well as the possibility to provide Spanish interpretation at Meetings of the Special Commissions and Diplomatic Sessions, has universally been acknowledged as a large contribution towards removing a major obstacle to the effective participation of Latin American States in the work of the Hague Conference on Private International Law.

**C. Development of Phase II**

Phase I visits to States in Latin America assisted in (i) increasing the visibility of the work of the Hague Conference in the region; (ii) assessing the operation of Hague Conventions within each State; (iii) identifying obstacles to effective implementation and discussing ways in which those obstacles may be removed; (iv) providing information in respect of Hague Conventions currently being examined in certain States; (v) encouraging the accession to and ratification of Hague Conventions; and (vi) reinforcing links with officials, judges and others with responsibility under the Hague Conventions.

Phase II of the Special Programme (July 2006-June 2007) will see an increased focus on all Hague Judicial and Administrative Co-operative Conventions. The Programme anticipates further co-operation with States in Latin America, including initial visits to States which were not made during Phase I and follow-up visits from Phase I as recommended in the individual State reports. See Preliminary Document No 5 (Annex B

on following page) for detailed information.

**PRELIMINARY DOCUMENT NO 5 FOR THE ATTENTION OF THE SPECIAL  
COMMISSION OF APRIL 2006 ON GENERAL AFFAIRS AND POLICY OF THE  
CONFERENCE, ANNEX B TO  
THE SUPPLEMENTARY BUDGET AND EXPLANATORY NOTES,  
FINANCIAL YEAR LII (1 JULY 2006 – 30 JUNE 2007)**

**THE HAGUE JUDICIAL AND ADMINISTRATIVE CO-OPERATION CONVENTIONS:  
THE SPECIAL PROGRAMME FOR LATIN AMERICAN STATES  
PHASE II: JULY 2006 – JUNE 2007**

**I. OBJECTIVES**

*Provide technical assistance to Latin American States in respect of implementation of Hague Conventions, in particular the Conventions concerning the cross-border protection of children addressing international child abduction (including the issue of access), intercountry adoption, and matters of child protection,<sup>17</sup> as well as on the ongoing discussions related to a worldwide Convention on international child support and other forms of family maintenance.*

*Promote and provide information and assistance in respect of the relevant Hague Conventions on Judicial and Administrative Co-operation (legalisation, service of documents, taking of evidence, access to justice).<sup>18</sup>*

*Offer technical assistance to Latin American States in respect of Seminars for Judges, Government Officials, Central Authority Officers and other professionals with responsibility for implementing Hague Conventions.*

*Encourage twinning of Central Authorities as a way to strengthen the operation of the Hague Conventions.*

*Promote participation of Latin American States in the work of the Hague Conference (participation at Meetings of the Special Commission and preparations for such meetings - responses to questionnaires and statistical surveys; use of HCCH practical tools – INCADAT, INCSTAT and the iChild case management system, Guides to Good Practice, *The Judges' Newsletter*).*

*Facilitate accessibility of information concerning operation of the Hague Conventions, including increasing the visibility of the work of the Hague Conference in Latin America.*

*Continue to develop and promote the work of the Hague Conference in the Spanish language.*

*Improve generally the operation of the Hague Conventions within the region and between countries in the region and other Contracting States around the world.*

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<sup>17</sup> *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction; Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption; and 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.*

<sup>18</sup> *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents; Convention of 15 November 1965 on the Service Abroad of Extrajudicial Documents in Civil or Commercial Matters; Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters; Convention of 25 October 1980 on International Access to Justice.*

## II. PROPOSED ACTIONS IN RESPECT OF THE HAGUE CONVENTIONS

### ***1980 Hague Child Abduction Convention***

- A. Assistance with implementation of the Conclusions and Recommendations from the 2005 Judicial Seminar – Operation of the Hague Children's Conventions and Cross-Border Protection of Children within Latin America (Hague Forum for Judicial Expertise, The Hague, The Netherlands) and the 2004 Latin American Judges' Seminar on the 1980 Hague Convention (Monterrey, Mexico) (see Preliminary Document No 6 of March 2006 for the attention of the Special Commission of April 2006 on General Affairs and Policy of the Conference) – as well as the Recommendations and Guides to Good Practice adopted by various Special Commissions.
- B. Visits to several State Parties to the 1980 Convention, including initial visits which were not made during Phase I and follow-up visits from Phase I as recommended in the individual State reports.
1. Discussion sessions with Central Authorities in respect of the operation of the 1980 Convention, including the provision of information with regard to tools developed by the Hague Conference.
  - INCADAT: Promotion of its use; inclusion of significant case law; development and strengthening of the INCADAT Correspondent network in Latin America; provision of INCADAT in Spanish.
  - INCSTAT: If requested, provision of assistance to Central Authorities in respect of implementation, statistical and data entry.
  - iChild: If requested, provision of assistance to Central Authorities in respect of implementation, statistical and data entry.
  - *The Judges' Newsletter*: Increased distribution to Latin American Judicial Associations; provision of regional updates and current relevant topics of interest.
  - Guides to Good Practice: Promotion and development.
  - Questionnaires: Follow up where necessary and requested on responses.
2. Depending on needs and subject to discussion with each Central Authority, support organisation of and assist with national and regional seminars for Judges, other professionals, Governmental or Non-Governmental Organisations involved in implementation and application of Hague Conventions. These will include initial seminars which were not convened during Phase I, follow-up to any conclusions from Phase I as recommended in the individual State reports, and exploration of long-distance educational programmes.
3. Encourage formal or informal designations of Hague Liaison Judges, and provide support and information to those Judges already designated.
4. Assist States with preparations for the Fifth Meeting of the Special Commission to review the practical operation of the 1980 Hague Convention (assist in gathering information from States including responses to questionnaires on access, preventive measures, enforcement of foreign orders, direct judicial communications, statistical surveys).

