ENLÈVEMENT INTERNATIONAL D'ENFANTS
INTERNATIONAL CHILD ABDUCTION

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COMPILATION DES RÉPONSES AU QUESTIONNAIRE SUR LE FONCTIONNEMENT PRATIQUE DE LA CONVENTION DE LA HAYE DU 25 OCTOBRE 1980 SUR LES ASPECTS CIVILS DE L'ENLÈVEMENT INTERNATIONAL D'ENFANTS

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

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RECOPILACIÓN DE LAS RESPUESTAS AL CUESTIONARIO SOBRE EL FUNCIONAMIENTO PRÁCTICO DEL CONVENIO DE LA HAYA DE 25 DE OCTUBRE DE 1980 SOBRE LOS ASPECTOS CIVILES DE LA SUSTRACCIÓN INTERNACIONAL DE MENORES

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*Document préliminaire No 2 d'octobre 2006
à l'intention 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)*

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for the attention 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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a la atención de la Quinta reunión de la Comisión Especial
sobre el funcionamiento del Convenio de La Haya de 25 de octubre de 1980
sobre los Aspectos Civiles de la Sustracción Internacional de Menores
(La Haya, 30 de octubre – 9 de noviembre de 2006)*

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COMPILATION DES RÉPONSES AU QUESTIONNAIRE SUR LE FONCTIONNEMENT PRATIQUE DE LA CONVENTION DE LA HAYE DU 25 OCTOBRE 1980 SUR LES ASPECTS CIVILS DE L'ENLÈVEMENT INTERNATIONAL D'ENFANTS

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Compilation des réponses au questionnaire sur le fonctionnement pratique de la Convention de La Haye du 25 octobre 1980 sur les aspects civils de l'enlèvement international d'enfants
(Comprenant des questions relatives à la mise en œuvre de la Convention de La Haye du 19 octobre 1996 concernant la compétence, la loi applicable, la reconnaissance, l'exécution et la coopération en matière de responsabilité parentale et de mesure de protection des enfants)

* * *

Collated Responses to the Questionnaire concerning the practical operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction
(Including questions on implementation of the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children)

* * *

Recopilación de las respuestas al Cuestionario sobre el funcionamiento práctico del Convenio de La Haya de 25 de octubre de 1980 sobre los Aspectos Civiles de la Sustracción Internacional de Menores
(incluyendo cuestiones relativas a la implementación del Convenio de La Haya de 19 de octubre de 1996 relativo a la Competencia, la Ley aplicable, el Reconocimiento, la Ejecución y la Cooperación en materia de Responsabilidad Parental y Medidas para la Protección de los Niños)

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1. The role and functions of Central Authorities – Rôle et fonctions des Autorités centrales

Question 1	
Have any difficulties arisen in practice in achieving effective communication with other Central Authorities? In particular, how are "modern rapid means of communication," used by your Central Authority in order to expedite communications, bearing in mind the requirements of confidentiality?	**Avez-vous rencontré en pratique des difficultés qui font obstacle à une communication efficace avec d'autres Autorités centrales ? Plus particulièrement, quels « moyens de communication modernes et rapides » votre Autorité centrale utilise-t-elle pour communiquer rapidement, s'efforçant de respecter les exigences concernant la confidentialité des informations ?**

Argentina – Argentine :

La dificultad más común que ha surgido con algunas Autoridades Centrales ha sido la falta de comunicación en debido tiempo de las novedades de los procedimientos, lo que en muchos casos ocasiona la perdida de la posibilidad de apelar un fallo desfavorable. Asimismo, genera gran ansiedad en los peticionantes, a quienes no puede brindarseles información sobre el estado de sus casos. Entendemos que en algunos Autoridades Centrales, esta falta de respuesta a las solicitudes de información puede deberse a la falta de recursos económicos o humanos, pero consideramos que es un tema de suma importancia que debe ser mejorado si se desea cumplir acabadamente con los objetivos del Convenio. Esta Autoridad Central, para evitar las demoras en las comunicaciones, recurre al uso del correo electrónico, al teléfono y al fax para mantener contacto con las demás Autoridades Centrales. Cuando se trata de contactar a los peticionante, además de estas vías también utilizamos notas e inclusive entrevistas personales, según el caso.

Australia – Australie :

E-mail is commonly used in communicating with other Central Authorities and is a quick and effective means of communication. Documents are often sent by facsimile and originals are then sent by airmail.

Communication is a problem with certain countries, making involvement of Australian Embassies necessary. This is an unreasonable imposition on their time and resources of the Embassies. Translation delays can also impede timely responses.

Austria – Autriche :

No difficulties have arisen in practice: The Central Autority of Austria uses fax and phone calls regularly. Communication by e-mail is rare (due to the necessity of documentation and the transmission of documents).

Canada – Canada :

E-mail provides a simple, fast and effective means of communication. It also helps where time differences make telephone contact more difficult. Correspondence and documents are sent by fax, in addition to, or as an alternative to regular mail, depending on the circumstances. Original documents are generally sent by courier. Communications also take place by telephone in some cases.

**

Le courrier électronique fournit une solution simple, rapide et efficace aux questions de communication. De plus, cette solution est utile lorsque les différences dans les fuseaux horaires rendent les communications téléphoniques difficiles. La correspondance and les documents sont envoyés par télécopieur comme alternative ou parfois additionnellement à l'envoi par courier régulier, selon les circonstances. Les documents originaux sont généralement envoyés par courrier. Le téléphone est également utilisé dans certains cas.

Chile – Chili :

Sí:

- En muchas ocasiones no se acusa recibo de la solicitud sino después de transcurridas varias semanas desde el envío y de varias solicitudes de acuse de recibo por parte de esta Autoridad Central.
- Varias autoridades no informan periódicamente el estado de tramitación de una solicitud de restitución ni los resultados de las audiencias efectuadas, siendo necesario en estos casos, solicitud de información en reiteradas oportunidades por parte de esta Autoridad Central.
- Los correos electrónicos en muchas ocasiones no son respondidos con la prontitud y rapidez que permite dicho medio.
- En muchos casos y habida consideración de las diferencias horarias, es prácticamente imposible lograr comunicarse por teléfono con algunas autoridades centrales, transcurriendo a veces semanas sin poder lograr dicha comunicación. Asimismo algunas autoridades centrales no devuelven los llamados.

En la mayoría de los casos nuestras comunicaciones son remitidas por fax a las demás autoridades centrales. Sin embargo, cuando éstas contienen información especialmente relevante o documentación, se remite por correo aéreo y en avance por fax.

Nos comunicamos por e-mail y teléfono con aquellas autoridades centrales que utilizan efectivamente estos medios.

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Cabe hacer presente, que para asegurar que la información remitidas por otras autoridades centrales vía correo electrónico sea revisada sin importar si hay alguno de sus miembros fuera, esta oficina cuenta con un correo institucional al que tienen acceso todos los profesionales que integran esta autoridad central.

Desafortunadamente sólo contamos con una línea telefónica que es a la vez fax, lo que sabemos puede ocasionar dificultades en la comunicación rápida y eficaz con otras autoridades centrales.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

There are so far no particular difficulties in communicating with other Central Authorities. Communication by e-mails (accompanied by long distance calls when necessary) is considered a very effective way in prompting quick response.

China (SAR Macao) – Chine (RAS Macao) :

Yes, in the Macao Special Administrative Region of the People's Republic of China (MSAR), some difficulties have arisen in practice in achieving communication with other Central Authorities but such difficulties are mainly related to the recurrent use of the faculty provided for the last sentence of the first paragraph of Article 24 of the Convention and not connected with the use modern means of communication.

In fact, documents sent to the MSAR Central Authority, the Welfare Institute of Macao, instead of being accompanied by a translation in one of the official languages of MSAR are systematically accompanied by a translation on English or French. It is difficult to produce accurate and quick translations. Consequently, this language question has implecations in what concerns prompt responses and rapid communication as well as in the processing applications.

Specifically, regarding the use of new communication technology, as referred, no major problem was encountered until now. Upon receiving a request, the MSAR Central Authority will promptly assign a specific person to communicate with the other Central Auithority. The means of communication will depend on the concrete situation, For more delicate / confidential situations, China's consular and / or diplomatic chanels can be used. In this regard, it should be mentioned that, in the MSAR, the effect of electronic documents and signatures is regulated by law, and all public authorities, including the Central Authority, are materially well equipped.

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Colombia – Colombie :

Si existen dificultades en la práctica para lograr una comunicación rápida con las Autoridades Centrales, entre otros motivos:

- No cuentan con los medios rápidos de comunicación
- Los tienen pero no los utilizan
- No responden a las solicitudes que se hacen por correo electrónico
- No se reporta el cambio de dirección electrónica.

El Instituto Colombiano de Bienestar Familiar –ICBF- y en especial la Subdirección de Intervenciones Directas en su condición de Autoridad Central, cuenta con medios rápidos y modernos que permiten establecer contacto con las demás Autoridades. Estos medios tienen confidencialidad y difusión. La indebida retención y distribución está sancionada por la Ley

Costa Rica – Costa Rica :

El PANI ha utilizado teléfono, fax, correo electrónico y correo postal certificado, todo sin mayor problema para nosotros. Empero, la mayor parte de los problemas vienen de las

Autoridades Centrales Requeridas, quienes para empezar no suelen darse por comunicados sobre los requerimientos, amén de que han demostrado no tener prácticas adecuadas de rendición de cuentas.

Cyprus – Chypres :

So far no serious difficulties have been experienced in achieving effective communication with other Central Authorities. Good cooperation and personal contacts through the telephone are often the solution to the problems arising from delays. In order to expedite communications the use of fax and e-mail is in everyday practice. Nevertheless, all the necessary measures are taken in order to secure the confidential nature of the cases.

Czech Republic – République tchèque :

No, we have not had such difficulties. The fax and email communication is frequently used. We have never met such problems as mentioned in the Guide.

Denmark – Danemark :

In general we find the communication and co-operation between the Central Authorities very efficient and well functioning. We use mail, fax, phone and e-mail in our communication with other Central Authorities and with Danish Authorities.

The Danish Central Authority have experienced that in some instances requested Member States are very slow to start convention proceedings and –when proceedings have been started – neglect to keep us informed, to provide us with court orders or answer our questions.

Also we have experienced some difficulties with a few Member States in achieving legal information of a general character in connection with applications.

Finally we have experienced difficulties in getting help to organise or secure the effective exercise of rights of access.

Ecuador – Equateur :

La Autoridad Central del Ecuador cuenta con los siguientes medios de comunicación: teléfono, con acceso a llamadas internacionales, fax, correo electrónico y correo postal certificado. Generalmente la comunicación con otras autoridades centrales es fluída, sin embargo han existido situaciones en las que las respuestas han demorado en llegar y eso ha retrasado los procesos.

Por lo general se envía información urgente a través de correo electrónico, mientras que la documentación se remite luego por correo postal.

El Salvador – El Salvador :

En nuestro país, la experiencia en la aplicación del Convenio es relativamente nueva, por lo que han surgido algunas dificultades prácticas normales, principalmente porque en El Salvador son dos las Autoridades Centrales: la Procuraduría General de la República PGR Y EL Instituto Nacional para el Desarrollo Integral de la Niñez y Adolescencia ISNA, por lo que cuando actuamos como país requerido, surge la duda en cuanto a qué institución referir el caso, aunque de hecho, es a la Procuraduría General de la República a quien le corresponde entablar las acciones legales.

En cuanto a la utilización de los medios de comunicación modernos, no existe problema para que nuestra institución se comunique con otras a través de teléfono, fax y correo electrónico.

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Finland – Finlande :

The Finnish Central Authority has not yet experienced any major difficulties in effective communication with other Central Authorities. The most used mean of communication is fax. Phone and e-mail are used for more informal contacts, clarification of issues, or in cases of urgency.

France – France :

L'autorité centrale française n'a pas été confrontée à des difficultés, dans ses échanges avec les autres autorités centrales, faisant obstacle à une bonne circulation des informations. Néanmoins, il appartient à chaque autorité centrale de veiller à faire apparaître les coordonnées actualisées de ses services et de ses membres sur le site de la convention de La Haye.

Les moyens de communications utilisés sont le courrier, le fax, le téléphone et l'envoi de messages électroniques.

A notre avis, pour les échanges présentant un caractère d'urgence, l'envoi de fax est à privilégier par rapport à celle du message électronique, car l'autorité centrale "émettrice" est assurée de la réception du courrier, alors que l'envoi d'un e-mail n'offre pas toujours la même garantie, si la personne recevant ce courrier est absente, ou n'a pas accès à sa boîte e-mail.

Greece – Grèce :

We have not faced any major difficulties in achieving effective communication with the other Central Authority. Some Central Authroities do not have any available e-mail addresses for rapid communication.

Guatemala – Guatemala :

Se utiliza el Internet para la comunicación inmediata y la respuesta, sin embargo la documentación debe enviarse aún por correo normal.

Iceland – Islande :

No major difficulties have arisen in practice in achieving effective communication with other Central Authorities. We mostly use fax and email (and phone) when communicating with other Central Authorities and that works well.

Ireland – Irlande :

Difficulties are not generally encountered, other than the natural delays caused by major time zone differences. Email and fax are used regularly, due to the fairly urgent nature of the work. Also, telephone may be used in some cases.

Israel – Israël :

Problems have been encountered with some Central Authorities where the phone/fax numbers or e-mail addresses are not in working order. The inability to reach another Central Authority can cause significant delays in the handling of an application. In some cases it was learned that there were changes in these numbers / addresses, however the Permanent Bureau was not notified of these changes. Again, such situations can cause considerable delays in the handling of an application. Central Authorities should immediately notify the Permanent Bureau of any such changes so that the remaining contracting states can be notified immediately.

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In some countries, the phones of the Central Authority are answered by personnel who speak neither English nor French, the two official languages of the Convention, and it is therefore sometimes impossible to even reach the appropriate person. It is suggested that every Central Authority have a staff person who speaks at least one of the official languages of the Convention. In addition, recorded phone messages of some Central Authorities are only in the language of that country. It is suggested that such messages also include a duplicate message in either English or French.

In terms of rapid communication, the Central Authority for Israel has provided two e-mail addresses. If particular personnel are away for an extended period, for example vacation, e-mail communications sent to the particular person will receive an automatic reply stating that the person is away from the office. The sender may then send the e-mail to the other address listed on the Hague website. As well, the fax machine is in operation 24 hours per day, seven days per week. No one outside of the Central Authority has access to such e-mails or faxes, thereby ensuring confidentiality.

Italy – Italie :

Nous rencontrons surtout des difficultés avec presque tous les pays de l'AmériqueCentrale et du Sud, à l'exception de l'Argentine. Nous avons aussi quelques graves difficultés avec les pays de l'ex-Yougoslavie.

L'Autorité Centrale italienne dispose de tous les moyens modernes et rapides de communication (télécopieur, courriel, etc).

Latvia – Lettonie :

For communication with other Central Authorities the Ministry as the Central Authority under Convention with taking into consideration principles of confidentiality mainly uses regular mail and fax messages. In situations when there is need to act promptly we use an e-mail and / or communication by phone directly. Considerable difficulties in communication with Central Authorities in other countries are not observed.

Lithuania – Lituanie :

We have encountered no problems concerning effective communication with central authorities of other states. In order to ensure effective communication with other countries' central authorities, State Child Rights Protection and Adoption Service (SCRPAS) normally uses electronic mail and sometimes fax. An electronic mailbox of a person responsible for the implementation of the 1980 Convention is normally used for the sending and receiving information. In this way confidentiality of communication is ensured.

Malta – Malte :

To date no difficulties have arisen in practice in achieving effective communication with any Central Authorities contacted.

All modern means of communication, i.e. email, fax transmission and long distance telephone calls, have been used to advantage and as expediency requires. However, formal applications and attachments are still dispatched by AR. Registered Express Mail.

Mexico – Méxique :

No, en el caso de México no nos hemos encontrado con algún problema cuando se trata de la comunicación con las Autoridades Centrales, utilizamos el correo electrónico y el fax, sólo para las comunicaciones de intercambio de información entre las Autoridades Centrales.

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Para documentación que debe presentarse ante la autoridad judicial que conocerá de un caso, toda documentación debe ser presentada en original o copia certificada acompañada de una traducción al idioma español, como lo establece el Artículo 271 del Código Federal de Procedimientos Civiles "las actuaciones judiciales y promociones deben escribirse en lengua española. Lo que se presente por escrito en idioma extranjero se acompañará de la correspondiente traducción al castellano".

Monaco – Monaco :

Au sein de l'Autorité centrale monégasque, le moyen de communication privilégié avec les autres Autorités centrales est la télécopie. Le courrier électronique est aussi utilisé mais en cas d'urgence la télécopie et la communication par téléphone suivent.

Netherlands – Pays-Bas :

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

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

New Zealand – Nouvelle Zélande :

No. The New Zealand Central Authority's preferred and most frequently used means of communication is by e-mail. The Central Authority has the ability to scan and send applications by e-mail in preference to facsimile where this option is available. However, the large size of some documents may prevent receipt by the overseas State due to limited access or size restrictions imposed for users. Facsimile is the second preferred option. All original documentation is couriered to destination on receipt after it is faxed or e-mailed to the receiving state or Court.

Nicaragua – Nicaragua :

En este sentido existe un intercambio de información a través de correo electrónico, que permite dar seguimiento al desarrollo de los casos, los cuales se desarrollan con la debida confidencialidad.

Panama – Panama :

La autoridad central panameña cuenta con sistema de correo electrónico, fax, teléfono con acceso a llamadas internacionales, y próximamente se adquirirá para uso de todas las oficinas del Ministerio de Relaciones Exteriores un sistema de video conferencia.

En la generalidad de los casos la comunicación con los países es buena.

En la autoridad central panameña no se han practicado políticas de confidencialidad hacia otros países, toda vez que la única comunicación que se realiza a los casos es a la

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autoridad central del país requirente o requerido, y no se brinda a terceros o particulares, salvo que sean apoderados legales de alguna de las partes.

Paraguay – Paraguay :

El medio de comunicación con el que contamos es el correo electrónico para enviar desde Paraguay nuestras comunicaciones. Contamos además con la cooperación de por ejemplo el Consulado de la República Argentina para enviar vía cartera diplomática de documentación pertinente. El relacionamiento con el Consulado es excelente.

Poland – Pologne :

We have not encountered any difficulties in achieving effective communication with other Central Authorities. It has been facilitated to a great extend by using modern means of communication, such as the Internet, fax, etc. Unfortunately in some cases using these means may be the reason for receiving the correspondence by an unauthorized person. Therefore, we undertake all the necessary actions to prevent such situations *e.g.* by bounding the addressee by obligation of providing us with the correct telephone and fax number, as well as the e-mail address. What is more, we require the addressee to confirm that the correspondence has reached him.

Portugal – Portugal :

Yes, the Portuguese Central Authority has a few communication problems with the Czech Republic and some of the South America countries. In order to expedite communications and bearing in mind the urgency of the procedure and the requirements of confidentiality we use fax or mail.

Romania – Roumanie :

No, fax, e-mail.

Slovakia – Slovaquie :

The Slovak Central Authority- The Centre for the International Legal Protection of Children and Youth (hereafter the Slovak CA or the Centre) has never had any difficulties with communication neither towards the other central authorities nor towards the expediting of information or internal communication within the Centre.

In order to provide prompt responses and rapid follow-up information, all the accessible modern means of Communication, especially fax and e-mail, are frequently used in combination; mostly in a way that allows affirming, that the relevant person receives the important information on time. Therefore, the Centre has not had to deal with any problems mentioned in the Guide to Good Practice by now.

South Africa – Afrique du Sud :

No specific problems have arisen. The use of electronic mail and facsimile has made rapid communication possible.

Spain – Espagne :

Normalmente las comunicaciones se realizan por fax. El correo electrónico se utiliza para cuestiones urgentes o cuando el otro país no dispone de fax o no contesta a los requerimientos.

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Sweden – Suède :

The Swedish Central Authority has not experienced any major difficulties in effective communication with other Central Authorities. The modern rapid means of communication with other Central Authorities are primarily by fax, mail, DHL, E-mail and telephone, without neglecting the requirements of confidentiality. The most used mean of communication is fax. Telephone and e-mail are used mainly for informal contacts, clarification issues or in case of urgency.

Switzerland – Suisse :

L'autorité centrale suisse utilise toutes les voies de communication de documents écrits rapides, selon ses interlocuteurs : courriels, télécopieurs, courriers postaux urgents (FEDEX).

United Kingdom (Scotland) – Royaume Uni (Écosse) :

In general most Central Authorities are extremely co-operative. Delays occur with incoming cases in Scotland when requesting Central Authorities fail to provide all the necessary documents. In particular, an affidavit is required in Scotland before court proceedings can be raised.

The Central Authority for Scotland makes full use of modern, rapid means of communication. Case papers are often scanned at the outset and sent by e-mail with the originals, which are then forwarded by airmail. The Central Authority for Scotland has encountered no problems thus far with modern communication methods and the requirement for confidentiality.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

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

E-mail is particularly helpful where:

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

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

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

United States – Etats Unis :

In general, the United States Central Authority (USCA) has not experienced difficulties communicating with other Central Authorities. The U.S. Central Authority uses telephone, email and fax, and on some occasions communicates through the American Embassies abroad. An increase in use of email has improved our ability to communicate more rapidly and effectively with certain Central Authorities, as has the increased use of

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scanners to transmit documents. Occasionally, we have difficulty communicating with a Central Authority when that Authority does not respond to faxed inquiries or where the Authorities do not have correct fax numbers. In these cases, USCA relies on our embassies to transfer information.

Uruguay – Uruguay :

No han surgido dificultades especiales. Se utiliza además de la comunicación por correo, la comunicación telefónica, el fax y el correo electrónico, para contactarse con otras Autoridades Centrales para requerir o enviar información sobre solicitudes de reintegro internacional.

Question 2	
Are there any other problems of co-operation with other Central Authorities to which you wish to draw attention?	**Souhaitez-vous attirer l'attention sur d'autres problèmes de coopération rencontrés avec d'autres Autorités centrales ?**

Argentina – Argentine :

Los principales problemas en la tramitación de los casos de restitución y visitas, pueden discriminarse de la siguiente manera:

a) Además de la falta de respuesta a los requerimientos de informes señalados en la pregunta anterior, deben mencionarse las demoras por parte de algunas Autoridades Centrales en remitir los casos a la Justicia, o en procurar información de las autoridades intervinientes en el proceso, como así también en la confirmación del domicilio del peticionante o en la realización de la etapa voluntaria prevista en el artículo 10.

b) También se considera un inconveniente la diferencia de criterios respecto a la interpretación del Convenio, especialmente en lo que hace a la definición de custodia. En efecto, muchos países no toman en cuenta lo que en materia de custodia establece la legislación argentina, y por ende no juzgan ilícito un traslado o una retención ya que aplican su propia legislación en la materia. También existen diferencias de criterio respecto a cuando procede o no una solicitud de visitas en el marco del artículo 21.

c) Con otros países lo que se observan son demoras en el ámbito de la Justicia, donde la parte sustractora tiene la posibilidad de plantear infinitos recursos que demoran la tramitación del caso. Sin dejar de mencionar que los Jueces muchas veces hacen caso omiso a lo previsto en el artículo 16, volcándose sobre temas de fondo que no les competen.

d) Finalmente, con algunos países también se ha observado un tratamiento parcial en razón de la nacionalidad de los sustractores, favoreciendose los intereses de sus nacionales en vez de tener en cuenta la residencia del menor.

Australia – Australie :

a) Lack of legal or administrative framework to implement the Convention (Art. 7 *f)*)

Although Fiji has acceded to the Convention, to our knowledge, it is yet to pass implementing legislation. However, Australia has sent two cases to Fiji to be dealt with under domestic legislation. In one, a return order was made and we are awaiting the outcome of the other.

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b) Lack of resources to keep each other informed (Art. 7 *i)*)

Some Central Authorities take many months to respond to communications regardless of whether they concern an application to or from those countries, or a simply query. Even when the communication is translated into the language of the other country, these emails / faxes too are often ignored. In certain cases, we have sought intervention by the nearest Australian Embassy to obtain a response, but they may also be unsuccessful (China-Macau, Colombia, Cyprus, Spain, Portugal, South Africa, Mexico, Guatemala and Croatia).

c) Limited implementation of the Access Limb of the Convention (Art. 7 *f)*)

Scotland asserts that domestic case law means that it can only implement the Access limb of the Convention in a limited fashion. In short, foreign access applications to Scotland are only considered where no modification to the order is required and where the action is brought almost immediately. The practical effect of advice from Scotland is that all foreign access applications will need to be litigated domestically, rather than through the Convention. This creates two issues: increased expenses for the person whose access rights have been breached and the effective closure of the 'access application' avenue between Scotland and Australia.

d) Lack of notice to Central Authority of case hearing (Art. 7 *i)*)

In some cases little notice is given of a hearing. For example, in one case in Malta the applicant father in Australia was not contacted and the paternal grandfather in Malta was asked to participate in the hearing on short notice. In this case, the court refused to order the return of the child.

d) Lack of legal aid in access cases (Art. 7 *g)*)

Refusal of Legal Aid in England for some access cases causes difficulties to some applicants.

e) American Legal Assistance Questionnaire (Art. 7 *g)*)

While it is open to Australian applicants to complete the American Questionnaire, the reality is that, should they qualify for an American pro bono or reduced fee attorney, the likelihood is that one cannot be found.

Austria – Autriche :

There are no remarkable problems of co-operation with other Central Authorities, but of course the communication with those CA using German or English is far easier than with others.

Canada – Canada :

Canadian Central Authorities have identified the following problems with cooperation:

- One country's Central Authority referred a left-behind parent in that country who was seeking assistance (including help completing a request for return) directly to the Canadian Central Authority for the province to which the child was abducted. The Canadian Central Authority drew these concerns to the attention of the Authority in question.
- There has been difficulty obtaining information from some Central Authorities respecting the nature of custody provisions in effect in the jurisdiction of the child's habitual residence. Lack of such information causes delays in proceedings where a request for return is based on custody rights that arise by operation of law because

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of the difficulty that can arise in ascertaining the nature of such custody rights. An affidavit of law from a neutral source is preferable to one from the left-behind parent's counsel. While a request can be made for a declaration pursuant to Article 15, such a process can be time-consuming and expensive. It would expedite matters greatly if, at least on request, Central Authorities provided information / clarification respecting custody provisions and rights that arise by operation of law.

- One country's Central Authority was making a decision that the court should be making. The issue was habitual residence. The Central Authority indicated that it would not accept the application for return because in its view the child's habitual residence was not Canada. The Canadian Central Authority's position was that the foreign court should be making that determination not the requested Central Authority.

- The system of some States for selecting counsel can be frustrating and time consuming. Applications for return would happen more quickly if there was a better system for obtaining counsel.

- In certain States, the necessary steps to implement the Convention were not completed and thus, there are difficulties in applying the Convention, including the fact that there is no Central Authority.

- Receiving timely responses from a number of Central Authorities is difficult, and requires repeated attempts at establishing contact before a response is received.

- In some States, the fact that there is no communication between the applicant parent and the authority who files the application in court continues to be a problem. Processing thus takes longer because this authority has to contact its Central Authority, which then contacts us. If the authority filing the application were able to contact directly the applicant parent or his or her lawyer in Canada, these cases would be resolved much faster.

- In some instances, child searches are very long and difficult. There were cases where the search for the children has been ongoing for more than a year, to no avail. It appears that the Central Authority does not function unless Interpol helps it locate the child. Several Central Authorities do not seem to have the co-operation of agencies like local police or education or immigration departments to assist them in their searches.

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Les autorités centrales canadiennes ont soulevé les difficultés de coopération suivantes:

- Une Autorité centrale canadienne a été confrontée au cas où l'Autorité centrale d'un autre État a référé un parent étranger dont les enfants avaient été enlevés et qui demandait de l'aide (notamment pour rédiger des demandes de retour) directement à l'Autorité centrale canadienne. Cette dernière a fait part de ses préoccupations à l'Autorité en question.

- Il y a eu de la difficulté à obtenir de l'information de certaines Autorités centrales concernant la nature des dispositions relatives à la garde en vigueur dans le ressort de la résidence habituelle de l'enfant. L'absence de renseignements semblables retarde les procédures lorsqu'une demande de retour est fondée uniquement sur des droits de garde existant par le seul effet de la loi parce qu'il peut s'avérer difficile de cerner la nature de ces droits de garde. Un affidavit portant sur le droit émanant d'une source neutre est préférable à celui du procureur du parent victime. Bien que l'on puisse demander une déclaration en vertu de l'article 15, une telle démarche peut s'avérer longue et coûteuse. Les choses s'en trouveraient

grandement accélérées si, à tout le moins sur demande, les Autorités centrales fournissaient des renseignements ou des clarifications concernant les dispositions relatives à la garde et les droits qui existent par le seul effet de la loi.

- Une Autorité centrale a pris une décision qui aurait dû revenir au tribunal. La question était celle de la résidence habituelle. L'Autorité centrale a dit qu'elle n'accepterait pas la demande de retour parce qu'elle était d'avis que la résidence habituelle de l'enfant n'était pas le Canada. L'autorité centrale canadienne était d'avis que cette question devait être tranchée par le tribunal étranger, et non par l'Autorité centrale requise.

- Le système appliqué par certains États pour choisir des avocats est frustrant et prend beaucoup de temps. Les demandes de retour seraient traitées plus rapidement si ces États disposaient d'un meilleur système de sélection d'avocats.

- Dans certains États, les mesures légales pour mettre en œuvre la Convention n'ont pas été entreprises. De ce fait, il y a des difficultés dans l'application de la Convention, y compris l'absence d'Autorité centrale.

- Il est difficile d'obtenir des réponses rapides de plusieurs Autorités centrales, et il faut répéter les tentatives d'établissement d'un contact avant d'obtenir une réponse.

- Dans certains États, l'inexistence de communication entre le parent requérant et l'autorité qui introduit la requête devant le tribunal reste un problème. Le temps de traitement en est d'autant retardé puisque l'autorité qui introduit la requête devant le tribunal doit communiquer avec son Autorité centrale qui ensuite, communique avec l'Autorité centrale canadienne. Si l'autorité remplissant la demande pouvait communiquer directement avec le parent requérant ou son avocat au Canada, cela accélérerait le processus de résolution de ces dossiers.

Dans certains cas, les recherches pour localiser un enfant sont très longues et difficiles. Il y a eu des cas où les enfants sont recherchées depuis plus d'un an sans succès. Il semble que l'Autorité centrale fonctionne seulement avec l'assistance d'Interpol pour l'aider dans la localisation. Plusieurs Autorités centrales ne semblent pas avoir la coopération des agences comme les polices locales, les départements d'éducation ou d'immigration pour les assister dans leurs recherches.

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Chile – Chili :

En ocasiones aquellas autoridades centrales que no prestan asistencia judicial a los solicitantes, no han sido lo suficientemente claras o diligentes en prestar información y orientación sobre las alternativas de asistencia judicial que existen en sus respectivos países.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

There as re so far no particular problems in co-operating with other Central Authorities.

China (SAR Macao) – Chine (RAS Macao) :

No.

Colombia – Colombie :

Tuvimos problemas de comunicación con dos Autoridades Centrales las cuales fueron superadas gracias a la intervención Diplomática.

Costa Rica – Costa Rica :

Lo que se responde a continuación es con el mayor de los respetos hacia dos queridísimos pueblos hermanos: La autoridad central de México es la que más problemas de cooperación nos ha dado cuando son Autoridad Central Requerida. Han guardado silencio cada vez que se les pide cuentas sobre las demoras en la tramitación de un caso concreto particularmente claro y fácil de resolver. Las veces que se les llama por teléfono, dicen que devolverán la llamada en breve pero a la postre nunca cumplen con lo que prometen. En cierta ocasión le dijeron a una progenitora solicitante que Costa Rica estaba en pañales, dando a entender que ellos tienen mayor experiencia, insinuando por ende que debido a eso ellos no tenían por qué rendir cuentas. En breve, la autoridad central de México no suele atender ni contestar llamados por teléfono, fax, correo electrónico y correo postal certificado. Las pocas veces que lo han hecho es por intermediación de autoridades diplomáticas y consulares. Por lo anterior, todo parece indicar que la Autoridad Central Mexicana adolece de una cultura distendida de rendición de cuentas.

La autoridad central de Nicaragua en menor medida, porque sí cooperan, pero se han documentado indicios razonables que apuntan a que se demoran a la hora de actuar y responder llamados por correo electrónico y correo postal certificado. Pero a diferencia de la autoridad central de México, siempre han dado respetuosas explicaciones sobre sus atrasos.

Cyprus – Chypres :

The major problems encountered, are related to the delays in procedures especially in regard to the fixing of the date for examination of the case by the Judge, the adjournments noted for no serious reason and the delays occurred until the issue of a final judgement.

These days are, of course, related to the organization of the Court system but nevertheless have a negative impact on the effectiveness of the role of the Central Authorities, which are often incapable to offer any assistance.

Czech Republic – République tchèque :

No.

Denmark – Danemark :

So far the Danish Central Authority has not experienced any major problems.

Ecuador – Equateur :

Ninguna.

El Salvador – El Salvador :

Hasta el momento, no han existido problemas de cooperación.

Finland – Finlande :

[No answer]

France – France :

Non.

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Greece – Grèce :

It is difficult to establish effective co-operation with some Central Authorities (Argentina, Bulgaria, Italy).

Guatemala – Guatemala :

Guatemala, aunque es parte del Convenio se encuentra aun implementando la forma de aplicación el mismo, por lo mismo, ha encontrado problemas con la comunicación con otras autoridades, así como con los informes de seguimiento de casos presentados ante otras autoridades centrales.

Iceland – Islande :

No.

Ireland – Irlande :

In countries with a federal system of jurisdiction, if the abductor and child move from one jurisdiction to another, the proceedings must be re-commenced in the court in the new jurisdiction. Naturally, this can cause lengthy delays in cases.

Some countries also have difficulties with the understanding of the notion that a father not named on a child's birth certificate may, nonetheless, in Irish law, have guardianship rights and thus rights of custody within the meaning of Article 3 of the Hague Convention. The application of legal concepts (*e.g.* "recognition" of the child by a parent) of the state to which the child has been abducted which have no equivalent in Irish law has led in some instances to delay in acceptance by the Central Authority in some states of the fact that there has been a wrongful removal.

Israel – Israël :

Some Central Authorities, after receiving a new application from another Central Authority, do not respond in a timely manner to communications, do not confirm receipt of applications, and do not provide updates of the status of a case, despite repeated requests. In some situations the Israeli Central Authority (in addition to the left-behind parents), has not received any advance notice of a hearing date in the courts of the other contracting country and is only notified after the hearing has taken place, despite repeated requests to be notified in advance. This denies the left behind parent the opportunity of attending the hearing. In addition, in some cases where the Central Authority itself represents the foreign parent in the proceedings, it has not notified the Israeli Central Authority as to the claims being raised by the abducting parent, thereby preventing the parent from responding to those claims.

Italy – Italie :

Dans certains pays les procédures requièrent parfois des délais trop longs, même si la collaboration avec leur Autorité Centrale est excellente.

Latvia – Lettonie :

We would like to notice that as in Convention are settled questions about necessity in the scope of Convention to act / operate promptly, in communication with other Central Authorities there is sometimes observed situations in which arrangement and culture of document's circulation differ if compare such arrangement in Latvia's Central Authority and other Central Authorities abroad. For example, when central Authorities uses modern communication technologies as an e-mail for example which nowadays is the fastest way of communication, frequently we meet with difficulties when some Central Authorities doesn't replay, replay with delay or replay incompletely. For example in our system of

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document's circulation, document can be issued out of the institution only when all questions are prepared and answered completely.

As another problem we would like to notice situations when some request-receiving countries requests documents in their national / official language assertively. Although in Article 24 of the Convention is stated that any application, communication or other document sent to the Central Authority of— the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English. Central Authority of Latvia within limits tries to provide documents in the official language of the request-receiving country but if it isn't possible documents in English is provided.

Lithuania – Lituanie :

None.

Malta – Malte :

So far, there have been no problems of co-operation with any Central Authorities.

Mexico – Méxique :

Un poco complicado para algunas autoridades centrales el entender que para estar en condiciones de presentar un caso de sustracción de menores ante la autoridad judicial mexicana competente, se requiere de documentación original o copia certificada con su respectiva traducción al idioma español.

Monaco – Monaco :

Aucun problème de coopération particulier n'est à signaler.

Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

The New Zealand Central Authority believes that there is a fundamental need for clear and effective communication and co-operation between Central Authorities, especially in individual cases. Co-operation between Central Authorities is essential to the effective working on the Convention. Sadly New Zealand has experienced difficulties with some Central Authorities failing to keep the CA informed of progress and failure to respond to queries. If the CA receives regular updates the CA may through legal representative offer legal opinion on the process, clarify the legal situation and make recommendations.

Nicaragua – Nicaragua :

A la fecha, la Autoridad Central tiene relaciones de cooperación con las Autoridades Centrales de Costa Rica, Panamà, y Colombia, con quines se desarrollan coordinaciones armónicas, en la tramitación de los casos.

Panama – Panama :

a) Es necesario se remita debidamente traducida al idioma, la legislación de custodia o visitas de los países en las respectivas solicitudes.

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b) De no contar el solicitantes con recursos para contratar un abogado, que la autoridad central remita la certificación correspondiente.

c) Mayor información sobre el posible paradero del niño o algunos datos que sirvan de guía para las autoridades judiciales.

Paraguay – Paraguay :

La reciprocidad: hemos logrado por ejemplo sentencias de restitución, sentencias de restitución ejecutadas, restituciones voluntarias. De éstas, _____ son con la República Argentina, sin embargo nos es muy difícil obtener la restitución de un niño paraguayo.

Poland – Pologne :

We have experienced some difficulties regarding our co-operation with other Central Authorities, e.g. long periods of expecting responses. However, it has not been a common practice and refers only to individual cases of specific and complicated nature.

Portugal – Portugal :

Yes, the Portuguese Central Authority would like to call the attention of the Hague Conference to the translation of the documents which causes great delays.

Romania – Roumanie :

Yes; cooperation problems with the Republic of Serbia. Romania, as requesting state, has sent a request for returning some children who had illicitly reached the Republic of Serbia. No answer has been received. We are encountering difficulties in contacting the Central Authority of this state.

Slovakia – Slovaquie :

The Centre has not had any major problems of co-operation with other Central Authorities. However, in some cases occurred difficulties, arising from the differences between the continental system of law and the system of case-law, especially in understanding of matters of evidence of foreign law (Chapter 6.5.1 and Chapter 6.5.3 of The Guide to Good Practice – Part II on Implementing Measures). Nevertheless, all these questionable matters were resolved through discussion between the Central Authorities.

In one case the cooperation with the Central Authority was very slow and the CA reacted only to the written request of the Slovak Central Authority for information, otherwise not. Additionally, in some cases the central authorities do not include all the necessary details in the application, which may slow down the whole process.

South Africa – Afrique du Sud :

Generally no problems have been experienced in this regard.

Spain – Espagne :

Sí, algunas Autoridades no contestan a nuestras peticiones, o lo hacen con mucho retraso. En otras ocasiones no proporcionan información sobre la legislación de su país.

Sweden – Suède :

Sometimes the handling of the case takes long time at some Central Authorities. This causes the disadvantage to delaying the process.

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Switzerland – Suisse :

- Certains Etats ne peuvent être saisis que par voie de courriers recommandés et parfois même ces derniers ne donnent pas lieu à suivi, ce qui implique des rappels, voire l'entremise de la représentation diplomatique suisse sur place ou encore l'assistance d'autres organismes (par. ex. INTERPOL ; Service social international/SSI).
- L'accès à l'assistance judiciaire gratuite n'est souvent pas garanti. Coûts importants pour les parents ravisseurs.
- L'assistance en vue de promouvoir une solution amiable est inexistante dans la majorité des Etats.
- L'accès à l'information est parfois très difficile et le parent ravisseur ne sait souvent pas qui défend ses droits à l'étranger.
- L'audition de l'enfant n'a souvent pas lieu.
- Les procédures sont trop longues, le délai de 6 semaines n'étant pas respecté dans une majorité de cas.
- Plusieurs pays sont très formalistes pour engager une procédure.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

The Central Authority for Scotland often has difficulties in achieving effective communication with certain Central Authorities. Regularly, requests for updates on cases can go unanswered and often this can simply be interpreted that there is nothing further to report. However, it would be helpful to have this clarified for the sake of the applicant.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

The Central Authorities note that in some cases requested States are slow to initiate Convention proceedings for the following reasons:

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

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

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

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

United States – Etats Unis :

Certain Central Authorities unduly delay submitting Hague petitions and supporting documentation to the National Center for Missing & Exploited Children.

Uruguay – Uruguay :

No.

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Question 3	
Does your Central Authority maintain a website and / or a brochure / information pack? (Please provide the web address or check if the information on the Hague Conference website is accurate, see < www.hcch.net > → Child Abduction Section → Links to related websites). If so, does the website and / or brochure / information pack contain the following information as recommended by the Special Commission of 2001: *"a) the other Contracting States in relation to whom the Convention is in effect;* *b) the means by which a missing child may be located;* *c) the designation and contact details for the Central Authority;* *d) application procedures (for return and access), documentary requirements, any standard forms employed and any language requirements;* *e) details, where applicable, of how to apply for legal aid or otherwise for the provision of legal service;* *f) the judicial procedures, including appeals procedures, which apply to return applications;* *g) enforcement options and procedures for return and access orders;* *h) any special requirements which may arise in the course of the proceedings (e.g. with regard to matters of evidence);* *i) information concerning the services applicable for the protection of a returning child (and accompanying parent,*	**Votre Autorité centrale gère-t-elle un site Internet (dans l'affirmative, veuillez préciser son adresse ou vérifier que les informations reprises sur le site Internet de la Conférence de La Haye sont correctes, voir < www.hcch.net > → Espace enlèvement d'enfants → liens vers d'autres sites) et / ou publie-t-elle une brochure ou un dossier d'informations ? Dans l'affirmative, le site Internet, la brochure et / ou le dossier d'informations fournissent-ils les informations suivantes recommandées par la Commission spéciale de 2001 :** *« a) les autres Etats contractants pour lesquels la Convention s'applique ;* *b) les moyens utilisés pour localiser un enfant disparu ;* *c) la désignation et les coordonnées de l'Autorité centrale ;* *d) les procédures à suivre pour la demande (de retour et de droit de visite), la documentation exigée, les formulaires standards et la (les) langue(s) utilisés;* *e) le cas échéant, les informations concernant la manière d'obtenir l'aide judiciaire ou encore le bénéfice de services juridiques;* *f) les procédures judiciaires, incluant les procédures d'appel, applicables aux demandes de retour;* *g) les procédures et modes d'exécution des décisions accordant un retour ou un droit de visite;* *h) toute exigence particulière pouvant naître pendant la procédure (par exemple, concernant les questions de preuve);* *i) des informations relatives aux mesures disponibles pour la protection d'un enfant dont le retour est ordonné (et, le cas échéant, du parent*

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where relevant), and concerning applications for legal aid for, or the provision of legal services to, the accompanying parent on return; ***j) information, if applicable, concerning liaison judges"?***	***accompagnateur), et à la demande d'obtention d'une aide judiciaire ou du bénéfice de services juridiques pour le parent qui retourne avec l'enfant;*** ***j) le cas échéant, des informations relatives aux juges de liaisons. »***

Argentina – Argentine :

La página de la Autoridad Central es www.menores.gov.ar.

En la actualidad, la página de esta Autoridad Central contiene la información detallada en los puntos a) – d), si bien se está trabajando sobre la incorporación de las demás cuestiones contenidas en los apartados e) – j).

Australia – Australie :

International Child Abduction Website: http://www.ag.gov.au/childabduction

a) Yes.

b) Yes.

c) Yes.

d) Yes.

e) Yes.

f) No, although parents are advised to consider whether they have any grounds for opposing return and that if they think they may have grounds, consult a lawyer or legal aid body

g) There is information about procedures for return and access orders.

h) No.

i) Yes.

j) No.

Austria – Autriche :

The Central Authority maintains the website already linked in the Hague website. Short information about the items a), b), f) to i) and extended information about the items d) and e) are included. It is possible for an applicant to fill out forms online in different languages, for the moment:

- applications for access: in German, English, French
- applications for return: in German, English, French, Greek, Italian, Polish, Portuguese, Romanian, Swedish, Serbian/Croatian, Spanish, Czech, Turkish and Hungarian.

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Canada – Canada :

The Department of Foreign Affairs and International Trade of Canada has developed a public information booklet called "*International Child Abductions: A Manual for Parents" that* can be accessed via the Internet at: http://www.voyage.gc.ca/main/pubs/child_abductions-en.asp. This booklet comprises all relevant information on how to prevent and to handle abductions in Canada. It also refers to useful websites on the matter, including those of some of the provinces and territories.

Moreover, Justice Canada's website contains an *Inventory of Government-Based Family Justice Services* that provides a wide range of useful information about services available in Canada's common law provinces and territories. The *Inventory* includes information about the nature of family justice services in these jurisdictions, individual jurisdictional profiles, Legal Aid contact information, Central Authority contacts, the model parental child abduction charging guidelines and links to interesting websites. The *Inventory* is available in the "Parenting after Divorce" section of Justice Canada's website: www.justice.gc.ca (or directly at http://www.justice.gc.ca/en/ps/pad/resources/fjis/ (English)).

Ontario

The Central Authority of Ontario does not maintain a website with respect to the Convention. However, the Ministry of Community and Social Services' Family Responsibility Office website does make reference to the Hague Convention and the Ontario Central Authority, while also providing website links and contact information with respect to International Child Abduction. Website:
http://www.mcss.gov.on.ca/CFCS/en/programs/SCS/FamilyResponsibilityOffice/links/default/htm.

Saskatchewan

The Central Authority of Saskatchewan does maintain a website with information about the 1980 Convention, at:
http://www.saskjustice.gov.sk.ca/legislation/summaries/intlchildabdact.shtml.

The Saskatchewan's website contains only information for c) (Contact information is also available at: http://www.agr.gov.sk.ca/apps/human_serv/structure/display2.asp?id=794 and http://www.gov.sk.ca/whodoeswhat/subject.html?c/_custody-of-children).

Regarding d), we would ordinarily only send or email an application after discussing with the potential applicant the circumstances, to ensure that it is an international case. We would then assist the applicant over the phone in completing the application.

Regarding e), this information is available on the Saskatchewan Legal Aid Commission website at: http://legalaid.sk.ca/familyservices.html.

Quebec

Yes. The Quebec Central Authority has posted information on the Hague Convention on the Quebec Department of Justice website that can be found at the following addresses:
http://www.justice.gouv.qc.ca/francais/programmes/eie/eie.htm (French)
http://www.justice.gouv.qc.ca/english/programmes/eie/eie-a.htm (English).

The site contains the information referred to in paragraphs a), c), d) and e).

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Manitoba

Manitoba's Justice Department does not have a website focussing on the Hague Abduction Convention. The Department does, however, produce a comprehensive public information booklet that describes family justice services and court procedures in the province, and legal information resources and Legal Aid, as well as general legal information on a wide-range of family law matters including parental child abductions and the Hague Abduction Convention, domestic violence, child protection and custody and access. The Family Law in Manitoba, 2005 booklet is available in hard copy and via the Internet at:
http://www.gov.mb.ca/justice/family/law/index.html (English)
http://www.gov.mb.ca/justice/family/law/index.fr.html (French)

These links appear on The Hague Conference website.

As mentioned in Part I of the Guide to Good Practice (Central Authority Practice), Manitoba's Central Authority has developed standard information letters that it forwards to foreign and Manitoba left-behind parents seeking the return of a child. These letters contain information about the handling of Hague Convention cases in Manitoba and the services provided by our Central Authority.

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Le ministère des Affaires étrangères et du Commerce international a mis au point une brochure d'information publique intitulée « Enlèvements internationaux d'enfants – Guide à l'intention des parents », disponible sur Internat à l'adresse http://www.voyage.gc.ca/main/pubs/child_abductions-fr.asp. Cette brochure comprend tous les renseignements pertinents sur les façons de prévenir et de traiter les enlèvements au Canada. Il renvoie aussi à des sites Web utiles sur le sujet, notamment ceux de certains des provinces et des territoires.

De plus, le site Internet du ministère de la Justice du Canada comprend un répertoire des services gouvernementaux en droit de la famille. Ce site contient quantité d'information utile concernant les services disponibles au Canada dans les provinces de common law et dans les territoires. Le répertoire comprend également de l'information à propos de la nature des services en droit de la famille qui sont fournis dans ces juridictions, de l'information sur ces juridictions, sur les coordonnées pour l'aide juridique et pour les autorités centrales et sur les lignes directrices en matière de conduite en cas d'enlèvement d'enfant ainsi que le renvoi à d'autres sites d'intérêt. Le répertoire est disponible dans la section "le rôle parental après le divorce" du site Internet de Justice Canada: www.justice.gc.ca (ou directement
http://www.justice.gc.ca/fr/ps/pad/resources/fjis/).

Ontario

L'Autorité centrale de l'Ontario n'administre pas de site Web au sujet de la Convention. Cependant, le site Web du Bureau des obligations familiales du ministère des Services sociaux et communautaires mentionne la Convention de La Haye et l'Autorité centrale de l'Ontario, tout en fournissant des liens à des sites Web et des références utiles relativement à l'enlèvement international d'enfants :
http://www.mcss.gov.on.ca/mcss/french/pillars/familyResponsibility/index.

Saskatchewan

L'Autorité centrale de la Saskatchewan administre un site Web contenant des renseignements au sujet de la Convention de 1980, à l'adresse :
http://www.saskjustice.gov.sk.ca/legislation/summaries/intlchildabdact.shtml.

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Le site Web de la Saskatchewan contient seulement de l'information du type visé à l'alinéa c) ci-dessus (des coordonnées sont également disponibles à l'adresse http://www.agr.gov.sk.ca/apps/human_serv/structure/display2.asp?id=794 et à l'adresse http://www.gov.sk.ca/whodoeswhat/subject.html?c/_custody-of-children).

Pour ce qui concerne l'alinéa d), en règle générale, nous envoyons un formulaire de demande par courriel ou par courrier ordinaire après avoir discuté avec le demandeur éventuel afin de s'assurer qu'il s'agit d'un cas international. Nous offrons ensuite une assistance téléphonique au demandeur pour remplir son formulaire.

Pour ce qui concerne l'alinéa e), ces renseignements sont disponibles sur le site Web de la Saskatchewan Legal Aid Commission (Commission de l'aide juridique de la Saskatchewan) à l'adresse http://legalaid.sk.ca/familyservices.html.

Québec

Oui. L'Autorité centrale du Québec a créé un dossier d'information sur la Convention de La Haye sur le site du ministère de la Justice du Québec que l'on retrouve aux adresses suivantes : http://www.justice.gouv.qc.ca/francais/programmes/eie/eie.htm (français) http://www.justice.gouv.qc.ca/english/programmes/eie/eie-a.htm (anglais).

Le site comprend les informations mentionnées aux alinéas a), c), d) et e).

Manitoba

Justice Manitoba n'a pas de site Web consacré à la Convention de La Haye sur l'enlèvement international. Le ministère produit cependant une brochure d'information publique complète qui décrit les services de justice et les procédures judiciaires en matière familiale dans la province, et des ressources en matière d'information juridique et concernant Aide juridique Manitoba, de même que des renseignements juridiques généraux sur un vaste éventail de questions de droit de la famille dont les enlèvements d'enfants par un parent et la Convention de La Haye sur les enlèvements, la violence familiale, la protection des enfants et la garde et le droit de visite. La brochure *Droit de la famille au Manitoba 2005* est disponible en copie papier ou sur Internet à l'adresse :
http://www.gov.mb.ca/justice/family/law/index.html (Anglais)
http://www.gov.mb.ca/justice/family/law/index.fr.html (Français)

Ces liens figurent sur le site Web de la Conférence de La Haye.

Tel que mentionné à la Partie I du Guide de bonnes pratiques (Pratiques des Autorités centrales), l'Autorité centrale du Manitoba a élaboré des lettres d'information standard qu'elle envoie aux parents étrangers et manitobains qui demandent le retour d'un enfant. Ces lettres contiennent des renseignements sur le traitement des cas relevant de la Convention de La Haye au Manitoba et les services fournis par notre Autorité centrale.

Chile – Chili :

En la actualidad se está realizando mejoras al sitio web de la Corporación de Asistencia Judicial, lo que incluye mejoras sustanciales al link de la Autoridad Central de Chile, este nuevo sitio web estará disponible dentro de los próximos días y será comunicado oportunamente a la Conferencia de la Haya, junto con las modificaciones para acceder al link de la Autoridad Central Chilena. Esta nueva página web contendrá un resumen de todos los antecedentes que son necesarios para solicitar la restitución de un niño o un régimen de visitas, así como formularios estándar y datos necesarios para contactar a la Autoridad Central de Chile.

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China (SAR Hong Kong) – Chine (RAS Hongkong) :

We maintain a website : http://www.doj.gov.hk/childabduct/index.html

a) Yes.

b) Yes.

c) Yes.

d) Yes.

e) Yes.

f) Yes.

g) Yes.

h) Yes.

i) Yes.

j) No.

China (SAR Macao) – Chine (RAS Macao) :

Yes, the MSAR Central Authority maintains a website – www.ias.gov.mo – which contains its contact details and general information and a link to the website of the Hague Conference. The website will be improved in the near future in order to include more detailed information on the Convention.

Specific legal information, such as the authentic text of the Convention (in French and English), its translations into both of the official languages of the MSAR (Chinese and Portuguese), and related notifications made to the depository are published in the MSAR Official Gazette. The access to the corresponding website, that is say, http://www.imprensa.macau.gov.mo, is free of charge.

Colombia – Colombie :

Nos encontramos en proceso de reconstrucción de la página, el tema fue enviado al departamento de sistemas para su incorporación y allí se atendieron los criterios sobre los que se pregunta en éste interrogante.

Costa Rica – Costa Rica :

La autoridad central como tal NO, pero el Patronato Nacional de la Infancia tiene el siguiente sitio web: www.pani.go.cr.

Cyprus – Chypres :

Our Central Authority maintains a website (www.mjpo.gov.cy) which provides basic information on Child Abduction matters. We are currently in the process of enriching the relevant page, in an effort to include all the information suggested in Question 3 (a-j).

In the meantime, anyone who is interested in having more information or advice may have a direct telephone contact with the staff of the competent Unit.

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Czech Republic – République tchèque :

The web address is"www.umpod.cz"but it does not contain all the information required yet.

Denmark – Danemark :

In 2004 the Danish Central Authority - in cooperation with the Ministry of Foreign Affairs and the Police - made a homepage (www.bornebortforelse.dk) regarding child abductions The homepage was made to ensure that information about child abduction is within easy reach for those who need it. Parents and other interested can find information about legislation and authorities to contact if a child have been abducted. The homepage is in both Danish and English. At the same time a Child Abduction Hotline was established. The Hotline, which is attached to The Danish Central Authority, can be contacted outside normal working hours and during weekends. The Hotline staff can inform about the rules that apply in a current situation, the authorities to contact, the help to get from various authorities and the precautions to take.

Danish embassies and consular representations abroad has also been instructed to recommend persons seeking advice and guidance on these questions in countries covered by the conventions, to contact the Danish Central Authority – if necessary through the Foreign Service. The Danish representations abroad have also been instructed, in a given case, to advise the persons in question to seek legal advice in the country of residence as well.

The information on The Hague Conference website is accurate.

a) Yes.

b) Yes.

c) Yes.

d) Yes.

e) Yes.

f) There is information about the judicial procedures which apply to return applications, but not information about appeals procedures.

g) Yes.

h) No.

i) Yes.

j) There is no information about the liaison judges on the website; however when a case is forwarded to the relevant court (Civil Court) information about liaison judges is included.

Ecuador – Equateur :

El Consejo Nacional de la Niñez y Adolescencia, cuyo Presidente es la Autoridad Central del Ecaudor, mantiene la siguiente página web: www.cnna.gov.ec , sin embargo ésta se encuentra en reestructuración a fin de que se incluya la información que fue recomendada por la Comisión Especial de 2001.

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El Salvador – El Salvador :

Nuestra institución, como autoridad central, cuenta con el siguiente sitio Web: www.pgr.gob.sv , sin embargo, para la aplicación del convenio se está trabajando con el objeto que se pueda acceder a un sitio específico desde dicha página.

En cuanto a verificar si es correcta la información contenida en el sitio Web de la Conferencia de La Haya, en lo que respecta a la Procuraduría General de la República, es necesario hacer las siguientes modificaciones:

- temporalmente y por cuestiones logísticas de reparación del Edifico Ex Antel, la dirección correcta (hasta nuevo aviso)es:

  PROCURADURÍA GENERAL DE LA REPÚBLICA
  27 AVENIDA NORTE
  1235, SAN SALVADOR
  TEL: 2235–0625
  FAX: 2235–0625
  TELEFAX: 2236-0627

Finland – Finlande :

The Central Authority for Finalnd maintains a website and a booklet on international child abduction. The links at the Hgaue Conference website are accurate.

a) Yes.

b) Yes.

c) Yes.

d) Yes.

e) Yes.

f) Yes. The booklet does not, however, give detailed information on the child abduction procedures in Finland.

g) Yes.

h) Yes

i) Yes

j) No. Liaison judge system does not apply in Finland.

France – France :

Dès mars 2005, le Ministère de la Justice a lancé un site intranet/internet consacré aux déplacements illicites d’enfants et aux droits de visite transfrontières, dont l’adresse est la suivante : “*www.enlevement-parental.justice.gouv.fr*”, qui fournit des renseignements pratiques sur les contacts utiles et les conduites à tenir.

Ce site répond aux recommandations énoncées par la commission spéciale de 2001.

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Greece – Grèce :

Our Central Authority does not maintain a website on its own. We provide information through the website is maintained by the Greek Ministry of Justice (www.ministryofjustice.gr and http://ministryofjustice.gr/modules.php?op=modload&name=International&file=page3). It contains the information indicated in paragraphs: a), c), d), e).

Guatemala – Guatemala :

Actualmente se cuenta únicamente con un folleto de información con respecto al tema, así como un formulario para la presentación de la denuncia de sustracción, el cual contiene todos los requisitos establecidos en la Convención. Sin embargo se esta implementando el sistema informático de la Procuraduría General de la Nación, en el que se incluirá la información relacionada con este tema para conocimiento de todos.

Si la persona acude a la PGN, se le brinda la asesoría necesaria para la presentación del caso, así como se le auxilia con la documentación, y la comunicación con la autoridad central del país donde supuestamente se encuentra el niño.

Iceland – Islande :

The Central Authority does have a website in Icelandic which has at least some information on most of the points a) - j). It needs to be updated.

Ireland – Irlande :

a) Not yet.

b) Not yet.

c) Yes.

d) Not yet.

e) Not yet.

f) Not yet.

g) Not yet.

h) Not yet.

i) Not yet.

j) Not yet.

Israel – Israël :

The Central Authority website is within the Ministry of Justice website, at http://www.justice.gov.il. The direct link to the Child Abduction page is http://www.justice.gov.il/MOJHeb/PraklitotHamedina/MehozotHapraklitutVehamachlakot/HamachlakaHabeinLeumit/AmanatHag. The website contains much of the information recommended by the Special Commission and is in the process of being revised, and translated into English. There are also plans to prepare a brochure.

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Italy – Italie :

L'Autorité Centrale italienne collabore à la gestion le site Internet *www.giustiziaminorile.it* où sont accessibles les informations visées aux points a, b, c, d et suivants. En outre, une brochure contenant ces mêmes renseignements a paru récemment aux soins de l'Autorité Centrale italienne.

a) Oui.

b) Oui.

c) Oui.

d) Oui.

e) Non.

f) Non.

g) Non.

h) Non.

i) Non.

j) Non.

Latvia – Lettonie :

On the web site of the Ministry for Children and Family Affairs there is inserted information section related to the Convention -
http://www.bm.gov.lv/lat/informacija/informacija_vecakiem/?doc=191

In this section presently is information only in Latvian provided, in the nearest future we are planning to provide version of this section in Russian as well as in English in the same time with improvements in its content with taking into consideration recommendations of the Special Commission 2001.

In the mentioned section is included the following information: aims of the Convention; rules for implementation of the Convention; accession status between countries; also link from the website of the Hague Conference on international private law is provided, where interested persons can follow to whom Convention is in effect; there is information provided regarding Central Authorities, link from Hague Conference provided where interested persons can get information about contact information of the Central Authorities in all member states; in this section also is given main functions of the Central Authority; there is provided information about available forms of the request as well as information about requirements for applicants – necessary information and additional documents; there is provided information also about general procedure in request-receiving country as well as information about the main circumstances which the Court can take into consideration when it decide about return of child to country from what child was abducted or retained; in the same way there is provided information regarding costs which are related to the process under Convention as well as provided information regarding contact information of Central Authority of Latvia and contact information of the contact person.

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Lithuania – Lituanie :

SCRPAS website (www.ivaikinimas.lt) contains information the Hague Conventions that authorise SCRPAS to perform functions assigned to a Central Authority.

The website provides information on the 1980 Convention and the following data:

- states that have approved of Lithuania's accession to the Convention;

- name of the central authority and contact details of responsible persons;

- application forms (in Lithuanian and English) to be filled while approaching the Central Authority concerning return of a child;

- names and contact data of institutions working in the area of prevention, control and investigation of children's abduction and illegal taking away and keeping.

It should be noted that it was only recently that SCRPAS has started receiving applications under the 1980 Convention, therefore, the practice of application of the Convention to individual cases is in the process of formation. For this reason certain procedures (e.g. those referred to under items e), g), h) and i)) related to international children‿s abduction cases are still being reviewed.

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Malta – Malte :

The Maltese Central Authority maintains a website on the official site of the Ministry for the Family and Social Solidarity. The information on the website of the Hague Conference needs to be updated. The name "Department of Family Welfare" has to be changed to "Department for Social Welfare Standards", following a change of role. The website address has to be changed from www.msp.gov.mt to www.welfare.gov.mt . The website, which is still quite new, does not as yet contain all the information recommended by the Special Commission 2001:

a) The public is directed to view the list of the Contracting States on the website of the Hague Conference.

b) No.

c) Yes.

d) No, however, the public is invited to contact the official at the Central Authority in order to be assisted with their application and to be given any information required.

e) No, however, the Central Authority will assist in this regard.

f) As above.

g) As above.

h) As above.

i) No, however, the Central Authority will direct the interested person to the appropriate agency.

j) No, however, the Central Authority will provide the information when requested.

Mexico – Méxique :

No, actualmente se está trabajando en ello.

Monaco – Monaco :

La Direction des Services Judiciaires (DSJ) apparaît sur le site Internet officiel de la Principauté de Monaco mais rien n'est indiqué quant à sa fonction d'Autorité Centrale pour la convention visée, ce qui devrait être modifié très prochainement.

Compte tenu du peu de cas d'enlèvements dont est saisie la DSJ, aucune brochure ni dossier d'informations n'est publiée.

Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

Information about child abduction is available on the Ministry of Justice website at http://www.justice.govt.nz/family/what-familycourt-does/children/hague-convention.asp.

The Ministry of Justice also publishes brochures on Preventing Children Being Removed from New Zealand, and on child abduction.

a) to i) Yes.

j) Not applicable.

Nicaragua – Nicaragua :

El Consejo Nacional de Atención y Protección Integral a la Niñez y la Adolescencia, (CONAPINA), cuanta con un sitio; www.conapina.gob.ni, próximamente estaremos incorporando todos los datos relacionados a la aplicación del Convenio; cabe señalar que los datos contenidos en el sitio www.hcch.net, son correctos con excepción al nombre de la Titular de la Institución (Autoridad Central) que aparece el nombre de AMELIA FRECH, siendo que la actual titular es la Lic. Ana María Aguirre de Gutierrez.

Panama – Panama :

La autoridad central panameña cuenta con información sobre restitución internacional en el sitio web: www.mire.gob.pa, en el enlace Dirección General de Asuntos Jurídicos y Tratados.

La información cuenta con:

a) Datos de contacto de la autoridad central.

b) Los procedimientos de solicitud, documentación exigida, formulario estándar y lenguas utilizadas

c) Detalles sobre la asistencia judicial gratuita

d) Procedimiento judiciales.

Paraguay – Paraguay :

Está en procesamiento. Una vez configurado estaremos incluyendo el paquete informativo sugerido por la Comisión Especial.

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Poland – Pologne :

The Ministry of Justice of the Republic of Poland does not maintain a separate website referring to the Hague Convention matters. However, the main website of the Ministry of Justice contains information regarding all the organizational units of the Ministry, where the Convention is available to everybody. No brochure or information pack with regard to wrongful removal or retention of a child has been published so far. Nevertheless, a number of articles on the Convention have appeared in legal magazines and daily newspapers. Moreover, a number of works on the proceedings in cases concerning wrongful removal or retention of a child, particularly on ways of obtaining legal aid and advice are widely accessible.

Portugal – Portugal :

No, we do not. Currently, the Portuguese Central Authority hasn't any institutional policy towards the dissemination of the Convention contents in spite of being conscious of the importance of the issue. However, the Portuguese Central Authority is preparing in its new website all the links recommended by the Conference Good Practice Guide.

Romania – Roumanie :

Yes; www.just.ro (the website of the Romanian Ministry of Justice). On this site, there is a section on International Judicial Cooperation / A Guide to international judicial cooperation in civil and commercial matters / International legal assistance in matters of family law.

The following information is provided:

a) The Contracting States for which the Hague Convention applies;

b) The text of the Convention;

c) The Perez-Vera report;

d) Forms;

e) Domestic legislation facilitating the implementation of the Convention (Law No 369/2004 and the Regulations regarding the means by which the Ministry of Justice exercises its prerogatives as central authority, as approved by Order of the Justice Minister);

f) A concise presentation of the Convention and of Law No 369/2004; explaining the role of the Ministry of Justice as the Central Authority.

Slovakia – Slovaquie :

Yes, our Central Authority maintains a website; the web address is www.cipc.sk, which provides the information in Slovak language. The English language version of the website is being prepared at the moment.

This website contains the information as following:

a) Yes.

b) Yes

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c) Yes. Additionally, the judicial proceedings under this Convention as well as the enforcement of the order for return is *ex lege* free of costs in respect to all the parties. If the applicant wishes to be represented by a lawyer outside of the Central Agency and is not able to pay for him, he may ask the court for legal aid.

d) Yes.

e) No, due to missing specific legal provisions.

f) Yes.

g) No.

h) No, not in the Slovak Republic.

South Africa – Afrique du Sud :

a) The website has info.

b) No info provided.

c) Yes.

d) Yes.

e) In South Africa the Family Advocates / designated Central Authority are legally qualified. They perform the function, sometimes with the assistance of the state attorney.

f) No.

g) No.

h) Yes.

i) No information. The Family Advocate ensures smooth running of process with the assistance of other state departments where necessary.

j) No.

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Spain – Espagne :

Sí hay una página web. La dirección es : **www.justicia.es**

a) Sí, mediante hipervínculos.

b) Los diferentes Cuerpos Policiales se encargan de la localización de menores.

c) Sí.

d) Sí.

e) Sí.

f) Sí.

g) Sí.

h) No.

i) No.

j) No.

Sweden – Suède :

The Swedish Central Authority maintains both a website and a brochure with information regarding international child abduction. The website provides information regarding all Swedish legislation and international conventions concerning child abduction, links to other international instruments regarding child abduction, information about the Swedish legal aid authority etc. It also provides the Hague application form. The information is available in Swedish and English. The website has a search function, so that depending on the case in point, it is possible to search for specific words. The addresses of the sites are: www.regeringen.se and www.sweden.gov.se.

The brochure from 1999 is currently not up to date. The Swedish Central Authority will revise its old information material in order to publicize a new version, including the Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the Recognition and Enforcement of judgments in matrimonial matters and the matters of parental Responsibility (Brussels II regulation). The Central Authority also provides attorneys with a Swedish translation of the Brussels II regulation. Because of the out of date brochure, in answering the following questions (a-j) reference will primarily be made to the website.

a) Both the website and the brochure has a list of states regarding which the Convention is in effect.

b) There is no information either in the brochure nor on the website of the means by which a missing child may be located. However, there is information on the website of what kind of preventive measures that can be taken, if there is a suspicion that the child will be removed or retained. Measures such as contacting a lawyer, making a list on addresses and telephone number to the other parent's relatives and friends, making a list of important information of the other parent, taking picture of the child etc, are some of the preventive measures that can help the Central Authority in order to later on locate the child.

Other means by which the Central Authority can locate a child is to find out the child's /parent's national registration. Sometimes, the Central Authority has to involve Interpol to locate the child.

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c) The designated Swedish Central Authority to discharge the duties that are imposed by the convention is the Department for Consular Affairs and Civil Law at the Ministry for Foreign Affairs (UD-KC). If a child has been wrongfully removed or retained in another country, UD-KC can be contacted. UD-KC will give information in the case and send application forms if appropriate. The contact information provided on the website is:

Ministry for Foreign Affairs
Department for Consular Affairs and Civil Law
10339 Stockholm
Telephone number: +46 (8) 405 1000
Fax number: +46 (8) 723 1176
E-mail: ud@foreign.ministry.se

d) The website provides complete information regarding the application procedure, with detailed instructions of how the application form shall be filled in and where to send it. The Hague application form is available on the website in four different

languages (Swedish, Spanish, English and German). The Power of Attorney is also available in these languages. Moreover, the website provides information of the application regarding each specific country (when the Hague Convention came into force between Sweden and the country in question and what language on the application form that is required for the specific country).

The application form according to the Brussels II regulation is available in a Swedish and an English version at the website.

e) There is a link to the Swedish legal aid authority (Rättshjälpsmyndigheten) on the website that provides information about the legal aid system in Sweden. This information is only provided in Swedish, but the contact information (including telephone number, e-mail and mail address) to Rättshjälpsmyndigheten is available on the website. The application form for legal aid is also available at the website (www.rhm.dom.se).

Law (1996:1619) regarding legal aid regulates under what circumstances legal aid can be granted. A foreign citizen can be granted legal aid in Sweden without having any other connection to Sweden than the legal process concerning the child abduction case. Eligibility for legal aid is determined through an income threshold of a maximum income of 260 000 SEK annually, or 275 000 SEK if the applicant has an obligation to pay alimony. The applicant, who has to go through an attorney to obtain legal aid, pays the first two hours of legal advice. A Swedish citizen can apply for legal aid for international child abduction- and access cases, both in convention and non-convention cases. The recipient of legal aid pays a part of the legal aid himself, decided on the basis of annual income.

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f) In a PDF –file with the headline "When A Child is Abducted From Sweden", information of how the judicial procedures goes is available. This file contains instructions of what parties and authorities that are involved in the process and what tasks they have to fulfill. It also contains information of the necessity of an attorney and how the Court works. Law (1996:242) Regarding Court Procedures regulates the procedure that the Court has to follow in a child abduction process. The above-mentioned PDF-file also includes instructions of how to appeal a Hague return order.

If a voluntary return cannot be achieved, the applicant will have to turn to the Stockholm City Court to receive a return order. The central Authority will recommend that the applicant engage a legal representative. The costs for the legal representative will in most cases be covered by the Swedish Legal aid system (see above section 3e). The court is obliged to handle the case with expedience. Cases should be dealt with within six weeks and in the event that the process lasts for a longer time the court is obliged to inform the applicant, upon his/her request, about the reasons causing the delay. The City Court can decide whether the decision should be enforced immediately upon announcement of the verdict or once the decision has gained legal force. In most Hague Convention Cases, the Court orders that the decision shall be enforced immediately, unless any of the parties has requested a stay of execution and that request is granted by the Court. A judgment gains legal force when the time- limit for appeal, three weeks, has expired. The appellate Court is the Court of Appeal whose judgment can be appealed to the Supreme Court, provided that the latter gives leave to appeal, which is done only in cases of precedential value. The Courts are obliged by law to give Hague Convention cases regarding wrongful detention or abductions priority. The applicant should receive a judgment within six weeks upon the Court's receipt of the application.

g) On the website there is a link to the Law (1989:14) on Recognition and Enforcement of Foreign Decisions Concerning Custody of Children etc. and on the Return of Children (the 1989 Act in the following). The 1989 Act is applicable in relation to the states parties to the 1980 Hague and Luxemburg Conventions and is

written explicitly to implement the relevant provisions of the two conventions in Swedish law. The law prescribes that a child that has been taken to/retained in Sweden should be returned immediately upon application. The 1989 Act also regulates the procedure and defines wrongful removal /detention and grounds for refusing a return in accordance with the Hague Convention. The law also lays out the basis for enforcement of return decisions.

In cases where there is a risk that a child will be taken out of the country, or when the enforcement of the decision is presumed to be obstructed, the City Court has the right to order that the child should be taken into custody immediately, without detriment to the child. The Court then has to decide, without delay, if the child should remain in custody. As basis for well-informed deliberations, the Court has the possibility to request that a representative of the social services, or another person deemed suitable, act as mediator to try to reach a voluntary solution, provided that such a measure can be presumed to result in the voluntary return of the child, without undue delay of the proceedings in court. The maximum timeframe allowed for mediation is a period of two weeks, which can only be prolonged under exceptional circumstances. Before reaching a decision, the court should procure the child's view, provided that the child has reached a proper degree of maturity.

If the Court decides that the child shall be returned to the state of habitual residence, the court can order the surrender of the child under penalty of a fine or alternatively collection by the police. The court cannot force the abducting parent to return with the child to Sweden. The applicant may have to go to the requested state to bring back the child.

Concerning the access order, an applicant can apply for access at the Court in the State where the child has been removed or retained, pending the decision of the Hague application. However, this can be interpreted as if the applicant has accepted that the child is living in the other country. An application of access in the country where the child has been removed can therefore result in a refusal order regarding the removal of the child.

h) There is no information about the course of proceedings on the website. For information regarding matters of evidence see section 7b below.

i) There is no information on the website concerning the services applicable for the protection of a returning child. However, the Children and Parents Code, Chapter 21, Sections 9 and 11-16 provides the basis for the enforcement of court orders regarding children in all cases relevant to custodial issues, including but not limited to, Hague Convention cases. The law establishes that the enforcement of court orders should be executed as carefully as possible in regard to the child concerned. Additionally, the law includes provisions regarding the procedure and legal costs.

The City Court can place a pecuniary fine on the abducting parent if it can be assumed that the child through this will be returned without undue delay. It can also order the police to collect the child if it finds it necessary. In cases where there is a risk that the child will be taken out of the country or when the enforcement of the decision is presumed to be obstructed, the Court may order that the child be immediately taken into care by the authorities in any way the Court finds suitable. If there is no time to await such a court order, the police may bring the child under immediate care or take any urgent measures that can be made without harming the child. In these situations, a medical doctor and a social worker must assist the police. The action should be instantly reported to the Court, which without delay decides whether or not it shall stand. The Swedish Central Authority has a supervisory role and confirms the return of the child to the receiving Central Authority.

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The Swedish Central Authority also supplies funds in order to facilitate the return of the child (and the accompanying parent). This financial aid has the amount of 500 000 SEK every year.

See above Section 3e concerning the possibility of receiving legal aid.

j) In the Swedish system, liaison judges do not exist.

Switzerland – Suisse :

Oui : le site de l'autorité centrale suisse (dans les langues officielles f/d/i) se trouve sous www.ofj.admin.ch/société/enlèvement international d'enfants/exercice du droit de visite.

Des informations concernant en particulier les lettres a), b), c), d), y sont fournies : s'agissant des questions relevant des lettres e) à j), des réponses précises ne peuvent être fournies qu'à partir du moment où le canton concerné est déterminé ; les dispositions relatives à l'organisation judiciaire, la procédure civile, l'assistance judiciaire gratuite relèvent pour l'heure du droit cantonal (vingt-six cantons).

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United Kingdom (Scotland) – Royaume Uni (Écosse) :

a) Yes.

b) In progress (due for completion by end of August 2006).

c) Yes.

d) Yes.

e) No, this is not required as cases are granted automatic legal aid in respect of this Convention.

f) In progress (due for completion by end of August 2006).

g) In progress (due for completion by end of August 2006).

h) In progress (due for completion by end of August 2006).

i) In progress (due for completion by end of August 2006).

j) In progress (due for completion by end of August 2006).

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

The Official Solicitor's website was www.offsol.demon.co.uk. It has recently changed to www.officialsolicitor.gov.uk.

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

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

k) Yes.

l) Yes.

m) England/Wales:

Yes for each of the Central Authorities for the following:

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

Northern Ireland:
Yes.

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

o) Yes

p) Yes

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

r) England/Wales:
Yes.

Northern Ireland
Not at present.

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

t) Not at present.

England/Wales
It is intended that the Official Solicitor's website will be amended to provide this information.

United States – Etats Unis :

The U.S. Central Authority(USCA) maintains a website at, contains information on the use of the Convention, including a downloadable copy of the Hague application form.
See: http://travel.state.gov/family/abduction/resources/resources_559.html

Contact information on the Hague Conference for the USCA is accurate. In addition, the USCA website includes a hyperlink to NCMEC's web site, which provides information and resources for both parents and attorneys.

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a) Yes: http://www.travel.state.gov/family/abduction/hague_issues/hague_issues_1487.html.

b) The USCA web site contains a document entitled "How to Search for a Child Abducted Abroad." See: http://www.travel.state.gov/family/abduction/resources/resources_550.html.

The National Center for Missing and Exploited Children (NCMEC) web site contains information for locating children in the U.S. In addition, NCMEC uses its many resources to locate children in the U.S. as part of its work on behalf of the USCA. The NCMEC web site is http://www.ncmec.org

c) Yes, the website contains a fax number, land line phone numbers, and the address to CA/OCS/CI. The site also contains links to the National Center for Missing and Exploited Children, the Department of Justice, Passport Agencies, and many others that relate to international child abduction.

d) Yes, procedures and requirements for applicants in the U.S. whose children have been taken or retained abroad are explained in detail. Copies of the Hague Application can be printed off the website. Country-specific instructions/information is available, and language directives are included.

The National Center for Missing and Exploited Children (NCMEC) web site will be redesigned to include information for applicants abroad.

e) The National Center for Missing and Exploited Children (NCMEC) web site will be redesigned to include this information for applicants abroad.

f) Information for applicants in the U.S. on court procedures abroad is provided in country-specific abduction flyers on the USCA web site.

See: http://www.travel.state.gov/family/abduction/country/country_486.html.

The National Center for Missing and Exploited Children (NCMEC) web site will be redesigned to include this information for applicants abroad.

g) See response to f) above.

h) See response to f) above.

i) See response to f) above.

j) A Judicial Advisory Council is currently being developed as a joint project of the National Center for Missing and Exploited Children and USCA. Information about this project will be provided on both the USCA and NCMEC web sites in the future.

Uruguay – Uruguay :

Se está organizando un sitio web.

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Question 4	
What measures does your Central Authority undertake to encourage voluntary returns and amicable resolutions, and how do you seek to ensure that these negotiations do not lead to undue delay in return proceedings? [Note: Questions 20-22 deal with the subject of mediation.]	**Quelles mesures votre Autorité centrale prend-elle pour encourager les retours volontaires et les solutions amiables ? Comment cherchez-vous à garantir que ces négociations ne retardent pas inutilement la procédure de retour ? [Remarque : les questions 20 à 22 portent sur la médiation.]**

Argentina – Argentine :

Esta Autoridad ofrece siempre al peticionante la posibilidad de intentar una etapa voluntaria extrajudicial antes de radicar el proceso ante la Justicia. En el caso de los pedidos entrantes, que son aquellos en los que realizamos la gestion directamente, se envía una nota al padre sustractor, para que recapacite y restituya al menor en forma voluntaria (o en su caso se fije un régimen de visitas), y tambien se le explican las consecuencias que acarreará su negativa. Para evitar demoras se le otorga un plazo de 10 días para responder. En muchos casos se coordinan reuniones para explicar el procedimiento en forma personal, e incluso se han concretado entregas de niños en nuestra oficinas. Con respecto a los pedidos salientes, también hemos mantenido llamadas en conferencia con las partes y sus abogados, en el intento de llegar a una solución amistosa, apelando a veces también a la intervención de nuestros Consulados en el extranjero, en pos de un acuerdo extrajudicial.

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Australia – Australie :

The requirements of Art 7c are reflected in Australia's legislation at Reg 13(4) of the Family Law (Child Abduction Convention) Regulations. Reg 13(4) specifies action that must be taken by the Australian Central Authority, which includes seeking:

(a) an amicable resolution of the differences between the applicant and the person opposing return of the child in relation to the removal or retention of the child; and
(b) the voluntary return of the child.

In practice, a decision is made at the time of receipt of the application whether or not it is an appropriate case for voluntary return. Sometimes the applicant also requests that a voluntary return be sought before other action is taken. This process does not usually cause significant delay and will in fact save considerable time in the end if lengthy court proceedings can be avoided. It is usually apparent quite early if the taking parent is using voluntary return negotiations as a delaying tactic, in which case negotiations may be terminated and legal proceedings commenced.

In most cases, including voluntary returns, the Australian Central Authority will file the Hague application in court in order to obtain ex parte orders to prevent the further removal of the child from Australia, the surrender of passports and similar restrictions. If a voluntary return is negotiated after obtaining these orders, the matter is resolved by consent orders for return.

Austria – Autriche :

As in any other case, judges are encouraged to strive for amicable solutions; although there is no strict obligation to hold a hearing before the decision, all parties have to be heard (orally or literally) before the decision. Thus there is always an opportunity to encourage the parties to establish amicable solutions.

Canada – Canada :

In appropriate cases, Canadian Central Authorities will negotiate with the taking parent or his/her legal counsel and try to obtain voluntary return of the child. These negotiations may occur prior to or after the filing of Court documents, including an Article 16 notice in some jurisdictions. If negotiations commence prior to the commencement of Court proceedings, drafting of Court documents would continue during the period of negotiation so as not to delay proceedings. Negotiations would not serve to delay the filing of a request for return in Court where it was almost one year from the date of the alleged wrongful removal / retention.

The Central Authority would have contacted the abducting parent by letter and phone where flight is not a risk and where the requesting parent has authorized that contact. Other than that, the Central Authorities have no special process in place. More information is needed on how mediation is handled internationally.

When the case is going to court, we strongly suggest that counsel for the parties endeavour to find an amicable resolution. Needless to say, that approach is useful in situations where the parties are still on good terms. It often appears that negotiations are undertaken once a date is set for the hearing on return and sometimes at the request of the judge hearing the request for return.

**

Dans les circonstances appropriées, les Autorités centrales canadiennes négocieront avec le parent ravisseur et/ou son procureur pour tenter d'obtenir le retour volontaire de l'enfant. Ces négociations peuvent avoir lieu avant ou après le dépôt de documents en cour, incluant un avis en vertu de l'Article 16 dans certaines juridictions. Si les négociations commencent avant le début de la procédure judiciaire, la rédaction des documents destinés à la cour se poursuivra pendant la période de négociation de manière à ne pas retarder la procédure. Les négociations ne serviront pas à retarder le dépôt d'une demande de retour en cour lorsque près d'un an s'est écoulé depuis la date du retrait/non-retour illicite.

L'Autorité centrale contactera le parent ravisseur par lettre ou par téléphone lorsqu'il n'y a pas de risque de fuite et que le parent demandeur a autorisé cette communication. Autrement, les Autorités centrales ne prévoient aucune procédure spéciale. On a besoin de plus de renseignements sur le fonctionnement de la médiation internationale.

Lorsque le dossier est judiciarisé, nous suggérons fortement aux procureurs des parties de tenter une solution à l'amiable. Il va de soi que cette approche s'avère utile dans une situation où les parties sont toujours en bonne relation. Il appert souvent que des négociations sont entreprises une fois une date fixée pour l'audition sur le retour et quelques fois à la demande du juge qui entend la demande de retour.

Chile – Chili :

Como lamentablemente no se cuenta con personal adecuado para realizar restituciones voluntarias o soluciones amigables previas al juicio, se debe dejar a la instancia judicial y al juez que intente ofrecer alguna alternativa diferente al regreso forzoso del niño. Por otro lado, cabe señalar, que la experiencia de esta Autoridad Central con soluciones amigables no ha sido en general bastante negativa. La mayoría de las veces en que se ha llegado a acuerdo a sido con madres sustractoras, quienes frente al Juez se comprometen a regresar, sin embargo, cuando el solicitante hace llegar los pasajes aéreos ellas huyen con los niños y debemos solicitar a INTERPOL nuevamente la búsqueda del niño y solicitar al Tribunal el cumplimiento forzado del acuerdo, con la demora que eso ocasiona.