5. Collect research in respect of regional developments surrounding:
  - Possibilities and interest in twinning Central Authorities.
  - Use of mediation to facilitate resolution of child abduction, custody and access cases.
  - National and regional initiatives developing procedural law in respect of child abduction cases.

***1993 Intercountry Adoption Convention***

- C. Promote and provide information and assistance in respect of the Convention; provide information and assistance in respect of accession to and ratification of the Convention.
- D. Assistance with implementation of the Conclusions and Recommendations from the Second Meeting of the Special Commission on the practical operation of the 1993 Intercountry Adoption Convention (September 2005).

***1996 Child Protection Convention***

- E. Promote and provide information and assistance in respect of the Convention; provide information and assistance in respect of accession to and ratification of the Convention.
- F. Assist States with preparations for the Fifth Meeting of the Special Commission to review the practical operation of the 1980 Hague Convention, as well as implementation of the 1996 Hague Convention.

***Project on International Recovery of Child Support and other forms of Family Maintenance***

- G. Promote participation in the project, in particular leading up to the Diplomatic Session and promotion of the new instrument in the region.

***Hague Conventions on Judicial and Administrative Co-operation***

- H. Promote and provide information and assistance in respect of the relevant Hague Conventions on Judicial and Administrative Co-operation, including promotion of accession to and ratification of to the Conventions.

**III. PROPOSED ACTIONS IN RESPECT OF THE HAGUE CONFERENCE IN GENERAL**

- I. Facilitate accessibility of information concerning operation of the Hague Conventions, including increasing the visibility of the work of the Hague Conference in Latin America. This will also include continued development and promotion of the work of the Hague Conference, including publications, in the Spanish language.
- J. Explore possible methods of co-operation with relevant international, regional and national organisations in order to implement the Latin American Programme most effectively.
- K. Assist with preparation of meetings, visits and coordination requirements from officials from the Hague Permanent Bureau, including maintaining the office of the Liaison Legal Officer.

#### IV. LOGISTICAL SUPPORT REQUIRED

Item	Euros
1. Full time Liaison Legal Officer	Proposed regular budget
2. Costs associated with visits and seminars	
<i>Travel Expenses (return from Buenos Aires, Argentina)</i>	
Brazil	450.00
Bolivia	310.00
Chile	250.00
Colombia, Venezuela	530.00
Costa Rica, El Salvador, Honduras	1,080.00
Guatemala, Nicaragua	1,075.00
Mexico	915.00
Panama, Dominican Republic	950.00
Paraguay	300.00
Peru, Ecuador	800.00
Uruguay (2 trips)	310.00
The Netherlands (2 trips)	2,500.00
Sub-total	9,470.00
<i>Accommodation and per diem expenses</i>	
Latin America: 120 Euros per day (average 3 days for each State, and visiting 16 States during the year, 17 trips)	6,120.00
The Hague: (four weeks): Hotel (80 Euros per day)	2,240.00
The Hague: (four weeks): Per diem (50 Euros per day)	1,400.00
Sub-total	9,760.00
<i>Extraordinary Expenses</i>	
Exceptionally, co-participate in costs related to Seminars, which should normally be covered by the National Governments and NGOs	770.00
<b>TOTAL</b>	<b><u>20,000.00</u></b>

**THE HAGUE PROJECT FOR INTERNATIONAL CO-OPERATION AND  
THE PROTECTION OF CHILDREN**

**OPERATION OF THE HAGUE CHILDREN'S CONVENTIONS  
AND CROSS-BORDER PROTECTION OF CHILDREN WITHIN  
LATIN AMERICA**

**28 NOVEMBER – 3 DECEMBER 2005, THE HAGUE**

**CONCLUSIONS AND RECOMMENDATIONS**

On 28 November - 3 December 2005, 18 Judges, from Argentina, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Mexico, Panama, Paraguay, Peru, United States of America, Uruguay, and Venezuela met in The Hague, The Netherlands, to discuss how to improve, among the countries represented, the operation of the three modern Hague Children's Conventions addressing international child abduction, intercountry adoption, and matters of child protection,<sup>1</sup> as well as the ongoing discussions related to a worldwide Convention on international child support and other forms of family maintenance, and other Hague Conventions dealing with judicial and administrative co-operation in general.<sup>2</sup>

The Seminar consolidated the advances made by the 2004 Monterrey Seminar, and the network of Judges established in such Seminar who are committed to continued improvement in the operation of the Hague Child Abduction Convention in particular, but also more generally to international judicial and inter-State co-operation to improve international child protection.

Agreement was reached on the following Conclusions and Recommendations:

**International co-operation**

1. The effective functioning of the Hague Children's Conventions depends on close co-operation among Judges and Central Authorities on internal and international levels.
2. Particularly, within the 1980 Convention, it was recognized that when deciding on a child abduction case, the requested Judge should trust that the Judicial Authorities of the requesting State will take care of the due protection of the child, and where necessary the accompanying parent, once the child is returned.
3. The Judicial Authorities of both States involved share the interest and responsibility of protecting the child against any kind of risk and should cooperate in protecting the best interest of the child.