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China (SAR Hong Kong) – Chine (RAS Hongkong) :

As soon as the abducting parent is located, we will ascertain whether he/she is willing to voluntarily return the child to the resquesting State. Apart from informing the abducting parent of the legal provisions that require him/her to return the child, we will also provide counselling and social services to him/her and to the child where appropriate. If the abducting parent indicates willingness to do so, we will take the following steps:

- We will inform the left behind parent and ask him/her insofar as practicable to come to Hong Kong to collect the child.

- We will arrange for an urgent hearing before the court which is attended by us (as the Central Authority), the left-behind parent and the abducting parent, if available.

- In the court hearing, we will seek a court order for the return of the child on the basis of consent of the abducting parent. In cases where the left-behind parent cannot attend the court hearing, we will also submit to the court for its approval of the proposed pratical arrangements for the return of the child such as the details of the departure flight, the person to accompany the child to the airport, the person to pick up the child in the State of habitual residence etc. to ensure the safe return of the child.

In our experience, the above measures would not lead to delay. Once the abducting parent is located we will issue Hague proceedings, arrange for an early hearing date and prepapre affidavits etc in accordance with our domestic rules that govern child abduction proceedings. The progress of the Hague proceedings would not be held in abeyance while ascertaining the abducting parent's whishes. If the abducting parent is willing to co-oporate, the voluntary return will be embodied in a consent order. If he/she whishes to contest the Hague proceedings, the case will be decided by the court.

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China (SAR Macao) – Chine (RAS Macao) :

The MSAR Central Authority id also the governmental entity internally in charge of matters related to childhood and youth. Its functions as Central Authority are strictly of an administrative nature and do not cover decisions on cases of abduction under the convention, which are of an exclusive competence of the judicial.

In fat, as a general rule, both parents exercise parental power. In case of divorce, separation, etc, although the new system of exercise of parental power can be established by the parents through an agreement, such an agreement must be subject to homologation / ratification by the court. Thus, it culd be said that only the courts are competent to decide matters concerning the regulation of the exercise of parental power, rights of custody and of contact, the respective alteration, including return / parental visition orders under the Convention.

Nevertheless, in all situations involving children, the MSAR Central Authority is responsible for the investigation into the circumstances and needs of the child and the preparation of the social reports to be presented to the court.

In any case, whether it is purely internal or under the Convention, the MSAR Central Authority, whenever a child is involved and ta risk, has the functional power / duty of defending the best interest of that child. As trying to bring about an amicable resolution between the child's parents / guardian / family members and to secure the voluntary return of the child, in principle, concur with the best interest of the child, it will be automatically seen as covered by that power / duty. In practical terms, usually this is done in a very simple manner, prior to the institution of the judicial proceedings, by means of interviewing the non-compliant parent / guardian or, if possible, both parents, reasoning with him / her / them, encouraging them to try to resolve their differences by mutual consensus without resorting to the court and reminding them of the negative

consequence of criminal prosecution (substraction of a minor is a criminal offence in the MSAR, thou it depends on a complaint being lodged), etc. It is worthwhile to mention that the Central Authority's staff is multidisciplinary and well trained tream of experts.

Once the judicial proceeding is instituted, it is mandatory under the law, as a first step of the hearing, for the judge to try to conciliate the interested parties.

Colombia – Colombie :

El proceso de restitución y regulación internacional de visitas se ha venido desarrollando a través de dos fases, la administrativa y judicial. En la Fase administrativa interviene el Defensor de Familia, quien es una Autoridad con facultades para tomar medidas provisionales a favor de los niños que se encuentren retenidos, como son: impedir la salida del país, comprometer a los padres que retienen a los niños a que permitan el contacto de éstos con el padre que lo reclama, mientras se surte el proceso y, si es del caso, tomar medidas provisionales de protección. En esta Fase también se propicia la entrega voluntaria del niño o niña retenido y si hay ánimo de conciliación se cita a las partes para que en Audiencia lleguen a un acuerdo de retorno o de visitas. Nuestro sistema judicial exige agotar este ese requisito de procedibilidad para presentar la demanda ante el Juez competente.

Cuando remitimos las solicitudes a las Regionales (nivel departamental) y Centros Zonales ICBF (unidades operativas en lo local) del país, en éstas damos instrucciones precisas para el trámite y hacemos recomendaciones a los Defensores de Familia y demás servidores públicos de carácter administrativo del Instituto, para que actúen con celeridad, estamos al tanto solicitando informes de los procesos y de que estos pasen oportunamente a la fase judicial e informando a las diferentes autoridades centrales sobre estas actuaciones.

Dentro de las jornadas de capacitación que se han realizado sobre el tema, se ha hecho énfasis en la observancia de los principios que inspiran el Tratado, como son el de celeridad y el del Interés Superior de los Niños. Además se está en proceso de edición y publicación de un Manual operativo, en el que está incluido el procedimiento para la ejecución del Convenio, que incluye las observaciones y recomendaciones de la Guía de Buenas Prácticas.

Costa Rica – Costa Rica :

Cuando Costa Rica es Autoridad Central Requerida, se invita al progenitor denunciado a que proponga una solución amigable o un régimen de visitas internacional. Al mismo tiempo, se le pide a la Autoridad Central Requirente que haga lo mismo con el padre solicitante. Pero con sólo que uno de los dos progenitores manifieste no estar de acuerdo con lo anterior, se consideran fracasadas las negociaciones y, por ende, se procede a incoar de inmediato el proceso judicial correspondiente.

Ahora bien, cuando Costa Rica es Autoridad Central Requirente, mediante la misma comunicación de requerimiento formal se envía la decisión del padre solicitante sobre el particular, siendo que en consecuencia se remite, ya sea una propuesta de solución amigable o régimen de visitas internacional, ó ulteriormente una manifestación escrita y suscrita por ese padre diciendo de una vez por todas que no desea ni solución amigable ni régimen de visitas.

Cyprus – Chypres :

Due to the great urgency of child abduction cases and the increase in numbers it is not easy to proceed to negotiations with the abductor parent. The under-staffing of the Unit dealing with these issues, is also a major.

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Czech Republic – République tchèque :

See response to point 3 of 2001 Questionnaire.

Denmark – Danemark :

The Civil Court takes measures to encourage a voluntary return and an amicable resolution.

Ecuador – Equateur :

Para asegurar la devolución voluntaria o facilitar una solución amigable, la Autoridad Central del Ecuador realiza las acciones necesarias a fin de localizar al sustractor y al niño, niña o adolescente. Una vez localizados y con autorización previa del peticionante, nos ponemos en contacto con el demandado para informarle sobre el proceso iniciado y sus obligaciones. Se enfatiza mucho en los efectos dañinos que puede sufrir el niño como consecuencia de la sustracción y en las ventajas que resultan de un retorno voluntario. Si no hay respuesta inmediata del denunciado respecto a dicha solución, se procede a presentar el expediente al juez de niñez y adolescencia respectivo.

El Salvador – El Salvador :

La Procuraduría General de la República, a través de la Unidad de Defensa de la Familia y el Menor, procura lograr la restitución voluntaria, a través de la conciliación, método en el cual nuestro personal tiene vasta experiencia.

Finland – Finlande :

When the Central Authority of Finland has received a request for return, it assigns the case to a Finnish lawyer whose first duty is to attempt to achieve a voluntary return of the child. In practice the lawyer makes a contact with the abductor in order to find out his/her willingness to amicable solution of the situation. Failing this, the lawyer will bring action for return of the child in the Helsinki Court of Appeal. This has not lead to considerable delays but, on the contrary, often to very positive solutions.

Considering the purpose of the Convention, all the Central Authorities should, as a first duty, ensure that there is a real opportunity for a voluntary retunr. A short delay for that purpose is worth it.

France – France :

Lorsqu'elle est saisie d'une demande de retour, l'autorité centrale française fait entendre par les services de police ou de gendarmerie le parent qui retient l'enfant avant d'engager la procédure judiciaire stricto sensu, afin de tenter de parvenir à un règlement amiable de la situation.

Si ce parent refuse de retourner l'enfant, les éléments qu'il soulève pour fonder sa position sont adressés à l'autorité centrale requérante. Ces échanges, et la détermination des positions respectives des parties, peuvent parfois faciliter un dénouement négocié au blocage créé par le déplacement.

La rapidité de la transmission de ces informations et le suivi régulier des dossiers préviennent les retards dans la procédure de retour.

Par ailleurs, l'autorité centrale française dispose en son sein d'une intervenante sociale qui peut prendre l'attache du parent ayant déplacé l'enfant, afin de rechercher si un arrangement entre les parties est envisageable et, dans l'affirmative, les aider à le formaliser et à le mettre en oeuvre.

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Dès qu'une nouvelle situation de déplacement de mineurs est signalée, elle peut recevoir la partie en demande, l'aider à faire le point sur sa requête ou identifier ses attentes envers la procédure de retour ou de droit de visite, ce qui constitue souvent la première étape d'un rapprochement des parties.

Greece – Grèce :

Our Central Authority is not authorized to undertake voluntary returns and amicable resolutions.

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

The Central Authority does encourage voluntary returns. The legal expert handling the case at the Central Authority speaks with the taking parent either by phone or at the Central Authority and gives guidance on the proceedings that will take place if the child is not returned. If there seems to be a possibility of a settlement some time is normally taken for mediation but the thought is, not to let the mediation delay the case at this stage. For example the Central Authority usually begins the process of finding an attorney for the applicant even though an amicable solution is possible.

Ireland – Irlande :

On discovery of the whereabouts of child by the Garda Síochána (National Police) or the Health Service Executive (the national body with responsibility for, among other things, children at risk and with local networks of child welfare officers for that purpose).attempts are made by those Authorities in suitable cases to secure a voluntary return or an amicable resolution of the issues. And where the Legal Aid Board (see question 8 below) becomes involved in making an application to the High Court to seek an order for the return of a child, it is conscious of the requirement to seek a voluntary return of an amicable resolution. Family Law in Ireland expressly encourages, and the courts support, voluntary agreements or mediation between the parties to resolve their differences. Experience in child abduction cases is that these approaches do not delay matters because the overall requirement under the Convention is to secure the expeditious return of the child.

Israel – Israël :

Except in cases where the left-behind parent is concerned that there is a risk of flight by the taking parent, the Israeli Central Authority will contact the taking parent to explore the possibility of a voluntary return. It will inform the taking parent that they have the right to, and should, consult with legal counsel. The parent will be given two weeks to respond, failing which steps will then be taken to assist the left-behind parent to secure an attorney and initiate proceedings in the appropriate court. Should the taking parent be willing to negotiate a voluntary return but same is not done within a reasonable amount of time (a short period), then steps will be taken to assist the left-behind parent to secure an attorney and initiate legal proceedings. Any delay to pursue voluntary return is to be for the shortest possible period.

Italy – Italie :

Les Brigades des Mineurs des Préfectures de Police sont chargées de verbaliser les déclarations du parent ravisseur quant à sa disponibilité à retourner volontairement l'enfant enlevé. L'on se prévaut parfois de l'assistance des Services Sociaux Juvéniles (du Ministère de la Justice) ou de Services Sociaux de terrain. Il s'agi,t en tout cas, d'activités menées promptement qui ne risquent pas de ralentir le cours de la procédure de retour.

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Latvia – Lettonie :

Situation in which is possible to facilitate voluntary return and amicable solution mainly is dependent from fact is or not known any contact information of the person who abducted or retained child. In our experience and practice were cases where this information was both known and not known. Situations in which was known address, phone number or an e-mail of the person who abducted/retained child, employees of the Ministry tries to contact with this person in order to ascertain circumstances of established situation from his/her point of view and positions, simultaneously the Ministry is trying to facilitate amicable solution. In our practice there was only one case in which person who abducted child has voluntary returned to country from what child was abducted. In other cases there was not known contact information of this person or what is the most frequently person who abducted child is negative minded in relation to applicant and doesn't want to resolve situation in amicable way.

Lithuania – Lituanie :

In order to achieve that a child is voluntarily returned and an amicable agreement is reached SCRPAS strives to furnish both the applicant and the abductor with detailed information about advantages of returning the child – by direct communication, phone or letters or via electronic mail, i.e. to persuade them that this would be a simpler, quicker and cheaper process than judicial proceedings and that, in addition, the probability of harming the child would be reduced. Cases of successful returning of children from abroad are indicated to the parties, which also influences their decision on amicable agreement.

If, nevertheless, SCRPAS sees that the parties are not going to settle the dispute in an amicable way, it refers them to Lithuanian attorneys-at-law so that the parties can use their services in settling the dispute both in pre-judicial stage and in the course of judicial proceedings.

Furthermore, the parties are always informed about an opportunity (*i.e.* even without negotiating over the voluntary return of the child) to resolve the issue of the return in court.

Malta – Malte :

Upon receipt of an application, the Central Authority official tries to contact the abducting parent in order to fix an appointment. If the abducting parent honours the appointment, the official will explain that s/he can either decide to return the child voluntarily, or else there will be no other option but to institute legal proceedings against him / her. If the abducting parent is willing to co-operate to reach an amicable solution, every reasonable effort (within an agreed timeframe) is made to secure compliance for a voluntary return.

Mexico – Méxique :

Sólo en caso de que el solicitante lo requiera se busca una restitución voluntaria o solución amigable, sin embargo en la práctica la Autoridad Central mexicana no ha tenido solicitudes en ese sentido, ello, se debe a que la mayoría de los solicitantes temen poner sobre aviso a la parte sustractora del procedimiento y que ésta decida trasladar al menor a otro lugar, donde su localización sea difícil.

La Autoridad Judicial Mexicana a la que se le ha solicitado la restitución de un menor, cuando celebra la diligencia para notificar a la parte sustractora del procedimiento de restitución, buscan en la misma diligencia una restitución voluntaria, en caso de negativa, citan a una audiencia donde finalmente resuelven lo conducente, para lo cual, generalmente aseguran provisionalmente a los menores y así se evita que sean trasladados a otro lugar.

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Monaco – Monaco :

Seule une affaire dont a été saisie la DSJ depuis 2003, en sa qualité d'Autorité Centrale, semble pouvoir faire l'objet d'une médiation. Dans cette affaire, la qualification d'enlèvement international au sens de la Convention est toutefois difficile à retenir étant donné que le père de l'enfant, qui a invoqué la Convention, ne bénéficiait d'aucun droit de visite ou d'hébergement accordé par un juge.

De manière générale, la DSJ est saisie alors que des procédures judiciaires sont déjà en cours ou que des décisions judiciaires ont été rendues. Il est alors difficile de lancer une procédure de médiation compte tenu des relations particulièrement difficiles existant entre les parents.

Sur les procédures de médiation existant à Monaco, voir les réponses 20 à 22.

Netherlands – Pays-Bas :

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

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

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New Zealand – Nouvelle Zélande :

When an application is received and the child is located, the Central Authority will appoint counsel to represent the applicant. Counsel are instructed to initiate proceedings and to determine, after communication with counsel acting for the abducting parent, whether it is possible to negotiate a voluntary return. These measures do not lead to delays as they run parallel to the timetabling of the court process. If voluntary return negotiations are successful, it is common practice to obtain orders by consent from the court which allows for enforcement measures to be initiated if the terms of the return are changed or not complied with thus avoiding unnecessary delay.

Nicaragua – Nicaragua :

Se solicita a la Autoridad Administrativa, (Ministerio de la Familia) a quien le corresponde aplicar medidas de Protección Especial, que auspicien como primera medida; las Restituciones voluntarias de niñas, niños y adolescentes a sus países de residencia habitual, sin detrimento de mantener el procedimiento administrativo vigente.

Panama – Panama :

La autoridad central panameña no cuenta con personal idóneo para llegar a solución amigable de conflictos, es por ello que este rol lo desempeña la autoridad judicial competente como parte del proceso.

Paraguay – Paraguay :

Ni bien recibimos una solicitud de restitución, hacemos ubicar el domicilio del sustractor, lo convocamos a una entrevista haciéndole saber del pedido de restitución, haciéndole notar las ventajas de avenirse a una solución amistosa, ahorro de costos y gastos y por sobre todo el bien del niño o los niños. Luego de esa entrevista solicitamos como medida cautelar la prohibición de salida del país, la cal es levantada posteriormente. Si procede la mediación se remite inmediatamente el pedido al Juez de la Niñez y la Adolescencia del domicilio del niño/a, adolescente.

Poland – Pologne :

The Polish Central Authority does not undertake to encourage voluntary returns or amicable resolutions between the parties to the proceedings as it has no possibility to take such actions. Any actions regarding such matters are undertaken solely by the Guardianship Court, before which the proceedings under the Hague Convention take place. Under the Article 223 § 1 of the Polish Code of Civil Procedure (k.p.c.) the judge is entitled to encourage amicable resolution between the parties. Moreover, the court may advise the parties to use mediation. Under no circumstances may the attempts to reach an amicable resolution lead to undue delay in return proceedings.

Portugal – Portugal :

In what concerns to the international child abduction there is no practice on mediation in Portugal neither directly by the Central Authority nor by other agencies. Regarding to the parental responsibility, an agency which depends from the Ministry of Justice assumes the mediation.

Romania – Roumanie :

Since Romania has quite recently adopted (on 22.05.2006) a legislation regulating the institution of mediation, which has yet to be put into practice, the Romanian Central Authority carries out a "*sui generis* mediation". A reconciliation letter is sent to the parent who has traveled with the child, asking him/her to give back the child of his/her own accord, explaining briefly the consequences of a refusal. Also, the parent is invited for discussions at the office of the Central Authority. In two out of ten cases, such a procedure results in the returning of the child.

Slovakia – Slovaquie :

Usually, before filing a petition for return order at the competent court, the appointed employee of the Centre meets with the abductor in person to explain the negative aspects of the committed abduction and the harmful impact it may have on the children. If the abductor declares to return with the child, then he is usually allowed to do so within a very short period of time.

If the abductor does not follow his declaration, the case is immediately brought before the court.

However, in some cases due to the pressure of time (Art. 12), these measures are not provided.

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South Africa – Afrique du Sud :

The Family Advocate/Ad hoc Central Authority uses alternative Dispute Resolution Techniques to encourage voluntary return. All applications under the Convention are treated as urgent.

Spain – Espagne :

Ver respuesta en las preguntas 20-22.

Sweden – Suède :

To encourage a voluntary return, the Court has the possibility to request that a representative of the social services, or another person deemed suitable, act as a mediator to try to reach a voluntary solution. However, this provides that such a measure presumably can result in the voluntary return of the child, without undue delay of the proceedings in the court. The maximum time frame allowed for mediation is a period of two weeks, which can only be prolonged under exceptional circumstances. (For information about the mediation process see above Section 3 g).

In some cases the counsel- instructed on behalf of the applicant sends a "voluntary return letter" to the respondent. If there is no answer to the letter within a certain period of time or if there is a risk that the respondent will disappear with the child, the proceedings are initiated immediately. The Central Authority also encourages voluntary returns by telephone calls with the abducting parent.

In order to encourage a voluntary return, the Swedish Central Authority cooperates with an informal network in the day-to-day handling of cases. The informal network is made up of lawyers, courts, social authorities, the international social services, the police, prosecutors, professors, child psychologists, etc. This informal cooperation has expanded in connection with specific cases and over time.

Before court proceedings starts, the Central Authority always makes an inquiry to the abductor whether a voluntary return can be obtained. If there is an unwillingness to meet the request of a voluntary return, court proceedings at the Stockholm city Court will be initiated.

The Swedish Central Authority has taken part in several international conferences organized by Reunite, a well-reputed British NGO. At these conferences participants exchanged experience of every aspect of child abduction. The Swedish Central Authority has also initiated cooperation with Reunite concerning mediation in cases under the Convention where children have been abducted from Sweden to the UK. Sweden hosted a small group of countries, aiming at improving the international co-operation regarding child abductions and related issues in non-convention cases.

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Switzerland – Suisse :

L'autorité centrale suisse encourage les retours volontaires et les solutions amiables en tant qu'Etat requis, mais également en tant qu'Etat requérant.

Etat requis :

- prise de contact avec le parent ravisseur par courrier et téléphone suivant les circonstances, pour l'informer de la situation (dépôt d'une requête de retour) et des possibilités qui s'offrent pour lui comme pour le demandeur. Renseignements fournis sur les conséquences d'un retour volontaire et sur les possibilités offertes dans l'Etat requérant : précisions sur demande du ravisseur qui seront obtenues avec l'aide de l'AC de l'Etat requérant; et/ou

- négociation et tentative de règlement amiable avec l'aide d'un organe cantonal approprié : service de protection de l'enfance, autorité tutélaire en particulier. L'organe cantonal engagé par l'autorité centrale est informé de l'urgence du traitement et des conditions temporelles données par l'article 11.

Etat requérant :

- l'AC suisse renseigne également le parent ravisseur qui souhaite connaître sa position et les moyens d'assistance en cas de retour volontaire ; l'entremise avec des services sociaux, des autorités tutélaires ou des avocats dans le canton de retour, voire avec la représentation diplomatique du parent concerné ; cette information peut être fournie directement ou par l'intermédiaire de l'AC requise.

Information préventive :

- l'AC suisse fournit aux personnes intéressées les indications utiles, voire même les coordonnées de personnes ou institutions pouvant aider sur place le parent susceptible d'effectuer un enlèvement.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

Solicitors are encouraged by the Central Authority to seek a voluntary return in the first instance, if appropriate. The initial instructions given to the solicitor emphasise the need for the case to be dealt with within the six week deadline. All practitioners dealing with Hague cases have an understanding of the need to work together with foreign authorities and parents to bring about a voluntary settlement if possible.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

United States – Etats Unis :

Unless there is a fear of further flight, a letter is sent to the respondent parent explaining the Hague Convention process and asking the parent to return the child on a voluntary basis. The parent is given approximately 10 days to respond to the letter. If no response is received, the case proceeds. Seeking a voluntary return, therefore, does not delay processing of a case for more than two weeks. If a parent will voluntarily return the child, some time will elapse while arrangements are being made, either between the parents and facilitated by the Central Authorities, or by attorneys representing the parents. The U.S. Central Authority rarely has a case in which negotiations to return a child voluntarily are begun and then abandoned. No voluntary return letter is sent if the applicant parent or Central Authority advises that the abducting parent is a flight risk.

Uruguay – Uruguay :

En el Derecho Procesal uruguayo en casos de solicitudes de restitución internacional se intenta en audiencia judicial el acuerdo de partes, de no lograrse éste, se llevan adelante procedimientos judiciales restitutorios.

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Question 5	
In accordance with the Guide to Good Practice – Part I on Central Authority Practice, has your Central Authority shared its expertise with another Central Authority or benefited from another Central Authority sharing its expertise with your Central Authority?	**Conformément au Guide de bonnes pratiques – première partie sur la pratique des Autorités centrales, votre Autorité centrale a-t-elle partagé ses connaissances avec une autre Autorité centrale ou bien a-t-elle bénéficié des connaissances d'une autre Autorité centrale ?**

Argentina – Argentine :

Se han realizado seminarios-talleres con Perú y con Paraguay, en los cuales se ha ofrecido la experiencia de nuestra Autoridad Central en el tema con el objeto de brindar difusión y capacitación a los operadores directos e indirectos de la niñez en dichos países. También se ha ofrecido nuestra colaboración a Brasil y a Bolivia, proponiendo el mantenimiento de reuniones bilaterales para analizar los obstáculos que se observan en la práctica y mejorar el funcionamiento del Convenio, estando ello pendiente hasta la fecha.

Australia – Australie :

The Central Authority has participated in a number of conferences and summits on International Abduction. For example, the Central Authority attended the conference in Malaysia in 2005.

This year the Central Authority travelled to Papua New Guinea to encourage Papua New Guinea to consider joining the Convention and discuss Australia's experience. Australia also arranged for delegates from Papua New Guinea to travel to Australia.

The Central Authority holds a biennial conference on Child Abduction to which other Central Authorities are invited. At this year's conference, held in October, New Zealand participated. State Central Authorities carry out Australia's Convention obligations in each State and Territory. The State Central Authorities attend the biennial conference with the Commonwealth Central Authority and share information and experiences.

Austria – Autriche :

No specific expertises have been shared.

Canada – Canada :

In Canada, primary responsibility for operational duties under the Convention rests with the Central Authorities of the 13 provinces/territories. These Central Authorities, together with Canada's Federal Central Authority and the Central Authorities of other States, share information, experiences and expertise with one another on a regular basis.

**

Au Canada, ce sont les Autorités centrales des 13 provinces et territoires qui sont les principales responsables des fonctions opérationnelles prévues par la Convention. Ces Autorités centrales collaborent régulièrement entre elles ainsi qu'avec l'Autorité centrale fédérale pour partager des renseignements, des expériences et des compétences.

Chile – Chili :

Si.

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- En Octubre de 2004, esta Autoridad Central participó en un seminario realizado por la Autoridad Central de Perú.
- En Enero de 2006, la Autoridad Central de EE.UU. participó en un seminario dirigido a los Jueces Chilenos y luego en un coloquio en que fue analizado el funcionamiento práctico del Convenio donde participaron organismos encargados de velar por los derechos de los niños en Chile y distintos profesores Universitarios.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We have shared our experience with other Central Authorities through case dealings and do benefit from other Central Authorities from expertise sharing.

China (SAR Macao) – Chine (RAS Macao) :

There was no opportunity of sharing expertise directly with other Central Authorities until this moment. Nonetheless, the MSAR Central Authority has benefited from sharing of experiences and expertise in the Special Commission to study the operation of the Convention.

Colombia – Colombie :

Participamos en la III Reunión de Autoridades Centrales Iberoamericanas en Materia de Sustracción Internacional de Menores, realizada en Cartagena de Indias del 1º al 4 de noviembre de 2005. En este encuentre representantes de las Autoridades Centrales dieron a conocer sus experiencias y procedimientos de aplicación del Convenio.

En el año 2004 el Ministerio de Relaciones Exteriores de Colombia junto con la Embajada Americana, realizó un encuentro de Autoridades Centrales de Estados Unidos y Colombia en el mismo participaron Defensores de Familia. El objetivo fue conocer los procedimientos, los problemas y las acciones que se estaban realizando en relación con el Convenio en ambos países.

Costa Rica – Costa Rica :

No.

Cyprus – Chypres :

Obstacles for undertaking any kind of mediation. In the light of the above difficulties we focus on the need to proceed immediately to the preparation of the relevant return / communication applications.

However, in a limited number of cases, amicable resolutions were reached as a result of our interference.

Czech Republic – République tchèque :

Yes, for instance with Israeli and Canadian Central Authority.

Denmark – Danemark :

The Danish Central Authority attended a meeting in Sweden in 2005 together with the Central Authorities form all the Nordic Countries. A new meeting is planned in the autumn of 2006 in Norway.

Ecuador – Equateur :

No.

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El Salvador – El Salvador :

A pesar que los Estados Unidos de América no han aceptado la adhesión de El Salvador, hemos tenido la oportunidad de compartir experiencias con personal de la Oficina de los Asuntos de Menores del Departamento de Estado y con personal del Centro Nacional para Menores Desaparecidos y Explotados.

Finland – Finlande :

The Finnish Central Authority has exchanged views of the child abduction matters annually with the Central Authority of Estonia. The first meeting with the Central Authorities of all Nordic countries (Sweden, Norway, Denmark, Iceland and Finland) was organised in Stockholm in November 2005. The meetings proved to be very fruitful and the aim is to organise such meetings annually.

France – France :

L'autorité centrale française est en relation constante avec les autres autorités centrales, qu'elle a l'occasion de rencontrer et d'accueillir régulièrement (séminaires, rencontres d'experts, colloques). Ces réunions lui permettent d'échanger sur les expériences développées dans les autres Etats, et d'améliorer sa pratique de la mise en oeuvre de la convention de la Haye du 25 octobre 1980.

Greece – Grèce :

No.

Guatemala – Guatemala :

[No answer]

Iceland – Islande :

The Central Authorities of the Nordic Countries began formal co-operation in 2005 and will most likely meet annually hereinafter.

Ireland – Irlande :

No.

Israel – Israël :

In some cases where the Israeli Central Authority has encountered a new problem, it has consulted with other central authorities to determine whether they have encountered such a problem and, if so, how they have resolved the problem. Where a difficulty is being experienced with respect to the handling of an application in the country to which the application was forwarded, the Israeli Central Authority may explain to the other Central Authority how such difficulties have been resolved in incoming cases in Israel, and suggest that, if possible, such action be taken in the requested State. For example, in a case where the foreign central authority stated that they were having difficulty determining an abducted child's exact location, the Israeli Central Authority suggested tracing a telephone number that had been provided in order to determine the address, or applying to the education authorities to determine whether the child had been registered in a school in that country, as this would provide an address for the child.

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Italy – Italie :

L'Autorité Centrale italienne maintient des relations d'échange d'informations quotidiennes avec ses correspondants et discute toujours, soit par écrit qu'au téléphone, de questions particulières pouvant surgir le cas échéant.

En outre, en novembre 2005 l'Autorité Centrale italienne a été invitée en Suisse par l'Autorité Centrale helvétique pour une visite d'étude de trois jours.

Aucun accord de jumelage au sens stricte n'a jamais été conclu par l'Autorité Centrale italienne.

Latvia – Lettonie :

Central Authority of Latvia with comparatively little experience in terms of Convention, from Central Authorities in other member states acquires readily practice and experience about questions of implementation and interpretation of the Conventions.

Lithuania – Lituanie :

SCRPAS has not entered into any twinning arrangements with other Central Authorities. As the formation of practice of settlement of applications under the 1980 Convention is still underway in Lithuania, in resolving individual cases SCRPAS uses experience and knowledge of the state to which the abduction case is related. We would like to separate out the United Kingdom as a state that resolves cases under the 1980 Convention very effectively.

On 12-13 October 2005 a conference entitled "Protection of Children by Implementing International Conventions on Custody and Adoption of Children" was held in Vilnius by the Ministry of Social Security and Labour and SCRPAS. The conference focussed on international experience and practice of implementation of the 1980 Hague Convention on the Civil Aspects of International Child Abduction, the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, and the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption; discussions on best practice in Lithuania and abroad were held; and issues of communication with children and returning the children to their legal representatives were discussed. The conference was aimed at increasing awareness of the Hague conventions on international private law regulating international procedures securing the representation and protection of both property and non-property rights of children and defining competences of the authorities responsible for the implementation of the conventions.

At the conference reports were delivered by experts of the Hague Conference on Private International Law, a representative of the Swiss International Social Service (ISS), representatives of Lithuanian, Finnish, Latvian and Estonian central authorities and a judge of the Lithuanian Supreme Court.

The conference had around 100 participants including representatives of Lithuanian ministries and municipal children's rights protection services, judges, attorneys-at-law, bailiffs, representatives of universities and other state and local authorities dealing with children's rights protection issues as well as guests from foreign states. Thus, apart from increasing awareness of the 1980 Convention, the conference facilitated establishing contacts with representatives of other central authorities.

Malta – Malte :

Not yet.

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Mexico – Méxique :

No, no hemos tenido la oportunidad.

Monaco – Monaco :

La DSJ communique avec d'autres Autorités Centrales notamment l'Autorité française avec laquelle la DSJ a déjà échangé diverses correspondances.

Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

The New Zealand Central Authority is working at strengthening relations with Fiji. The Central Authority and Fiji hope to work together offering support and assistance in the implementation of the Convention and infrastructure required to resource a Central Authority in Fiji.

Nicaragua – Nicaragua :

Dado, la reciente aplicación del Convenio en el País, a esta fecha aún no hemos compartido experiencias con nuestros Homólogos.

Panama – Panama :

La autoridad central panameña ha participado en seminarios sobre sustracción internacional de menores patrocinados por la agencia española de Cooperación Internacional, y en ellos los países iberoamericanos han compartido sus experiencias mutuamente.

Asimismo, se están programando seminarios bilaterales con algunos países para adiestramiento de los jueces.

Paraguay – Paraguay :

Los primeros días de marzo hemos realizado en Asunción, un Seminario sobre Restitución con la asistencia de Ignacio Goicoechea y la Dra. Ma. Chiodi de la Autoridad Central Argentina, realizándose un rico intercambio de experiencias, Del mismo han participado además 57 personas, de ellos Jueces, Defensores y Fiscales de la Niñez y la Adolescencia, Policía Nacional (INTERPOL) cuyos primeros resultados son: una comunicación más fluida con los actores que intervienen en el procedimiento logrando mayor celeridad en las actuaciones que les competen.

Poland – Pologne :

Yes, it is a common practice of the Polish Central Authority as well as many other Central Authorities, with which the Polish Authority co-operates.

Portugal – Portugal :

No.

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Romania – Roumanie :

Yes, with France.

Slovakia – Slovaquie :

So far, the exchange of information is secured through the international meetings of the Central Authorities or through the communication with the other Central Authority when dealing with the concrete case. Therefore, the Central Authority of Slovakia would like to underline the importance of the as frequent meetings of the representatives of the CA´s as possible.

South Africa – Afrique du Sud :

Yes. The practice is to enquire from the requesting Central Authority to provide guidance and input on inter pretation and application of that country's legislation.

Spain – Espagne :

Sí, en el último año se han tenido encuentros con las Autoridades Centrales de Reino Unido, Suiza y Estados Unidos.

Asimismo España organizó el III Encuentro de Autoridades Centrales Iberoamericanas, que se celebró en Cartagena de Indias (Colombia) y al que asistieron las Autoridades Centrales de Argentina, Chile, Colombia, Perú, San Salvador, España, Honduras, México, Panamá, Paraguay, Perú, Venezuela y un representante de la Conferencia de la Haya.

Sweden – Suède :

In addition to the every day sharing of expertise that exist between the different central authorities when working with Hague cases, Sweden has initiated a regional co-operation between the Nordic countries (see below section 23).

Switzerland – Suisse :

Echanges ponctuels d'information; réponses à des demandes particulières sur la mise en œuvre de la convention en général ou à des enquêtes d'autres Etats sur des points précis.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

The Central Authority for Scotland is always willing to share information about practice and procedure in the spirit of co-operation and does so regularly in the context of specific cases.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

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

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

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United States – Etats Unis :

The U.S. Central Authority (USCA) has participated in numerous bi-national and multi-national conferences and summits on the topic of International Parental Abduction, and has benefited tremendously from sharing and receiving information related to processing of Hague cases. The networking function of these events has been particularly valuable, allowing us to establish stronger professional relationships with and greater understanding of the personnel and functions of our partner Central Authorities. By understanding the constraints and resource limitations of our counterparts, we are able to work more effectively to fill the gaps. The USCA and embassies abroad have co-sponsored judicial seminars with other Central Authorities in Central and South America, Europe and Israel.

Some specific examples that demonstrate this sharing of expertise and co-operation include:

(1) French Central Authority (FCA): The USCA has benefited from the FCA sharing its expertise with us. The FCA can be counted on to provide thorough responses to all requests for information on the French civil and criminal justice systems, and inner-workings of the Judiciary and Ministry of Justice.

(2) Spanish Central Authority (SCA): Personnel from the USCA and the SCA have had meetings twice during the last 12 months to share our respective expertise with each other. Two representatives from the USCA, as well as two U.S. judges, gave presentations to audiences, including the SCA, Spanish Judiciary, and Spanish judges in January 2006.

(3) Mexican Central Authority (MCA): The USCA and the MCA held a judicial and law enforcement training conference with authorities from both countries, following on from our first joint training program held in Mexico City in 2003. Recent joint judicial training programs were held in Michoacan, Mexico (Sept. 2005), Jalisco, Mexico (April 2006), and Ensenada, Mexico (June 2006).

(4) Joint Seminar in Israel: We held our first joint judicial seminar on international child abduction in Tel Aviv in March 2006. The US-Israeli Joint Seminar on the Hague Abduction Convention, co-sponsored by the U.S. Embassy and the Israel Ministry of Justice, was very successful. The GOI expressed hope that a similar seminar may be held in Washington, D.C., co-sponsored by CA and the Israeli Embassy.

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Uruguay – Uruguay :

Se mantiene una fluida comunicación con otras Autoridades Centrales, vr.gr., tales las de Argentina, España, etc.

2. Court proceedings – Procédures judiciares

Question 6	
Do you have any special arrangements whereby jurisdiction to hear return applications is concentrated in a limited number of courts or judges? Are such arrangements being contemplated?	**Votre Etat a-t-il mis en place une structure spéciale pour concentrer les demandes de retour d'enfants auprès d'un nombre limité de tribunaux ou de juges ? Votre Etat envisage-t-il la mise en place d'une telle structure ?**

Argentina – Argentine :

No se han realizado acuerdos en este sentido, pero por una cuestión de especialización en la materia, entienden en estos procedimientos los Juzgados y Tribunales de Familia. En el caso que no hubiera ninguno de ellos en la Jurisdicción competente, intervendrán los Juzgados Civiles.

Australia – Australie :

Whilst jurisdiction to deal with proceedings instituted under the Convention Regulations is invested in the Family Court of Australia and the Family Court of Western Australia as well as the various courts of summary jurisdiction, as a matter of practice Convention applications are not dealt with by courts of summary jurisdiction.

In practice, jurisdiction is already restricted to the Family Court of Australia and the Family Court of Western Australia.

Austria – Autriche :

Since 2005 the competence for cases concerning the return of a child is concentrated in the district courts (Bezirksgericht - BG) in the city of the court of appeal. This does not include applications for access (Art. 21), which are dealt by all District Courts (approx. 100).

Return orders have to be dealt by the following (16) district courts:

Burgenland	BG Eisenstadt
Kärnten	BG Klagenfurt
Niederösterreich	BG Korneuburg, Krems, St.Pölten and Wr.Neustadt
Oberösterreich	BG Linz, Ried, Steyr and Wels
Salzburg	BG Salzburg
Steiermark	BG Graz and Leoben
Tirol	BG Innsbruck
Vorarlberg	BG Feldkirch
Wien	BG Innere Stadt Wien.

Canada – Canada :

Ontario

In Ontario, all levels of court (Ontario Court of Justice, Superior Court of Justice, Superior Court of Justice [Family Court]) can hear and decide on a Hague Convention matter. There are no special arrangements with respect to concentrating return applications in a limited number of courts or judges being contemplated currently.

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Saskatchewan
In Saskatchewan, Hague return applications are family law matters, and accordingly are only heard in the Family Law Division of our Court of Queen's Bench. There are (13) judges appointed to the Family Law Division. Family law matters are ordinarily heard by family law judges, although there are occasions when a Queen's Bench judge who is not a designated family law division judge will hear family law matters. For more information, go to http://www.sasklawcourts.ca/default.asp?pg=qb_family_law_info.

Quebec
No. Section 6 of *An Act respecting the civil aspects of international and interprovincial child abduction* (R.S.Q., v. A-23.01), the statute which applies the Hague Convention in Quebec, states that the Superior Court is the competent judicial authority for Quebec regarding the hearing of applications for the return of a child. There are 43 Superior Courts in Quebec and 184 judges (including 41 supernumerary judges) likely to hear return applications.

The Court of Appeal has two chief places [the terms "chief place" and "chief-place" both appear in Quebec statutes – TR.]: Quebec City and Montreal. The Court's 20 judges (plus a few supernumerary judges) are likely to hear appeals from Superior Court decisions.

All of these judges are likely to hear return applications at trial or on appeal. It bears noting, however, that 85% of applications are heard in Montreal, which considerably reduces the pool of judges likely to be assigned to hear a return application. While the need has apparently not yet arisen, there is nothing to stop the chief justices of the Superior Court and the Court of Appeal from designating a small number of judges to hear cases of this type.

Manitoba
Yes. Manitoba's Unified Family Court, the Court of Queen's Bench (Family Division), hears all requests for return at first instance. The Family Division of the Court of Queen's Bench consists of Judges who specialize in the area of family law and are familiar with decisions respecting the Convention.

Alberta
There are some Alberta Queen Bench justices that have assumed responsibility for Hague matters.

Nova Scotia
In Nova Scotia, Hague Convention matters are heard in either Supreme Court (Family Division) which is a unified court or in Family Courts throughout the Province. In most instances, it is the Unified Family Court that hears the matter, so we do in essence have a concentrated or limited number of courts and judges who hear these types of matters. This has simply evolved out of practice as opposed to any deliberate arrangements being made.

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Ontario
En Ontario, tous les tribunaux (Cour de justice de l'Ontario, Cour supérieure de justice, Cour supérieure de justice [Cour de la famille]) peuvent entendre et trancher les affaires relevant de la Convention. On n'envisage pas à l'heure actuelle la mise en place d'une structure spéciale pour concentrer les demandes de retour auprès d'un nombre limité de tribunaux ou de juges.

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Saskatchewan
En Saskatchewan, les demandes de retour relevant de la Convention de La Haye sont des affaires de droit de la famille, et elles sont donc entendues uniquement par la Division du droit de la famille de la Cour du Banc de la Reine. On compte treize (13) juges nommés à la Division du droit de la famille. Les affaires de droit de la famille sont habituellement entendues par les juges affectés au droit de la famille, mais il arrive à l'occasion qu'un juge de la Cour du Banc de la Reine qui n'est pas un juge désigné de la Division de la famille entende des affaires de droit de la famille. Pour plus de renseignements, consulter le site Web à l'adresse
http://www.sasklawcourts.ca/default.asp?pg=qb_family_law_info.

Québec
Non. La *Loi sur les aspects civils de l'enlèvement international et interprovincial d'enfants* (L.R.Q., c. A-23.01), la loi de mise en vigueur de la Convention de La Haye au Québec, prévoit à son article 6 que la Cour supérieure est, pour le Québec, l'autorité compétente pour entendre une demande de retour de l'enfant. Il y a 43 Cours supérieures au Québec et 184 juges (incluant 41 juges surnuméraires) qui sont susceptibles d'entendre une telle demande.

La Cour d'Appel a deux chefs-lieux, Québec et Montréal. Les 20 juges de la Cour (plus les quelques juges surnuméraires) sont susceptibles d'entendre les appels d'une décision de la Cour supérieure.

Tous ces juges sont susceptibles d'entendre une demande de retour, en première instance ou en appel. Par contre, il faut dire que 85% des demandes sont entendues dans le chef-lieu de Montréal ce qui, par le fait même, réduit considérablement le bassin de juges susceptibles d'être désignés pour entendre une telle demande de retour. Bien que le besoin ne semble pas s'être fait sentir à ce jour, rien ne s'opposerait à ce que les juges en chef de la Cour supérieure et de la Cour d'appel identifient un nombre restreint de juges pour entendre les dossiers de ce genre.

Manitoba
Oui, la Cour unifiée de la famille du Manitoba, savoir la Cour du Banc de la Reine (Division de la famille), entend toutes les demandes de retour en première instance. La Division de la famille de la Cour du Banc de la Reine se compose de juges qui se spécialisent dans le domaine du droit de la famille et qui sont bien au fait des décisions relatives à la Convention.

Alberta
Il y a certains juges de la Cour du Banc de la Reine en Alberta qui ont pris en charge les affaires relevant de la Convention de La Haye.

Nouvelle-Écosse
En Nouvelle-Écosse, les affaires relevant de la Convention de La Haye sont entendues soit par la Cour suprême (Division de la famille), qui est un tribunal unifié de la famille, ou dans les Tribunaux de la famille partout dans la province. Dans la plupart des cas, c'est le Tribunal unifié de la famille qui entend l'affaire; ainsi, il y a dans les faits en Nouvelle-Écosse un nombre restreint de tribunaux ou de juges qui entendent ces types d'affaires. C'est le résultat de la pratique plutôt que de la mise en place délibérée d'une structure spéciale.

Chile – Chili :

Al ser asuntos relacionados con niños, los casos de sustracción y visitas deben ser vistos por los Tribunales de Familia del domicilio del niño. Pero no están limitados a un número determinado de tribunales o jueces.

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China (SAR Hong Kong) – Chine (RAS Hongkong) :

Child abduction cases are dealt with at the Court of First Instance of the High Court of HKSAR.

The relevant Hong Kong legislation restricts jurisdiction to the High Court. Accoridngly, at the first instance, only a High Court judge may hear an application for the return of a child. Only those judges with family law experience are allocated cases under the Convention. Two judges have been assigned to hear urgent preliminary applications under the Convention. All substantive hearings are restricted to those two judges or in case they are not available, other judges in the High Court with family law experience. In short, all Hague Conventions cases are dealt with in one court by a small pool of experienced judges.

China (SAR Macao) – Chine (RAS Macao) :

There is no special arrangement whereby jurisdiction to hear return applications is concentrated in a limited number of courts. However, Law 9/2004, modifying and complementing the Law on the Basis of the Organization of the Judicial, created First Instance Courts specialised in family and minors issues.

Colombia – Colombie :

No existe acuerdo especial en ese sentido, sin embargo, por disposición legal, los asuntos de familia son conocidos por una jurisdicción especial con un número limitado de Jueces, que entre otros asuntos, están facultados para decidir sobre las solicitudes de retorno y regulación internacional de visitas reguladas por el Convenio de conformidad con la Ley 1008 de 2006, ley que fue elaborada con el soporte técnico y jurídico del ICBF.

Costa Rica – Costa Rica :

Sí. De acuerdo con regulaciones internas del Poder Judicial de la República de Costa Rica, al Juzgado de Niñez & Adolescencia le compete conocer y resolver en primera instancia la totalidad de los asuntos vinculados con esta materia. Y al único Tribunal Superior de Familia del país, le compete revisar en segunda instancia lo resuelto por ese juzgado, con ocasión de los recursos de apelación. Ambos órganos jurisdiccionales están centralizados en el denominado Primer Circuito Judicial de San José, situado en la capital de la República.

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Cyprus – Chypres :

These cases are heard by judges of the Family Courts depending in which district the abductor or the child reside. So these cases are concentrated in a limited number of courts or judges.

Czech Republic – République tchèque :

No.

Denmark – Danemark :

In Denmark applications for return are dealt with by the Civil Courts in first instance. There are 82 Civil Courts in Denmark.

If a decision made by the Civil Court is appealed, the High Court will deal with the case. We have two divisions of the High Court in Denmark, a western and an eastern division.

It is possible to apply for permission to get the case tried in the third instance, which is the Supreme Court. We have not had any examples of cases where permission has been granted.

Ecuador – Equateur :

La Administración de Justicia Especializada de la Niñez y Adolescencia está conformada por los Juzgados de Niñez y Adolescencia y son ellos los competentes para ocuparse de las solicitudes de restitución internacional en primera instancia, competencia que se radica por sorteo.

De presentarse apelación a la resolución del Juez de Niñez y Adolescencia, por sorteo conoce una de las Salas Especializadas de la Niñez y Adolescencia de la Corte Superior.

No hay ninguna disposición en virtud de la cual se limite a un número de jueces la competencia en casos de restitución internacional.

El Salvador – El Salvador :

Aunque no existe un acuerdo oficial, en atención a la naturaleza y derechos resguardados en el convenio, su aplicación en El Salvador debe ser efectuada por los Jueces de Familia, lo cual hasta el momento no ha presentado objeción alguna.

Finland – Finlande :

At first instance, only one court, Helsinki Court of Appeal, has jurisdiction to make decisions on international child abduction. Moreover, handling of return cases has been concentrated to a handful of judges within the court. These arrangements have proved to be very advantageous in terms of uniform application and better understanding of the Convention.

France – France :

La loi du 4 mars 2002 relative à l'autorité parentale prévoit désormais, en matière de déplacement international d'enfants, la spécialisation des magistrats en charge de ce contentieux, ainsi que la compétence d'un seul tribunal par Cour d'Appel.

Greece – Grèce :

There are family sections in the First Instance and Appeal Courts in Athens, Piraeus and Thessalonica.

Guatemala – Guatemala :

Actualmente se encuentra como juez enlace la Sala de Apelaciones de Niñez y Adolescencia, sin embargo a nivel de la Republica de Guatemala, los jueces de Familia y los jueces de Niñez y Adolescencia puede conocer del caso en concreto y ordenar las medidas cautelares urgentes como la restitución del niño a su país de origen, en virtud de una resolución judicial vigente en que se demuestre que ese niño se encuentra bajo la custodia legal de la persona que esta presentando la denuncia.

Iceland – Islande :

In Iceland we have a two level court system with 8 district courts (38 judges), hearing both civil and criminal cases, and a Supreme Court (9 judges). According to law return applications are dealt with by any of the 8 district courts in first instance, subject to geographical jurisdiction (venue) over the person allegedly wrongfully removing or retaining a child. Within each court any number of judges may be called to hear Hague return cases, except in the Capitol court of Reykjavik, where there are 21 judges,

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6 specialising in criminal law and 15 on civil law.[1] There has been no official discussion on concentrating jurisdiction, in law, either by limiting the number of courts or judges hearing such cases, but in practice Hague cases are dealt with by a limited number of judges, according to decision by the heads of each court.[2]

Appeals may be lodged with the Supreme Court within 2 weeks following a district court's ruling on a case.

Judicial training or briefing has not been made available for judges concerned in Hague proceedings, whereas there is no educational programme established within the court system and funding for judicial training is limited. However, the appointed liaison judge has written an unofficial „Guide to Good Practice", available to all judges, and can also be approached for any general information on the Convention, literature, designated contacts in other countries etc.

Ireland – Irlande :

The Child Abduction and Enforcement of Custody Orders Act 1991, which gives the force of Law in Ireland in Ireland to the 1980 Convention, confines jurisdiction in Hague Convention matters to the High Court. This is the only level of jurisdiction at first instance for Hague cases. The statutory maximum number of judges in the High Court is 26. In practice, only a limited number of High Court judges deal with Hague cases on a regular basis. Appeals from the decisions of the High Court in Hague Convention cases lie to the Supreme Court. There are a total of eight judges in the Supreme Court.

Israel – Israël :

Section 6 of the Hague Convention Law (Return of Abduction Children) 1991 provides that the court with jurisdiction under that law is the Family Court. There are 10 Family Courts throughout Israel, with approximately 30 Judges who have special training in family law matters. While theoretically any of these judges may hear Hague Convention cases, in practice some courts seem to assign cases to a small group of judges. Most cases are heard in the three major cities in Israel. The Central Authority has been discussing the idea of having the cases concentrated in a particular court with specialist judges to hear the cases, however this is at the very preliminary stage of discussions and would require legislative amendments.

A decision of the Family Court can be appealed to the District Court. There are 5 District Courts in Israel, made up of approximately 100 judges. Appeals are heard by a panel of three judges, one of whom is a family law specialist. In the larger cities, the panels are often made up of judges who are experienced in Hague Convention cases. In order to appeal a District Court decision to Israel's highest court, the Supreme Court, an application for leave must be filed. If leave is granted, the appeal is heard by a panel of three Supreme Court justices.

Italy – Italie :

Toutes les procédures judiciaires italiennes relèvent, de par la loi, du ressort des Tribunaux pour Enfants, saisis par les Procureurs desdits Tribunaux. La compétence est en tout cas territoriale : le Tribunal pour Enfants compétent est celui du lieu où l'enfant a été conduit.

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[1] As for the other district courts, 4 have only one judge, 2 have three judges each and 1 has the number of seven.
[2] Obviously, this dose not apply to the one-man/one-woman courts.

Latvia – Lettonie :

Presently, cases under Convention are heard at the Courts based on the place of residence of plaintiff or respondent. However we would like to notice that in the practice of our Courts there is only one case which presently (July, 2006) is in the process at the Court of Appeal.

We would like to notice that in Latvia there is law draft prepared "Amendments in the Civil Process Law" (Article 644.[7] and 644.[14]) what is accepted at the parliament (Saeima) in 2nd reading. This law draft prescribes that applications in the cases regarding child abduction or detention to/in the foreign country will be submitted to the district (city) Courts on the basis of place of residence of applicant or on the basis of child's place of residence before abduction or detention. Applications in the cases regarding child abduction or detention to/in the Latvia will be submitted to the district (city) Courts on the basis of places of residence of a child before abduction or detention or on the basis of place of residence or location of a person who abducted/retained child. If there is not known place of residence or location of person who abducted/retained child than application would be submitted to the Riga Centre District Court.

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Lithuania – Lituanie :

According to the Ministry of Justice, general rules apply at present and there are no plans to establish specialisation of courts and judges. It should be noted, however, that at many district courts of the Republic of Lithuania there are judges specialising in family and juvenile cases as such cases require special knowledge and qualifications.

Malta – Malte :

In Malta, cases of international child abduction are heard by the Family Court. This particular court is currently made up of two judges, and thus return applications are distributed between and heard by these two judges.

Mexico – México :

No, y no estamos en condiciones de llegar a acuerdos de esta naturaleza, la competencia en nuestro país se determina por territorio, es decir, en los asuntos de sustracción de menores será competente el Juez del lugar donde el se presume se encuentra el menor, ya que ahí podrá ser requerido judicialmente sobre el cumplimiento de la obligación, es decir, la entrega del menor.

Monaco – Monaco :

Cette question est sans objet pour la Principauté de Monaco où seul un juge est compétent dans les affaires d'enlèvement international d'enfants et il n'y a qu'un seul tribunal.

Netherlands – Pays-Bas :

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

It is the same court which would be competent in other family proceedings with respect to the same parents and child, if those proceedings were instituted.

New Zealand – Nouvelle Zélande :

No. Since 1981 New Zealand has a specialised Family Court as a division of New Zealand's District Court. The Family Court is made up of 66 Courts and approximately 40 Judges. Applications are heard in the court where they are filed. As the bench is quite small no consideration is being given to limit the number of judges or courts that deal with Hague matters.

Nicaragua – Nicaragua :

La Resolución No 2-2005, del Consejo Nacional de Atención y Protección Integral a la Niñez y la Adolescencia, (CONAPINA), del 4 de Octubre del año dos mil cinco, establece que en la tramitación de dichas solicitudes, la Secretaria Ejecutiva del Consejo, coordinará sus acciones con lo demás miembros del mismo y demás autoridades Gubernamentales, y velara por cumplir con los principios del Interés Superior del Niño y la Niña, igualdad y no discriminación, protección, formación integral y participación consignados en la Convención Internacional de los Derechos del Niño y en el Código de la Niñez y la Adolescencia, y se designa al Ministerio de la Familia, como Autoridad Administrativa competente, para emitir las decisiones sobre las solicitudes de Restitución Internacional de niños.

Panama – Panama :

Por mandato de ley, es competencia de los Juzgados de Niñez y Adolescencia atender todos los asuntos que guarde relación con menores de edad que no este atribuido expresamente a otra autoridad (Artículo 754 numeral 6 del Código de la Familia). Como los procesos de Restitución Internacional guardan relación como medidas de protección en favor de los menores de edad son atribuidas a esta Jurisdicción, sumando el hecho que por vía jurisprudencial ha sido confirmada nuestra competencia (Fallo del 23 de mayo de 1991 CSJ y 11 de septiembre de 1997).

Paraguay – Paraguay :

No existe un acuerdo especial La ley 1680/01 en su Art. 169 señala "De la competencia territorial". "La competencia territorial estará determinada por el lugar de residencia habitual del niño o adolescente".

Poland – Pologne :

It is within the competence of the Polish District Courts as the first instance courts to hear the applications for return of a wrongfully removed child to Poland under the Hague Convention. All the Polish District Court have jurisdiction over such cases. Concentrating the jurisdiction to hear the cases under the Hague Convention in a limited number of Polish District Courts has not been contemplated by the Polish Authorities so far.

Portugal – Portugal :

Yes, in Portugal this matter concerns to the Family and Minors Court, by law (Decree-Law No 246-A/2001 of September 14).

Romania – Roumanie :

Yes. According to Law No 369/2004 regarding the implementation of the Convention on the Civil Aspects of International Child Abduction, adopted in The Hague on 25 October 1980, to which Romania subscribed in 1992, the legal proceedings concerning the requests for returning the children take place in two stages: the first instance trial and the appeal. All legal disputes generated by the application of the Hague Convention of 1980 on civil aspects of international child abduction shall concentrate in only one court:

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the Tribunal of Bucharest; appeals against the rulings of the Bucharest Tribunal shall be judged by the Bucharest Court of Appeal.

Slovakia – Slovaquie :

No, in the Slovak Republic all district courts are competent to hear cases under the Convention.

South Africa – Afrique du Sud :

Presently no such arrangements are in place. The High Court of South Africa, by virtue of its status as upper guardian of all minor children within its jurisdiction, adjudicates on applications.

Spain – Espagne :

Actualmente no existe en España acuerdo alguno especial en virtud del cual se concentre la competencia para conocer de los casos de sustracción internacional de menores en un número limitado de jueces y tribunales, ni en las previsiones legislativas actuales se ha concretado tal posibilidad, muy demandada por sectores de la doctrina científica española. En España y conforme al Art. 1902 de la Ley de Enjuiciamiento Civil, aprobada por Real Decreto de 3 de febrero de 1881, y tras la modificación operada por la Ley Orgánica 1/1996, de 15 de enero, tiene competencia para examinar estas solicitudes el Juez de Primera Instancia, o de Familia en su caso, en cuya demarcación judicial se halle el menor que ha sido objeto de un traslado o retención ilícitos. Contra la decisión en forma de Auto judicial que adopte el Juez de Primera Instancia, solo cabra recurso de apelación para ante la Audiencia Provincial correspondiente y en un solo efecto, que deberá resolverse en el improrrogable plazo de 20 días. A la vista de lo ya indicado, aclarar que los Juzgados de Primera Instancia se enmarcan a lo largo del territorio español dentro de cada partido judicial, que es la unidad territorial integrada por uno o más municipios limítrofes, pertenecientes a una misma provincia, pudiendo coincidir con la demarcación provincial. Por lo tanto, existe un gran número potencial de órganos judiciales que pueden juzgar estos casos. Las Audiencias Provinciales en España, tienen su sede en la capital de cada provincia de la que toman su nombre y tienen jurisdicción en toda la provincia

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Sweden – Suède :

Child abduction cases demand special knowledge of the substance of the Convention, and in foreign legislation. To make sure that the interpretation of the Convention is similar, there is much to suggest that the trial of cases regarding child abduction takes place in one designated court.

Since first of July 2006, the Stockholm City Court is the only authorized Court to hear return applications. The appellate Court will be the court of Appeal (also in Stockholm), whose judgment can be appealed to the Supreme Court, if the Supreme Court gives leave to appeal.

It is only family judges that hear cases regarding child abduction, but there is no limited numbers of family judges who have been appointed in hearing these cases.

Switzerland – Suisse :

A la suite de quelques cas d'enlèvements douloureux et d'interventions parlementaires, le Gouvernement suisse vient d'élaborer une loi d’application prévoyant la création d’une telle structure; ce projet de loi suit les étapes de la procédure interne avant d’être soumise au Parlement fédéral.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

Jurisdiction is limited to the Supreme Civil Court in Scotland.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

Yes.

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

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

United States – Etats Unis :

The U.S. implementing legislation, International Child Abduction Remedies Act, 42 U.S.C. 11601 – 11610 (ICARA) grants concurrent jurisdiction to state and federal courts. Currently, Hague return applications are not limited to particular judges or courts. In our federal system, family law cases are traditionally heard in State or local courts, and many Convention cases are heard in state-level courts. The USCA, as a part of the executive branch of the government, lacks the authority to limit the number of courts or judges hearing Hague cases under the doctrine of "separation of powers."

Uruguay – Uruguay :

De acuerdo a la normativa aplicable, las solicitudes de restitución internacional provenientes del extranjero son remitidas a la Justicia Letrada de Instancia con competencia en materia de Familia del lugar donde se encuentre el menor, determinándose el turno del Juez actuante en base a la fecha de libramiento del pedido de restitución. Existe sin embargo alguna iniciativa a nivel del Poder Judicial para conferir competencia en el tema a cierto número de Juzgados especializados.

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Question 7	
What measures exist to ensure that Hague applications are dealt with promptly (Article 7) and expeditiously (Article 11)? In particular: **a) Are there set timetables at both trial and appellate level to ensure the speedy determination of return applications?** **b) What special measures / rules exist to control or limit the evidence (particularly oral evidence) which may be admitted in Hague proceedings?**	**Quelles mesures ont été mises en place afin d'assurer que les demandes en relation avec la Convention de La Haye soient traitées rapidement (article 7) et en urgence (article 11) ? Notamment :** **a) Les procédures tant de première instance qu'en appel sont-elles encadrées dans des délais particuliers pour garantir le traitement rapide des demandes de retour ?** **b) Quelles mesures / règles spéciales existe-t-il pour contrôler ou limiter les preuves (notamment orales) pouvant être admises dans une procédure relevant de la Convention de La Haye ?**

Argentina – Argentine :

En todos los casos, en nuestro carácter de Autoridad Central, se envía una nota al Tribunal que interviene y se le explica la necesidad de aplicar el procedimiento más urgente que exista de acuerdo al Código Prcesal que se aplique. Puede ser el proceso sumarísimo, o una medida cautelar. Lamentablemente en muchas casos los Juzgados utilizan procedimientos ordinarios y esto acarrea demoras.

No existen cronogramas establecidos para tomar decisiones, pero se hace hincapié en el plazo de seis semanas contenido en el artículo 11 del Convenio. Tampoco existen disposiciones especiales para limitar las pruebas, siendo los jueces quienes determinarán si se abre a prueba o no la causa, y en su caso, cuales son las pruebas admisibles.

Australia – Australie :

The obligation to act promptly and expeditiously is reflected in Subregulations 15(2) and (4) of the Family Law (Child Abduction Convention) Regulations. Subregulation 15(2) provides that a court must, so far as practicable, give to an application such priority as will ensure that the application is dealt with as quickly as a proper consideration of each matter relating to the application allows.

Regulation 15(4) provides:

> (4) If an application made under regulation 14 is not determined by a court within the period of 42 days commencing on the day on which the application is made:
> (a) the responsible Central Authority who made the application may request the Registrar of the court to state in writing the reasons for the application not having been determined within that period; and
> (b) as soon as practicable after a request is made, the Registrar must give the statement to the responsible Central Authority."

In turn, Regulation 14 provides for the making of applications to the court for the following orders:

> "(1) In relation to a child who is removed from a convention country to, or retained in, Australia, the responsible Central Authority may apply to a court in accordance with Form 2 for:
> (a) an order for the return of the child to the country in which he or she habitually resided immediately before his or her removal or retention; or
> (b) an order for the issue of a warrant for the apprehension or detention of the child authorising a person named or described in the warrant, with such assistance as is necessary and reasonable and if necessary and reasonable by force, to:
> (i) stop, enter and search any vehicle, vessel or aircraft; or
> (ii) enter and search premises;
> if the person reasonably believes that:
> (iii) the child is in or on the vehicle, vessel, aircraft or premises, as the case may be; and
> (iv) the entry and search is made in circumstances of such seriousness or urgency as to justify search and entry under the warrant; or
> (c) an order directing that the child not to be removed from a place specified in the order and that members of the Australian Federal Police are to prevent removal of the child from that place; or
> (d) an order requiring such arrangements to be made as are necessary for the purpose of placing the child with an appropriate person, institution or other body to secure the welfare of the child pending the determination of an application under regulation 13; or

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(e) any other order that the responsible Central Authority considers to be appropriate to give effect to the Convention."

In particular:

a) Because of the small number of Judicial Officers involved and the high profile nature of Convention proceedings, the Court is extremely conscious of the urgency issues involved in Hague proceedings and generally endeavours to provide to such proceedings as much priority as the court lists will allow and as the due process requirements can tolerate.

Generally, it means that holding orders can be made on the same day the application is made and that a hearing for return can be fully determined within 2 or 3 weeks of the parties both first appearing before the court.

If an appeal is then instituted, every endeavour is made to obtain the earliest possible hearing date, which, subject to the logistics of the preparation of the necessary documents for the appeal books, could be as early as one week after the appeal has been filed, but would generally likely to be within one or two months of that time. Depending then on the complexity of the issues raised and other pressures on the members of the appeal court, a judgment can either be delivered on an *ex tempore* basis immediately upon the conclusion of the hearing or within several days after the matter has been heard. In some cases, however, because of complexity, as well as other obligations of the judicial officers involved, the delivery of judgment is delayed for several weeks or, on rare occasion, a few months. Unfortunately, appeals to the High Court are more time consuming.

b) Regulation 29 of the Convention Regulations provides for the admissibility of an application, attachments to, and other documents forwarded in support of, that application as evidence of the facts stated in the application or document. In addition, affidavits of witnesses outside Australia are admissible despite non-attendance for cross-examination.

In *Regino and Regino* (1995) FLC 92-587, Lindenmayer J commented on the difficulty the court faced in Hague matters in deciding matters on the documents alone. He said:

> The resolution of the crucial factual issue in this case, which I have earlier identified, essentially involves a determination by me of the relative credibility of the parties' conflicting accounts of the events immediately preceding the wife's departure from the United States with M on 25 November 1993...
>
> Before attempting that resolution, it is appropriate to acknowledge that it is particularly difficult for any court to resolve contested issues of fact on the basis of affidavit evidence only where the court does not have the opportunity, which the taking of viva voce evidence provides, of seeing and hearing the witnesses give their evidence and thus being able to assess their credibility in the light of their demeanour and general consistency, particularly when subjected to a searching cross-examination in the forensic context. Nevertheless, in a case such as this, where, by the very nature of the proceedings, one of the parties resides overseas, and it is therefore impracticable to secure his or her attendance before the court to give oral testimony, the court must necessarily undertake that difficult task and do the best it can to resolve the factual issues upon the material which is before it. In doing so, I believe that the court must be cautious not to unfairly disadvantage the absent party by presumptively giving greater credit to the testimony of the other party who happens to be within the jurisdiction and before the court.

The Full Court in *Hanbury-Brown and Hanbury-Brown,* (1996) FLC 92-671 at 82,947 was critical of the fact that "everyone involved in those proceedings lost sight of the intended

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summary nature of the proceedings and both the husband and the wife (the latter of whom attended the hearing from the United States) were subjected to quite substantial cross-examination, as indeed were the deponents to two other affidavits read in the proceedings. As a consequence, the hearing extended over 2 full sitting days of the Court. This Court has said previously (*e.g.* in *Gazi & Gazi* (1993) FLC 92-341 at 79,623) that in most cases arising under the Convention, cross-examination of deponents to affidavits is not appropriate. The Courts of the United Kingdom have adopted a similar approach: see In *Re F* (minor: abduction: rights of custody abroad) [1995] 3 All ER 641 at 647-8, per Butler-Sloss, LJ, citing In Re F [1992] 1 FLR 548 at 553-4. We do not regard this case as having warranted such a substantial departure from that general rule as in fact occurred."

Austria – Autriche :

a) No strict timetables are set. All cases have to be dealt as fast as possible. If no decision is possible within 6 weeks, the court has to report the reasons to the CA.

b) As all cases concerning children's rights are ruled by the principle of full examination, Austrian law cannot establish any rules limiting the evidence (although the time limit may work as an indirect limitation of taking evidence).

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Canada – Canada :

a) Ontario
Although there are no set timetables, all levels of courts in Ontario recognize the importance of dealing with Hague matters in a prompt and timely manner. The Ontario Central Authority deals closely with all Ontario courts to encourage that Hague Applications are dealt with expeditiously within the spirit and intent of the Hague Convention. While conventional family law matters must adhere to certain disclosure requirements and timetables, there are no such restraints on Hague Applications. Hague Applications are also given special consideration in terms of scheduling in priority to conventional family law matters.

Saskatchewan
Our judges are aware of the importance of hearing return applications quickly. Although there are no specific time limits set out in our Rules of Court, the Rules do limit the ability of a party to seek adjournments (which could otherwise drag out the proceedings.) Once a judgment is rendered by the Court of Queen's Bench, a party wishing to appeal the decision has 30 days in which to file a Notice of Appeal.

New Brunswick
The Family Division has always treated both Hague applications and child protection matters as
being pressing and urgent. As such, priority is given to hearing such cases to the point of displacing other civil matters.

Quebec
Section 6 of *An Act respecting the civil aspects of international and interprovincial child abduction* states that the Superior Court is the competent judicial authority for Quebec regarding the hearing of applications for the return of a child. Section 27 of the Act specifically requires the Superior Court to reach a decision within six weeks from the date of commencement of the judicial proceedings; however, the Act is silent on the period within which a decision on an appeal must be made.

Section 19 of the Act states that any judicial proceedings for the return of a child have precedence over all other matters as provided in article 861 of the *Code of Civil Procedure* for *habeas corpus* proceedings. Article 861 CCP states that *habeas corpus* proceedings have precedence over all other matters, both before the Superior Court and before the Court of Appeal.

Once the return application is filed, counsel for the parties and counsel for the Attorney General of Quebec, representing the Central Authority for Quebec, contact the chief justices in each chief place so that a hearing can be scheduled as quickly as possible, bearing in mind the court calendar and the number of days it will take to hear the matter. As a rule, a hearing can be held within four to six weeks.

A parent who wishes to appeal a lower-court decision has 30 days to file an appeal. Then, in theory, each party is required to submit a factum to the court and a hearing date is set as soon as the case is ready to be heard. In practice, however, the parties usually agree to proceed without formal factums, which enables the chief justice to strike a panel of judges that will hear the appeal as soon as the parties are ready to proceed. It normally takes only a few days for the parties to prepare the documentation required for the hearing.

A trial decision ordering a child returned to the state of habitual residence is sometimes enforced notwithstanding any appeal. A parent who wishes to appeal that decision must then ask the Court of Appeal to suspend enforcement of the decision to return until the appeal is heard and a ruling is made.

A parent can also appeal a Court of Appeal decision to the Supreme Court of Canada. However, the parent must obtain leave from the Supreme Court, and the application for leave must be filed within 60 days following the date of the Court of Appeal decision. Once again, if the decision ordering the child returned is enforced notwithstanding any appeal, the parent filing the appeal will have to ask the Court of Appeal to suspend enforcement of the decision pending a ruling by the Supreme Court of Canada. The Act does not set a deadline by which the Supreme Court of Canada must make a decision.

In practice, however, child abduction cases usually proceed as quickly in the Supreme Court of Canada as in the trial and appellate courts. For example, in Thomson *v.* Thomson, [1994] 3 S.C.R. 551, barely 11 months passed between the time the application for return of the child was filed (February 25, 1993) and the Supreme Court of Canada made a ruling (delivered from the bench on January 26, 1994) upholding the order to return. In one Quebec case (R.D.M. *v.* M.B.G.A.), 11 months passed between the trial decision (January 7, 2004) and the Supreme Court of Canada ruling (December 2, 2004) refusing to hear the matter.

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<u>Manitoba</u>
In Manitoba requests for return proceed by way of Notice of Application with affidavit evidence in support. The Court recognizes the urgency of these cases and the specific exceptions to return that exist and can direct the expeditious handling of cases, including limitations on pre-hearing cross-examinations / discovery.

<u>Alberta</u>
Alberta Courts at all levels will expedite matters involving children when asked to do so and have on occasion initiated that approach.

<u>Nova Scotia</u>
When a Hague application comes before the Court, they attempt to deal with it as expeditiously as possible. However, as with all other applications before the court, they are processed in accordance with the governing court rules and Judges have the discretion to "run" their cases as they wish. This includes timing as well as what evidence and in what form it can be presented during the course of the proceedings.

b) <u>Ontario</u>
There are no Hague specific rules with respect to controlling or limiting evidence admissible in court. This is left to the discretion of the judge to determine what evidence they consider admissible. The Ontario courts mainly rely on affidavit, rather than oral evidence, although there are cases in which oral evidence is adduced.

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Saskatchewan
There are no special rules in place with respect to Hague proceedings. The general test of admissibility is relevance of the evidence. Our courts have ordinarily relied on affidavit evidence rather than oral testimony.

New Brunswick
Because the judiciary feels compelled to strictly follow the Hague Convention as enacted in New Brunswick in the form of the International Abduction of Children Act, there has been no need to create special rules or measures to control the limits of evidence which may be admitted in Hague proceedings.

Quebec
There are no special rules for applying the Hague Convention. The rules of evidence applicable in Quebec courts are the rules set out in the *Civil Code* and the *Code of Civil Procedure*; it is the responsibility of the judge hearing an application for return of a child to control or limit evidence in respect of those rules. In principle, hearsay evidence is not admitted; however, under Article 14 of the Hague Convention (and section 28 of the statute implementing the Hague Convention in Quebec), in ascertaining whether there has been a wrongful removal or retention, the courts can directly consider the law of and judicial or administrative decisions recognized in the foreign State without following the specific procedures for the establishment of proof under that law or the recognition of foreign decisions which would otherwise be applicable.

We recognize as burden of proof the burden generally recognized by the applicable international case law.

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**

a) Ontario
Bien qu’il n’y ait pas d’échéancier établi, tous les tribunaux en Ontario reconnaissent l’importance de traiter rapidement et en urgence les affaires relevant de la Convention de La Haye. L’Autorité centrale de l’Ontario travaille étroitement avec les tribunaux de l’Ontario pour encourager le traitement rapide des demandes relevant de la Convention de La Haye en conformité avec l’esprit et le but de la Convention. Tandis que les affaires ordinaires de droit de la famille sont assujetties à certaines exigences en matière de communication de la preuve et à certains échéanciers, les demandes relevant de la Convention de La Haye ne sont soumises à aucunes contraintes semblables. Les demandes relevant de la Convention de La Haye sont aussi inscrites aux rôles en priorité par rapport aux affaires ordinaires de droit de la famille.

Saskatchewan
Nos juges sont conscients de l’importance d’entendre rapidement les demandes de retour. Bien que nos règles de cour ne prévoient aucuns délais spécifiques, ces règles limitent la capacité d’une partie de demander des ajournements (qui feraient traîner les procédures en longueur). Une fois qu’un jugement est rendu par la Cour du Banc de la

Reine, la partie qui souhaite interjeter appel de la décision a 30 jours pour déposer un avis d'appel.

Nouveau-Brunswick
La Division de la famille a toujours traité tant les demandes relevant de la Convention de La Haye que les affaires de protection de l'enfance à titre pressant et urgent. À ce titre, on accorde la priorité à l'audition de ces causes, en reportant au besoin l'audition d'autres affaires civiles.

Québec
La Loi sur les aspects civils de l'enlèvement international et interprovincial d'enfants prévoit à son article 6 que la Cour supérieure est, pour le Québec, l'autorité compétente pour entendre une demande de retour de l'enfant. L'article 27 de cette même loi impose implicitement à la Cour supérieure de statuer sur la demande de retour d'enfant dans un délai de six semaines à compter de l'introduction d'une demande judiciaire; toutefois, la loi est silencieuse quant au délai à l'intérieur duquel une affaire portée en appel devrait être tranchée.

L'article 19 de la loi édicte que toute demande relative au retour d'un enfant bénéficie de la préséance prévue à l'article 861 du Code de procédure civile pour les demandes d'habeas corpus. Or, l'article 861 C.p.c. prescrit que toute demande d'habeas corpus a préséance sur toutes les autres demandes, tant devant la Cour supérieure que devant la Cour d'appel.

Suite à l'introduction de la demande de retour, les avocats des parties ainsi que l'avocat du Procureur général du Québec, qui représente l'Autorité centrale du Québec, sont en contact avec les juges en chefs de chaque chefs-lieux afin qu'une date d'audition soit fixée le plus rapidement possible tout en tenant compte du calendrier de la Cour et du nombre de jours requis pour entendre cette affaire. En règle générale, une date d'audition peut être fixée à l'intérieur d'un délai de 4 à 6 semaines.

Le parent qui désire en appeler de la décision de première instance a trente jours pour inscrire en appel. Ensuite, en théorie, chaque partie doit fournir à la Cour un mémoire et une date d'audition est fixée dès que le dossier est en état d'être entendu. Cependant, en pratique, les parties acceptent généralement de procéder sans la production de mémoires formels, ce qui permet au Juge en chef de former, pour l'occasion, un banc de juges qui entendra l'appel dès que les parties seront prêtes à procéder. Ce qui ne prend généralement que quelques jours le temps pour les parties de préparer la documentation nécessaire à l'audition de l'appel.

Il arrive souvent que la décision de première instance qui ordonne le retour de l'enfant dans l'État de résidence habituelle soit exécutoire nonobstant appel. Le parent qui désire en appeler de cette décision doit alors demander à la Cour d'Appel de suspendre l'exécution de la décision de retour jusqu'à ce que l'appel soit entendu et jugé.

Un parent peut également interjeter appel de la décision de la Cour d'Appel devant la Cour suprême du Canada. Il doit toutefois y être autorisé par la Cour suprême et sa demande d'autorisation doit être produite dans les 60 jours qui suivent la décision de la Cour d'Appel. Encore une fois, si la décision ordonnant le retour de l'enfant est exécutoire nonobstant appel, le parent qui porte l'affaire en appel devra demander à la Cour d'Appel de suspendre l'exécution de la décision en attendant la décision de la Cour suprême du Canada. La loi n'impose aucune limite de temps à la Cour suprême du Canada pour rendre une décision.

En pratique toutefois, les affaires d'enlèvement d'enfants procèdent généralement avec autant de célérité devant la Cour suprême que devant les tribunaux de première instance et d'appel. À titre d'exemple, dans Thomson c. Thomson, [1994] 3 R.C.S. 551, il s'était écoulé à peine 11 mois entre l'introduction de la demande visant le retour de l'enfant (le 25 février 1993) et le jugement de la Cour suprême du Canada (prononcé séance tenante

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le 26 janvier 1994) confirmant l'ordonnance de retour. Dans une affaire du Québec (R.D.M. c. M.B.G.A.), 11 mois se sont écoulés entre la décision de première instance (le 7 janvier 2004) et la décision de la Cour suprême du Canada (le 2 décembre 2004) qui refusait d'entendre cette affaire.

Manitoba

Au Manitoba, les demandes de retour sont présentées par voie d'avis de requête avec preuve par affidavit à l'appui. La Cour reconnaît l'urgence de ces causes et les exceptions spécifiques au retour qui peuvent exister, et elle peut ordonner le traitement accéléré de ces causes, notamment en imposant des limites aux interrogatoires et à la communication d'éléments de preuve avant l'audition.

Alberta

Tous les tribunaux de l'Alberta accélèreront les procédures concernant des enfants lorsque qu'on le leur demande, et ils l'ont déjà fait de leur propre initiative à l'occasion.

Nouvelle-Écosse

Lorsqu'une demande relevant de la Convention de La Haye est déposée en cour, le tribunal tente de la traiter le plus rapidement possible. Cependant, comme toutes les autres demandes en justice, ces demandes sont traitées en conformité avec les règles de cour applicables, et les juges ont le pouvoir discrétionnaire d'administrer leurs causes comme ils l'entendent. Cela s'étend au calendrier ainsi qu'à la nature et à la forme des éléments de preuve qui peuvent être présentés au cours de la procédure.

Ontario

Il n'y a aucune règle propre aux affaires relevant de la Convention de La Haye pour ce qui est du contrôle ou de la limitation des preuves pouvant être admises en cour. Le juge conserve le pouvoir discrétionnaire de déterminer quelle preuve il admettra. Les tribunaux de l'Ontario s'appuient beaucoup sur la preuve par affidavit, plutôt que la preuve orale, mais il y a des cas où des témoignages sont entendus.

Saskatchewan

Il n'y a aucune règle spéciale en place relativement aux procédures relevant de la Convention de La Haye. Nous tribunaux s'appuient habituellement sur la preuve par affidavit plutôt que la preuve orale.

Nouveau-Brunswick

Étant donné que les juges se sentent obligés de suivre à la lettre les dispositions de la Convention de La Haye telles que mises en œuvre législativement au Nouveau-Brunswick aux termes de la *Loi sur l'enlèvement international d'enfants*, on n'a pas eu besoin de créer de mesures ou de règles spéciales pour contrôler ou limiter les preuves pouvant être admises dans les procédures relevant de la Convention de La Haye.

Québec

Aucune règle spéciale n'existe pour l'application de la Convention de La Haye. Les règles de preuve devant les tribunaux du Québec sont celles prévues au Code civil et au Code de procédure civile; il appartient au juge saisi d'une demande de retour d'enfant de contrôler, ou de limiter, les preuves dans le respect de ces règles de preuve. En principe, les preuves par ouï-dire ne sont pas admises; cependant, en vertu de l'article 14 de la Convention de La Haye (et 28 de la loi mettant en vigueur la Convention de La Haye au Québec), pour déterminer l'existence d'un déplacement ou d'un non-retour illicite, les tribunaux peuvent tenir compte directement du droit et des décisions judiciaires ou administratives reconnus dans l'État étranger sans avoir recours aux procédures spécifiques sur la preuve de ce droit ou pour la reconnaissance des décisions étrangères qui seraient applicables.

Nous reconnaissons comme fardeau de preuve celui qui est généralement reconnu par la jurisprudence internationale en cette matière.

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Manitoba
Au Manitoba, les demandes de retour sont présentées par voie d'avis de requête avec preuve par affidavit à l'appui. La Cour reconnaît l'urgence de ces causes et les exceptions spécifiques au retour qui peuvent exister, et elle peut ordonner le traitement accéléré de ces causes, notamment en imposant des limites aux interrogatoires et à la communication d'éléments de preuve avant l'audition.

Nouvelle-Écosse
Lorsqu'une demande relevant de la Convention de La Haye est déposée en cour, le tribunal tente de la traiter le plus rapidement possible. Cependant, comme toutes les autres demandes en justice, ces demandes sont traitées en conformité avec les règles de cour applicables et les juges ont le pouvoir discrétionnaire d'administrer leurs causes comme ils l'entendent. Cela s'étend au calendrier ainsi qu'à la nature et à la forme des éléments de preuve qui peuvent être présentés au cours de la procédure.

Chile – Chili :

Existen diferentes medidas, para garantizar que las solicitudes sean tramitadas rápidamente. Respecto al artículo 7, contamos con un Convenio con INTERPOL, quienes nos ayudan a localizar de forma muy expedita la ubicación del niño en el territorio Chileno. Asimismo, al ser esta Autoridad Central quien representa directamente a los solicitantes o en casos que en que el niño se encuentra fuera de Santiago, son derivados a otros Consultorios Jurídicos de la Corporación de Asistencia Judicial es bastante rápida la localización de un abogado que represente al solicitante. Respecto al artículo 11, desde el año 1998 existe un Auto Acordado dictado por la Excma. Corte Suprema de Justicia que regula el procedimiento aplicable por los Tribunales para las causas de restitución, el que establece plazos breves de tramitación tanto en Primera Instancia como en la Corte de Apelaciones.

a) El cronograma para ambas instancias está dado por el Auto Acordado antes señalado.
b) Respecto a las pruebas admitidas, no existen limitaciones, pero estas deben ser rendidas en única audiencia, por lo que los juicios no se ven dilatados (al menos en Primera Instancia) por la presentación de pruebas, a menos que se solicite algún informe psicológico o social, el que en tal caso debe ser presentado en un plazo máximo de 15 días. Lamentablemente, en la instancia de apelación, se solicitan nuevas medidas que demoran el fallo del recurso más allá de lo establecido en el Auto Acordado de la Corte Suprema.

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China (SAR Hong Kong) – Chine (RAS Hongkong) :

a) Although there are no set timetables at both trial and appellate level, judges hearing the Hague applications will deal with the applications expeditiously with a view to concluding all proceedings, including the proceedings in the appelate level, within 6 weeks of the institution of the hearings.

b) Our domestic rules on Hague proceedings provide for the exchange of affidavit evidence only. Oral evidence is generally not allowed and if allowed, it is at the discretion of the judge on a case by case basis. Relevant authorities on the prompt and summary nature of Hague proceedings and on the principle that oral evidence is allowed only in exceptional circumstances will be submitted to the court where necessary.

China (SAR Macao) – Chine (RAS Macao) :

a) The speedy determination of return applications is ensured not by means of set timetables but the specialty of the overall of the applicable procedure.

The Convention is directly applicable and prevails over ordinary law. Hague applications follow existing legal framework, in particular, the Civil Code, Decree-Law 65/99M of

25 October, that establishes the Child Educational and Social Protection Regime, and the Civil Procedure Code. Decree-Law 65/99M contains both special substantive and procedural provisions.