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<sup>1</sup> Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction; Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption; and the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children.

<sup>2</sup> Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents; Hague Convention of 15 November 1965 on the Service Abroad of Extrajudicial Documents in Civil or Commercial Matters; Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters and the Hague Convention of 25 October 1980 on International Access to Justice.

### **Judicial communications and liaison judges**

4. Effective and fluent communications between Judges and Central Authorities should be encouraged, as a means of speeding procedures and achieving the necessary co-operation to give effective protection to the child in both States involved.
5. Strong support was expressed for the establishment of a network of Liaison Judges to promote and facilitate international judicial communications.
6. The Judges present undertook to explore in their own jurisdictions, with the support of the Permanent Bureau, the feasibility of designating a Liaison Judge.
7. It is important that Liaison Judges act in co-operation and co-ordination with Central Authorities.

### **The rights of the child**

8. It was recognized that the 1980 Hague Convention, by facilitating the prompt return of children wrongfully removed from or retained outside their country of habitual residence, supports the fundamental rights of the child, including the child's right to maintain personal relations and direct contacts with both parents, as recognized in human rights instruments, in particular the Convention on the Rights of the Child of 20 November 1989. In applying the 1980 Hague Convention Judges are reminded that it serves as an instrument to give effect to those principles.

### **Nature of proceedings under the 1980 Hague Conventions**

9. The clear distinction should be maintained by Judges between proceedings for the return of a child under the Hague Convention and custody proceedings which should be conducted by the courts of the country in which the child has his/her habitual residence and to which the child is to be returned.
10. It was recognized that in a child abduction situation it is in the best interest of the child to return him/her to his/her habitual residence where the Judicial Authorities of such State should be able to decide in the child's best interest which party should exercise physical custody and which one access rights, and whether or not the child should be relocated.

### **Expedition in Hague proceedings, including appeals**

11. The Judges present considered that urgency is of the essence in child abduction cases and that all efforts should be made to decide such cases within 6 weeks.
12. In case national procedural law of a Contracting State does not provide such an urgent procedure, it is highly recommended to such Contracting State to consider enacting a special procedure for international child abduction cases which might include provisions for resolving the case expeditiously at first instance in accordance with the spirit of the Convention and, where applicable, at appeal level.

13. Also endorsed were the Conclusions and Recommendations of the March 2001 Fourth Meeting of the Special Commission to Review the Operation of the 1980 Convention:
  - calling upon trial and appellate courts to set and adhere to timetables that ensure the speedy determination of return applications; and
  - calling for the firm management by Judges, both at trial and appellate levels, of the progress of return proceedings.

#### **Exceptional nature of defenses**

14. The exceptional nature of the defenses under the Convention was emphasized. The "grave risk" defense under Article 13(1) b) should be narrowly interpreted. Any tendency to give a broad interpretation to that Article undermines the operation of the Convention.
15. A clear distinction should be made between the views of the child concerning general issues of custody and contact and the objections of a child to return which are relevant in return proceedings.
16. The methods by which a court obtains the views of the child differ in different countries. It is essential to distinguish the child's own views from those which may have been induced by the abducting parent.

#### **Consistent interpretation**

17. The free availability of INCADAT and its Spanish version are welcomed by Judges as an important contribution to the spread of knowledge about the Convention and as a means of promoting consistent interpretation of the Convention internationally. Contracting States in the region are encouraged to collaborate with the Permanent Bureau in ensuring the full representation on INCADAT of case law from the Latin American countries.
18. Judges and Central Authorities are encouraged to make use of *The Judges' Newsletter on International Child Protection* as a means of exchanging ideas and good practices, and to help promote consistent approaches to the interpretation and operation of the Convention

#### **Safe return and protective measures**

19. It was recognized that in a majority of applications for return the abducting parent is the primary carer of the child and that in an increasing number of cases issues of domestic violence or child abuse are raised.
20. Where the proof of violence or abuse is not clear it may nevertheless be necessary, when ordering the return of the child, to ensure that the authorities in the requesting State are alerted to any risk to the child or the accompanying parent and that any necessary measures of protection are put in place in that country. This can sometimes be accomplished through the medium of the Central Authorities. A Liaison Judge may also play a co-ordinating role in such cases.
21. Where protective measures are ordered by the returning Judge in respect of the child or the accompanying parent they should be enforceable in the State of return.

22. The value of the Hague Convention of 1996 in this context was recognized.

### **Transfrontier contact**

23. A court in which an application for return is pending should have jurisdiction to make provisional orders enabling the left-behind parent to have access to the child pending the decision on return.
24. Courts should make use of appropriate guarantees and safeguards to ensure that contact arrangements and conditions are respected by both parents.
25. Courts should respect contact arrangements ordered by a court of a country in which a child has his or her habitual residence. This is also the case where contact arrangements have been ordered in the context of a decision to allow one parent to relocate to another country with the child.
26. It was recognized that the Hague Convention of 1996 makes major improvements in the legal framework regulating cross-frontier contact or access.
27. Judges should encourage, promote and facilitate whenever possible the resolution by agreement of contact disputes.