In procedural law terms, a request for the return of a child constitutes a special injunction called "judicial surrender of a child", which may be required in connection with or independently of any other proceedings. In urgent critical situations, it is possible to request the court to issue provisional decisions. For instance, whenever a delay may cause damages to the interests of the child, the relevant act shall be ordered and carried out immediately (even during judicial holidays). Once the injunction procedure is instituted, the Public Prosecutor and the person / entity whom the child is resideing with / entrusted to shall have 5 days from the dtae of service of process to oppose the request to surrender the child. If there is no such opposition or if the opposition is manifestely without ground, the surrender shall be immediately ordered by the judge. Voluntary failure to comply with that order is a criminal offence of qualified disobedience. In case opoosition is deducted, the procuring of evidence will take place, but the judge enjoys discretionary powers what concerns the admissibility of produced eveidence, the requesting of measures deemed necessary and of a social report on the situation of the involved partie. If through such measures / report it is shown that the requesting person is unfit, that person will be served to, within 5 days, answer to that allegation and present eveidence, after which the judge will decide.

Likewise, though appeals are possible and follow, in principle, the ordinary appeals' general rules, the respective effect (as to stay or not the proceedings or the decision) is decided by the judge.

Hence, it is possible to ensure that Hague applicatios are dealt with promptly.

b) As mentioned, there is no difference between purely internal cases and cases under the Hague Convention. There is no special measure or rule to control or limit evidence in general or oral evidence in particular. Within personal jurisdiction, it is to the judge to admit the evidence (please refer to the last part of previous response).

Colombia – Colombie :

Con la expedición de la Ley 1008 de 2006 de enero 23, las autoridades competentes para conocer y resolver sobre estos asuntos deben aplicar rigurosamente el principio de celeridad y además deben reconocer que las disposiciones contenidas en los Convenios Internacionales tiene prevalencia sobre las contenidas en otras leyes.

Antes de la expedición de la mencionada ley y posteriormente a la expedición de la misma, la Subdirección en su condición de Autoridad Central, al momento de remitir las solicitudes de retorno o regulación internacional de visitas a las Regionales del país donde se encuentra el niño o niña retenido (a), orienta al Defensor de Familia sobre las acciones a seguir y se le solicita la toma de medidas provisionales a favor del menor o menores involucrados para restablecer en parte sus derechos vulnerados, mientras se define el proceso y recomienda la utilización de los medios rápidos de comunicación para informar de sus actuaciones a esta dependencia.

a) No existen

b) Los Procesos que se adelantan en ejecución del Convenio están supeditados a lo dispuesto en la Ley 1008 de 2006 y en especial el procedimiento se encuentra en el Decreto 2282 de 1.989 modificatorio del Código de Procedimiento Civil, el procedimiento ordenado en estos casos es el Verbal Sumario, cuya característica es que los términos son muy cortos para la etapa probatoria e igualmente para dictar sentencia.

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Costa Rica – Costa Rica :

Existen medidas legislativas, específicamente ciertas normas y principios jurídicos vinculantes para el juez. Es decir, resulta que en el estado actual del ordenamiento jurídico vigente de la República de Costa Rica, existen una serie de "licencias" normativas que podrían agilizar sobremanera la velocidad del poder procesal jurisdiccional de los jueces naturales llamados a resolver las solicitudes de restitución internacional. Propiamente se trata de una serie de principios, potestades y deberes legales aplicables por jueces que conozcan asuntos con personas menores de edad involucradas, y que hoy día subyacen implícitos ó explícitos a partir del contenido de los siguientes artículos del vigente Código de Niñez y Adolescencia (Ley de la República Nº 7739): 8º (principio de jerarquía normativa de las fuentes del Derecho de Niñez y Adolescencia); 9º (principio de aplicación preferente); 112º (principio de supletoriedad del Código Procesal Civil cuando no contravenga las normas procesales del Código de Niñez y Adolescencia); 113º.a (principio de ampliación de los poderes del juez en la conducción del proceso); 113º.b (principio de ausencia de ritualismo procesal); 115º.f (deber del juez de resolver las pretensiones de las partes y aquellas disposiciones del Código de Niñez y Adolescencia que le conciernen); 115º.g (deber del juez de evitar cualquier dilación del proceso); 115º.i (poder/deber del juez de usar el poder cautelar); y 118º (deber del juez de evitar el ritualismo procesal).

De allí el primer intento del Juzgado de Niñez & Adolescencia acerca de tramitar estos procesos ya no como ABREVIADOS del Código Procesal Civil, sino como PROCESO ESPECIAL SUMARÍSIMO DE RESTITUCIÓN INTERNACIONAL DE PERSONA MENOR DE EDAD, a partir del año 2006. Es decir, se supone que el proceso sumarísimo, por demás construido a base de ciertos principios tales como los arriba mencionados, a diferencia del abreviado, propende en mejor forma a garantizar que las solicitudes sean tramitadas rápidamente y de manera expedita.

Por motivos obvios de separación de poderes, el inciso a) de esta pregunta no compete ser respondido por esta Autoridad Central. Es decir, la información pertinente debe ser solicitada al Poder Judicial de la República de Costa Rica.

El inciso b) encuentra respuesta a partir de los artículos 113°.d, 143° y 144° del Código de Niñez & Adolescencia, que inequívocamente entrañan un fundamental principio rector de oralidad, el cual no obstante debe ser concretado máximo en una audiencia, por mandato del legislador. Es decir, si bien la oralidad es un principio ineludible, la idea es materializarlo en una sola audiencia antes de la sentencia. Y así se cumple en la práctica, con las excepciones de rigor.

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Cyprus – Chypres :

In Cyprus there is a procedural law enacted in 2002 governing cases of abduction. These rules concern the time limit of trial (6 weeks), the time of filing of the opposition (7 days), the limit of filling an appeal (14 days) and the proceedings at trial. According to these rules, oral evidence is not permitted. But cross examination is of course permitted to persons who filed an affidavit.

Czech Republic – République tchèque :

There are no timetables. Only according a guideline issued by the Ministry of Justice Czech courts shall in The Hague abduction cases decide promptly.

Denmark – Danemark :

The Hague Convention has been implemented in Danish law in Act No 793 of 27 November 1990 on International Enforcement of Decisions concerning Custody of Children and Restoration of Custody of Children, etc. (International Child Abduction).

a) No specific measures other than the above mentioned has been taken.

b) The judge at the Civil Court decides the case procedure according to the Danish Administration of Justice Act.

Ecuador – Equateur :

Código de la Niñez y Adolescencia (CNA), Ley Orgánica publicada en el Registro Oficial No 737 de 3 de enero del 2003, vigente desde julio del 2003:

Art. 121.- Recuperación del hijo o hija.- Cuando un niño, niña o adolescente ha sido llevado al extranjero con violación de las disposiciones del presente Código y de las resoluciones judiciales sobre ejercicio de la patria potestad y de la tenencia, los organismos competentes del Estado arbitrarán de inmediato todas las medidas necesarias para su retorno al país. Para el mismo efecto, el Juez exhortará a los jueces competentes del estado donde se encuentre el niño, niña o adolescente.

a) El Art. 282 del Código de la Niñez y Adolescencia dispone que el procedimiento contencioso general, aplicable para el caso de restitución internacional, no podrá durar más de cincuenta días de término contados desde la citación con la demanda en primera instancia; ni más de veinticinco días desde la recepción del proceso, tanto en segunda instancia como en el caso de casación.

b) No hay disposiciones especiales al respecto.

El Salvador – El Salvador :

a) La Procuraduría General de la República cuenta con un manual de aplicación del convenio, en el cual se determinan plazos para la fase administrativa y se establece que nuestra institución debe actuar con urgencia en los procedimientos administrativos.

En lo que respecta a la fase judicial, son los Tribunales competentes quienes determinarán el procedimiento a seguir.

El recurso de APELACIÓN se debe interponer dentro de los tres días hábiles posteriores a la notificación de la resolución emitida por el Juez, conforme a la Ley Procesal de Familia.

b) Dentro de la audiencia, una vez agotada la fase conciliatoria, se procede a la recepción de la prueba, la cual puede ser incluso testimonial, pero existe un momento oportuno para ello, al final se les da la palabra a los abogados de las partes para que manifiesten los alegatos correspondientes.

Finland – Finlande :

Return cases are always of high priority in the court. The national law limits the time of the court procedure to six weeks. The decision of the first instance court, Helsinki Court of Appeal, is directly enforceable regardless of an appeal.

France – France :

L'article 1210-5 du nouveau code de procédure civile prévoit que la demande aux fins d'obtenir le retour est formée, instruite et jugée en la forme des référés, le juge devant utiliser les procédures les plus rapides pour trancher la question du retour de l'enfant au lieu de sa résidence habituelle. Ce mode de saisine du juge aux affaires familiales lui permet de rendre une décision à bref délai ayant l'autorité de la chose jugée au principal.

Par ailleurs, la France est liée ainsi que tous les autres Etats membres de l'Union (à l'exception du Danemark) par le règlement Bruxelles II bis, qui renforce les conditions d'application de la convention de la Haye du 25 octobre 1980.

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S'il n'existe pas de règle particulière pour contrôler ou limiter les preuves produites lors d'une procédure de retour, il appartient au juge, dans le respect du principe fondamental du débat contradictoire, de veiller à ce que ces pièces aient être portées à la connaissance de la partie adverse, et que celle-ci ait pu répondre aux assertions soutenues par une des parties en se fondant sur lesdites pièces.

Greece – Grèce :

The First Instance Courts are proceedings under the timetables without any particular measure / rule.

Guatemala – Guatemala :

a) La independencia judicial es uno de los principios contenidos en nuestro ordenamiento jurídico en consecuencia cada juez conoce de sus casos de conformidad con la legislación aplicable y con su propio criterio, sin embargo los juzgadores actúan siempre en el interés superior del niño, otorgándole prioridad a los casos de personas menores de edad.

b) [Sin respuesta]

Iceland – Islande :

The Hague Convention has been implemented in Icelandic law through Act No. 160 of 27 December 1995 on the Recognition and Enforcement of Foreign Decisions on the Custody of Children and the Return of Abducted Children, etc. (relating to both the Hague Convention and the European Convention).[3]

Although the text of Article 7 of the former Convention has not been implemented word by word into national legislation its context is captured by law and the Ministry of Justice, as the Central Authority, will take appropriate measures to interpret the Act in compliance with Article 7 in its co-operation with the competent authorities of other States.

The same will apply for Article 11, independent of whether the administrative authority or the judiciary is concerned, and it is common understanding that the 6 weeks time-limit shall be respected insofar as possible, starting from the date of commencement of proceedings, whether at administrative or court level.[4] However, statistics show that decisions are seldom reached within 6 weeks in the event of court proceedings, although the delay is normally only a matter of days or a couple of weeks, most often due to gathering of documentary evidence.[5]

According to the Convention and the above-mentioned Act the 6 weeks timetable has been set to ensure the speedy determination of return applications, although there is debate on whether the time-limit will apply on appeal. Apart from that no specific measures have been taken.

The presiding judge (3 on appeal) is responsible for controlling and limiting the evidence which may be admitted in Hague cases. However, in light of provisions of the Enforcement Procedures Act No 90 of 1 June 1989 both the applicant and the respondent are entitled to submit written documents, stating their claims and arguments, along with documentary evidence, and will on request be granted a short stay of proceedings for such preparation. Because of the special nature of these cases such adjournment should not be more than a week. Following, the judge shall try to bring about an amicable

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[3] The European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children done at Luxembourg on 20th May 1980.
[4] On appeal, some have argued that a new 6 weeks time-limit will begin.
[5] In only one single case the time-limit has been stretched to 10 weeks.

resolution of the case, but in the event of non-voluntary return the case will be orally heard, normally in the same court session. According to the Act it is only by way of exception that expert reports and oral evidence are allowed, although in practice judges may have been too lenient in derogation from that rule.[6] The judge will then deliberate before reaching a decision, and should then as always proceed as expeditiously as possible, in accordance with the spirit, general scheme and wording of the Convention.

Ireland – Irlande :

a) EU Regulation 2201/2003 (also known as Brussels II *bis* regulation) sets out strict time limits under Article 11 for these cases. It states that "the court shall, except where exceptional circumstances make this impossible, issue its judgment no later than six weeks after the application is lodged". That Regulation has the force of domestic law.

b) Oral evidence is rarely permitted although it may occasionally be heard where there is an unresolvable clash in affidavit evidence on a crucial point. Oral evidence is discouraged largely because it unduly prolongs a procedure in which time is of the essence. As far as affidavit evidence is concerned, this is governed by Order 40 Rule 4 of the Rules of the Superior Courts:

> "Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, and shall state his means of knowledge thereof, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted."

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Since the initial application in a Hague Convention case is made *ex parte* (without notice to the other side) and is by way of an interlocutory motion, statements of belief as above are permitted. Where Article 13 defences are claimed, they must be set out fully in the Respondent's replying affidavit. Other affidavit evidence in support may also be filed.

Rules of evidence which apply to Hague Convention cases heard before the High Court in Ireland are the same, broadly, as those applying in any other type of proceedings, except for the specific rules (e.g. in regard to "foreign law" evidence) which are contained in the Convention itself. However, it is generally accepted that in these cases, as in other family law cases, the court has a discretion to apply the rules of evidence rather less strictly than would be the case in, say, a criminal prosecution. This applies, for instance, to the rule against hearsay; but the Court would nevertheless always bear in mind that hearsay is inherently a questionable form of evidence. Specific statutory provision is made in the Children Act 1997 for the hearing of indirect evidence of children, and for the taking in evidence of reports, in civil proceedings concerning the welfare of a child, as exceptions to the rule against hearsay; built in to these provisions are safeguards to ensure that the Court will attach appropriate weight to such hearsay evidence.

On a general point, section 38(2) of the Child Abduction and Enforcement of Custody Orders Act 1991 (which gives force of law in Ireland to the Hague and Luxembourg Conventions) provides that Rules of Court may be made for the expeditious hearing of an application made under the Hague or Luxembourg Convention.

Israel – Israël :

a) Israel has enacted specific regulations – Civil Procedure Regulations (Amendment) 1995, Chapter 22(1): Return of Abducted Children - with prescribed time periods to govern Hague Convention proceedings. Upon the filing of a petition pursuant to the Hague Convention Law, the hearing on the petition is to take place not later than 15 days from the time of the filing of the petition. The Respondent's answer is to be filed no later than two days before the date of the hearing of the claim, and is to be served on the Petitioner on the same day as it is filed in court. If a party wishes to cross-examine a witness who filed an affidavit, the cross-examination is to take place not later than 5

[6] On appeal, oral evidence will never be allowed.

days after the first hearing. The court is to give a judgment, with reasons, on the petition no later than 6 weeks from the day that the petition was filed. An appeal of the court's judgment is to be filed not later than 7 days from the day of the giving of the Judgment. The period to be set for the hearing of the appeal is to be not later than 10 days from the day the appeal was filed. A decision by the appeal court is to be given no later than 30 days from the day of the filing of the appeal. In order to appeal a District Court Judgment, one must file a request for leave to appeal in the Supreme Court of Israel. This request must be filed within seven days of the giving of the Judgment of the District Court. Again, the hearing is to take place within ten days from the day that the appeal was filed, and a decision is to be given on the appeal within 30 days.

The Central Authority closely monitors cases in an effort to ensure, to the extent possible, that the courts stand by these time frames. In the event that legal proceedings become protracted, the Central Authority will, in an appropriate case, apply to the court under Article 11 to inquire into the reasons for the delay, and will report to the other central authority accordingly.

b) Judges have the ability to restrict the scope of evidence introduced to a trial in all court proceedings, and to make sure that the evidence introduced is relevant to the proceedings. This is especially true for proceedings according to the Hague Convention, in light of the fact that the proceeding must be expeditious according to law, and the fact that the decision must be given promptly. Therefore, the Judge has the authority to limit the evidence, to prevent the testimony of witnesses whose testimony is not relevant to the case, and to limit the scope of the evidence introduced. Furthermore, if the court wishes that a party report for examination, it must give special reasons in writing.

Italy – Italie :

a) Le Tribunal pour Enfants est tenu, de par la loi, de fixer l'audience de plaidoiries dans un délai de 30 jours depuis sa saisine par le Procureur.

b) Ces mesures relèvent du ressort exclusif des Tribunaux pour Enfants, l'Autorité Centrale n'ayant aucun pouvoir d'y interférer.

Latvia – Lettonie :

The law draft "Amendments in the Civil Process Law" (Article 644.[19]) prescribes that the Court uses appropriated process facilities as well as uses the fastest methods for acquisition of the evidences in order to take a decision within six weeks after receiving of application.

Due to the limited practice there isn't arranged specific time-table in order to ensure prompt hearing of the application. As well as in terms of Convention there aren't specific measures/rules which restrict and control addition to the case of different kind of evidences.

Lithuania – Lituanie :

a) According to the Ministry of Justice, applications under the Hague Convention are examined by way of extraordinary proceedings that ensure efficient resolution of issues within the time limits established in Article 11 of the Convention

b) In accordance with the laws in force applications under the Hague Convention can be examined both by way of written and oral procedure depending on the circumstances of the case.

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Malta – Malte :

Maltese legislation has provided for special rules (enacted by virtue of L.N.129 of 2000) to ensure that cases at first instances and at appeal stage, are dealt with expeditiously. The court of first instance is bound to set a date for hearing within 4 days of receipt of application, and hearing should be expeditious, and if possible, on consecutive dates. Following judgement, there are only 8 working days within which an appeal may be lodged, and a very restricted time period within which the hearing date should be set. Judgement should be given without any delay.

Mexico – Méxique :

a) No, no existen cronogramas establecidos, sin embargo, las autoridades judiciales mexicanas para resolver este tipo de asuntos, se allegan de los procedimientos expeditos (procedimientos sumarios) con que cuentan para emitir una resolución.

b) La medida más importante para controlar o limitar las pruebas es la propia convención, la cual en su artículo 16 establece que las autoridades a las que se les haya solicitado una restitución, no decidirán sobre la cuestión de fondo del derecho de custodia, sino que únicamente resolverán sobre la restitución de los menores, en ese sentido, se les insiste a las autoridades judiciales que el solicitar más pruebas pueden exponerles a que conozcan y estudien cuestiones de fondo que no les corresponde.

Monaco – Monaco :

a) L' ensemble de la procédure de retour d'un enfant basée sur la Convention de La Haye est encadré par l'obligation d'urgence comme le précise l'article 11 de l'ordonnance souveraine 10.767 du 7 janvier 1993 rendant exécutoire ladite convention. Hormis cet impératif d'ordre général, il n'existe pas de délai particulier quant à la procédure d'exécution. Toutefois, lorsque des mesures judiciaires sont demandées dans ce cadre, les magistrats y donnent une priorité en raison de l'urgence.

b) Le droit monégasque ne connaît pas de mesures ou règle spéciales pour contrôler ou limiter de telles preuves dans une procédure relevant de la Convention de La Haye. Il est fait application du droit commun monégasque.

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Netherlands – Pays-Bas :

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

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

New Zealand – Nouvelle Zélande :

a) The standard is 6 weeks or 13 weeks if there are special circumstances such as where a specialist report or other evidence, material or information is requires that

cannot be obtained immediately. There is generally good compliance with the timeframes.

b) Generally hearings in New Zealand are conducted on counsel's submissions and affidavit evidence. It is unusual for oral evidence to be adduced at the hearing. However New Zealand legislation or the New Zealand Family Court has statutory authority to receive any evidence it sees fit. The Court has inherent power to control its own proceedings and there are no specific rules to limit this power in respect of Hague proceedings.

The admissibility of evidence section 128 of the Care of Children Act 2004 applies. This section allows the court to 'receive any evidence that it thinks fit, whether it is otherwise admissible in a court of law or not'. However the need for the cases to be dealt with promptly means that evidence is mostly by affidavit, and oral evidence and cross examination are not encouraged. Cross examination and oral evidence may however be allowed where both parties are available.

Nicaragua – Nicaragua :

En lo relativo a la tramitación, sin perjuicio de los plazos establecidos en el Convenio, se esta sujeto a las características propias de cada caso y de las solicitudes expresas de urgencia en la tramitación de los mismo.

a) No, en la actualidad no existe un plazo ò periodo que limite las instancias.

b) Atendiendo al principio, de la falta de formalismos establecidos en el Convenio, se tiene libertad probatoria, en el marco de la admisibilidad de nuestro ordenamiento jurídico interno.

Panama – Panama :

a) Lo que se ha procurado es que dentro de las programaciones de audiencia pre establecida en los despachos judiciales, al momento de llegar una solicitud de Restitución debe tramitarse expeditamente, de tal forma que dentro de un término no mayor de quince días se efectúe el acto oral. Este término para cumplirse, es necesario surtir las notificaciones personales de las partes interesadas, siendo necesario contar con la dirección completa de la parte requerida y tener respuesta oportuna, si la parte requirente ha de solicitar asistencia legal gratuita.

b) Como medida para tramitar las pruebas no existe ninguna. Sin embargo, se hace énfasis cual es el objeto de la pretensión, debiendo encausarse el caudal probatorio a los presupuestos legales previstos en los artículos 1 al 5 de la Ley 22 del 10 de diciembre de 1993, que aprobó el Convenio sobre los Aspectos Civiles de la Sustracción Internacional de Menores, hecho en la Haya, el 25 de octubre de 1980.

Paraguay – Paraguay :

Ley 1680/01 en su Art. 167 señala: "Del carácter del procedimiento". "El procedimiento tendrá carácter sumario y gratuito, respetando los Principios de Concentración, inmediación y bilateralidad"

a) No existen programas en ambas instancias.

b) No existe.

Poland – Pologne :

The provisions of Articles 7 and 11 of the Hague Convention are integrated into the Polish domestic law and are directly applied. Under these provisions the Polish authorities are

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obliged to act expeditiously in proceedings for the return of wrongfully removed children. Moreover, the obligation to undertake expeditious measures in such cases is imposed on the Polish authorities under the Article 11 par 3 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000. No other special regulations specifying the period of time in which the proceedings under the Hague Convention shall be completed exist.

Portugal – Portugal :

The Portuguese Central Authority tries with its depressed resources to deal promptly and expeditiously with the transfer of the applications to the competent Courts.

Romania – Roumanie :

a) Law No 369/2004 stipulates that requests for returning a child who is on Romanian territory should be urgently answered in accordance with art. 3 of the Hague Convention.

The grounds for ordering the return of the child shall be presented within 10 days of the ruling. The order shall be appealed against at the Bucharest Court of Appeal, the Section for minors and family matters, within 10 days of communication.

b) [No answer]

Slovakia – Slovaquie :

a) There are no timetables to ensure the speedy determination of return applications.

b) Due to the missing executing legislature of the Convention in the Slovak republic, there are no such measures which would limit the extent of the evidence admitted in court. Subsequently, the judicial procedures under The Hague Conventions in Slovakia in some cases lasted for a longer period of time, as the court demanded wider extent of evidence than necessary; especially concerning information on the social background of the child in the requesting country.

South Africa – Afrique du Sud :

a) The applications are brought on urgent semi urgent basis where the period for filing papers is truncated.

b) Hague Convention Applications are brought by way of Motion Court procedure. In terms of our rules of practice, applications are disposed of on the papers before the court. In cases of serious or material disputes of fact only, will the application be referred for oral evidence.

Spain – Espagne :

En España, la tramitación del procedimiento tiene carácter preferente y debe realizarse en el plazo de seis semanas desde la fecha en que se hubiera solicitado ante el Juez de Primera Instancia la restitución del menor (Art. 1902 de la Ley de Enjuiciamiento Civil), y la apelación contra la decisión del Juez de Primera Instancia lo es en un solo efecto y debe resolverse en el improrrogable plazo de 20 días (Art. 1908 de la Ley de Enjuiciamiento Civil). El Reglamento Comunitario 2201/2003, en su Art. 11 señala que el órgano jurisdiccional ante el que se interponga la demanda de restitución de un menor, actuará con urgencia en el marco del proceso en el que se sustancie la demanda, utilizando los procedimientos más expeditivos que prevea la legislación nacional, de tal modo que, salvo que existan circunstancias excepcionales que lo hagan imposible, el órgano jurisdiccional dictará su resolución como máximo seis semanas después de la

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interposición de la demanda. En punto a medidas cautelares o urgentes, cuando se haya promovido el expediente en España, ante el Juez de Primera Instancia o de familia en cuya demarcación judicial se halle el menor que ha sido objeto de un traslado o retención ilícitos, según el Art. 1902 de la Ley de Enjuiciamiento Civil de 1881, el Juez podrá adoptar, a petición de quien promueva el procedimiento o del Ministerio Fiscal, la correspondiente medida provisional de custodia del menor, así como cualquier otra medida de aseguramiento que estime pertinente con arreglo al Art. 1903 de la Ley de Enjuiciamiento Civil. Por otro lado, también prevé el Art.1905 que, si pese a haberse requerido la presencia ante el Juez de la persona que ha sustraído o retiene al menor, aquél no comparece, el Juez podrá decretar las medidas provisionales que juzgue pertinentes en relación con el menor. Acerca de la obtención de pruebas, en casos de oposición a la restitución, los Arts. 1901 a 1908 de la Ley de Enjuiciamiento Civil prevén la tramitación de un proceso contradictorio con comparecencia de las partes ante el juez y posibilidad de practica de pruebas pertinentes dentro de los seis días posteriores, pudiendo el juez recabar tras la primera comparecencia, los informes sobre la procedencia o no de la restitución que estime pertinentes. Suelen practicarse, al efecto, informes tanto psicológicos como de trabajadores sociales. El Reglamento Comunitario 2201/2003, prevé que la audiencia del menor en otro estado miembro pueda realizarse por los procedimientos establecidos en el Reglamento CE nº 1206/2001 del Consejo de 28 de mayo de 2001 sobre obtención de pruebas, y dicho Reglamento 2201/2003, en el caso del Art. 13 b) del Convenio, estipula de forma novedosa que los órganos jurisdiccionales no podrán denegar la restitución de un menor basándose en lo dispuesto en la letra b) del Art. 13 si se demuestra que se han adoptado medidas adecuadas para garantizar la protección del menor tras su restitución.

Sweden – Suède :

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This question relates to the expedience of the work made by the Central Authorities as well as it concerns the use of expeditious procedures in the court.

Regarding Article 7 and the obligation to secure a prompt return, the Swedish Central Authority co-operates on two levels. First, the Swedish Central Authority co-operates with the Central Authority concerned. In addition, the Swedish Central Authority promotes co-operation among the authorities competent for the matters dealt with within the State. Since, the Swedish law confers upon the Central Authority a relatively large extent on the freedom of action, the co-operation promotes effectively.

Concerning Article 11, the court is obliged to handle the case with expedience. Cases should be dealt with within six weeks and in the event that the process lasts for a longer time the court is obliged to inform the applicant, upon his/her request, about the reasons causing the delay. The City Court can decide whether the decision should be enforced immediately upon announcement of the verdict or once the decision has gained legal force. In most Hague Convention Cases, the Court orders that the decision shall be enforced immediately, unless any of the parties has requested a stay of execution and that request is granted by the Court. A judgment gains legal force when the time- limit for appeal, three weeks, has expired.

Concerning the expedience of Hague cases, it is a question depending on the resources available within the authorities and the courts. Therefore, the possibility to comply with the six weeks time limit can vary.

a) See above section 7 regarding the timetables. The six weeks timeline is applicable even at the appellate court.

b) The Hague application process has to follow the order in the Law (1996:242) regarding Court Procedures (Lagen om Domstolsärenden). This law permits written evidence. With that, the need to present the evidence in oral form is reduced. This function is a mechanism to comply with the requirement that the process shall be dealt with expeditiously.

Switzerland – Suisse :

Actuellement, les cantons recourent à des procédures dites sommaires (cf. réponse de l'AC suisse au questionnaire 2001)

United Kingdom (Scotland) – Royaume Uni (Écosse) :

a) Yes. In Scotland, the rules of the Court of Session provide a timetable for the Court. In Scotland the judges do, in general, exercise firm judicial management. Cases at the first level and at the appellate level are given priority by the Keeper of the Rolls, the court official who is responsible for setting the timetable of the Court of Session.

A system operates whereby cases are given priority as soon as presented (see: Rules of the Court of Session 70.5 – 70.8). Petition procedure is used so as to allow for maximum flexibility. The period of notice is very short at only four days and a first hearing takes place within seven days thereafter. The judge is then able to exercise firm case management to secure expeditious progress of the case; the Rules of the Court contain provisions exclusively directed to Hague Convention cases the tenor of which is that progress in these cases must be rapid and that assists the judge in requiring parties to keep to tight time scales.

The court gives priority to these cases throughout their passage through its hands and early dates for second hearings and, if necessary, reclaiming motions (appeals) are provided. The Hague Liaison judge checks that the court is achieving satisfactory timescales by keeping a file detailing the progress of all cases, which is delivered to her periodically.

b) Hague procedures in the Scottish Courts are governed by strict procedural rules. When an application is lodged in court, along with this written evidence is also lodged which is to be served on all interested parties. At the first hearing the presiding judge shall determine what other written evidence (if any) is required and whether on special cause shown a particular matter should be the subject of oral evidence. Thereafter a date is fixed for the next hearing.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

a) <u>England/Wales</u>
Whilst there is no formal set timetable the listing officer ensures that Hague applications are listed for hearing very quickly and the established general rule is as follows:

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

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

The ICACU also notes that Article 11(3) of the Brussels II revised regulation provides as between Member States of the European Community, that a court to which an application for return of a child is made under the Convention, the court shall act expeditiously in proceedings on the application, using the most expeditious procedures available in national law and without prejudice to this, shall, except where exceptional circumstances

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make this impossible, issue its judgment no later than six weeks after the application is lodged.

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

Any Notice of Appeal has to be filed within 14 days of the date of the first instance decision.

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

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

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

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

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

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

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

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

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United States – Etats Unis :

Trial timetables, if any, are governed by federal, state and local court rules and thus are variable. All courts have procedures for expedited hearings in emergency cases. Under the U.S. common law legal system, precedents have been established requiring expeditious adjudication. See discussion below of *Zajaczkowski v. Zajaczkowska*, 932 F. Supp. 128 (D. Md. 1996) (affirmed by *Zajaczkowski v. Zajaczkowska*, 1997 U.S. App. LEXIS 10154 (4th Cir. Md. 1997).

In addition, the U.S. Central Authority (USCA), through the National Center for Missing and Exploited Children (NCMEC) monitors the progress of incoming Hague petitions, reminding courts of the need to process these applications expeditiously. For example, the USCA sends each court a packet of information regarding the handling of Hague Convention cases upon learning that such a case is pending in a court of the United States. After six weeks, the USCA routinely requests an update of the progress of the case and reminds the court that the case needs to be handled expeditiously.

In general, rules of evidence are governed by the applicable court rules. There are general rules of relevance and admissibility which are applied by federal courts. In state courts the type of evidence admissible in a Hague proceeding is a matter of local law and will vary by State. Consistent with the Convention, section 11605 of the U.S. implementing legislation, ICARA, states that the Hague petition and supporting documentation need not be authenticated in order to be admissible in court.

In addition, case law has limited discovery in cases involving the Hague Convention and ICARA. In *Zajaczkowski v. Zajaczkowska*, 932 F. Supp. 128 (D. Md. 1996) (affirmed by *Zajaczkowski v. Zajaczkowska*, 1997 U.S. App. LEXIS 10154 (4th Cir. Md. 1997), the court noted that the Convention (Article 19) envisions a period of six weeks from the date of the filing of a petition to the court's decision. Since the rules of procedure applicable to ordinary civil cases would be at odds with the Convention and ICARA's emphasis on expedited resolution, the court decided that petitions under Convention and ICARA could be appropriately handled as an application for a writ of habeas corpus. Habeas petitions normally displace the calendar of the judge who hears them and receive prompt action based on the allegations in the petition. Therefore, the *Zajaczkowski* court decided to hear evidence and arguments in a summary fashion and decide the case at the close of the hearing.

Another court in the same Circuit, *Menechem v. Frydman-Menachem*, held that there is no requirement, under the Convention or under ICARA, that discovery be allowed or that an evidentiary hearing be conducted. Thus, the court could properly resolve ICARA cases on the basis of affidavits and other evidence, without resorting to a full trial on the merits or a plenary evidentiary hearing. , 240 F. Supp. 2d 437, 444 (S.D. Md. 2003). The court in *March v. Levine,* came to the same conclusion. See 136 F. Supp. 2d 831, 834 (M.D. Tenn. 2000).

Courts in other U.S. jurisdictions have used a variety of other procedural methods to ensure a speedy resolution of Convention cases. Many proceed with a "show cause" order requiring a respondent to appear with a child immediately or within a short period of time. See, for example, *Sealed Appellant v. Sealed Appellee*, 394 F.3d 338 (5th Cir. 2004); *Small v. Clark*, 2006 U.S. Dist. LEXIS 48448 (M.D. Fla. 2006). Some states allow a magistrate judge to hear Convention cases, thus permitting the case to move more quickly through a crowded court docket. See *Karkkainen* at 1023. Courts can also order expedited briefings. See *Koch v. Koch*, 2006 U.S.App. LEXIS 14417, 13 (7th Cir. 2006).

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Uruguay – Uruguay :

Se recuerda a las sedes judiciales a las que se remiten las solicitudes de restitución, lo dispuesto por los arts. 7, en lo referido al "retorno inmediato de los menores" y 11, "proceder con urgencia con vistas al retorno del menor", "en un plazo de seis semanas".

a) No, no existen, y tales cronogramas en el ordenamiento jurídico uruguayo deben ser fijados por el propio Poder Judicial.

b) No existen y ello sería competencia en principio del Poder Judicial.

Question 8	
What measures exist to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers? Do such measures lead to delays?	**Quelles mesures existe-t-il pour accorder ou faciliter l'obtention d'une aide judiciaire et juridique, notamment la participation de conseillers juridiques ? Ces mesures retardent-elle la procédure ?**

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Argentina – Argentine :

En los casos entrantes, toda vez que esta Autoridad Central no representa en forma directa a los peticionantes, las solicitudes son radicadas ante los Tribunales mediante Defensorías Oficiales y Patrocinios Jurídicos Gratuitos. Sin perjuicio de ello, los padres podrán optar por contratar un abogado particular, en cuyo caso se facilitan listados de abogados de la Jurisdicción que corresponda.
Asimismo, cabe mencionar que para los casos salientes, el Estado Argentino ha previsto un subsidio (Decreto 891/95), a través del cual se brinda asistencia económica a aquellos nacionales que deben viajar a una audiencia en el extranjero o afrontar el gasto que el retorno de los menores implica. Este subsidio también ouede utilizarse para contratar los servicios de un abogado en el extranjero cuando el Estado Requerido no tiene previsto un mecanismo de asistencia gratuita.

Australia – Australie :

As Australia did not make a reservation under Article 26 of the Convention, applicants seeking the return of a child from Australia under the Convention will not incur any legal costs if the Central Authority conducts the legal proceedings on behalf of the applicant. Furthermore, there are no eligibility requirements for legal representation or assistance for applicants (usually left behind parents, but occasionally an institution). Legal costs will not be paid for applicants who seek the return of a child from Australia under the Convention without the involvement of the Central Authority.

In appropriate cases, other costs associated with the legal proceedings, such as separate legal representation for the child, psychologists' reports, translations, will be met by the Central Authority or the federal legal aid system.

The Australian system is also unusual in offering government funded financial assistance to parents in Australia whose children have been removed from Australia. This financial assistance is means and merit tested, and may cover the cost of legal representation in other countries, travel costs for a child ordered to return to Australia by a foreign court, and travel and related costs for a left behind parent to travel to the requested country to bring an abducted child back to Australia. The scheme does not cover the return travel costs of children wrongfully brought to Australia. This arrangement has sometimes resulted in delays for the Australian parent waiting for approval for financial assistance. For example, the foreign legal representative of the Australian parent usually will not proceed with the application or file it in court until the initial retainer is paid. This is a particular problem in the USA and Germany.

Lack of legal aid and experienced legal representation are the biggest problem faced by parents where children are taken to the USA. Although the NCMEC is extremely helpful in resolving cases, and the US system has vastly improved since NCMEC took over incoming cases, major obstacles to a satisfactory resolution of cases remain. California is the exception, and the involvement of the state Attorney General brings a level of speed, efficiency and expertise which is lacking in other States.

Austria – Autriche :

Legal aid and advice is provided; the first step in any abduction case is the appointment of a pro bono lawyer to act on behalf of the applicant – without any means-test (Art. 5 of the national Act to implement the Hague Convention).

Canada – Canada :

Ontario
Upon receipt of an incoming Application, one of the first courses of actions taken by the Ontario Central Authority is to inquire whether the Applicant is financially able to retain counsel. If the Applicant expresses financial concerns, our office sends a Legal Aid Questionnaire for the Applicant to complete. Once the Legal Aid Questionnaire is received by our office, it is forwarded to the Ontario Legal Aid Plan for consideration. The Ontario Legal Aid Plan can then approve legal aid for the Applicant and issue a legal aid certificate for an appointed lawyer. The Ontario Central Authority has not faced any unreasonable delay with respect to the legal aid process in Ontario. If the Applicant does not qualify for legal aid, the Ontario Central Authority facilitates the retention of counsel by providing contact information for a list of Hague specialists, as well as providing a general lawyer referral number through the Law Society of Upper Canada (the regulatory body for the legal profession in Ontario).

Saskatchewan
Although most incoming requests for return are resolved without contested court proceedings, the Central Authority for Saskatchewan's office will, in appropriate cases, initiate the necessary court proceedings to have a matter determined. The Central Authority may be represented by counsel acting on behalf of the province of Saskatchewan to uphold the Convention. As such, counsel would not take instructions from the applicant parent or his/her lawyer. Parents can always retain their own counsel.

Quebec
In Quebec, section 37 of *An Act respecting the civil aspects of international and interprovincial child abduction* states that an applicant parent can obtain legal aid if he or she meets the eligibility criteria set out in the *Legal Aid Act* (R.S.Q., v. A-14). The parent can then be represented by a permanent legal aid lawyer or a lawyer in private practice who does legal aid work.

Delays in our jurisdiction can be attributed to the fact that the applicant parent takes a while to complete and submit the legal aid application form, which must be accompanied by supporting documents. Once our Central Authority receives the information, it can take a few days to confirm the parent's eligibility and find a lawyer to act as his or her representative.

Of course, if the parent does not meet the eligibility criteria of the Quebec legal aid system, he or she will have to cover his or her own legal fees. Our Central Authority is able to give the parent a list of lawyers with experience in application of the Hague Convention. The parent will then have to contact those lawyers and choose one as a representative. The Quebec Bar Association can also refer lawyers who specialize in family law and international law.

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Manitoba and New Brunswick
While Manitoba was the only Canadian province/territory not to make a legal aid reservation, the Central Authorities of both New Brunswick and Manitoba play similar, more extensive roles with respect to Convention proceedings. Crown Counsel in both jurisdictions presents incoming requests for return to the Court, in their capacity as Crown Counsel for the Minister of Justice/designated Central Authority of the province. Their role is akin to a friend of the Court. Parents can retain private counsel if they wish.

In presenting incoming requests for return to the Court, counsel prepare the necessary court application, liaise with the Central Authority in the other jurisdiction and the left-behind parent and his/her counsel, if applicable, to obtain affidavit evidence. The practice in Manitoba is to send an information letter to the left-behind parent, his/her counsel or the other Central Authority describing the role of Manitoba's Central Authority and providing information as to the material needed to submit a request for return to the Court.

The role played by the Central Authorities of Manitoba and New Brunswick facilitates the expeditious handling of requests for return.

Alberta
Alberta's Legal Aid is very cooperative. For incoming matters the policy is to provide Legal Aid to parents who would qualify for Legal Aid in their country of origin. The Alberta Central Authority has direct contact with decision makers at Legal Aid to get approval for coverage with no delays.

Nova Scotia
An Applicant under the Hague Convention may qualify for the provision of legal aid in Nova Scotia. If we obtain information from the other Central Authority that the person does not have money to pay for a private lawyer, we will forward a Legal Aid Application for that individual to complete and should they qualify under our criteria, a Legal Aid lawyer will be provided. The Central Authority for Nova Scotia does not provide legal counsel for Applicants. However, we do facilitate contact between the Applicants and private lawyers and act as a go between as and when necessary. Sometimes, these measures can lead to delay.

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Ontario
Lorsque l'Autorité centrale de l'Ontario reçoit une demande provenant d'un autre ressort, une des premières choses qu'elle fait est de s'enquérir si le demandeur a les moyens financiers d'engager un avocat. Si le demandeur exprime des préoccupations financières, notre bureau envoie un questionnaire relatif à l'aide juridique que le demandeur doit remplir. Une fois que notre bureau a reçu le questionnaire relatif à l'aide juridique, il le transmet au Régime d'aide juridique de l'Ontario pour examen. Le Régime d'aide juridique de l'Ontario peut alors approuver l'aide juridique pour le demandeur et délivrer un certificat d'aide juridique pour un avocat désigné. L'Autorité centrale de l'Ontario n'a été confrontée à aucun délai déraisonnable dans le processus de l'aide juridique en Ontario. Si le demandeur n'est pas admissible à l'aide juridique, l'Autorité centrale de l'Ontario facilite la recherche d'un avocat en fournissant une liste d'avocats spécialisés dans la Convention de La Haye, de même qu'en fournissant les coordonnées du service général d'aiguillage du Barreau du Haut-Canada (l'organisme de réglementation de la profession juridique en Ontario).

Saskatchewan
Bien que la plupart des demandes de retour provenant d'un autre ressort que reçoit l'Autorité centrale de la Saskatchewan se règlent sans donner lieu à des procédures judiciaires contestées, le bureau de l'Autorité centrale instituera, lorsqu'il y a lieu, les procédures judiciaires nécessaires pour faire trancher une affaire. L'Autorité centrale peut être représentée par un procureur agissant pour le compte de la province de la

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Saskatchewan pour faire respecter la Convention. En pareil cas, le procureur ne recevra pas d'instructions du parent requérant ou de son procureur. Les parents peuvent toujours engager leur propre procureur.

Québec
Au Québec, la Loi sur les aspects civils de l'enlèvement international et interprovincial d'enfant, prévoit à son article 37 que le parent requérant peut obtenir les services d'un avocat avec un mandat d'aide juridique s'il satisfait aux critères d'éligibilité de la Loi sur l'aide juridique (L.R.Q., c. A-14). Ce parent pourra donc être représenté par un avocat permanent de l'aide juridique ou par un avocat de la pratique privée qui accepte les mandats d'aide juridique.

Les délais encourus dans notre juridiction peuvent être reliés au fait que le parent requérant prend un certain temps pour compléter et transmettre le formulaire de demande d'aide juridique qui doit être accompagné des documents qui appuient sa demande. Une fois l'information reçue par notre Autorité centrale, il peut s'écouler quelques jours pour confirmer l'éligibilité de ce parent et lui trouver un avocat pour le représenter.

Bien entendu, si ce parent ne répond pas aux critères d'éligibilité du régime québécois d'Aide juridique, il devra assumer les frais de son avocat. A cet égard, notre Autorité centrale peut fournir à ce parent une liste d'avocats ayant de l'expérience dans l'application de la Convention de La Haye. Il devra ensuite communiquer avec eux et choisir celui qui le représentera. Le Barreau du Québec peut également référer des avocats qui se spécialisent dans le droit familial et le droit international.

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Manitoba et Nouveau-Brunswick
Bien que le Manitoba ait été le seul parmi les provinces et territoires canadiens à ne pas formuler de réserve relativement à l'aide juridique, les Autorités centrales du Nouveau-Brunswick et du Manitoba jouent des rôles similaires plus élaborés relativement aux procédures relevant de la Convention. Le procureur de la Couronne dans les deux ressorts présente les demandes de retour à la Cour, en qualité de procureur de la Couronne pour le compte du ministre de la Justice / Autorité centrale désignée de la province. Son rôle s'apparente à celui d'ami de la Cour. Les parents peuvent engager un avocat du secteur privé s'ils le souhaitent.

Lorsqu'ils présentent à la cour des demandes de retour provenant d'un autre ressort, les procureurs préparent la requête en justice, communiquent avec l'Autorité centrale dans l'autre ressort et avec le parent requérant et son procureur, s'il y a lieu, pour obtenir une preuve par affidavit. Au Manitoba, on a pour pratique d'envoyer une lettre d'information au parent victime, à son procureur ou à l'autre Autorité centrale décrivant le rôle de l'Autorité centrale du Manitoba et fournissant des renseignements sur la documentation requise pour soumettre une demande à la cour.

Le rôle joué par les Autorités centrales du Manitoba et du Nouveau-Brunswick facilite le traitement rapide des demandes de retour.

Alberta
Le service d'aide juridique de l'Alberta est très coopératif. Pour ce qui concerne les demandes de retour provenant d'un autre ressort, le service d'aide juridique a pour politique d'offrir une aide juridique au parent qui serait admissible à l'aide juridique dans son pays d'origine. L'Autorité centrale de l'Alberta communique directement avec les décideurs du service d'aide juridique pour faire approuver les demandes d'aide. Pas de délais.

Nouvelle-Écosse
Un demandeur en vertu de la Convention de La Haye peut être admissible à l'aide juridique en Nouvelle-Écosse. Si nous obtenons des renseignements de l'autre Autorité centrale selon lesquels l'individu n'a pas les moyens d'engager un avocat du secteur

privé, nous transmettons un formulaire de demande d'aide juridique que cet individu doit remplir, et s'il est admissible selon nos critères, un avocat de l'aide juridique lui est assigné. L'Autorité centrale de la Nouvelle-Écosse ne fournit pas les services d'un avocat aux requérants. Cependant, nous facilitons les contacts entre requérants et avocats du secteur privé, et nous agissons comme intermédiaire au besoin. Ces mesures entraînent parfois des délais.

Chile – Chili :

Como se señaló en la respuesta anterior, esta Autoridad Central toma la representación directa de los solicitantes ante los Tribunales de Justicia, cuando el niño se encuentra en la ciudad de Santiago. Si el niño se encuentra en otra ciudad, el caso es derivado para que el solicitante sea representado por la Corporación de Asistencia Judicial de la ciudad donde el niño se encuentre. Cabe hacer presente que esta asistencia jurídica es gratuita para toda persona. Al ser la misma Autoridad Central la que presta la asistencia jurídica, no implica ningún retraso la designación de representante.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

When we recive a request for retunr from a Central Authority, if it appears to us that the left-behind parent may be eligible for lega laid or upon request, we will provide the left-behind parent or his/her Central Authority information about the lega laid services in Hong Kong. If the left-behind parent wishes to apply for legal aid, we will advise or refer him/her to apply to the Legal Aid Department for legal aid. If the left-behind parent is granted legal aid, the Legal Aid Department will assign a solicitor and/or a counsel to represent him/her in the Hague proceedings.

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Our legal aid services are funded by the governement and are available to any person, resident or non-resident, involved in legal proceedings instituted within jurisdiction. Hague proceedings are instituted in the Court of Fist Instance and as such are covered by legal aid.

Applicants for legal aid are required to pass both the merits and means tests. Merits test is ususlly not a problem in this type of cases but there could be difficulties with the means test. Regarding means test, the Legal Aid Department has to be satisfied that the applicant, who may be the left-behind parent or the abducting parent, and who may be resident in Hong Kong or making an application from abroad, is financially eligible for legal aid before granting legal aid. If the applicant's financial resources exceed the upper financial limit for legal aid, legal aid will be refused. Where legal aid is granted, the applicant may be required to pay a contribution towards the costs of the proceedings, depending on the amount of his/her financial resources. Legal aid will not be granted solely for the purpose of providing legal advice.

The above arrangement would not result in delay. When we receive a request for return from a Central Authority, we will take initial steps including ascertaining from the immigration authority as to whether the child is indeed within the jurisdiction and if so, apply for a stop order from the court to prevent further removal of the child from jurisdiction pending Hague proceedings. After these initial steps have been taken, we then advise the applicant of the options available to him/her in pursuing the Hague proceedings. If the applicant wishes to instruct private lawyer, we will provide list of firms experienced in handling these matters. If the applicant wishes to apply for legal aid, we will provide information to enable the applicant to apply for legal aid. Where a private lawyer is instructed by the parent or assigned by the Legal Aid Department, we will then transger the case to the private lawyer.

China (SAR Macao) – Chine (RAS Macao) :

In the MSAR, the the right to resort to law and to have access to the courts, to lawyers' help for protection of lawful rights and interests and to judicial remedies is a fundamental

right guaranteed by Article 36 of the Basic Law. Justice cannot be denied on any grounds, in particular, lack of financial resources.

Two deifferent mechanisms are in place to fully ensure this right: (i) the free legal counselling / assistance service provided by the Public Assistance and Information Center (under Decree-Law 60/86/M of 29 December, as modified by Decree-Law 14/91/M of 18 February); and (ii) the legal aid's system (under law 21/88/M od 15 August, and Decree-Law 41/94/M of 1 August) (the texts of the quoted laws are available on the referred website: http://www.imprensa.macau.gov.mo).

The legal aid's system covers total or partial exemption from or postponement of payment of judicial costs as well as of lawyer's fees. It depends solely on the lack of financial resources to pay normal court / lawyers expenses and can be requested at any stage of the proceedings.

Apllications under the Convention are directed to the MSAR Central Authority, which will analyse them and verify whether the case meets the requierements established under the Convention. If so, it will act by means of providing information and assistance – as itr has not the necessary *locus standis* to institute the judicial proceedings itself, not to request the benefit of legal aid on behalf of an applicant. Only if expressly and duly empowered by the applicant, the MSAR Central Authority will be able to take further action such as appointing a lawyer to represent the applicant and institute judicial proceedings and / or requiring directly or through the lawyer or the Public Prosecutor the benefit of legal aid (under the quoted domestic law read togetjer with article 25 of the Convention). Otherwise, the MSAR Central Authority may only provide information and assistance by directing the interested applicant to the relevant enetities and by certifying the applicant's lack of financial resources upon transmitted information on his / her financial situation. It is up to the court to decide whether the requirements for obtaining legal assistance are met. The legal aid "proceddings" are expeditious and generally do not result in delays.

Colombia – Colombie :

En las dos fases el Defensor de Familia y el Juez exigen el nombramiento de un abogado que asista a la parte que no esté en condiciones de comparecer al proceso o de asumir los honorarios de un abogado. En todo caso este procedimiento comporta demora, dado que en ocasiones no es fácil conseguir un abogado de oficio.

Costa Rica – Costa Rica :

Con ocasión de incoar el proceso judicial correspondiente, y en el mismo escrito de interposición de la demanda, la Autoridad Central Requerida solicita como trámite previo la colaboración interinstitucional del juez(a) titular del Juzgado de Niñez & Adolescencia, a efecto de que desde su condición de autoridad judicial competente, en primer lugar disponga el respectivo nombramiento de curador procesal destinado a asumir la defensa técnica del progenitor solicitante, de conformidad con la Lista Oficial de Peritos en Derecho del Poder Judicial publicada en el Boletín Judicial; y en segundo lugar, que una vez aceptado el nombramiento de marras, dicho Juzgado prevenga al respectivo curador acerca de comunicarse a la mayor brevedad con la Autoridad Central Requerida, a efecto de recibir de parte de nosotros una breve capacitación sobre el particular del funcionamiento y aplicación en general del Convenio de la Haya, en cuenta las implicaciones de asumir el rol de representante judicial del progenitor adulto solicitante. Esta diligencia no comporta mayores retrasos, excepto si el curador ad-hoc no acepta la designación o simplemente no acude a la Autoridad Central para ser capacitado en la materia.

Importa destacar que la institucionalización de esta diligencia en el año 2005 fue idea original del PANI como Autoridad Central, toda vez que ese punto antes no estaba resuelto y, por lo mismo, generaba mucha polémica y discordia jurídica, principalmente

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porque el Tribunal Superior de Familia erróneamente consideraba que esta función debía ejercerla directamente el PANI, pero con el inconveniente de que por mandato constitucional el PANI sólo puede litigar en juicios a favor del interés superior del niño, con exclusión de sus padres adultos, máxime si hay intereses contrapuestos.

Cyprus – Chypres :

Legal aid is provided in these kinds of cases. There is some delay when legal aid is applied for us for the legal aid application to be approved by the court, the views of the welfare office must be taken into account.

Czech Republic – République tchèque :

The Czech Central Authority can either represent the applicant in the court (including filing for a return order) or arrange for a lawyer. The representation by the Central Authority is free of costs.

Denmark – Danemark :

In Denmark the court shall automatically assign an attorney at law to a requesting parent who applies for the return of a child. The procedure is prescribed in the Danish Act on International Enforcement of Decisions concerning Custody of Children and Restoration of Children, etc. Fees and reimbursement of expenses incurred in connection with the assigned attorney are covered by the Danish State.

When a parent is applying for access in Denmark, the application shall be lodged with a Local Government Office. The Danish legal aid system does not apply for cases which are dealt with by administrative authorities. However, The Local Government Office is obliged to offer counselling and information to the parents and to the child.

We have not experienced that the above measures have lead to delays.

Ecuador – Equateur :

El Consejo Nacional de la Niñez y Adolescencia ha suscrito un convenio de cooperación con la Defensoría Social del Colegio de Abogados de Pichincha con el objeto de brindar asistencia jurídica gratuita a las partes del proceso de restitución internacional de niños, niñas o adolescentes en aplicación del Convenio de La Haya de 1980.

El convenio antes señalado ha sido suscrito recientemente por lo que no hay experiencias que permitan señalar los tiempos utilizados.

El Salvador – El Salvador :

La Procuraduría General de la República, como Autoridad Central, a través de la Unidad de Defensa de la Familia y el Menor, proporciona asistencia legal gratuita, asesora y provee de abogado al solicitante para promover los casos ante los Juzgados de Familia.

Finland – Finlande :

The applicant is granted free legal aid without costs automatically in Finland in accordance with the Hague Convention. There are no delays due to this.

See also answer to question No 67.

France – France :

Les demandes d'attribution de l'aide judiciaire internationale, s'agissant de procédures ayant lieu devant des juridictions françaises, sont traitées par le Bureau de l'Entraide

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Civile et Commerciale Internationale (BECCI) qui est également l'autorité centrale chargée de la mise en oeuvre de la convention de la Haye du 25 octobre 1980. Le traitement centralisé de ces demandes permet de s'assurer de leur traitement coordonné.

Il importe cependant de rappeler que le recours à un avocat n'est pas obligatoire en France, c'est le Procureur de la République près le Tribunal de Grande Instance territorialement compétent qui présente la demande de retour devant la juridiction au nom de la partie requérante, laquelle n'est pas obligée d'être représentée par un avocat.

L'introduction de la demande par le Procureur de la République permet au parent requérant de ne pas être partie à la procédure de retour, sauf s'il souhaite y intervenir.

Greece – Grèce :

Legal Aid is always provided without any delay.

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

Legal aid in Iceland in Hague cases is *i.a.* subject to the applicant's income and has to be applied for, as in other civil cases. The attorney assigned to the applicant is instructed to apply for financial support for the applicant as soon as possible but this does not delay the proceedings. The applicant is made aware of that if he/she does not apply for financial support (legal aid) or if he/she is denied this the applicant is in fact responsible for the costs. In these situations the Central Authority pays the attorney's fees and asks for reimbursement from the applicant - if possible. The fundamental conditions for granting legal aid is that the applicant must be in difficult financial circumstances and his case must give sufficient grounds for the institution of proceedings. The legal aid system does not cause delays in Hague proceedings.

Ireland – Irlande :

The Civil Legal Aid Act 1995 established the Legal Aid Board on a statutory footing, it having been in existence since 1980 on an administrative basis. Its function is to deliver State-funded legal aid and advice to certain classes of persons in a range of civil proceedings through a network of Law Centres in the principal centres of population. Under section 28(5) of that Act, legal aid is granted to applicants under the Convention where the Central Authority is under an obligation to provide legal assistance. In effect, this means that in the case of incoming applications under the Hague Convention legal assistance is provided automatically to applicants regardless of means. On receipt of an incoming application under the Hague Convention the Central Authority contacts the Legal Aid Board with a request for the assignment of a solicitor to represent the applicant. Cases are dealt with on a priority basis. The Board arranges for the assignment of a barrister or senior counsel for the High Court proceedings. The High Court and the Supreme Court have expressed concern about the considerable delay in the processing of some applications. The policy of the Central Authority and other authorities (including the Legal Aid Board) is to review cases where delay has occurred. Notwithstanding the use of fast-track management systems, the experience is that delay is unavoidable in some cases. In outgoing cases where the requested country does not provide free legal aid there is potential for delay. However, the majority of outgoing cases are legally aided.

Israel – Israël :

Upon receipt of an application from another central authority, the Israeli Central Authority notifies the other central authority that Israel made the reservation to the third

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paragraph of Article 26 of the Convention, and that the left behind parent has two options – one is to secure a private attorney, in which case a list of attorneys can be provided; the other is to request the appointment of an attorney through legal aid. If he wishes to request an attorney through legal aid, the parent must provide documentary proof that he qualifies for legal aid in his country. Additionally, the Israeli Central Authority is in the process of putting together a list of attorneys who, in a case where a parent does not qualify for legal aid yet cannot afford full attorney's fees, may be willing to represent foreign applicants on a reduced-fee or pro bono basis. In all of these scenarios, the Israeli Central Authority does everything possible to assist in the securing of an attorney, with a minimum amount of delay. For example, upon receipt of the proper documentation, a legal aid attorney can normally be secured within a matter of one to two weeks.

Italy – Italie :

D'après la loi italienne, généralement, l'assistance juridique n'est pas nécessaire car la procédure est acheminée par le Procureur près le Tribunal pour Enfants compétent, autorité publique, qui demande audit Tribunal de faire droit à la demande ou, le cas échéant, de la rejeter.

Il est toutefois possible d'avoir recours à l'aide juridique qui permet au demandeur d'être assisté gratuitement par un avocat commis d'office. Malheureusement, les délais pour l'octroi de l'aide judiciaire sont assez longs.

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Latvia – Lettonie :

In Latvia State ensured legal aid is provided in accordance with State Ensured Legal Aid Law. In accordance with Article 3 of the State Ensured Legal Aid Law, the following persons have the right to legal aid: a citizen of Latvia; a non-citizen of Latvia; a stateless person; a European Union citizen who is not a citizen of the Republic of Latvia, but resides legally in the Republic of Latvia; a citizen of a state that is not a Member State of the European Union if he or she legally resides in the Republic of Latvia and has received a permanent residence permit; a person who has the right to legal aid ensured by the Republic of Latvia in accordance with the international agreement entered into by the Republic of Latvia; and an asylum seeker, a refugee and a person who has been granted the alternative status in the Republic of Latvia.

The persons referred to in first part of this Article have the right to legal aid if such persons, taking into account their special situation, state of property and income level, are unable to provide partly or fully for the protection of their rights.

About providing of legal aid in Republic of Latvia responsible is Legal Aid Administration of the Ministry of Justice (Riga, Raiņa boulevard 15, LV-1050, phone (+371) 7036963).

For persons who doesn't comply with requirements and conditions regarding receipt of state ensured legal aid, the Ministry as central Authority in the scope of its facilities can to ensure consultations with legal advisor as well as to provide contact information of sworn advocates.

Lithuania – Lituanie :

According to the Ministry of Justice, Articles 42 and 26(3) of the Convention do not obligate the Republic of Lithuania to pay costs of judicial proceedings or costs of participation of attorneys-at-law or advisers referred to in Article 26(2) of the Convention, except for the cases where such costs can be paid out of the funds allotted for the Lithuanian legal aid and consulting system.

In accordance with the Code of Civil Procedure of the Republic of Lithuania, litigation costs consist of the stamp duty and costs related to the examination of the case. Article

83(1), p. 13 of this Code establishes that in cases related to the implementation of the Convention claimants are exempted from stamp duty.

In accordance with the Republic of Lithuania Law on Legal Aid Guaranteed by the State, legal aid rendered by the state is classified as primary and secondary legal aid. Primary legal aid includes provision of legal aid and consulting as well as preparation of documents intended for submission to state and local authorities except for procedural documents. Furthermore, this legal aid also includes consulting on dispute resolution out-of-court, actions related to amicable resolution of disputes, and drafting of an agreement on lawsuit. Secondary legal aid includes preparation of documents, defence and representation in judicial proceedings including the execution process, representation in case of preliminary resolution of disputes out-of-court provided that such procedures have been established by the law or by a court judgement. In addition, secondary legal aid includes compensation for litigation costs in civil proceedings, costs related to deciding cases in accordance with the administrative procedure, and costs related to examination of civil claims made in criminal proceedings.

Any citizen of the Republic of Lithuania, citizens of other EU Member States, other natural persons residing in the Republic of Lithuania and other EU Member States as well as persons referred to in international treaties signed by the Republic of Lithuania are entitled to primary legal aid. Secondary legal aid is provided to citizens of the Republic of Lithuania, citizens of other EU Member States, other natural persons legally residing in the Republic of Lithuania and other EU Member States whose property and annual income does not exceed property and income levels established by the Government of the Republic of Lithuania for the purposes of provision of legal aid. Persons entitled to social benefit under the Republic of Lithuania Law on Social Assistance in Cash to Low-Income Families (or Single Persons) have the right to secondary legal aid irrespective of the property and income levels as well as persons having presented evidence that they cannot dispose of their property and funds for objective reasons, as a result of which their property and annual income they can dispose of does not exceed the property and income levels established by the Government. Detailed information on this issue is provided on website www.teisinepagalba.lt.

We have no information that such rules have delayed the implementation of the Convention.

Malta – Malte :

To date, legal advice and representation is provided by the Central Authority. No delays have been experienced, which are attributable to the way in which legal advice and representation is provided. Should the current system change, the Central Authority would still offer its assistance in order to get adequate legal representation for the applicant.

Mexico – Méxique :

A petición del solicitante se le puede solicitar a la autoridad judicial que conozca del caso, se le asigne un defensor de oficio que le represente en el procedimiento de restitución de menores, lo que no representa ningún tipo de retraso en el procedimiento.

Monaco – Monaco :

Deux personnes sui font partie de l'Autorité Centrale et qui traitent les dossiers d'enlèvement international d'enfant assurent une mission de conseil et prêtent leurs bons offices.

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Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

Where an application for the return of child is made under section 102 or 103 of the Care of Children Act 2004 and the applicant does not have legal representation the Central Authority shall, where the circumstances require, appoint a barrister or solicitor to represent the applicant. Using a select number of lawyers ensures that the applicant receives expert legal representation.

Nicaragua – Nicaragua :

En la actualidad, la Autoridad Central no cuenta con los recursos humanos, ni financieros para la designación ò participación de un Abogado; en cada caso sin embargo se le orienta y se brinda asesorìa legal a los solicitantes sobre los alcances, objetivos y tramites de la Solicitudes de Restitución Internacional de personas menores de edad.

Panama – Panama :

El Decreto Ejecutivo No. 222 del 31 de octubre de 2001 establece que para facilitar la asistencia judicial en favor del requirente, la autoridad Central al tener información que la peticionaria de la restitución no cuente con recursos económico puede gestionar ante Organizaciones no gubernamentales y al Colegio Nacional de Abogados que provean un listado de profesionales del derecho dispuestos asistir o representar legalmente y de manera gratuita, a la parte requirente. De igual forma la autoridad judicial Panameña puede designar un defensor de oficio, debiendo constar con información socio-económico que de fe de la carencia de recursos del requirente, conforme al fundamento de patrocino gratuito previsto en nuestro Código Judicial.

Paraguay – Paraguay :

Al presentar un pedido de restitución por medio de la A. C. lo primero que se solicita es la designación del Defensor de Ausentes, para representar al requirente, y en otros casos una Abogada/o de la A.C concurre por el requirente. A veces el tiempo para la designación e intervención de un Defensor de Ausentes, comporta un retraso en el proceso.

Poland – Pologne :

An applicant residing abroad is entitled to appoint a legal counsel to represent him before the Polish court during the proceedings under the Hague Convention. Moreover, the applicant has the right to request the court to appoint a public defender for him. Such a request may be submitted by an applicant, who was beforehand exempted from the obligation of bearing the costs of the proceedings after he indicated that incurring such costs without the detriment to his and his family's financial situation is not possible. The court requests the competent regional legal council to appoint a public defender. This procedure does not lead to delays in proceedings for the return of a child under the Hague Convention. The Ministry of Justice acts as an intermediary in the transmission of the applications for legal aid and advice in the cases it handles as the Central Authority for the Hague Convention.

Portugal – Portugal :

Portugal has its own legislation on legal aid and advice but it causes some delays on the conventional proceedings.

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Romania – Roumanie :

Law no. 369/2004 provides that the complainant who is abroad shall be represented before the Romanian courts by a lawyer or by the Romanian Central Authority. At the request of the complainant, the Romanian Central Authority may facilitate the legal assistance by a Romanian lawyer.

The answer to the request shall be offered against the interests of the person who has allegedly taken or kept the minor, and the tutorial authority from the domicile of the accused shall be cited.

Slovakia – Slovaquie :

The legal help of the Centre is provided free of costs. However, if the applicant demands to be represented by the legal attorney, the legal help of the Centre cannot be provided, as it means double-representation.

The representation of the attorney is not free of cost, but in compliance with par.30 of The Civil Procedure Act No. 99/1963 Z.z. the judge may appoint a legal attorney to a party on the own request, if the party is presumed to be exempted from paying the court fees and if it is necessary for protection of the party´s interests.

South Africa – Afrique du Sud :

Legal aid/advice is given by the Family Advocate / *ad hoc* Central Authority, who is an admitted advocate. No delays arise in this regard.

Spain – Espagne :

En España, este tipo de actuaciones no debe comportar retraso alguno. No es precisa la asistencia de un abogado o procurador para iniciar el procedimiento, y el propio interesado puede presentar la solicitud mediante formulario estándar que se dirige a la Autoridad Central Española. En principio, todas las actuaciones que lleva a cabo la Autoridad Central Española son gratuitas. Cuando se inicia el proceso del Art. 1901 y siguientes de la Ley de Enjuiciamiento Civil española, el solicitante es representado ante el juez español por el abogado del estado de la provincia donde se encuentra el menor, salvo que el solicitante opte por un abogado particular, en cuyo caso, la Autoridad Central española prestará únicamente su asesoramiento. El Art. 1909 de la Ley de Enjuiciamiento Civil, respecto al proceso tramitado en España, prevé que se declararan las costas del procedimiento de oficio, salvo en el caso de que el juez resolviese la restitución del menor, en que en el Auto se establecerá que la persona que trasladó o retuvo al menor, abone las costas del procedimiento así como los gastos en que haya incurrido el solicitante, incluidos los del viaje y los que ocasione la restitución del menor al Estado de su residencia habitual con anterioridad a la sustracción. En el Reglamento 2201/2003, se regula la asistencia jurídica gratuita en el Art. 50 y la no necesidad de cauciones y la no exigencia de legalizaciones en los Arts. 51 y 52. En la normativa interna de España, con carácter general, la justicia gratuita, en su caso, se reconoce a aquellas personas físicas cuyos recursos e ingresos económicos, computados anualmente por todos los conceptos y por unidad familiar, no superen el doble del salario mínimo interprofesional vigente en el momento de efectuar la solicitud. En España, y para el ámbito de la Unión Europea, la Directiva 2002/8/CE del Consejo de 27 de enero de 2003 destinada a mejorar el acceso a la justicia en los litigios transfronterizos mediante el establecimiento de reglas mínimas comunes relativas a la justicia gratuita para dichos litigios, fue objeto de transposición al derecho nacional por la Ley 16/2005, de 18 de julio, por la que se modifica la Ley 1/1996, de 10 de enero, de asistencia jurídica gratuita, para regular las especialidades de los litigios transfronterizos civiles y mercantiles en la Unión Europea.

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Sobre los gastos en que hay incurrido el solicitante incluidos los del viaje y los que ocasione la restitución del menor, al Estado de su residencia habitual con anterioridad a la sustracción, se ha de pronunciar el Juez en el Auto que resuelve la restitución del menor, concretando que son a cargo de la persona que traslado al menor, tal y como ya se ha indicado. El Juez resuelve en cada caso concreto, si los costes de la ejecución han de ser abonados por la parte a la que le son desestimadas sus peticiones, o si se declaran de oficio en cuyo caso cada parte ha de abonar las causadas a su instancia. Se calculan por el Secretario Judicial en la correspondiente tasación de costas a la vista de las peticiones y documentos de las partes que se presentan en el Juzgado de Primera Instancia. Es posible, como se ha dicho, obtener los beneficios de la Asistencia Jurídica Gratuita, siendo de aplicación el Convenio tendente a facilitar el acceso internacional a la justicia hecho en La Haya el 25 de octubre de 1980, y el Convenio europeo relativo a la transmisión de solicitudes de asistencia jurídica gratuita hecho en Estrasburgo el 27 de enero de 1977. Si se han concedido los beneficios de la asistencia jurídica gratuita a una de las partes, para el procedimiento también los tiene para la ejecución de las resoluciones dictadas. Si no se tienen concedidos los beneficios de la Justicia Gratuita, cada parte deberá abonar sus gastos y costas del proceso causados a su instancia a medida que se vayan produciendo, sin perjuicio de lo que el Juez resuelva en el Auto sobre las costas causadas. No es necesario ningún pago anticipado al órgano de ejecución para que actué, sin perjuicio de los pagos a los Abogados y Procuradores que intervienen en la ejecución. El pago adelantado no es una condición para la ejecución. Los solicitantes extranjeros pueden obtener información acerca de los costes de la ejecución bien de la Autoridad Central, de los Colegios de Abogados de cada ciudad, ya sea directamente o por Internet. El Juzgado de Primera Instancia encargado de la Ejecución de la resolución en que se acuerda la devolución o restitución de un menor, esta obligado a adoptar todas las decisiones que sean precisas en interés del menor, para su cumplimiento, hasta su total materialización.

Sweden – Suède :

It is the attorney that manages the matter concerning legal aid for the applicant and usually it does not delay the process. The role of the Swedish Central Authority is to provide information of that legal aid can be obtained (see above section 3e regarding legal aid).

Switzerland – Suisse :

Les règles du droit cantonal sur l'assistance judiciaire gratuite sont applicables et n'entraînent pas de retard pour le traitement des affaires.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

In Scotland, once an application has been checked by the Central Authority, an applicant is put in contact with a solicitor who is accredited as a family or child law specialist, in the geographical area that the child is thought to be. Advice is taken from the Law Society of Scotland so that the Central Authority cannot be accused of favouring particular firms, and therefore remains neutral in this process. The application is sent to the solicitor with a certificate entitling the applicant to automatic legal aid. Occasionally there may be some delay where the obtaining of sanction for an expert, *e.g.* a child psychologist, is required, but the Scottish Legal Aid Board usually deals with all necessary applications promptly.

The Central Authority has internal guidelines to ensure that all incoming cases are turned around and allocated to a solicitor within 24 hours of receipt of the case, and therefore delays are kept to an absolute minimum.

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United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

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

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

United States – Etats Unis :

The United States does not provide legal aid directly. However, the U.S. Central Authority (USCA) works to see that, wherever possible, every applicant parent who meets certain guidelines is provided with legal counsel and advice by private attorneys willing to provide pro bono or reduced-fee services. The National Center for Missing and Exploited Children (NCMEC), as the USCA representative, maintains a list of attorneys who practice in the various jurisdictions in the United States and have agreed to represent at least one incoming Hague case without charge. This list is known as the International Child Abduction Attorney Network (ICAAN) list. When a new case is received, the applicant is asked to provide information about his or her financial status in order to determine whether he or she qualifies for full-fee, reduced-fee, or pro bono representation.

Once the applicant's appropriate payment level is determined, the USCA, through NCMEC, contacts ICAAN attorneys, explains the basics of the case and asks if the attorney would be interested in representing the applicant parent. If the attorney agrees, the USCA forwards the name to the requesting Central Authority and asks that the applicant parent contact the attorney directly to ensure that they agree on the terms of the representation and payment (if any). New attorneys are regularly added and are provided with practical legal information and access to more experienced attorneys who will act as mentors and provide support as the case progresses. NCMEC is continually performing outreach and recruitment efforts, as well as trainings to expand the existing network of more than 1100 members.

In certain regions of the country it can be more difficult to identify pro bono counsel and/or overcome conflicts of interest and obstacles to representation. In cases involving a 13b affirmative domestic violence-based defense where there is strong evidence of abuse on the part of the applicant, we have some difficulties securing a volunteer lawyer to represent the applicant on a pro bono basis. Access cases are more challenging to place than return cases.

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Uruguay – Uruguay :

A solicitud de la Autoridad Central requirente se solicita asistencia judicial gratuita para el solicitante del reintegro, la que se concede de acuerdo a iguales parámetros que a las personas pertenecientes al foro. La asistencia letrada gratuita es proporcionada por la Defensoría de Oficio dependiente del Poder Judicial y cubre todo el país.

Question 9	
In what circumstances and by what procedures / methods are children heard in Hague proceedings? In particular how will a determination be made as to whether a child objects to return, and in what circumstances might judges refuse to return a child based on his or her objections?	**Dans quelles circonstances et sur la base de quelles procédures / mécanismes les enfants sont-ils entendus dans les procédures relevant de la Convention de La Haye ? Plus particulièrement, comment déterminer si l'enfant s'oppose à son retour et dans quelles conditions le juge refusera le retour de l'enfant sur la base de son opposition ?**

Argentina – Argentine :

Lo más habitual es que los menores sean oídos por el psicólogo del Tribunal, si bien también pueden ser entrevistados por los Jueces con la presencia del Asesor de Menores. El Juez, teniedo en cuenta el dictamen del Asesor de Menores, valorará la opinión del menor y tomará una decisión. Tendrá en cuenta para ello la edad y grado de madurez del menor, como así también los motivos que el menor invoque para su negativa a volver a su país de residencia, a fin de determinar si el mismo se encuentra indebidamente influenciado por el sustractor.

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Australia – Australie :

Where appropriate, if a child who is the subject of proceedings objects to return the court will order an independent assessment be done, known as a 'Family Report'. This allows for the child to be interviewed by a court counsellor who reports back to the court on what the child's views are and whether the child objects. It is not accepted practice of the Australian courts to interview children as part of Hague proceedings.

Austria – Autriche :

All children who seem sufficiently mature to state their opinion (without any strict age limit) have to be heard in any case concerning their care and education. Generally the hearing has to be held by the judge in person, but in cases of younger or disabled children the judge may use a social worker or an expert.

If a child of 14 years or more rejects the idea of return (or access) in a mature and uninfluenced matter, Austrian courts would respect his or her wish.

Canada – Canada :

Justice Canada's website contains an *Inventory of Government-Based Family Justice Services* that provides a wide range of useful information about services available in Canada's common law provinces and territories, including services that can provide the court with assessment reports that reflect a child's voice. The *Inventory* is available in the "Parenting after Divorce" section of Justice Canada's website: www.justice.gc.ca (or directly at http://www.justice.gc.ca/en/ps/pad/resources/fjis/).

Examples of provincial/territorial approaches to hearing children's voices follow.

Saskatchewan

Saskatchewan has only had one case where the abducting parent refused to return the children based on their objections. In that case, the judge ordered a specific type of Custody/access assessment, Hearing Children's Voices reports, which focus on the child. The judge provided guidelines for the assessor, so that the focus of the assessment would be on the nature of the children's objections rather than on their preferences for custodial arrangements. The children had indicated that they didn't feel they were able to spend enough time with their father while in their mother's care, so wished to reside with their father. The judge ordered the return of the children.

New Brunswick

Under section 7 of the Family Services Act, the judge is able to request appointment of a responsible spokesperson for a child subject to an application in the Court of Queen's Bench of New Brunswick, Family Division. While such a spokesperson is normally a lawyer, it can also be a psychologist or other responsible adult. Under section 6 of the Family Services Act, the judge can order an evaluation to determine if the child understands the options available to him or her, is able to express his or her wishes and is able to make appropriate judgment regarding same.

Quebec

When a request for the return of a child is served on an abducting parent, a notice of presentation indicating the date on which the request will be presented is attached. At that hearing, counsel for the abducting parent will usually state that the child wishes to object to being returned. It is common for the child's wishes to become the parent's wishes or for the parent's wishes to be imposed on the child. In situations where the child is called to state his or her objection to being returned to the State of habitual residence, the judge can ask that a lawyer (usually from legal aid) be assigned to represent the child (articles 394.1 to 394.5 of the *Code of Civil Procedure*). This method is often useful in situations where the parents are openly hostile toward each other and each is trying to influence the child.

Article 34 of the *Civil Code of Québec* states that, in every application brought before it affecting the interest of a child, the court must give the child an opportunity to be heard if his or her age and power of discernment permit. The question of whether and in what circumstances article 34 applies to a request for return has not been the subject of legal debate in Quebec.

The fact that this provision appears in the *Civil Code of Québec* means that, for the time being at least and in the absence of a significant legal debate on the issue, children who wish to be heard will be heard, provided their age and power of discernment permit. The child will appear in court alone or accompanied by a person qualified to lend assistance. The way the child is examined varies considerably depending on the circumstances, the personality of the child and the requirements of the case. Quebec judges generally prefer to hear children in the courtroom, with or without counsel but without the parents; some prefer instead to hear children in chambers with only a clerk or bailiff – no counsel and no parents – present. The parents sometimes ask the judge to hear the child in chambers in order to spare the child the formal atmosphere of the courtroom; sometimes counsel insist that the child be heard in court so that his or her testimony can be recorded (see commentary by Madam Justice M.-C. Laberge, "Le témoignage des enfants au Québec" [children's testimony in Quebec], *Judges' Newsletter*, Volume VI, Fall 2003, pp. 27-31).

The weight a judge attributes to a child's opinion varies from case to case. It is difficult to summarize the conditions in which a judge might justify refusal to return based on the child's objection, as the child's testimony and maturity and the seriousness of his or her objection are assessed on a case-by-case basis.

Manitoba

Manitoba's Courts generally do not hear from children directly feeling that it is more appropriate for the views of children to be conveyed by social services professionals

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skilled in interviewing children and assessing their level of development. Manitoba's Family Conciliation branch provides such assistance to the Court at no charge to the parties. In a Hague Abduction Convention case, an assessment report prepared by Family Conciliation would focus on the child's level of maturity and views relevant to the request for return. Information about Family Conciliation's services is available via the Internet at: http://www.gov.mb.ca/fs/childfam/family_conciliation.html (English)
http://www.gov.mb.ca/fs/childfam/family_conciliation.fr.html (French)

Alberta
Children are heard within the discretion of the judge.

Nova Scotia
There are no set court rules in Nova Scotia with respect to the procedures/methods that are used in order for children to be heard in Hague proceedings. In general, however, courts will not hear children unless they are of a certain age (over 14). In that instance, a court is likely to appoint a legal guardian and/or legal counsel for the child so that the child can have a voice in court. In other instances, a court may order an assessment to be done and the "voice of the child" will in essence be portrayed through that assessment.

A judge may refuse to return a child based on the child's age and the reasons why the child wishes to remain in Nova Scotia with one parent as opposed to returning to the other.

Ontario
Generally, the Ontario courts do not consider it necessary to hear from children in the context of a Hague proceeding. If the judge considers the child to be of sufficient age and maturity, they have discretion to allow the child's testimony. Additionally, there are cases in which the Children's Aid Society or the Office of the Children's Lawyer are employed to ensure the interests of the child are clearly heard. There are also cases in which the services of a child psychologist are employed to speak to the child's psychological well-being.

British Columbia
Children are generally not heard in BC Courts. Children's views may be conveyed by way of reports prepared by professionals. Such reports would have recommendations based on the professional's interviews with the children and evaluation of the children's level of maturity and ability to understand the long term consequences of their wishes. Discussion paper developed by CCSO will be provided for this question.

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Le site Internet du ministère de la Justice du Canada comprend un répertoire des services gouvernementaux en droit de la famille contenant quantité d'information utile concernant les services disponibles au Canada dans les provinces de common law et dans les territoires, y compris des services qui permettent de fournir des rapports d'évaluation concernant l'avis de l'enfant. Le répertoire est disponible dans la section "le rôle parental après le divorce" du site Internet de Justice Canada:
www.justice.gc.ca (ou directement http://www.justice.gc.ca/fr/ps/pad/resources/fjis/).

Des exemples, dans les provinces et territoires, d'approches à cette question de tenir compte de l'avis de l'enfant sont fournis ci- après.

Saskatchewan
La Saskatchewan a eu seulement un dossier dans lequel le parent ravisseur a refusé de rendre les enfants sur le fondement de leurs objections. Dans cette affaire, le juge a ordonné un type spécifique d'évaluation aux fins de la garde / du droit de visite, soit des rapports établis suivant les principes de « Écouter le point de vue des enfants », qui sont centrés sur l'enfant. Le juge a donné des directives à l'évaluateur, afin que l'évaluation

porte sur la nature des objections des enfants plutôt que sur leurs préférences en fait de régime de garde. Les enfants avaient fait savoir qu'ils trouvaient qu'ils ne pouvaient pas passer suffisamment de temps avec leur père lorsqu'ils étaient sous la garde de leur mère, de sorte qu'ils souhaitaient résider avec leur père. Le juge a ordonné le retour des enfants.

Nouveau-Brunswick
En vertu de l'article 7 de la *Loi sur les services à la famille*, le juge peut demander la désignation d'un porte-parole responsable pour un enfant sur demande adressée à la Cour du Banc de la Reine du Nouveau-Brunswick, Division de la famille. Bien que ce porte-parole soit habituellement un avocat, il peut aussi s'agir d'un psychologue ou autre adulte responsable. En vertu de l'article 6 de la *Loi sur les services à la famille*, le juge peut ordonner une évaluation pour déterminer si l'enfant comprend les choix qui s'offrent à lui, s'il est capable d'exprimer ses désirs et s'il est capable d'exercer un jugement approprié à cet égard.

Québec
Lorsque la Requête en vue du retour d'un enfant est signifiée au parent ravisseur, un avis de présentation indiquant la date où la requête sera présentée y est joint. C'est lors de cette audience que l'avocat du parent ravisseur fera généralement connaître la volonté de l'enfant de s'opposer à son retour. Il arrive souvent que le désir de l'enfant devienne celui du parent ou que le désir du parent soit imposé à l'enfant. Dans les situations où l'enfant est appelé à faire connaître son opposition à un éventuel retour dans l'État de résidence habituelle, le juge peut demander qu'un avocat (généralement de l'Aide juridique) soit assigné à l'enfant pour le représenter (articles 394.1 à 394.5 du Code de procédure civile). Cette façon de fonctionner s'avère souvent utile dans les situations où les parents sont en conflit ouvert et où chacun tente d'influencer l'enfant.

L'article 34 du Code civil du Québec exige du tribunal, chaque fois qu'il est saisi d'une demande mettant en jeu l'intérêt d'un enfant, qu'il lui donne la possibilité d'être entendu si son âge et son discernement le permettent. La question de savoir si l'article 34 s'applique à une demande de retour, et dans quelles circonstances, n'a pas encore fait l'objet d'un débat judiciaire au Québec.

La présence de cette disposition dans le Code civil du Québec fait en sorte que, pour le moment du moins et à défaut d'un débat de fond sur la question, l'enfant qui souhaite être entendu le sera, sous réserve qu'il ait l'âge et le discernement voulu pour ce faire. Au moment de sa comparution devant le tribunal, l'enfant sera seul ou accompagné d'une personne apte à l'assister. La façon d'interroger un enfant varie considérablement suivant les circonstances, la personnalité de l'enfant et les besoins de la cause. Les juges québécois préfèrent généralement entendre l'enfant en salle d'audience, avec ou sans les avocats mais en l'absence des parents; certains préfèrent plutôt entendre l'enfant dans leur cabinet, sans avocats ni parents, en la seule présence d'un greffier ou d'un huissier. Parfois, ce sont les parents qui demandent au juge d'entendre l'enfant dans son cabinet afin d'éviter à ce dernier la solennité de la salle d'audience; parfois, ce sont les avocats qui insistent pour que l'enfant soit entendu en salle d'audience de façon à ce que son témoignage soit enregistré (voir le commentaire de la juge M.-C. Laberge, « Le témoignage des enfants au Québec », La Lettre des juges, Tome VI / Automne 2003, pp. 27-31).

Le poids accordé par le juge à l'opinion de l'enfant varie d'une affaire à l'autre. Il est difficile de résumer les conditions dans lesquelles le juge pourrait justifier le non-retour sur la base de l'opposition de l'enfant puisqu'il s'agit d'une appréciation au cas par cas du témoignage de l'enfant, de sa maturité et surtout, du sérieux de son opposition.