### **Preventive measures**

28. Greater efforts should be made to develop and apply judicial, administrative and other measures aimed at preventing abductions from taking place. The Guide to Good Practice on Preventive Measures recently published by the Permanent Bureau was welcomed by Judges who consider that Contracting States should promote its use and implement measures adapted to the needs of each jurisdiction.
29. In particular the importance was recognized of strengthening migration controls for children and promoting the correct identification of children through personal and travel documents.
30. Also recognized was need to publicize the 1980 Convention, so as to make the public and child care professionals aware of its existence as well as of the Central Authority to which they should report child abduction situations.

### **The Hague Convention of 1996 on International Child Protection**

31. Attention was drawn to the considerable advantages that will flow from the adoption in the Latin American States 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. In particular:
  - the provisions of the 1980 Convention will be supplemented and strengthened in child abduction cases.
  - the shortcomings of the 1980 Convention in ensuring respect for rights of access will in several respects be redressed.
  - the Convention will play an important role in securing inter-State co-operation to protect vulnerable unaccompanied minors and children who are the subject of trafficking, including the increasing number of children who are at risk of physical or sexual abuse, and refugee children.

- the Convention provides for inter-State cooperation in the regulation of cross-border placements of children (i.e. those which fall short of adoption and are regulated by the 1993 Hague Convention).
- the Convention provides a flexible system of jurisdictional rules which avoid the risk of conflict between decisions on child protection made in different countries.

### **The Hague Convention of 1993 on Intercountry Adoption**

32. The importance was stressed of universal ratification of accession to the Hague Convention of 1993 on Intercountry Adoption among Latin American States. The Convention is an essential component in any strategy to combat child trafficking.
33. A welcome was expressed for the efforts being made in Guatemala to improve the situation of intercountry adoption and to ensure the effective implementation of the Hague Convention of 1993.

### **International Recovery of Child Support and Other Forms of Family Maintenance**

34. The international machinery for the recovery of child support and other forms of family maintenance is not working well. Attention was drawn to the current negotiations within the Hague Conference on a new global instrument designed to achieve procedures which are speedy, efficient and cost-effective. The active participation of Latin American States in this process is crucial, due to the need for such instrument in the region.

### **The Hague Conventions on International Legal Co-operation**

35. Attention was drawn to the value for Latin American States of the Hague Conventions on Judicial and Administrative Co-operation i.e. Apostille, Service, Evidence and Access to Justice.<sup>3</sup> Wider ratification / accession would bring benefits in many areas of law and practice, including in the context of the international protection of children.

### **Judicial seminars and training**

36. Attention was drawn to the importance of convening national and regional seminars, coordinating with other actors involved in the protection of children, promoting co-ordination and communications among judiciary in the region; resources and networking among Judges and Central Authorities; development of an International Child Protection Network.
37. Regular international meetings and contacts among Judges and Central Authorities for the purpose of exchanging information, ideas and good practice are needed. These meetings and contacts help to develop and maintain the mutual understanding and trust necessary for the Conventions to work well.

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<sup>3</sup> Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents; Hague Convention of 15 November 1965 on the Service Abroad of Extrajudicial Documents in Civil or Commercial Matters; Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters; and the Hague Convention of 25 October 1980 on International Access to Justice.

38. Recognition was given to the extreme importance of judicial training in international child protection and other areas of private international law. Training courses should be provided at the national, regional and international levels.
39. Strong support was expressed for the efforts being undertaken by the Permanent Bureau to establish an International Institute for the training of Judges and other relevant professionals which would offer a systematic approach to training and ensure the effective implementation of Hague Conventions, especially, but not only, in newly Contracting States.
40. Attention was also drawn to the need to introduce courses in international child protection law at the academic level.

### **The role of the Permanent Bureau**

41. Appreciation was expressed for the role played by the Permanent Bureau in monitoring the operation of the Hague Children's Conventions, in developing tools (e.g. INCADAT, The Judges' Newsletter on International Child Protection and the Guides to Good Practice) which greatly assist Judges in applying the Convention, and in promoting and organizing judicial conferences and seminars.
42. The creation of the office of Legal Liaison Officer for Latin America and the increasing use of the Spanish language in the Hague Conference work was welcomed and has already made an important impact in promoting the effective operation of the Hague Conventions in the Region. A strong wish was expressed that this office should be established on a permanent basis.

### **Information about national laws**

43. It was recommended that the child protection laws of each State should be made available through the Hague Conference Child Abduction homepage.

### **Continuing dialogue among the Judges**

44. The Judges present committed themselves, with the active assistance of the Permanent Bureau, to a continuing dialogue in matters of cross-border child protection within the region, and to keeping each other and the Permanent Bureau informed concerning training initiatives in their countries.

### **Dissemination of Conclusions and Recommendations**

These Conclusions and Recommendations will be circulated to all national authorities including Central Authorities. Participating Judges will also circulate them within their respective judicial and legal communities. They will also appear on the Hague Conference website and be publicized in *The Judges' Newsletter on International Child Protection*.

**THE LATIN AMERICAN JUDGES' SEMINAR ON  
THE 1980 HAGUE CONVENTION ON THE CIVIL ASPECTS OF  
INTERNATIONAL CHILD ABDUCTION  
1 – 4 December 2004**

*co-organized by*  
*Hague Conference on Private International Law*  
*United States Department of State (Office of Children's Issues)*  
*Law School of Instituto Tecnológico y de Estudios Superiores de Monterrey*  
*Organization of American States*  
*American Bar Association Latin American Law Initiative Council*  
*Texas-Mexico Bar Association*  
*International Centre for Missing and Exploited Children*

On 1-4 December 2004, ninety Judges, Central Authority officials and other experts from Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru, Spain, United States of America, Uruguay, and Venezuela and the following Organizations: Organization of American States - Inter-American Children's Institute, International Centre for Missing and Exploited Children, American Bar Association - Latin American Law Initiative Council, Texas-Mexico Bar Association and the Law School of Instituto Tecnológico y de Estudios Superiores de Monterrey met in Monterrey, Mexico, to discuss how to improve, among the countries represented, the operation of *the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*.

Agreement was reached on the following Conclusions and Recommendations:

**International co-operation**

1. The effective functioning of the Hague Convention of 1980 in the interests of children depends on close co-operation among the Judges and among the Central Authorities of the 75 Contracting States. Regular international meetings and contacts among Judges and Central Authorities for the purpose of exchanging information, ideas and good practice are needed. These meetings and contacts help to develop and maintain the mutual understanding and trust necessary for the Convention to work well.

A follow-up Seminar should be held in approximately two years. In the meantime, further initiatives should be pursued to encourage more frequent meetings and contacts, including the establishment of a website for this purpose.

**Speed in Hague Proceedings, including appeal procedures**

2. The Judges present endorse the Conclusions and Recommendations of the March 2001 Fourth Meeting of the Special Commission to Review the Operation of the 1980 Convention:
  - underscoring the obligation (Article 11) of Contracting States to process return applications expeditiously, and that this obligation extends also to appeal procedures;
  - calling upon trial and appellate courts to set and adhere to timetables that ensure the speedy determination of return applications; and
  - calling for the firm management by judges, both at trial and appellate levels, of

the progress of return proceedings.

### **The Pérez-Vera Report**

3. Attention is drawn to the value of the Explanatory Report on the 1980 Convention, drawn up by Elisa Pérez-Vera, as an aide to the interpretation and understanding of the Convention.

### **Exceptional nature of defenses**

4. The exceptional nature of the defenses under Articles 13 and 20 of the Convention is emphasized. The “grave risk” defense under Article 13(1) b) should, in keeping with the Pérez-Vera Report, be narrowly interpreted. Any tendency to give a broad interpretation to that Article undermines the operation of the Convention.

### **Nature of Hague proceedings**

5. The clear distinction should be maintained by Judges between proceedings for the return of a child under the Hague Convention and a hearing on the merits in relation to custody and access. The hearing on the merits of custody and access should be conducted by the courts of the country in which the child has his / her habitual residence and to which the child is returned.

### **Statistics**

6. Contracting States in the region should maintain up-to-date statistics concerning the volume, the outcome and the profile of Hague cases. They should transmit these annually to the Permanent Bureau in accordance with the approved statistical forms. They should also co-operate in the special survey which is being undertaken of all Hague cases commenced in 2003.

### **Judicial reference materials**

7. Consideration should be given to the development by a group of experts mainly constituted of Judges, with the support of the Permanent Bureau of the Hague Conference, of Judicial Reference Materials containing a broad range of examples from Contracting States of practices and procedures which have proved to be useful.

### **The Judges' Newsletter**

8. Judges and Central Authorities are encouraged to make use of *The Judges' Newsletter on International Child Protection* as a means of exchanging ideas and good practices, and to help promote consistent approaches to the interpretation and operation of the Convention.

### **Implementing measures**

9. Contracting States in the region are encouraged to consider the value of enacting laws and taking other measures to ensure that the Hague Convention will operate effectively. In this respect, attention is drawn to *the Guide to Good Practice on Implementing Measures*.

### **Publicity**

10. Contracting States in the region are encouraged, by all available means, including by the establishment of Central Authority websites, to publicize in the national languages the existence and provisions of the 1980 Hague Convention as well as on the procedures and measures giving effect to the Convention in the respective States.

### **Effective access to the courts**

11. The importance is emphasized of giving parents effective access to the courts. This applies both to a parent who is seeking a return or access order under the Convention and to a parent who is involved in proceedings concerning custody in the country to which the child is returned.

### **Acceptances of accessions**

12. Concern is expressed that, in respect of some States which have acceded to the Hague Convention in recent years, there have been delays on the part of other States in accepting those accessions. The attention of acceding States is drawn to the value of completing the Standard Hague Questionnaire as a means of providing information so as to facilitate acceptance of their accessions by other States.

### **Safe return and protective measures**

13. For the purpose of effecting the safe return of the child, Contracting States should consider the provision of procedures for obtaining, in the jurisdiction to which the child is to be returned, any necessary provisional protective measures prior to the return of the child, or for facilitating the recognition of protective measures ordered in the country from which the child is returned. Central Authorities should make every effort to provide information on, and access to, available protective measures.

### **Training programmes**

14. Contracting States in the region should promote and facilitate the establishment of national training programs concerning the 1980 Hague Convention for Judges, Central Authority personnel and practitioners.

### **Liaison Judges**

15. The growth of the network of liaison judges is noted as a significant aid to international judicial communication, collaboration and understanding.

### **International Child Abduction Database (INCADAT)**

16. The establishment of INCADAT and its free availability on the internet are welcomed by judges as an important contribution to the spread of knowledge about the Convention and as a means of promoting consistent interpretation of the Convention internationally. Contracting States in the region are encouraged to collaborate with the Permanent Bureau in ensuring the full representation on INCADAT of case law from the Latin American countries.