Manitoba
En règle générale, les tribunaux du Manitoba n'entendent pas directement les enfants, estimant qu'il est plus convenable que le point de vue des enfants soit présenté par des professionnels du travail social formés aux entrevues d'enfants et à l'évaluation de leur

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niveau de développement. Le Service de conciliation familiale du Manitoba fournit ce genre de service aux tribunaux sans frais pour les parties. Dans une affaire d'enlèvement relevant de la Convention de La Haye, un rapport d'évaluation établi par le Service de conciliation familiale porterait sur les aspects du degré de maturité et du point de vue de l'enfant qui sont pertinents pour la demande de retour. Des renseignements sur le Service de conciliation familiale sont disponibles sur Internet à l'adresse
http://www.gov.mb.ca/fs/childfam/family_conciliation.html (anglais)
http://www.gov.mb.ca/fs/childfam/family_conciliation.fr.html (français)

Alberta
Les enfants sont entendus à la discrétion du juge.

Nouvelle-Écosse
Il n'y a pas de règles de cour établies en Nouvelle-Écosse quant aux procédures/méthodes employés pour connaître le point de vue des enfants dans les procédures relevant de la Convention de La Haye. En général, cependant, les tribunaux n'entendront pas les enfants à moins qu'ils aient atteint un certain âge (plus de 14 ans). Dans ce cas, un tribunal désignera probablement un tuteur à l'enfant ou lui assignera un avocat pour que l'enfant ait une voix en cour. Dans d'autres cas, le tribunal peut ordonner la réalisation d'une évaluation, et l'essentiel du « point de vue de l'enfant » sera présenté au moyen de cette évaluation.

Un juge peut refuser de renvoyer un enfant sur le fondement de l'âge de l'enfant et des motifs pour lesquels l'enfant souhaite demeurer en Nouvelle-Écosse avec un parent plutôt que de retourner chez l'autre.

Ontario
En général, les tribunaux de l'Ontario ne jugent pas nécessaire d'entendre les enfants dans le contexte d'une procédure relevant de la Convention de La Haye. Si le juge considère que l'enfant est assez vieux et assez mûr, il a le pouvoir discrétionnaire de lui permettre de témoigner. En outre, il y a des cas où la Société d'aide à l'enfance ou le Bureau de l'avocat des enfants sont engagés pour veiller à ce que les intérêts de l'enfant soient dûment pris en compte. Il y a aussi des cas où les services d'un pédopsychologue sont engagés pour formuler des observations relatives au bien-être psychologique de l'enfant.

Colombie-Britannique
En règle générale, les enfants ne témoignent pas devant les tribunaux en Colombie-Britannique. Le point de vue des enfants est présenté au moyen de rapports établis par des professionnels. Ces rapports sont assortis de recommandations fondés sur les entretiens que le professionnel a eus avec les enfants et sur son évaluation du degré de maturité de l'enfant.

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Chile – Chili :

El propio Auto Acordado dictado por la Excma. Corte Suprema de Justicia, que regula el procedimiento aplicable para los casos de restitución, establece que los niños deben ser oídos por el Juez del Tribunal en audiencia confidencial, dónde participa también el Consejero Técnico del Tribunal, que puede ser un psicólogo o un Asistente Social. La opinión del niño es tomada en cuenta por el Juez dependiendo de la edad y madurez que demuestre el niño en la entrevista. Generalmente, si el niño demuestra madurez suficiente y se opone a su restitución, el Juez lo tomará en cuenta y muchas veces puedes ser incluso la única razón para denegar la restitución. Cabe señalar, que en muy pocas ocasiones se ha tomado en cuenta la opinión de un niño pequeño o sin madurez suficiente.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

The abducting parent has to first raise the child's objections as a defence in the Hague proceedings. The court would then determine it according to the principles set out in Article 13 as interpreted in decided cases, i.e. the child must have sufficient age and maturity and the child must express a valid objection to being returned. Depending on the circumstances, and invariably if both contesting parties agree, the court may see the child in chambers. Again, depending on the circumstances, this may or may not be in the presence of the contesting parties. The court will insist, however, on a neutral party being present (for example, a social welfare worker) and, before making any decision, will advise the contesting partiews in gerneral terms of what took place during the meeting. As a general statement, however, it can be said that our courts are reluctant to see a child, especially a younger child, unless there is good reason.

As to the views of the abjecting child, the court can also seek the assistance of the Officla Solicitor to represent the child to facilitate a determination as to whether a child objects to being returned pursuant to Article 13.

China (SAR Macao) – Chine (RAS Macao) :

As referred, there are no differences bwtween Hague proceedings and analogous domestic proceedings.

The child's right to be heard on important matters relating to his / her life is reflected in several local provisions, but the law does not establish a concrete age at which a child may or should be heard. Article 1756(2) of the Civil Code stipulates, as a general rule, that whenever there is no consensus between parents in matters of particular importance, the court before deciding, shall hear the child if he / she is ober 12 years old. Similarly, Decree-Law 65/99/M determines that if measures have to be adopted in regard to a child and if the child is over 12 years old, he / she shall be heard (Article 67 and 82).

Any decision involving a child must be made, taking into consideration his / her best interest. Therefore, objections of the child to be returned may be taken into consideration by the court but, legally, the court is not compelled to take into account of his / her views. In practice, the objection of the child can contribute to justify a refusal to order the return if, as provided in the law and / or in the Convention, it helps demonstrate the legal admissible grounds to refuse it. The judge is free to adopt the most convenient and befitting solution for each case according to the law.

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Colombia – Colombie :

En estos procesos como en otros que se tramitan en materia de protección de los derechos de los niños, observamos lo dispuesto en las normas nacionales e internacionales (Convención sobre los Derechos del niño), las cuales contemplan la obligación dentro de los procesos administrativos o judiciales de tener en cuenta las opiniones del niño en función de la edad y madurez de éste.

En la fase administrativa el Defensor de familia generalmente ordena un estudio psicosocial, en el que se establece la necesidad de escuchar o no al niño, en algunos casos se les toma una declaración la que es valorada por el equipo, esto en caso de que se deba tomar una medida de protección. Con estas valoraciones y las demás actuaciones realizadas por el Defensor de familia, en caso de fracasar la etapa de acuerdo o arreglo voluntario, se presenta la demanda y el Juez debe tenerlas como pruebas dentro del proceso que se adelanta.

Costa Rica – Costa Rica :

En el Derecho interno costarricense es regla regular el derecho del niño a un Estado de residencia habitual, así como su derecho de visitas, considerando su interés superior y su opinión personal. En este último caso, la autoridad judicial competente deberá tomar en cuenta la madurez emocional del niño(a) de que se trate, a efecto de determinar cómo recibirá dicha opinión. Además, es deber legal del juez valorar las pruebas por medio de la sana crítica racional.

Es decir, la opinión del niño sólo es un elemento a considerar para explorar, analizar y finalmente determinar su particular interés superior en el caso concreto, debiendo reflejarse esto último en la decisión final del juez.

En consecuencia, es obvio que lo que el juez determine como interés superior del niño para el caso concreto, decidirá en cual país se queda este último.

Cyprus – Chypres :

In the case where the opposition is based on article 13 (b), the views of the children might be heard if the judge requires it ans of course the judge will decide if the children are mature enough to be heard. Children's views are heard in the chamber of the judge and no one else is present except the judge and the children. Only in rare cases the views are heard only if this is absolutely necessary for the purpose of article 13 (b).

Czech Republic – République tchèque :

Children who are able to express themselves (older then 10 years) are as rule heard by social workers. The judges usually follow opinions of the social workers.

Denmark – Danemark :

Judges or an expert in child behaviour will have a conversation with the child, if the child has reached an age and maturity so the child's opinion has to be considered before the decision is made. In some cases there will be made an examination by an expert on child behaviour. Children above 12 years of age will always be heard.

Ecuador – Equateur :

Los Artículos 60 y 106 numeral 6) del Código de la Niñez y Adolescencia tutelan el principio y el derecho y el derecho que tienen los niños, niñas y adolescentes a ser consultados y a que se respeten sus decisiones considerando para ellos su grado de madurez y edad. Sin perjuicio de que la decisión final la toma el Juez considerando las excepciones que se puedan derivar y evidenciar del trámite y de las pruebas aportadas por las partes.

Es importante sin embargo señalar que, para el caso especifico de restitución internacional, no es clara la metodología para su aplicación.

El Salvador – El Salvador :

El Juez manda a oír al niño, conforme al artículo 12 de la Convención de los Derechos del Niño, sin embargo, el Juez no debe valorar dicha opinión en forma absoluta y aislada, sino en conjunto con prueba recabada, estudios socio económicos y en base a la sana crítica.

Finland – Finlande :

According to the Child Custody and Right of Access Act of Finland, Article 39, before he competent court makes a resolution on a return application it shall ascertain the opinion

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of the child, if he/she is, on the basis of his age or other circumstances in the knowledge of the court, to be presumed to have attained such a degree of maturity that it is appropriate to take his opinion into account.

In most of the cases the hearing of the child is conducted by social welfare board's social workers. There are no special rules how the hearing should be organised, and it varies depending on the age of the child, child's parent's mutual cooperation and other circumstances. A social worker may hear the child in child's home or in the authority's premises. Parents of the child are not normally present in the hearing. The social welfare board writes up a report of the hearing which will be sent to the judge.

If the child is heard in court a judge conducts the hearing.

Court will take the opinion of the child into account, but estimates what influence it has to the final decision. The opinion of the child is not binding to the court. Court must give reasons for its decision.

France – France :

L'audition de l'enfant est possible en droit interne français dans toutes procédures le concernant (article 388-1 du code civil). La parole de l'enfant est prise en considération par le juge qui procède à son audition, ou lorsqu'il fait procéder à son audition et à celle de ses parents par le biais d'une enquête sociale ou d'une expertise psychologique de la famille.

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Greece – Grèce :

The child's personality is always highly respected. The judge takes into consideration all the information provided by the state attorney as well as the child's maturity.

Guatemala – Guatemala :

Guatemala, a parte del Convenio de Sustracción, siempre que sea adecuado, de acuerdo a la edad y madurez del niño, se solicita su opinión, dentro de todo expediente judicial o administrativo, de conformidad con el artículo 12 de la Convención de los Derechos del Niño.

Iceland – Islande :

According to the Children's Act No. 76 of 27 March 2003 a child that has reached sufficient maturity shall, before a court decision is issued, be given the opportunity to comment on the case unless this can have a detrimental effect for the child or is pointless for the outcome of the case. A judge can entrust an expert to obtain the view of the child and make a report thereon.

In practice the district court judge in question and/or a psychologist, specialized in child behavior, will talk to the child *in camera* and report to the parties concerned, either orally or through a short written report.

By law there is no longer any limitation concerning the age of children who have the right to be heard. All depends on the child's maturity. As a rule, i.e. under all normal circumstances, children 12 years and above will always be heard and statistics show that children aged from 7-12 are more or less given the opportunity to comment on the case concerning their future. The youngest child ever to be heard was only 4 years at the time, and its views were obtained with interviews and tests performed by a psychologist.

Regarding the question of objection to return, following the child's opportunity to have its say on a case, and how judges should, and in fact do, respond to such objections, there is no complete answer. A book could be written on that subject. However, if a child raises

such objection, much depends on thorough evaluation of all circumstances surrounding the child's view. Initially, following Iceland's ratification of the Convention in 1996, judges were prone to not only listening to the child but also complying with its objection to return. In part, this may have been due to misunderstanding the difference between Hague procedures and custody cases. In recent years courts have been far more in line with the strict interpretation set out in Articles 12, 13 and 20 of the Convention.

Ireland – Irlande :

In these matters the deliberations of the Court are subject to the principle that the welfare of the child is paramount. The Court has the discretion to consider any objections which may be raised in relation to the return of the child. The evidence of the child may be heard and the Court may consider reports on the child's position, for example, welfare reports (see answer to question 3(b)) above.)

This matter was considered by the Irish Supreme Court in the case of RMM v MD, Denham J No. 162/99M of 9 December, 1999. The judgment quoted with approval certain passages from the explanatory report on the Convention on the Civil Aspects of International Child Abduction by Elisa Perez-Vera including paragraph 30 which states:-

> "In addition, the Convention also provides that the child's views concerning the essential question of its return or retention may be conclusive, provided it has, according to the competent authorities, attained an age and degree of maturity sufficient for its views to be taken into account. In this way, the Convention gives children the possibility of interpreting their own interests. Of course, this provision could prove dangerous if it were applied by means of the direct questioning of young people who may admittedly have a clear grasp of the situation but who may also suffer serious psychological harm if they think they are being forced to choose between two parents. However, such a provision is absolutely necessary given the fact that the Convention applies, *ratione personae*, to all children under the age of sixteen the fact must be acknowledged that it would be very difficult to accept that a child of, for example, fifteen years of age, should be returned against its will. Moreover, as regards this particular point, all efforts to agree on a minimum age at which the views of the child could be taken into account failed, since all the ages suggested seemed artificial, even arbitrary. It seemed best to leave the application of this clause to the discretion of the competent authorities".

The Supreme Court went on to state that this aspect of Article 13 is a separate ground and that the child's views alone are sufficient basis to refuse a return. The court expressed agreement with the approach in the English case of *S. v. S. (Child's views)* [1992] 2 F.L.R. 492 where it was determined that the part of Article 13 which related to the child's objection to being returned is completely separate from paragraph (b) which referred to the grave risk of physical or psychological harm and that there is no reason to interpret that part of the article as importing a requirement to satisfy paragraph (b) or to interpret the word 'object' to mean something stronger that its literal meaning. The court emphasised, however, that this is an area where the discretion of the judge must be exercised with great care. The Supreme Court also cited with agreement the approach of Balcombe LJ, in *S. v S. (Child Abduction) (Child's Views)* where that judgement stated:

> "(2) The establishment of the facts necessary to 'open the door' under Article 13
>
> (a) The question whether:
> (i) a child objects to being returned; and
> (ii) has attained an age and degree of maturity at which it is appropriate to take account of its views;
>
> are questions of fact which are peculiarly within the province of the trial judge. Miss Scotland submitted that the child's views should not be sought, either by the court welfare officer or the judge, until the evidence of the parents has been completed. We know of no justification for this submission. She also asked us to lay down

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guidelines for the procedure to be adopted in ascertaining the child's views and degree of maturity. We do not think it is desirable that we should do so. These cases under the Hague Convention come before the very experienced judges of the Family Division, and they can be relied on, in those cases where it may be necessary to ascertain these facts, to devise an appropriate procedure, always bearing in mind that the Convention is primarily designed to secure a speedy return of the child to the country from which it has been abducted.

(b) It will usually be necessary for the judge to find out why the child objects to being returned. If the only reason is because it wants to remain with the abduction parent, who is also asserting that he or she is unwilling to return, then this will be a highly relevant factor when the judge comes to consider the exercise of discretion.

(c) Article 13 does not seek to lay down any age below which a child is to be considered as not having attained sufficient maturity for its views to be taken into account. Nor should we. In this connection it is material to note that Art 12 of the UN Convention on the Rights of the Child provides as follows.

1. State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

(d) In our judgment, no criticism can be made of the decision by Ewbank J, to ascertain C's views, nor of the procedure which he adopted for that purpose. There was evidence which entitled him to find that C objected to being returned to France and that she had attained an age and degree of maturity at which it was appropriate to take account of her views. Those are findings with which this court should not interfere."

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The Supreme Court, in this case, went on to state that the Hague Convention is quite clear on its face that a child who objects to being returned and who has attained an age and a degree of maturity is entitled to have his or her view taken into account and that the trial judge was entitled to rely on the child's view in such a way as to make it quite clear that the child's view accorded with other determinations which the trial judge had made in the case so as to protect the child's long term psychology. The Supreme Court decision made it clear that it must always be the case that a decision not to return a child to its habitual residence is a decision of the court and that care should be taken that it is not, nor does it appear to be, the decision of the child.

There are no specific statutory rules governing decisions of this type; it is in the discretion of the Court to decide such case based on the individual circumstances. (See operation of the law as indicated in reply above.)

Israel – Israël :

Hearing a child is in the utmost interest of the Family Court. A child can be heard in a number of ways, depending on the circumstances of the case and the age and maturity of the child.

1. The court may decide to hear the child directly, without the preparation of any expert reports.

2. The court may issue a decision to hear the child and forward the order to the National Welfare Officer for Family Affairs in Israel (NWO), and authorize the NWO to determine how to handle the matter. A welfare office will then speak with the child and with both parents and, if necessary, may ask for a welfare report from the country of habitual residence. The welfare officer will prepare a report of her findings. The court will set a time limit for the filing of the welfare officer's report. Welfare officers give priority to Hague Convention matters. After receiving the report, the judge may decide to rely on the report without hearing the child. Or the judge may decide that it is necessary to hear the child, particularly if dealing with an older child. The child will be heard in the judge's chambers, almost always in the presence of a welfare officer.

3. The court may decide to be assisted by the Family Court Services (FCS) unit, which was established by the Family Court Law. The FCS is comprised of social workers, psychologists and psychiatrists. If the court wishes to hear the child, often the child will be heard by the judge in his chambers, accompanied by a social worker from the FCS. In addition, the court often summons a psychologist, a social worker, or a psychiatrist, to evaluate and report to the Court the wishes of the children. The specialist will be directed by the Court to pay special attention to the following issues:

In almost every case of abduction a kind of alliance and self identification comes about between the abductee and the abductor. The Judges are aware that the abduction often results in alienation to one of the parents and that the child is dependent upon the parent who abducted him The Judges are also aware that often there are attempts to "brainwash" the children. Therefore, the Court is extremely careful when considering the wishes of a child. In addition, the Court takes special notice of the rule that exceptions to returning the children should be interpreted carefully. The interpretation that the Court has given to this article of the Convention is that the Court should NOT check which parent the child prefers, but only if there is an extreme refusal to return to the country of origin, and if there are serious and valid reasons for the refusal. The Court will check the following parameters:

- The maturity of the child;
- The ability of the child to understand the consequences of the decision;
- The reasons for the refusal: is the child afraid of something or someone in the country of origin, is the child afraid of the parent seeking his return, or does the child merely prefer to stay with the abducting parent`
- Was the child "brainwashed", or is he strongly influenced by the abducting parent (in such a case, little value is given to the refusal of the child).

In extreme cases, the refusal of a child to return to the country of origin may be correlated with the "grave risk" defense, such as in cases where there is serious threat that the child may commit suicide.

Italy – Italie :

Il s'agit d'un domaine relevant du ressort exclusif du Tribunal pour Enfants qui statue cas par cas.

Latvia – Lettonie :

In the practice of the Courts in Latvia there weren't cases regarding Convention in which children were heard.

In accordance with Article 20 of the Protection of the Rights of the Child Law a child shall be given the opportunity to be heard in any adjudicative or administrative proceedings related to the child, either directly or through a lawful representative of the child or through a relevant institution.

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Lithuania – Lituanie :

Article 12 of the 1989 UN Convention of the Rights of the Child (ratified by Lithuania 1995; according to Lithuania's law, this legal act is a direct application document) establishes the child's right to express his/her views on any issues pertaining to him/her and to be heard, in any judicial or administrative proceedings pertaining to him/her, either directly or through a representative or relevant body in accordance with the procedure established by national laws. Accordingly, Article 3.164(1) of the Civil Code of the Republic of Lithuania establishes the duty to directly hear a child who is able to formulate his/her view where any issue related to the child is being resolved. Courts resolving child-related issues including issues under the Hague Convention take guidance from these provisions.

In its 1997 Manual on Human Rights Reporting, the UN Committee on the Child's Right noted that the child's right to being heard established in Article 12 of the Convention on the Rights of the Child can be realised in different ways, either directly or through representatives or other appropriate persons, and stated that all these ways represent alternatives, each of them providing the child with an opportunity for expressing his/her opinion in a free and informative way. Taking account of the child's mental immaturity emphasised in the preamble of the Convention, Lithuanian courts always give the child's interests a priority when taking any actions pertaining to the child; also, knowing that the child's questioning in court can damage his/her psyche, Lithuanian courts use the method of hearing the child through a representative in addition to hearing him/her directly in court. The child's wishes and views are heard through a representative in those cases when the hearing the child in court would contradict his/her interests due to the child's sensitivity, health condition etc. The court may cause a state child's right protection agency, the child's pedagogues, mentors etc. to hear the child and inform the court.

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Malta – Malte :

Each individual judge determines the way in which a child is to be heard, according to the circumstances of the case (including the option of videoconferencing, if necessary). Whether or not to order the return of the child, if the child objects, remains in the discretion of the judge. However, the judge would take into account the age and maturity of the child, together with his/her individual circumstances and his/her best interest.

Mexico – Méxique :

Los menores son escuchados cuando a criterio del Juez el menor cuenta con una edad o grado de madurez suficiente para tomar en cuenta su opinión.

Cuando el menor se opone a su restitución, la autoridad judicial ordena la realización de exámenes psicológicos para determinar si el menor esta siendo manipulado por la parte sustractora o es un deseo real el no ser restituido y en su caso, porque se esta negando a la restitución. A partir de ahí el Juez está en condiciones de resolver.

Monaco – Monaco :

Dans l'hypothèse où l'enfant est sur place, il peut être entendu par le juge tutélaire monégasque à partir de l'âge de 7 ans.

Dans l'hypothèse où l'enfant ne se trouve pas sur le territoire, ses déclarations peuvent être recueillies par écrit par les autorités judiciaires étrangères notamment dans le cadre de commissions rogatoires internationales.

Dans tous les cas, l'intérêt de l'enfant prime.

Netherlands – Pays-Bas :

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

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

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

New Zealand – Nouvelle Zélande :

Children do not attend the hearing. Their views are heard most often by appointing a lawyer to represent them at the hearing. Sometimes the Judge will meet with the child, or a psychological report commissioned, to evaluate the child's views.

The Care of Children Act states that in proceedings under the Act a child must be given reasonable opportunities to express views on matters affecting the child, and any views the child expresses (either directly or through a representative) must be taken into account. Unless the Court is satisfied that the appointment would serve no useful purpose, the Court must appoint a lawyer for the child if the proceedings appear likely to proceed to a hearing. It is the duty of the lawyer for child to ascertain the child's level of maturity and nature of any objection.

Examples of the objection to return

In VP v A no return was ordered for a combination of grave risk and that the children objected to the return. The mother had suffered from domestic violence that was found to be likely to result in her psychological state deteriorating to the point the children would suffer psychological harm should she be forced to return with them. In conjunction with this, the children had witnessed the domestic violence, and had a justifiable objection to returning. This case was said to be exceptional, as even though the Dutch authorities could protect the children and mother from physical harm, the level of psychological trauma that would result from a return would be debilitating and prevent the mother from providing for the children with their heightened needs.

In ADR v JMR FC WN FAM 2005-085-000243 30 June 2005 counsel was appointed to represent the children so their views could be properly ascertained. The mother also enlisted a psychologist to evaluate the wishes of the children. Here the children were not required to return to France. It was found that a return to France would expose the children to a grave risk of psychological harm. The children had also expressed their clear wish to remain in New Zealand. One of the two children in particular was so emotionally distressed by the separation of the parents that he said he had contemplated suicide. The psychologist found this was a real concern. The thought of returning to France was found to be intolerable for the child. The child was not emotionally resilient, and it was held that a return order would expose him to an unacceptable level of emotional harm.

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Nicaragua – Nicaragua :

En base a lo establecido en el Código de la Niñez y la adolescencia; que en su Artículo 17 reza: Las niñas, niños y adolescentes tienen derecho a ser escuchados en todo procedimiento judicial o administrativo, que afecte sus derechos, libertades y garantías, ya sea personalmente, por medio de un representante legal o de la autoridad competente, en consonancia con las normas de procedimiento correspondientes según sea el caso y en función de la edad y madurez. La inobservancia del presente derecho causará nulidad absoluta de todo lo actuado en ambos procedimientos; se toma en consideración la opinión de Las niñas, niños y adolescentes, a través del Estudio Social, que se realiza a éstos, en el cual tienen la oportunidad de ser escuchados.

Panama – Panama :

De conformidad a lo establecido en el artículo 489 numeral 10 del Código de la Familia, artículo 12 de la Ley 15 de 1990 y el artículo 905 numeral 7 de Código Judicial, todo niño o niña a partir de los siete (7) años será escuchado de manera directa por el Juez o Jueza a fin de emitir su opinión en este asunto que la afecta. Cuando el niño es menor de 7 años es entrevistado por un Psicólogo para conocer su estado emocional, madures como toda información referente a la petición de restituirlo. Cuando el niño o niña de 7 años deba ser escuchado, sera asistido por un defensor de oficio de conformidad en el artículo 738, 769 del Código de Familia.

Si el menor se opone a la restitución debe tomarse en cuenta la edad y madurez psicológica del mismo y las circunstancias que excepciona el mismo convenio para negar la restitución. También debe tomarse en consideración las circunstancias especiales que señala nuestro ordenamiento jurídico (Artículo 495-ss CF). Y establecer los mecanismo de protección previos en coordinación con la Autoridad Central requerida como la requirente, de tal forma que al proceder restituir el Niño se le garantice su protección. Es necesario conocer que instituciones de protección puede brindársele al niño en el Estado de su residencia Habitual, de tal forma que el niño sea informado sobre estas garantías y evitar que su traslado sea lo menos traumático posible, debiéndose auxiliar con un equipo técnico Especializado para estos casos.

Paraguay – Paraguay :

El Código de Niñez y Adolescencia, en su art. 4 establece que toda medida que se adopte en respecto al niño o adolescente estará fundada en su interés superior, y para determinar su interés superior, se respetarán sus vínculos familiares, su educación, origen étnico, religioso, cultural y lingüístico. Se atenderá además la opinión del mismo, el equilibrio entre sus derechos y sus deberes, así como su condición de persona en desarrollo. Los menores son escuchados a partir de los 9 años de edad, en presencia del Defensor del Niño ante el Juez de Niñez y Adolescencia en donde recayere la causa. Las circunstancias que podrían los Jueces oponerse a la concesión de una restitución, sería cuando estos ya crean una nueva residencia habitual, que por el rango erario crean nuevos vínculos afectivos.

Poland – Pologne :

In cases concerning determining child's rights Polish courts are obliged to hear the child and possibly take into consideration the child's views (Article 72 § 3 of the Constitution of the Republic of Poland). This obligation extends also to the cases under the Hague Convention heard before a Polish court. Polish law does not specify the age limit on which the hearing of the child depends. By virtue of the Article 576 § 2 of the Polish Code of Civil Procedure (k.p.c.) hearing of a minor shall take place outside the courtroom. The court may order the minor to appear personally at the hearing provided that the minor attained the age of 13. It is the judge or the person appointed by him, e.g. a probation officer that hears the minor.

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The court shall take into account child's objection to return to the place of habitual residence on the condition that the child's opinion is independent and the child attained a sufficient degree of maturity to express such an opinion.

Portugal – Portugal :

The Portuguese law allows the hearing of a child. It just depends on the Court's will. The judge shall evaluate the under 12 years old children's degree of maturity for that purpose. Usually the children above 12 years old are heard by the Portuguese Courts. Most of the time, the children's opinion is relevant for the decision; the value of the minor's point of view is, however, always dependent from the judge's discretion.

Romania – Roumanie :

According to Law no. 369/2004, the hearing of the child who is ten years old is obligatory. The child under ten years of age may be heard if the court deems it necessary. In all circumstances, when a child is heard a psychologist shall be present, and shall draw up a psychological report.

Slovakia – Slovaquie :

The children are heard in The Hague proceedings when the judge finds reasonable to do so. There is no limit for the age of the child who can be heard in the court. If the child is able, with respect to his age and his maturity, to express his own opinion independently, then it has right to express his opinion in all matters that concern about him.

Moreover, according to Family Law Act No. 36/2005 Z.z. in all judicial procedures, concerning the minor child, the minor has right to be heard in the court.

The child is usually heard directly in the court in the presence of the social worker, or a the judge appoints a psychologist, who is ordered to examine the child.

The Centre has not had any case, where the child had objected to return so far. In one case the child expressed its desire to return to the country of origin for a short time and then to come back and live in the requested country. The court ordered the return of the child.

Therefore, the Slovak CA supposes, that if the child strongly refuses to return, then the court will probably accept his/her objections - with respect to his age and rational maturity as mentioned above.

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South Africa – Afrique du Sud :

Generally, the court gains access to the voice of the child through expert reports of social workers, psychologists, etc. public interest groups such as the Child Law Centre has on occasion sought leave of the court to be admitted as amicus curiae to articulate the child's voice.

Our civil procedure provides for the appointment of a curator ad litem to represent the child. The court retains the power to order that the child be afforded separate representation.

The child's right to legal representation at state expense, in specified circumstances is also guaranteed by section 28(1)(b) of our Constitution.

To date , no matter has been decided by our courts where a child has objected to being returned. However, one such matter is currently pending in the Witwatersrand Local Division (Johannesburg High Court).

Spain – Espagne :

El Reglamento Comunitario 2201/2003, señala que la audiencia del menor desempeña un papel importante en la aplicación del Reglamento que no tiene por objeto modificar los procedimientos nacionales aplicables en la materia. El Art. 11 del Reglamento 2201/2003 indica que en caso de aplicarse los Arts. 12 y 13 del Convenio de La Haya de 1980, se velará por que se dé al menor posibilidad de audiencia durante el proceso, a menos que esto no se considere conveniente habida cuenta de su edad o grado de madurez. En la legislación interna española, la previsión de audiencia del menor la contiene el Art. 1905 y 1907 de la Ley de Enjuiciamiento Civil que señala que se oirá separadamente de las partes al menor sobre su restitución. En España el Art. 9 de la Ley Orgánica 1/1996, de protección jurídica del menor, señala que todo menor tiene derecho a ser oído. El Art. 9 indica que:"...*1. El menor tiene derecho a ser oído, tanto en el ámbito familiar como en cualquier procedimiento administrativo o judicial en que esté directamente implicado y que conduzca a una decisión que afecte a su esfera personal, familiar o social. En los procedimientos judiciales, las comparecencias del menor se realizarán de forma adecuada a su situación y al desarrollo evolutivo de éste, cuidando de preservar su intimidad. 2. Se garantizará que el menor pueda ejercitar este derecho por sí mismo o a través de la persona que designe para que le represente, cuando tenga suficiente juicio. No obstante, cuando ello no sea posible o no convenga al interés del menor, podrá conocerse su opinión por medio de sus representantes legales, siempre que no sean parte interesada ni tengan intereses contrapuestos a los del menor, o a través de otras personas que por su profesión o relación de especial confianza con él puedan transmitirla objetivamente. 3. Cuando el menor solicite ser oído directamente o por medio de persona que le represente, la denegación de la audiencia será motivada y comunicada al Ministerio Fiscal y a aquéllos*". En el área de la crisis matrimonial, ahora en España, la Ley 15/2005, de 8 de julio, por la que se modifican el Código Civil y la Ley de Enjuiciamiento Civil en materia de separación y divorcio, ha introducido en la materia importantes novedades. En el Art. 92 del Código Civil se imponía al juez la obligación de oír a los menores si tuvieran suficiente juicio y siempre a los mayores de doce años, señalándose que el juez de oficio o a petición de los interesados, podría recabar el dictamen de especialistas. Ahora en el nuevo Art. 92 del Código Civil, se hacen novedosas previsiones en los apartados 2, 6 y 9, que dicen: *2. El Juez, cuando deba adoptar cualquier medida sobre la custodia, el cuidado y la educación de los hijos menores, velará por el cumplimiento de su derecho a ser oídos. 6. En todo caso, antes de acordar el régimen de guarda y custodia, el Juez deberá recabar informe del Ministerio Fiscal, y oír a los menores que tengan suficiente juicio cuando se estime necesario de oficio o a petición del Fiscal, partes o miembros del Equipo Técnico Judicial, o del propio menor, valorar las alegaciones de las partes vertidas en la comparecencia y la prueba practicada en ella, y la relación que los padres mantengan entre sí y con sus hijos para determinar su idoneidad con el régimen de guarda. 9. El Juez, antes de adoptar alguna de las decisiones a que se refieren los apartados anteriores, de oficio o a instancia de parte, podrá recabar dictamen de especialistas debidamente cualificados, relativo a la idoneidad del modo de ejercicio de la patria potestad y del régimen de custodia de los menores.* Recalcar además que, de forma muy novedosa, la citada Ley 15/2005, de 8 de julio, ha regulado por primera vez en España la forma de llevar a cabo las exploraciones o audiencias de menores al añadir un nuevo párrafo final a la regla 4ª del Art. 770 de la LEC.. Dicha regla ya establecía que cuando hubiere hijos menores o incapacitados se les oirá si tuvieren suficiente juicio y, en todo caso, si fueren mayores de doce años. Ahora el párrafo nuevo añade:"... *En las exploraciones de menores en los procedimientos civiles se garantizará por el Juez que el menor pueda ser oído en condiciones idóneas para la salvaguarda de sus intereses, sin interferencias de otras personas, y recabando excepcionalmente el auxilio de especialistas cuando ello sea necesario*". Pese a faltar una clara previsión legal, parece importante la documentación de las declaraciones de un menor, por ejemplo, a los efectos de valorar denegaciones de retorno o de ordenar dicho retorno en casos de sustracción interparental de menores y en el marco de las previsiones recientes del Art. 10 y 11 del Reglamento 2.201/2003. En la Unión Europea, el tema relativo a la audiencia del menor es recurrente en el desarrollo del Reglamento 2.201/2003, y en particular con la mirada puesta en los Arts. 23, 41 y 42 del mismo y en

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los puntos 19 y 20 del preámbulo del Reglamento. Sobre esta cuestión, la guía práctica elaborada por la Comisión a través de la Red Judicial Europea en materia civil y mercantil, hace determinadas matizaciones al señalar que el Reglamento hace hincapié en la importancia de que los menores tengan la oportunidad de manifestar su opinión en los procedimientos que les afectan. La audiencia del menor es uno de los requisitos para suprimir el procedimiento de exequátur en el derecho de visita y las resoluciones que implican la restitución del menor. Es también posible oponerse al reconocimiento y a la ejecución de una resolución relativa a la responsabilidad parental por no haber dado al menor la posibilidad de audiencia y el Reglamento establece el principio fundamental de que se dará audiencia a un menor en los procedimientos que le afecten. Como excepción, un menor puede no ser oído si no se hubiere considerado conveniente habida cuenta de su edad o grado de madurez y esta excepción debe interpretarse de manera restrictiva para la guía práctica. De hecho, el Reglamento no modifica los procedimientos nacionales aplicables en esta materia y, en general, la audiencia al menor debe hacerse teniendo en cuenta su edad y madurez. La valoración de los puntos de vista de los niños pequeños requiere experiencia y cuidados especiales y es diferente al caso de los adolescentes. En un caso de sustracción de menores el propósito es a menudo determinar la naturaleza de las objeciones de los menores a la restitución y cuáles son sus causas, y también determinar si, y en qué medida, puede correr peligro el menor. Hay siempre una posibilidad de que los padres intentan influir al menor en estos casos. El Reglamento 2201/2003, en los puntos 19 y 20 del preámbulo señala que la audiencia del menor desempeña un papel importante en la aplicación del Reglamento, sin que éste tenga por objeto modificar los procedimientos nacionales aplicables en la materia y remite para la práctica de tales audiencias a los procedimientos establecidos en el Reglamento (CE) n° 1206/2001 del Consejo, de 28 de mayo de 2001. Pese a ello, se puede decir que en cierta medida, el Reglamento está armonizando las legislaciones internas cuando impone un derecho de audiencia que puede no estar previsto en la legislación interna de algún país. Se impone una posibilidad de audiencia en todo caso, aún hipotética. Resumidamente se puede decir que la opinión del menor en España es recabada cuando se considera necesario, sin que la edad sea un obstáculo para ello, a criterio de cada órgano judicial. La opinión del menor contraria a la restitución se valora siempre en función de su edad, grado de madurez y restantes circunstancias concretas, sin imposición alguna de valoraciones previas al órgano judicial que ha de resolver.

Sweden – Suède :

The Swedish Children and Parents Code and the 1989 Act (section 17) recognizes, the child's right to have an opportunity to express his or her views during the procedure. This shall be done unless the court decides that it would be improper in respect to the child's age and maturity. This exception shall be interpreted strictly. As a general rule, the child shall be asked in a way that takes into consideration the child's age and maturity. The assessment of younger children's statements shall be made by people with certain knowledge in this area and it shall be dealt with in another way than when it concerns adults.

In most cases the hearing of the child is conducted by social welfare board's social workers. There are no special rules how the hearing should be organized, and it varies depending on the age of the child, child's parent's mutual co-operation and other circumstances. Parents of the child are not normally present in the hearing. The social welfare board writes a report of the hearing, which will be sent to the judge.

Regarding the cases between EU member States, the Commission's Supervision Guide for the Interpretation of the Brussels II Regulation, which is applicable in Sweden since 1 June 2005, states that it is not necessary that the child's views are examined during the court proceedings, when it is sufficient that the child can be interrogated by a qualified authority in accordance with national legislation. In Sweden, it is usual that a social worker examines the child's views and later on reports the child's wishes and feelings to the court. If the child's views is examined by the court, the judge shall, as far as possible organize the interrogation with respect to the nature of the case, the age of the child and

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other circumstances. According to the supervision guide it is always important that the child has the opportunity to express its own views.

The person that will interrogate the child has to have appropriate education in this matter, in terms of communicating with the child and be aware of the risk that the parents try to affect the child in terms of putting pressure on the child. If the interrogation is made in a correct way and with sufficient discretion, the child will have an opportunity to express its own views and will be free from feelings of responsibility and sense of guilt.

Switzerland – Suisse :

Lorsque les enfants sont entendus, l'audition se fait par le juge ou par une personne appropriée, dépendant par exemple d'un service de protection de la jeunesse, l'âge admis étant fixé à six ans par le Tribunal fédéral (pour l'audition à ne pas confondre avec l'âge de maturité d'un enfant situé autour de 10 ans). L'invocation principalement de l'article 13, alinéa 1, lettre b) par le parent défendeur justifie l'audition d'un enfant, celui-ci étant toutefois entendu dans la plupart des cas « spontanément » dès l'âge de 10 ans. Dans le cadre de la recherche d'une solution amiable l'enfant peut être préalablement entendu par une autorité cantonale (autorité tutélaire, service de protection de la jeunesse) : cette audition pourra fournir les raisons d'un refus de retourner dans l'Etat requérant pour le mineur. En cas d'échec de la solution amiable, le juge appelé à statuer sur le retour décidera de tenir compte ou non de l'audition préalable ou s'il estime opportun d'effectuer une « nouvelle écoute » de l'enfant.

Le juge ou l'autorité cantonale compétente procède outre à l'audition personnelle de l'enfant (cas échéant par personne « appropriée » interposée, à l'instar de la possibilité offerte par le droit du divorce) à des enquêtes complémentaires notamment sur la situation sociale de l'enfant (dans son milieu familial, scolaire etc.).

Le refus clairement manifesté d'un mineur de ne pas retourner dans l'Etat de résidence habituelle est déterminant dans la majorité des cas lorsque le mineur est adolescent ou préadolescent. Le parent demandeur est dûment informé par les autorités centrales et peut renoncer par exemple à recourir contre une décision de 1ère instance. Lorsque ce parent accepte de « négocier » dans la phase de recherche de solution amiable (art. 7c), il dispose d'avantages qu'il n'a plus lorsqu'une décision de non retour est rendue. Par exemple de proposer au mineur une phase provisoire de séjour chez le défendeur ou un retour également provisoire chez lui, notamment pour terminer une année scolaire en cours.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

The views of the child may be obtained in a number of ways, none of which are prescribed by rules of court: for instance, by affidavit, by interview by a child psychologist who then reports and may give evidence, or by the child being separately represented before the court, which is not uncommon. If the child seeks to be represented, no exceptional circumstances rule operates. Separate representation for the child has become increasingly common in the case of a child who is of such an age that his views are liable to carry weight.

It is not the practice of judges of the Court of Session to interview children themselves. It would be technically possible, if the court thought it appropriate, to hear the child in evidence, but it would be very unusual to do so. In *W* v *W,* 2003 SLT 1253 the Inner House highlighted some of the 'potential pitfalls inherent' in interviewing the child in person. The Inner House seemed to be suggesting it would be best practice for the child's views to be ascertained by a person trained or experienced in finding out such information from children.

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It should be noted that the Court of Session does not have the services of any organisation such as CAFCASS (Children and Family Court Advisory & Support Service). CAFCASS operates in England and Wales and looks after the interests of children involved in family proceedings. To date, the Court of Session has not felt the need for the involvement of an organisation such as this: if a professional assessment of the child's stated position is required, one or both parties will, inevitably instruct a child psychologist to assist. The court will, if necessary, contact such a person directly to request their assistance and that it be provided as a matter of urgency. The need for such a report will usually be addressed at the first hearing.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

The weight given to the child's views will depend upon the child's age and understanding and whether or not his/her views have been genuinely arrived at. If the court finds that the child's objections have been influenced by the views of the defendant parent who may be vehemently opposed to any return, little or no weight will be attached to his/her expressed views.

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

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

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

United States – Etats Unis :

The circumstances and procedures for hearing from a child involved in a Hague proceeding depend on state law, and in many cases, on the practices of individual judges. Courts can receive evidence concerning a child's wishes in several ways, including allowing the child to testify; interviewing the child in the judge's chambers; having the child evaluated by a court-appointed psychological professional; and appointing an attorney or a *guardian ad litem* to speak on behalf of the child. All judges will consider the wishes of a child, but the weight given to those wishes depends on local law as well as factual circumstances such as the age and maturity of the child.

See discussion of child's objections in response to Question No 13 k).

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Uruguay – Uruguay :

En los casos de restitución internacional la opinión del menor es especialmente atendida, teniéndose en cuenta su edad y madurez, solicitándose usualmente al respecto informar de sicólogos. La opinión del menor dentro de los parámetros indicados puede incidir en el rechazo al reintegro.

Question 10	
How has Article 20 of the Convention been applied in your State? Are you aware of an increase in the use of this Article, bearing in mind that the Statistical Survey of all cases in 1999 found no case in which this exception to return was successfully invoked?	**Comment l'article 20 de la Convention a-t-il été appliqué dans votre Etat ? Avez-vous connaissance d'une utilisation accrue de cet article, sachant qu'il est ressorti de l'analyse statistique des demandes déposées en 1999 que cette exception n'a été retenue dans aucune affaire ?**

Argentina – Argentine :

No se ha presentado ningún caso en el que se haya resulto en base al art. 20.