### **Inter-relationship with other instruments**

17. It is recognized that the 1980 Hague Convention, by facilitating the prompt return of children wrongfully removed from or retained outside their country of habitual residence, supports the fundamental principles and rights of the child, including the child's right to maintain personal relations and direct contacts with both parents, as recognized in human rights instruments, in particular *the Convention on the Rights of the Child of 20 November 1989*. In applying the 1980 Hague Convention judges are reminded that it serves as an instrument to give effect to those principles.

18. Judges and Central Authorities are encouraged to become familiar with the Inter-American Program on Co-operation to Prevent and Remedy Cases of International Abduction of Children by One of their Parents, approved by the General Assembly of the Organization of American States by Resolution AG/Res. 2028, and, consistently with the terms and objectives of the 1980 Hague Convention, to make use of this instrument where appropriate to facilitating the return of children.

**Preventive measures**

19. Greater efforts should be made to develop and apply judicial, administrative and other measures aimed at preventing abductions from taking place. The forthcoming publication by the Hague Conference of a Guide to Good Practice on Preventive Measures is welcomed.

**Hague Convention of 1996 on International Child Protection**

20. The potential advantages 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*, as an adjunct to the 1980 Convention, are recognized. States in the region are encouraged to consider its ratification or accession.

**THE HAGUE PROJECT FOR INTERNATIONAL CO-OPERATION AND  
THE PROTECTION OF CHILDREN IN  
THE SOUTHERN AND EASTERN AFRICAN REGION**

**CONCLUSIONS AND RECOMMENDATIONS OF THE JUDICIAL SEMINAR  
ON THE ROLE OF THE HAGUE CHILD PROTECTION CONVENTIONS  
IN THE PRACTICAL IMPLEMENTATION OF  
THE UN CONVENTION ON THE RIGHTS OF THE CHILD AND THE  
AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD**

**3 - 6 SEPTEMBER 2006, THE HAGUE**

From 3-6 September 2006, Judges and Experts from Cameroon, Ethiopia, Kenya, Lesotho, Malawi, Mauritius, The Netherlands, Nigeria, Rwanda, South Africa, Tanzania, Uganda, Zambia, Zimbabwe, the African Union and from UNICEF, as well as the Hague Conference on Private International Law, met in The Hague, The Netherlands, to discuss the role of the Hague Child Protection Conventions<sup>1</sup> in relation to the practical implementation of the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

The participating Judges and Experts agreed the following:

1. There is a need to develop among African countries effective inter-State structures which focus on the needs and the protection of children who are at-risk across borders – especially those who are the subject of abduction, sale, trafficking, including those who become vulnerable as a result of poverty and the HIV/AIDS pandemic, and those who are displaced as a result of conflict or natural disaster. The development of an Africa-wide structure to facilitate inter-State co-operation for this purpose is fully in accord with, and should be inspired by, the principles set out in the African Charter on the Rights and Welfare of the Child and the UN Convention on the Rights of the Child.

*Judicial co-operation*

2. It is of fundamental importance to develop inter-State co-operation at the judicial level through, among other measures:
  - introducing practical legal structures to support such co-operation including in particular those established by the Hague Child Protection Conventions;
  - developing a Judicial Network on the African continent focusing on the international protection of children;
  - offering opportunities for training and sensitisation of Judges and Magistrates in international child protection law;
  - holding regular international and regional meetings involving Judges and Magistrates concerned with cross border child protection cases; and
  - promoting collaboration between the judicial, social, health and education services.
3. It is recommended that States give consideration to the advantages that flow from

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<sup>1</sup> Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction; Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption; and the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.

the establishment of Family or Children's Courts where they do not already exist.

4. It is affirmed that this meeting in The Hague has provided a valuable forum for the exchange of information and ideas amongst Judges, Magistrates and other child protection Experts, and for the development of the mutual trust, confidence and solidarity amongst Judges and Magistrates necessary for effective cross-border judicial co-operation.

*Administrative co-operation*

5. Attention is drawn to the potential value of using the 'Central Authority' model, as developed in the Hague Child Protection Conventions, as a focal point for inter-State co-operation in child protection, and it is recommended that further work be done to consider how best to (1) adapt this model to the needs of African countries and (2) establish a database of Central Authorities in Africa.

*Effective implementation of instruments*

6. Measures should be taken to ensure that national, regional and international instruments concerning child protection are fully and effectively implemented in African countries and that every effort is made to find the resources needed to provide individual States with the technical assistance and training facilities necessary for this purpose.

*Inter-disciplinary approach*

7. The effective implementation of Hague Conventions and other international and regional instruments requires an inter-disciplinary approach involving all of the actors including Judges, Magistrates, Lawyers, Academics, Social, Health and Education Workers, Parliamentarians, Law Enforcement Officers, the Media, Non-Governmental Organisations and other court users.

*Monitoring and review*

8. The importance of monitoring and of reviewing the practical operation of the international instruments is recognised.

*Regional and international co-operation*

9. There is a need to develop policy in this area in close co-operation with international and regional actors including the African Committee on the Rights and Welfare of the Child, the UN Committee on the Rights of the Child, and UNICEF.

*The participants present*

Recommend that the African Union should raise and promote awareness among Member States of the African Charter on the Rights and Welfare of the Child, the Hague Child Protection Conventions, and the *UN Convention on the Rights of the Child*. It is also recognised that the African Union can mobilise regional and international efforts for child protection.

Call upon the Hague Conference to ensure that a similar meeting be held in two-years time to follow-up on these conclusions and recommendations.

Fully support the plans of the Hague Conference for a major conference to be held in Africa in 2007 to discuss and develop the themes and ideas raised at this Judicial Seminar.

**SECOND MALTA JUDICIAL CONFERENCE  
ON CROSS-FRONTIER FAMILY LAW ISSUES  
HOSTED BY THE GOVERNMENT OF MALTA  
IN COLLABORATION WITH THE HAGUE CONFERENCE ON  
PRIVATE INTERNATIONAL LAW**

**DECLARATION**

On 19-22 March 2006, Judges and Experts from Algeria, Australia, Belgium, Canada, Egypt, France, Germany, Indonesia, Lebanon, Libya, Malaysia, Malta, Morocco, the Netherlands, Sweden, Tunisia, Turkey, the United Kingdom, the United States of America, the European Commission, the European Parliament, the Council of the European Union, the International Social Service, the International Centre for Missing and Exploited Children and Reunite, as well as the Hague Conference on Private International Law, met in St. Julian's, Malta, for the second round of discussions on how to secure better protection for cross-frontier rights of contact<sup>1</sup> of parents and their children and the problems posed by international abduction between the States concerned.

./. The participating Judges and Experts, noting the progress made following the first Malta Declaration (copy attached), and again guided by the principles set out in the United Nations Convention on the Rights of the Child of 1989, agreed the following:

1. The conclusions and recommendations set out in the first Malta Declaration are re-affirmed and, in the case of Judges and Experts who were not party to that Declaration, fully endorsed.
2. The centralised administrative authorities (sometimes called Central Authorities) which act as a focal point for cross-border co-operation in securing cross-frontier contact rights and in combating the illicit transfer and non return of children should be professionally staffed and adequately resourced. There should be continuity in their operation. They should have links internally with child protection, law enforcement and other related services, and externally they should have the capacity to co-operate effectively with their counterparts in other countries. Their role in promoting the amicable resolution of cross-frontier disputes concerning children is emphasized.
3. Intensified activity in the field of international family mediation and conciliation, including the development of new services, is welcomed.

The importance is recognised of having in place procedures enabling parental agreements to be judicially approved and made enforceable in the countries concerned.

Legal processes concerning parental disputes over children should be structured so as to encourage parental agreement and to facilitate access to mediation and other means of promoting such agreement. However, this should not delay the legal process and, where efforts to achieve agreement fail, effective access to a court should be available.

International family mediation should be carried out in a manner which is sensitive to cultural differences.

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<sup>1</sup> The word "contact" is used in a broad sense to denote any means, ranging from communications to periods of visitation, by which the relationship between a child and a parent may be maintained.

4. More consideration should be given to the implementation of measures, administrative, judicial and psychosocial, designed to prevent the unlawful removal or retention of children or to secure the conditions of contact. The Guide to Good Practice on Preventive Measures, published by the Hague Conference on Private International Law, which contains many examples of preventive measures operating in different countries, should be widely disseminated. Preventive measures should be employed whenever their need is justified; and the measures taken should be proportionate to the risks and consequences of unlawful removal or retention of the child in the particular case.
5. It is in the interests of children that courts in different States should apply common rules of jurisdiction and that custody and contact orders made on the basis of those rules should as a general principle be recognised in other States. Competing jurisdictions add to family conflict, discourage parental agreement, and can encourage the unlawful removal or retention of children.

It is noted that many States are now considering implementation of the uniform rules of jurisdiction set out in 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 Permanent Bureau of the Hague Conference on Private International Law is encouraged to provide States on request with technical assistance in this process. Efforts should be made to ensure that resources are made available for this purpose. The same applies to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*.

6. The development in a number of countries of specialised family courts is welcomed. The movement in some countries towards a concentration within the jurisdiction of courts dealing with international disputes concerning children is noted, recognising that in some legal systems such concentration is impracticable.
7. The efforts of the Hague Conference on Private International Law to provide training programmes for the judiciary in matters of international child protection are noted and supported.
8. It is regrettable that, despite the recommendation contained in the first Malta Declaration, the issuing of visas to enable the exercise of parental rights of contact remains a problem in some countries. The relevant authorities are urged to take positive action on this matter.
9. The further development since the first Malta Declaration of the international network of liaison judges is welcomed. New legislative provisions in respect of liaison judges in certain States are welcomed, as well as the development of specific models adapted to the needs of particular States, including Federal States.<sup>2</sup>

It is emphasised that encouragement for the appointment of liaison judges extends to States which are not Parties to the Hague Children's Conventions.

*The Judges' Newsletter on International Child Protection* serves as a valuable medium for the exchange of information and opinion among judges in all countries and for the promotion of judicial seminars and conferences.

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<sup>2</sup> Significant regional developments such as the European Union Judicial Network in Civil and Commercial Matters, are also welcomed.

10. Attention is drawn to the importance of disseminating information on national laws and procedures concerning child protection, in particular through the establishment of websites for this purpose, including the website of the Hague Conference. Appreciation is expressed for all efforts in this matter, including those of non-governmental organisations.
11. The process of dialogue, now known as the "Malta Process", should continue, with the assistance of the Hague Conference and in co-operation with other international organisations including the European Union.

In addition, an invitation will be extended to all States represented to participate in the fifth meeting<sup>3</sup> of the Special Commission of the Hague Conference to review the practical operation of the 1980 Hague Convention and issues surrounding the implementation of the 1996 Hague Convention. Participation in the Special Commission does not imply any obligation to accede to these Conventions but provides a welcome opportunity to continue a dialogue with a broader range of States and to benefit from a wide international experience in the international protection of children.

12. Recognition is accorded to regional initiatives, for example those instituted by the European Union in the Euromed context, as a means of promoting the objectives of the Malta process.

Thanks are extended to Germany, the Netherlands, Sweden and the United Kingdom for their financial support for this conference, and to the Government and judiciary of Malta for their role once again in promoting and providing an ideal setting for successful dialogue.

22 March 2006

- ./. Attachment mentioned.

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<sup>3</sup> To take place in The Hague from 30 October to 9 November 2006.

**THE MALTA JUDICIAL CONFERENCE ON CROSS-FRONTIER FAMILY LAW ISSUES  
HOSTED BY THE GOVERNMENT OF MALTA IN COLLABORATION  
WITH THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW**

**DECLARATION<sup>1</sup>**

On 14-17 March 2004, Judges and Experts from Algeria, Belgium, Egypt, France, Germany, Italy, Lebanon, Malta, Morocco, the Netherlands, Spain, Sweden, Tunisia, the United Kingdom, the European Commission, the Council of the European Union, the International Social Service and Reunite, as well as the Hague Conference on Private International Law, met in St. Julian's, Malta, to discuss how to secure better protection for cross-frontier rights of contact<sup>2</sup> of parents and their children and the problems posed by international abduction between the States concerned.

The participating Judges and Experts agreed the following:

1. The principles set out or implicit in the *United Nations Convention on the Rights of the Child* of 1989 are affirmed as a basis for action. In particular:
  - a) in all actions concerning children, the best interests of the child shall be a primary consideration;
  - b) a child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents;
  - c) a child should have the opportunity to learn to know and respect the culture and traditions of both parents;
  - d) States are obliged to take measures to combat the illicit transfer and non-return of children abroad.
2. Efficient and properly resourced authorities (Central Authorities) should be established in each State to co-operate amongst one another in securing cross-frontier rights of contact and in combating the illicit transfer and non-return of children. Such cooperation should include at least:
  - assistance in locating a child;
  - exchange of information relevant to the protection of the child;
  - assistance to foreign applicants in obtaining access to local services (including legal services) concerned with child protection.
3. Steps should be taken to facilitate, by means of mediation, conciliation, by the establishment of a commission of good offices, or by similar means, solutions for the protection of the child which are agreed between the parents.

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<sup>1</sup> The Declaration is non-binding. It may inspire, but is not intended to replace, possible bilateral or other arrangements between States.

<sup>2</sup> The word "contact" is used in a broad sense to denote any means, ranging from communications to periods of visitation, by which the relationship between a child and a parent may be maintained.

4. The use of guarantees and safeguards to help ensure the effective exercise of contact rights, and to prevent their abuse, should be explored and promoted. This should include financial guarantees, preventive measures and the use of methods appropriate within the cultural, religious and legal traditions of the parties.
5. The importance is recognised of having common rules which specify which country's courts or authorities are competent to make decisions concerning custody and contact.
6. Decisions concerning custody or contact made by a competent court or authority in one country should be respected in other countries, subject to fundamental considerations of public policy and taking into account the best interests of the child.
7. Speed in both administrative and judicial processes is of the essence because delays which prolong the separation of a child from a parent may have devastating consequences for the parent-child relationship.
8. The cases under consideration need to be handled by experienced judges. Judicial training, as well as concentration of jurisdiction among a limited number of courts, contribute to the development of the necessary expertise.
9. States should facilitate the cross-frontier movement of parents or children, where necessary, to enable rights of contact to be exercised. To this end, visas should be made available,<sup>3</sup> free circulation should be guaranteed within the country in which contact is to take place, and consideration should be given to the establishment of contact centres.
10. Successful inter-State co-operation in child protection depends on the development of mutual trust and confidence between judicial, administrative and other competent authorities in the different States. The regular exchange of information, as well as meetings between judges (and other officials) at a bilateral or a multilateral level, are a necessary part of building this trust and confidence.<sup>4</sup>
11. Networking between judges concerned with international child protection is a growing phenomenon, ideally assisted by the appointment of liaison judges. Judicial networking facilitates the exchange of information as well as direct communications between judges, where appropriate, in specific cases.
12. There should be established, with the assistance of the Hague Conference, an international database containing relevant information concerning laws and procedures in each State. Judges should transmit significant decisions and other judicial measures to the Hague Conference with a view to their inclusion on the existing International Child Abduction Database (INCADAT).
13. The process of dialogue should continue, with the assistance of the Hague Conference in co-operation with other international organisations including the European Union, with a view to the progressive elaboration and implementation of these conclusions.

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<sup>3</sup> This is dependent on the provision by parents to the relevant authorities of all the documentation and other information necessary to determine the visa application.

<sup>4</sup> For example, in the Euromed context.

14. Translations into Arabic should be prepared of the texts of the essential Conventions of the Hague Conference on Private International Law, in particular those concerning the protection of children,<sup>5</sup> to enable widespread diffusion of the norms and principles contained in these international instruments and to spread knowledge and awareness of the texts.

Thanks are extended to Germany, the Netherlands, Sweden and the United Kingdom for their financial support for this conference, and to the Government and judiciary of Malta for its active role in promoting and providing an ideal setting for successful dialogue.

17 March 2004

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<sup>5</sup> The two Conventions particularly relevant are the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children*.