Australia – Australie :

Australian legislation places the onus of proof of Article 20 on the person opposing the return. The burden of proof is the civil standard of proof, that is, on the balance of probabilities.

The raising of the Article 20 defence to return frequently leads to delays prior to the hearing of the matter in court. After the defendant files a response to the application for return outlining his/her defences for return, the Australian Central Authority has encountered any number of the following difficulties which cause delays:

- the left behind parent must respond to the defendant's arguments opposing return. The court must allow a reasonable time for this process.
- the left behind parent may not speak English and all documents need to be translated into the language of the left behind parent.
- the left behind parent who has no legal adviser in the requesting country may lack the education to respond appropriately to the allegations, in a form acceptable to the court (ie by sworn statement).
- the left behind parent may not be contactable by fax or email and so documents from the Australian Central Authority have to be sent and returned by post in the requesting country.
- the left behind parent may not respond adequately to the allegation and an adjournment may be necessary while additional material is obtained.
- if the defendant is late in filing a response the left behind parent may have insufficient time to respond and an adjournment is necessary.

In Australia, as the Central Authority represents the left behind parent, the Central Authority will be criticised by the Court for inadequate documentation in the application. It will also be criticised for any protracted delays in the legal proceedings.

The Article 20 defence has been raised in several cases but none successfully, for example, Director-General, Department of Family, Youth and Community Care and Bennett (2000) 26 FLR 71. Judgment was given that a boy of 5 not to be returned to England, inter alia, on the grounds that the child was of Torres Strait Island origin, and the English Court was not required to take into account his culture and heritage. The Central Authority appealed the decision and the appeal was upheld. The Torres Strait Islander issue did not have to be determined in this case: "The return of a child of Aboriginal or Torres Strait Islander heritage to a foreign country is not per se in breach of

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any fundamental principle of Australia relating to the protection of human rights and fundamental freedoms. The ability of a foreign court to give proper consideration to such heritage would only arise if an exception to mandatory return was otherwise established.

Austria – Autriche :

No cases found.

Canada – Canada :

Article 20 has been rarely pleaded and never successfully applied in Canadian provinces and territories.

**

L'article 20 n'a été que rarement plaidé et jamais appliqué par les tribunaux dans les provinces et territoires canadiens.

Chile – Chili :

Hasta la fecha, no se ha dado nunca un caso en Chile en que se haya alegado el artículo 20 como causal para oponerse a la restitución de un niño.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We have not come accross a case raising Article 20 as a defence and are not aware of an increase in the use of this Article.

China (SAR Macao) – Chine (RAS Macao) :

So far, Article 20 has never been invoked.

Colombia – Colombie :

En lo que va de ejecución del Convenio no se ha presentado ningún caso en el que se haya denegado la restitución de un niño por aplicación del artículo 20 del Convenio.

Costa Rica – Costa Rica :

Hasta el momento no ha sido aplicado el artículo 20° del Convenio de la Haya. Pero eso no quiere decir que en el futuro la situación se mantenga incólume, sobre todo si se toma en cuenta que nuestro ordenamiento constitucional protege con especial énfasis los derechos humanos de la mujer-madre conjuntamente con su hijo menor de edad. Es decir, en aquellos casos en donde el supuesto sustractor es MAMÁ (o sea, la mayoría de los casos según la estadística), el juzgador costarricense necesariamente quedará comprometido a considerar factores que van más allá de la simple determinación del Estado de residencia habitual del menor sustraído, p. ej. determinadas situaciones de violencia doméstica, en atención a los derechos humanos de esa mujer-madre.

Cyprus – Chypres :

No application has ever been dismissed because of this article. No I am not aware of such an increase in the use of this Article.

Czech Republic – République tchèque :

No.

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Denmark – Danemark :

The 1980 Hague Convention has been implemented in Danish law. We have not taken any specific measures concerning article 20 and article 20 have never been used.

Ecuador – Equateur :

No conocemos que haya sido aplicado el Art. 20 del Convenio.

El Salvador – El Salvador :

No hemos tenido ningún caso en el que se solicite la aplicación de dicha excepción.

Finland – Finlande :

Article 20 has never been applied in Finland. The Finnish Central Authority is not aware of an increase in the use of this article.

France – France :

L'article 20 de la convention de la Haye du 25 octobre 1980 n'a, jusqu'à présent, pas semble-t-il été appliqué à l'occasion d'une procédure de retour d'enfants, illicitement retenus en France, au lieu de leur résidence habituelle.

Greece – Grèce :

No.

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

Article 20 of the Convention and a comparable provision in the implementing Act have been invoked in several cases, although never successfully.

Ireland – Irlande :

This Article has recently been successfully used in a defence. This was a case where the child had been taken from foster care by the mother, who had been visiting the child on an access visit. The Irish court found that it was a possibility that, should the child be returned to Northern Ireland, the child might be put up for adoption. Before an adoption can take place in this jurisdiction, very stringent criteria must be met. The court found that the possibility of the adoption of the child did not reflect or protect the constitutional rights of the family, and accordingly the judge exercised his discretion under Article 20 of the Convention.

Israel – Israël :

The Article 20 defence has only been raised once in the Israeli courts, and the claim was dismissed. In the case of *Ploni v. Almonit*, Family Court of Tel Aviv, case 74430/99, a parent who abducted children from Zimbabwe to Israel claimed that human rights were being violated in Zimbabwe, and that due to the presence of bribery, she would not be able to have a fair trial in Zimbabwe. The court did not accept the mother's claims, holding that while the mother had proved individual incidents involving violation of human rights, such incidents did not meet the burden of proof under Article 20, and the court ordered the return of the children to Zimbabwe.

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There has not been an increase in the use of this article in Israel. However the article has been recently claimed, albeit unsuccessfully, in a case involving an abduction to Turkey, the abducting mother raised the Article 20 defence based on two claims. Firstly, she argued that the father had commenced proceedings in the Rabbinical Court in Israel, which is a religious court, and that as the Republic of Turkey has only secular courts, this is contrary to Turkish public order. Secondly, she falsely claimed that the Rabbinical Courts in Israel give priority to the father's parental rights over the child's best interests. The Turkish courts refused to accept these arguments (as well as other defences that were raised) and ordered that the child be returned to Israel. The mother then filed a petition in the European Court of Human Rights, again raising the Article 20 claim and also claiming that the order requiring the return of the child to Israel constituted a breach of her right to a fair trial as well as a breach of her right to family life, in contravention of the European Convention on Human Rights. The European Court of Human Rights dismissed her application.[7]

It would appear that Article 20 is being misused, in order to raise false concerns in the hopes of preventing a return. Courts must be careful to interpret this article extremely narrowly.

Italy – Italie :

L'article 20 n'a jamais été appliqué en Italie.

Latvia – Lettonie :

In the only case what is heard in the Latvia's Court under Convention, return of the child was refused with invoked Article 20 of the Convention where is stated that the return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms. These principles the Court has interpreted in interconnection with Article 10 of the Protection of the Rights of the Child Law that a child has the right to such living conditions and benevolent social environment as will ensure his or her full physical and intellectual development. In its turn in accordance with part 5 of Article 24 of the above mentioned Law limitations may be provided on expression of the wishes of the parents in relation to a child, irrespective of their opinions and religious convictions, if it is determined that they could be physically or mentally harmful to future development of the child.

In concrete case the Article 20 of the Convention was invoked side by side with Article 13 b) of the Convention.

Lithuania – Lituanie :

The Ministry of Justice has no information on the application of Article 20 of the Convention in our country.

Malta – Malte :

Article 20 has, to date, never been invoked.

Mexico – México :

En el caso de México no se ha reportado que se haya invocado la aplicación del artículo 20.

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[7] Unfortunately, rather than return the child to Israel, the mother disappeared with the child and to this day remains in hiding. The Turkish authorities claim to be unable to locate her and the child.

Monaco – Monaco :

Il semble que l'article 20 de la convention n'ait été retenu dans aucune affaire.

Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

No successful returns have been made under Article 20.

Nicaragua – Nicaragua :

No existe experiencia en cuanto a la aplicación de este artículo.

Panama – Panama :

En la práctica nos hemos invocado todavía esta norma. Sin embargo, conforme a nuestro ordenamiento jurídico interno faculta a la autoridad competente adoptar medidas de protección cuando surja riesgo en la integridad del niño o niña por causa de violencia intrafamiliar o maltrato (Ley 38 de 2001) y conforme al artículo 754 numeral 3, 764 y 766 del Código de Familia, a fin de garantizar el interés Superior del Menor de edad.

Paraguay – Paraguay :

Esta A.C. ha intentado aplicar para algunos casos, pero el Convenio lo realizó sin reservas, en consecuencia, el país requirente a pesar del transcurso de más de 3 años del juicio de restitución, sin localizar al menor, urgen la resolución judicial correspondiente.

Poland – Pologne :

The Ministry of Justice has no knowledge of any case, in which the court applied Article 20 of the Convention as a legal basis for refusing the return of a child.

Portugal – Portugal :

No, it never has been invoked.

Romania – Roumanie :

The exception provided for in art. 20 of the Convention has not been invoked or retained in any case withdrawn from the judgment of Romanian courts.

Slovakia – Slovaquie :

This article has not been applied in the Slovak republic so far.

South Africa – Afrique du Sud :

No. We are not aware of an increased use of this article.

Spain – Espagne :

No hemos tenido ningún caso en el que se haya aplicado este artículo.

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Sweden – Suède :

The Swedish Central Authority is not aware of an increase of the use of Article 20. In contrary, the courts have never applied Article 20 as a ground for refusal. Perhaps it can be suitable to argue that one reason why Article 20 has not been frequently invoked is because of the extended use of Article 13 as a ground for a non-return order of a child. Article 13 is also much more concrete in its wording and therefore easier to apply. However, having said that, the opinion is still that Article 13 and Article 20 regulate two different kinds of refusal situations.

Switzerland – Suisse :

L'article 20 a été peu appliqué en Suisse. Il a été invoqué une fois ou l'autre à l'appui de l'article 13b, notamment pour tenter d'éviter l'exécution tardive d'une décision de retour, qui semblait menacer particulièrement l'intérêt de l'enfant.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

We are not aware of any increase in the use of this Article in Scotland.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

United States – Etats Unis :

There has been no increase in the use of Article 20 in the United States. One case in the Puerto Rican Supreme Court recognized Article 20 as a valid defense to a return to Mexico, but it ultimately denied the return on Article 13(b) grounds. *De Los Rios Carmona v. Melendez*, 141 D.P.R. 282 (P.R. Dec. 1996). The U.S. District Court for Puerto Rico later applied the prevailing U.S. standard and declared that Article 20 should be "restrictively interpreted and applied…on the rare occasion that return of a child would utterly shock the conscience of the court or offend all notions of due process." *Aldinger v. Segler*, 263 F.Supp. 2d 284 (D. P.R. 2003) (quoting *Hazbun Escaf v. Rodriguez*, 200 F. Supp. 2d 603 (E.D. Va. 2002). The USCA is not aware of any cases where Article 20 formed the basis for denial of a return.

Uruguay – Uruguay :

La excepción no ha sido especialmente acogida en la jurisprudencia de nuestros tribunales y al respecto cabe recordar que en caso de que una solicitud de cooperación jurídica internacional afectare principios esenciales de nuestro Derecho, Orden Publico Internacional, el tribunal nacional actuante deberá fundar circunstanciadamente la excepción. Tal lo resultante de la "Declaración uruguaya", limitativa del alcance de la excepción de OPI efectuada al suscribir la Convención Interamericana de Normas Generales de DIPr. de Montevideo de 1979.

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3. Legal issues and interpretation of key concepts – Questions d'ordre juridique et interprétation de notions clés

Question 11	
Please comment on any Constitutional procedures or principles which make it difficult to implement the Hague Convention fully.	**Veuillez fournir des commentaires sur toute procédure ou tout principe d'ordre constitutionnel qui fait obstacle à la mise en œuvre de la Convention de La Haye dans son intégralité.**

Argentina – Argentine :

El principio del "interés superior del niño", de raigambre constitucional en nuestro país, ha sido invocado erroneamente en ocasiones, para rechazar la restitución de un menor. Si bien el derecho del niño a no ser trasladado a una extraña Jurisdicción es uno de los aspectos del "interés superior del menor", tal como es entendido en el marco de la Convención de La Haya de 1980 y en el Convenio sobre los Derechos del Niño, el cual invita a los Estados a hacer acuerdos en esta materia, se ha observado que en ocasiones, este concepto es utilizado de manera abusiva para favorecer a la parte sustractora o para indagar en cuestiones de fondo.

Australia – Australie :

There are none.

Austria – Autriche :

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

Canada – Canada :

There are no constitutional procedures or principles that make it difficult to implement the Convention.

**

Il n'y a aucune procédure ni aucun principe d'ordre constitutionnel qui fait obstacle à la mise en œuvre de la Convention.

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Chile – Chili :

La legislación chilena en cuanto a la custodia o "tuición" (como se le llama en Chile) no está clara cuando los padres viven separados. No está clara en el sentido que no hay norma expresa que señale que ambos padres tienen el derecho a decidir el lugar de residencia habitual de su hijo y en las causas en las que Chile es Autoridad Requirente puede interpretarse el Artículo 225 del Código Civil Chileno como que es la madre la que tiene el derecho a decidir donde vivirá su hijo. La única norma que se refiere a que la custodia corresponde a ambos padres conjuntamente es cuando estos viven juntos y en los casos de sustracción la generalidad es que los padres se encuentran separados. Es por esto que estamos trabajando junto al Ministerio de Justicia para lograr obtener modificaciones o al menos aclaraciones, del legislador, en estos temas.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We have not encountered any difficulty in implementing the Hague Convention because of the Constitutional procedures or principles.

China (SAR Macao) – Chine (RAS Macao) :

Until now, no problem in this regard was encountered.

Colombia – Colombie :

No se han presentado dificultades de aplicación del Convenio relacionadas con nuestros principios constitucionales.

Antes de la expedición de la Ley 1008 de 2006, existía una dificultad de carácter legal, en cuanto a las competencias y procedimientos aplicables para resolver los casos regulados por el Convenio. Hoy en día a pesar de haberse fijado la competencia en los Jueces de Familia, algunos Jueces Civiles del Circuito, quienes por competencia residual conocían de estos asuntos, no dan traslados de los procesos a los Juzgados de Familia alegando la perpetua jurisdictio.

Costa Rica – Costa Rica :

Mucho de lo recomendado por el Informe Pérez-Vera es aplicable en Costa Rica a la luz de nuestro Derecho interno. No obstante, adviértase que de acuerdo con la actual realidad normativa del vastísimo ordenamiento jurídico vigente de la República, en ciertos casos concretos la autoridad estatal competente (judicial ó administrativa) ineludiblemente deberá considerar otras normas, principios o reglas constitucionales y supralegales vinculantes por estar formalmente incorporados en dicho ordenamiento, lo que podría resultar en un límite u obstáculo para un funcionamiento del Convenio de la Haya ajustado al Informe Pérez-Vera. Por ejemplo:

- Los artículos 51° y 55° constitucionales, que conjuntamente obligan al Estado costarricense a proteger especialmente a la madre y su hijo menor de edad.

- El artículo 16° del Protocolo de San Salvador (Protocolo adicional a la Convención Americana sobre Derechos Humanos en materia de derechos económicos, sociales y culturales), que contiene una regla fundamental según la cual el niño de corta edad no debe ser separado de su madre, salvo circunstancias excepcionales, reconocidas judicialmente.

- La CONVENCIÓN sobre la ELIMINACIÓN de todas las FORMAS de DISCRIMINACIÓN contra la MUJER, y la CONVENCIÓN INTERAMERICANA para PREVENIR, SANCIONAR y ERRADICAR la VIOLENCIA contra la MUJER (Convención Belem Do Pará), que conjuntamente con la vinculante jurisprudencia constitucional, transformaron el ordenamiento jurídico costarricense hasta el punto de que ahora es obligatorio para todo operador jurídico –*entiéndase jueces, procuradores, abogados, etc.*- el interpretar el principio fundamental de igualdad con perspectiva de género, y justamente para erradicar todas las formas de discriminación en contra de la mujer.

- El artículo 20° del mismo Convenio de la Haya, que erige un principio jurídico de total respeto a los principios fundamentales del Estado requerido en materia de protección de los derechos humanos y las libertades fundamentales. Esta cláusula supralegal sin duda da a entender que no es voluntad del Convenio de la Haya el imponerse, desconocer ó desmejorar los principios fundamentales contenidos, por ejemplo, en los artículos 51° y 55° de la Constitución Política de la República de Costa Rica, 16° del Protocolo de San Salvador, ó en los mencionados instrumentos internacionales que protegen con especial énfasis a la mujer.

- El artículo 3° de la Convención sobre los Derechos del Niño (CDN), que obliga a las autoridades estatales competentes a considerar estrictamente el principio del Interés Superior del Niño en lo que respecta a la toma de decisiones concernientes a esa población. Aquí importa advertir que en la dinámica ó contexto de los casos concretos, el mencionado principio del interés superior no siempre se corresponderá

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> necesariamente con el derecho del niño a vivir en su Estado de residencia habitual –*derecho medular en el Convenio de la Haya*-, aunque por otro lado el artículo 11° CDN nos recete que es obligación de los Estados parte el adoptar medidas para luchar contra los traslados y la retención ilícitos de menores en el extranjero.

Ahora bien, teniendo en cuenta el contenido axiológico-deontológico recogido en la normativa jurídica recién mencionada, por lógica consecuencia se deduce que los casos concretos que eventualmente podrían complicarse en cuanto a la toma de una rápida decisión cautelar de restitución internacional de menor, son precisamente aquellas situaciones en donde el supuesto sustractor es MAMÁ. Es decir, dado que en el estado actual de nuestro ordenamiento jurídico se protege con especial énfasis o carácter reforzado a la mujer-madre conjuntamente con su hijo menor de edad, necesariamente habrá casos en donde el juzgador, antes de decidir, quedará totalmente comprometido a considerar factores que van más allá de la simple determinación del Estado de residencia habitual del menor sustraído, verbigracia ciertos móviles harto relevantes para el Derecho de Familia –*y también para el Derecho de Niñez & Adolescencia y el Derecho Internacional de los Derechos Humanos*-, como p. ej. determinadas situaciones de violencia doméstica que perfectamente podrían justificar a una madre que decidió salir del país con su hijo cual último recurso ó estrategia desesperada de sobrevivencia para huir de un posible padre agresor ó amenazador de vidas que, poco después, cínicamente invoca el Convenio de la Haya en su propio interés de hombre machista, adultocéntrico y nada próximo al interés superior del niño; asimismo, el juzgador podría enfrentarse a ciertas situaciones de niños de corta edad, por ejemplo lactantes maternos, que bajo ninguna circunstancia conviene depositarles provisionalmente -ni por cortísimo tiempo- en alternativas diferentes de su mamá por mientras se ejecuta paso a paso una orden judicial de restitución internacional de menor, especialmente si aparte del conflicto de pareja con el padre "desposeído", no hay mayores pruebas que evidencien negligencia en esa madre respecto del debido cuido diligente en beneficio de su bebé.

Por último, también es criterio técnico de esta Autoridad Central que el considerar esos relevantes factores extraordinarios, no necesariamente equivale a "recompensar" una supuesta madre sustractora, sino más bien el tomar en cuenta un elemento bio-psico-socio-legal de más en el contexto del obligado proceso juzgatorio ó jurisdiccional de determinar el interés superior del niño involucrado en el caso concreto, que a fin de cuentas es lo que le importa a la Convención sobre los Derechos del Niño y al mismo Convenio de la Haya.

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Cyprus – Chypres :

No comment.

Czech Republic – République tchèque :

There are no such procedures or principles.

Denmark – Danemark :

The 1980 Hague Convention has been implemented in Danish law.

Ecuador – Equateur :

No existen procedimientos o principios que dificulten la plena aplicación del Convenio. Al contrario, el Art. 163 de la Constitución Política de la República del Ecuador reconoce la vigencia y la supremacía de los Convenios Internacionales sobre el ordenamiento jurídico nacional.

El Salvador – El Salvador :

No existe ninguna disposición constitucional que dificulte la plena aplicación del convenio.

Finland – Finlande :

None.

France – France :

L'autorité centrale française n'a pas relevé dans sa pratique de procédure ou de principe d'ordre constitutionnel qui ferait obstacle à la mis en oeuvre de la convention de La Haye.

Greece – Grèce :

No.

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

As stated before, the Hague Convention has been implemented in national law.

Ireland – Irlande :

See Question 10 above.

Israel – Israël :

There are no such procedures or principles in Israel.

Italy – Italie :

Aucun, pour l'Italie. Bien au contraire, la loi par laquelle l'Italie a ratifié ladite Convention a indiqué aussi des règles procédurales fixant les délais pour le traitement en urgence des demandes de retour.

Latvia – Lettonie :

Up to now difficulties for complete implementation of the Convention are made by insufficient legal ground. See answer under question 12.

Lithuania – Lituanie :

The constitutional principles and procedures applied in the Republic of Lithuania provide proper conditions for the implementation of the Hague Convention.

Malta – Malte :

There have been no problems to date.

Mexico – Mexique :

No existe en México algún principio constitucional que dificulte la plena aplicación de la Convención, de hecho el artículo 133 de la Constitución Política de los Estados Unidos Mexicanos, establece que todos los tratados que estén de acuerdo con la misma, celebrados y que se celebren por el Presidente de la República, con la aprobación del Senado, serán la Ley Suprema de toda la Unión, por lo que los jueces de cada Estado de la República Mexicana deberán aplicarlos no obstante las disposiciones en contrario que pueda haber en las Constituciones o leyes locales. De acuerdo con dicha disposición, no

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fue necesario crear una legislación especial para aplicar la Convención en México, ya que los jueces de lo familiar tienen la obligación de aplicarla en conjunción con lo que disponen sus Códigos Civiles y de Procedimientos Civiles.

Monaco – Monaco :

Pas de commentaire particulier à formuler.

Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

None.

Nicaragua – Nicaragua :

Ninguno, por contrario La Constitución Política de la República de Nicaragua en su artículo setenta y uno establece que la niñez goza de protección especial y de todos sus derechos que su condición requiere, por lo cual tiene plena vigencia de la Convención sobre los Derechos del Niño.

Panama – Panama :

En cuanto al procedimiento vigente es propio señalar que debe constar en nuestro Código de Familia y el Menor un procedimiento especial sumario para la materia de Restitución Internacional, de tal forma que no debamos abocarnos a utilizar el procedimiento común ordinario, como lo establece el artículo 777 Código de la Familia, por no tener un trámite específico en este Código.

Al tener un procedimiento sumario se podría garantizar la tramitación más breve como lo contempla el tenor del Convenio. Debe precisarse con mayor exactitud las etapas procesales, definir términos en la primera y segunda instancia, delimitar la facultad probatorio a lo previsto en los artículos 1 al 5 del Convenio (Ley 22 de 1993).

Si bien es cierto que contamos con un decreto Ejecutivo No. 222 del 31 de octubre de 2001 que reglamenta el convenio precitado. Es propios que deba contarse en una ley, el procedimiento específico y especial y no supletorio.

Además, como actualmente existe un ante proyecto de Ley de Protección Integral, donde debe desarrollarse y ser considerada esta materia, de tal forma que se pueda contar con un procedimiento Especial y especifico para responder conforme a la finalidad del Convenio de Sustracción Internacional de Menores.

Paraguay – Paraguay :

La C.N. de 1992 en su Art. 54 garantiza la protección al niño.."En caso de conflicto, tienen carácter prevaleciente", o sea la C.N. en ninguno de los Artículos del Capítulo IV "De los Derechos de la Infancia", obstaculiza la plena aplicación del Convenio.

Poland – Pologne :

The Ministry of Justice takes a view that no provision of the Constitution of the Republic of Poland by any means hinders implementing the Hague Convention on the Civil Aspects of International Child Abduction fully.

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Portugal – Portugal :

The Portuguese Constitutional Law has no procedures or principles which make difficult to implement the Hague Convention.

Romania – Roumanie :

There are none.

Slovakia – Slovaquie :

There are no such procedures or principles.

South Africa – Afrique du Sud :

None. The Constitutional Court has dealt with challenges on two separate occasions, and ruled in both cases that the provisions of the convention do not violate our Constitution.

Spain – Espagne :

No existe en España ningún procedimiento o principio constitucional que dificulte la plena aplicación del Convenio.

Sweden – Suède :

It does not exist any specific constitutional procedures or principles which make it difficult to implement the Hague Convention fully.

Switzerland – Suisse :

Le système fédéraliste suisse implique une application diversifiée de la convention (autorités, procédures cantonales). Une amélioration sous l'angle du temps (instance cantonale unique et uniforme, voies de recours limitées et exécution aménagée de façon optimale dans toute la Suisse) est proposée par le biais de la loi fédérale envisagée (voir réponse au point 6).

Cela dit, il n'existe aucun obstacle constitutionnel à la mise en œuvre de la Convention dans son "intégralité".

L'article 11, alinéa 1, de la Constitution suisse prévoit que "Les enfants et les jeunes ont droit à une protection particulière de leur intégrité physique et psychique et à la liberté de mouvement." D'après la jurisprudence, cette disposition consacre les droits de l'enfant reconnus dans la Convention des Nations Unies de 1989 relative aux droits de l'enfant. Compte tenu de l'article 11 de cette Convention, cette disposition constitutionnelle consacre également les principes de la Convention de La Haye de 1980.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

No Constitutional procedures or principles have been identified in this respect.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

None identified.

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United States – Etats Unis :

The United States Constitutional doctrines of federalism and "separation of powers" can make certain aspects of implementing the 1980 Convention challenging. Under U.S. federalism principles, the fifty states and District of Columbia may make their own laws for their citizens, particularly laws governing families. The federal government has little authority to limit or control the law of states unless the state law is found unconstitutional by the U.S. Supreme Court. Given the concurrent jurisdiction over the Hague Convention granted to state and federal courts in U.S. implementing legislation, literally thousands of judges can potentially hear a Hague return petition. This presents a continuous challenge to the United States Central Authority (USCA) to provide training and outreach materials to all of the judges who need such information.

Similarly, the doctrine of separation of powers presents challenges because it prohibits one branch of government from infringing on the powers of the other two branches. Thus, the USCA, part of the executive branch, cannot affect the actions or functions of the judiciary. As a result it has been difficult to develop consistent practice in Hague cases or to effect actions of courts that are inconsistent with the Convention. Any rules to be imposed on the judiciary need to come from the judiciary itself, not from Congress or the executive branch. Thus, while the United States Central Authority may suggest best practices for a court to follow, it cannot force a state court to adopt those practices.

In addition, the United States' federal system at times results in inconsistent interpretations of the Convention, both among the federal judicial circuits and among different states. Particularly difficult is the fact that the U.S. Supreme Court has to date refused to hear any Abduction Convention cases, leaving growing discrepancies in treaty interpretation between the circuits and little clearly settled Convention law in the U.S.

Uruguay – Uruguay :

No, no existen. Por el contrario, la protección de derechos básicos del menor referidos a no ser desplazado ilegítimamente de su centro de vida coinciden con los textos constitucionales atinentes a la tutela de los Derechos Humanos.

Question 12	
Are there any important developments in legislation, case law or procedural law relevant to the operation of the 1980 Convention to which you wish to draw attention? Please could you provide us with an electronic copy of relevant legislation if possible?	**Souhaitez-vous mettre en exergue des développements pertinents qui se sont produits dans la législation, la jurisprudence ou le droit procédural en matière de mise en œuvre de la Convention de 1980 ? Veuillez fournir, dans la mesure du possible, un exemplaire sous forme électronique de toute législation pertinente.**

Argentina – Argentine :

No.

Australia – Australie :

Amendments to the Child Abduction Regulations

Amendments to the *Family Law (Child Abduction) Regulations 1986* were made in 2004. The most significant amendment was to specifically provide that an application for orders for the return of a child may be made by an individual as well as by the Central Authority. This overcomes the effects of the decision of the Full Court of the Family Court in *"A" (by her next friend) (unreported decision of Finn, May and Carmody JJ, 20 July 2004)* which ruled that an individual could not apply to a court under these regulations.

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Amendments to the Family Law Act

Significant amendments to the *Family Law Act 1975* were recently made by the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (the Shared Parenting Act). The changes aim to bring about a cultural shift in how family separation is managed: away from litigation and towards cooperation parenting.

However, in terms of the Convention, the most relevant amendments relate to terminology and parental responsibility. In short, the amendments to the Family Law Act remove references to the terms 'residence' and 'contact' in favour of 'lives with' and 'spends time with' in order to eliminate any sense of ownership of children. While the effect of this is minimal, it may have some impact on the understanding of Australian orders by other countries that use 'custody' and 'access' or other terminology in their own orders.

The amendments to the Family Law Act do not change the definition of parental responsibility. Section 61B states that parental responsibility 'in relation to a child, means all the duties, powers, responsibilities and authority which, by law, parents have in relation to children'. However, there are a number of changes to parental responsibility provisions set out below that reflect the key amendments discussed previously. These provisions also reflect an intention of the amendments to provide better guidance to readers of the Family Law Act and clarity as to the meaning of particular provisions. Section 111C also uses the updated terminology.

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FAMILY LAW ACT 1975- SECTION 61C

Each parent has parental responsibility (subject to court orders)

(1) Each of the parents of a child who is not 18 has parental responsibility for the child.

Note 1: This section states the legal position that prevails in relation to parental responsibility to the extent to which it is not displaced by a parenting order made by the court. See subsection (3) of this section and subsection 61D(2) for the effect of a parenting order.

Note 2: This section does not establish a presumption to be applied by the court when making a parenting order. See section 61DA for the presumption that the court does apply when making a parenting order.

Note 3: Under section 63C, the parents of a child may make a parenting plan that deals with the allocation of parental responsibility for the child.

(2) Subsection (1) has effect despite any changes in the nature of the relationships of the child's parents. It is not affected, for example, by the parents becoming separated or by either or both of them marrying or re-marrying.

(3) Subsection (1) has effect subject to any order of a court for the time being in force (whether or not made under this Act and whether made before or after the commencement of this section).

Note: Section 111CS may affect the attribution of parental responsibility for a child.

FAMILY LAW ACT 1975- SECTION 61D

Parenting orders and parental responsibility

(1) A parenting order confers parental responsibility for a child on a person, but only to the extent to which the order confers on the person duties, powers, responsibilities or authority in relation to the child.

(2) A parenting order in relation to a child does not take away or diminish any aspect of the parental responsibility of any person for the child except to the extent (if any):

(a) expressly provided for in the order; or

(b) necessary to give effect to the order.

FAMILY LAW ACT 1975- SECTION 111B

Convention on the Civil Aspects of International Child Abduction

(4) For the purposes of the Convention:

(a) each of the parents of a child should be regarded as having rights of custody in respect of the child unless the parent has no parental responsibility for the child because of any order of a court for the time being in force; and
(b) subject to any order of a court for the time being in force, a person:
(i) with whom a child is to live under a parenting order; or
(ii) who has parental responsibility for a child under a parenting order;
(iii) should be regarded as having rights of custody in respect of the child; and
(c) subject to any order of a court for the time being in force, a person who has parental responsibility for a child because of the operation of this Act or another Australian law and is responsible for the day-to-day or long-term care, welfare and development of the child should be regarded as having rights of custody in respect of the child; and
(d) subject to any order of a court for the time being in force, a person:
(i) with whom a child is to spend time under a parenting order; or
(ii) with whom a child is to communicate under a parenting order;

should be regarded as having a right of access to the child.

Note: The references in paragraphs (b) and (d) to parenting orders also cover provisions of parenting agreements registered under section 63E (see section 63F, in particular subsection (3)).

A full copy of the Amendment Act is available at <http://www.ag.gov.au>.

Austria – Autriche :

Developments in legislation are the concentration of competence described in reply 6 and the new Brussels II – regulation.

Canada – Canada :

There have been no such legislative or procedural law developments in Canadian provinces and territories.

**

Il n'y a eu aucun développement semblable dans la législation ou le droit procédural dans les provinces et territoires canadiens.

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Chile – Chili :

Fue importante que la Excma. Corte Suprema de Justicia dictara el Auto Acordado de 1998 y luego su modificación del año 2002, ya que establece el procedimiento que deben aplicar los Tribunales de Familia de Chile y las Cortes de Apelaciones para tramitar casos de sustracción en virtud de la Convención de la Haya en un plazo muy breve. Se acompaña copia del Auto Acordado de 1998 y su modificación de 2002.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

There are no important developmnents to which we wish to draw attention.

China (SAR Macao) – Chine (RAS Macao) :

At the moment, there are no relevant develoments. Please be informed that the mentioned Decreee-Law 65/99/M is currently under revision, the better implementation of this Hague Convention (as well as other Hague Conventions on children) being one of the reasons.

The relevant information, such as the Civil Code, Civil Procedure Code and Decree-Law 65/99/M, can be founf on the following website: www.imprensa.macau.gov.mo, in Chinese and Portuguese.

Colombia – Colombie :

Si los hay. **La** Ley 1008 23/01/2006 fijó competencias y procedimientos para la aplicación de convenios internacionales en materia de niñez y de familia. Con su expedición la competencia para conocer de los asuntos que son objeto del tratado recayó en la Fase Administrativa en los Defensores de Familia y en la Fase Judicial en los Jueces de Familia, lo que anteriormente por vía jurisprudencial era tramitado en la fase judicial por los Jueces Civiles del Circuito, no especializados en asuntos de familia y menores de edad.

Costa Rica – Costa Rica :

En legislación sustantiva y procesal especial no existe nada. Empero, en jurisprudencia ya se cuenta con la primera sentencia de primera instancia de la Historia, sin embargo, a la fecha no está firme, toda vez que el Tribunal Superior de Familia aún no resuelve la apelación interpuesta por el representante judicial de la parte actora (progenitor solicitante). Ahora bien, quizás uno de los aspectos más interesantes de dicha sentencia es la forma en cómo se resolvió que el Estado costarricense garantice representación judicial gratuita al progenitor requirente, lo cual –por cierto- ya se comentó supra (ver respuesta a pregunta N° 08).

Cyprus – Chypres :

The important development in our legislation is the procedural law mentioned above which was enacted in 2002. Unfortunately it is in Greek so we have to translate it and send it to you electronically (see question 7).

Czech Republic – République tchèque :

Decision of the Supreme Court dated December 7, 2000 see INCADAT: HC/E/CZ 468 [07/12/2000; Ústavní soud České republiky (Constitutional Court of the Czech Republic); Superior Appellate Court], III. ÚS 440/2000 DAOUD / DAOUD

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Denmark – Danemark :

Since July 1, 2003 it has been possible to apply for legal aid to cover the cost of legal steps needed to recover the child if a child has been removed to a foreign country – including non contracting states. The granting of legal aid is not means-tested.

See also the answer to question 13 (a).

Ecuador – Equateur :

Legislación:

El Código de la Niñez y Adolescencia, vigente desde julio del 2003, desarrolla de manera importante el tema de restitución de niños, niñas y adolescentes trasladados o retenidos ilegalmente:

Art. 77.- Protección contra el traslado y retención ilícitos de niños, niñas y adolescentes.- Se prohíbe el traslado y la retención de niños, niñas y adolescentes cuando violan el ejercicio de la patria potestad, el régimen de visitas o las normas sobre autorización para salir del país.

Los niños, niñas y adolescentes que han sido trasladados o retenidos ilegalmente, tienen derecho a ser reintegrados a su medio familiar y a gozar de las visitas de sus progenitores y otros parientes de conformidad con lo previsto en este Código.

El Estado tomará todas las medidas que sean necesarias para lograr el regreso y reinserción familiar del niño, niña o adolescente que se encuentre en la situación prevista en este artículo.

Art. 121.- Recuperación del hijo o hija.- Cuando un niño, niña o adolescente ha sido llevado al extranjero con violación de las disposiciones del presente Código y de las resoluciones judiciales sobre ejercicio de la patria potestad y de la tenencia, los organismos competentes del Estado arbitrarán de inmediato todas las medidas necesarias para su retorno al país. Para el mismo efecto, el Juez exhortará a los jueces competentes del estado donde se encuentre el niño, niña o adolescente.

Art. 125.- Retención indebida del hijo o la hija.- El padre, la madre o cualquier persona que retenga indebidamente al hijo o hija cuya patria potestad, tenencia o tutela han sido encargadas a otro, o que obstaculice el régimen de visitas, podrá ser requerido judicialmente para que lo entregue de inmediato a la persona que deba tenerlo y quedará obligado a indemnizar los daños ocasionados por la retención indebida, incluidos los gastos causados por el requerimiento y la restitución.

Si el requerido no cumple con lo ordenado, el Juez decretará apremio personal en su contra, sin perjuicio de ordenar, sin necesidad de resolución previa, el allanamiento del inmueble en que se encuentra o se supone que se encuentra el hijo o hija, para lograr su recuperación.

El Salvador – El Salvador :

Existen avances importantes en lo que respecta a la interpretación del Convenio, además, en base a las normas internas y teniendo en cuenta que los encargados de aplicarlo son los jueces de Familia, se ha propuesto un procedimiento sui generis, dentro del marco de la Ley Procesal de Familia, incluyendo el procedimiento de jurisdicción voluntaria y el trámite para los incidentes en cuanto a los plazos, procedimiento que respeta los derechos y garantías fundamentales.

Nuestras Normas internas pueden ser consultadas en www.csj.gob.sv ó www.asamblea.gob.sv

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Finland – Finlande :

The term "international child abduction" has been included to the national Code of Criminal Procedure (Section 25, Article 5a) in 2005. Earlier similar acts fell under the essential elements of an offense "arbitrary taking into custody". This, however, does not have concrete effects to the procedures according to the Convention, but the criminal procedure may go in parallel with the civil one.

France – France :

Outre la spécialisation des juridictions, prévue par la loi du 4 mars 2002 (citée plus haut) et l'article L 312-1-1 du code de l'organisation judiciaire, une section consacrée au déplacement illicite international d'enfants a été introduite dans le nouveau code de la procédure civile (article 1210-4 à 1210-6).

Greece – Grèce :

No.

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

As noted in the answer to question no. 9, the new Children's Act from 2003 abolished any limitation on how young a child should be to have the right to be heard. Further reforms were made on the status of children and parents. As from June 2006 the Act, as changed with Act 69/2006, provides that on separation or divorce parents have automatic joint custody over their children, unless they specifically decide otherwise or one or both parents start legal proceedings for sole custody.

The Children's Act of 2003 is being translated and will be available in English on the home page of the Ministry of Justice (www.domsmalaraduneyti.is).

Ireland – Irlande :

Council Regulation 2201/ 2003, which is directly effective in all EU Member States.

Israel – Israël :

There have been no developments in legislation or procedural law. A translation into English of the relevant legislation - (the Hague Convention Law (Return of Abducted Children) 1991 and the Civil Procedure Regulations (Amendment) 1995, Chapter 22: Return Abroad of Abducted Children - are being transmitted by e-mail. For developments in case law, see question 13 below.

Italy – Italie :

Aucun changement procédural n'est survenu depuis l'entrée en vigueur de la Convention en Italie.

Latvia – Lettonie :

At the Parliament (Saeima) in the 2nd reading there is accepted law draft "Amendments in the Civil Process Law". This law with amendments in direct way will regulate questions related to the Convention regarding to the Courts. In relation to the role of the Central Authority, the Ministry for Children and Family Affairs has submitted proposal to the

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parliament as law draft - "Amendments in Protection of the Rights of the Child Law", what is accepted in 1st reading at the parliament already. This law draft prescribes rights for Cabinet of Ministers to develop rules which will establish order in which Central Authority of Latvia acts and collaborates with other state institutions and local governments.

Electronic versions of above mentioned law drafts will be available as soon as they will come into force. The Ministry will send these to the Permanent Bureau.

Lithuania – Lituanie :

There are no adopted laws or other legal acts in Lithuania directly regulating the procedure for the implementation of the 1980 Convention or related issues. To the best of SCRPAS's knowledge, no judicial practice has formed in this area so far. However, it should be noted that the 1980 Convention is closely related to the application of the Council Regulation of 27 November 2003 (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility repealing Regulation (EC) No 1347/2000 ("Regulation"), therefore, a law adopted by the Seimas of the Republic of Lithuania should be mentioned in this context. The Republic of Lithuania Law on the Implementation of the Council Regulation of 27 November 2003 (EC) No.2201/2003 Concerning Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and in Matters of Parental Responsibility Repealing Regulation (EC) No 1347/2000" adopted by the Seimas on 21-04-2005 (No.X-169), defines the peculiar features of examining judicial cases related to the Regulation concerning the return of child that has been illegally taken away or kept in a state other that the state of his/her permanant residence, the consideration of applications for the use of the right to communication, and the execution of certificates issued by courts of the EU Member States; the law also establishes the central authorities performing functions laid down in the Regulation. A copy of this law is appended (Annex 1).

In addition, it is important to note that, by order of the Social Security and Labour Minister of the Republic of Lithuania No. A1-87 of 24-03-2006, the State Child Rights Protection and Adoption Service is authorised to perform functions assigned to a central authority in the area of the protection of the child's rights and lawful interests under the 1980 Convention, fulfilling the duties assigned to a competent authority under Articles 8, 9 and 33 of the 1996 Convention. However, the Ministry of Social Security and Labour remains responsible for the implementation of these Conventions. Copy of the order is appended (Annex 2).

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In the practical application of the 1980 Convention, a problem of different interpretation of terms used in the Convention and in Lithuanian legal acts arises. For example, under the Civil Code of the Republic of Lithuania, the issue of place of residence of the child must be resolved in case of dissolution of marriage. If the father and the mother live separately, the place of residence of the child is established by the parents' agreement. In case of dispute between the parents, the child's place of residence with one of the parents is established by court.

In accordance with the Procedure for the Child's Temporary Leaving for Foreign Countries approved by resolution of the Government of the Republic of Lithuania No 302 of 28 February 2002, when the child is leaving with the parent with whom the child lives by court decision, no consent of the other parent is required for leaving. However, in most cases persons to whom the procedure is applied leave for foreign countries for a longer period and then the leaving is treated as a permanent one. Consequently, the parent with whom the child lives can decide on the child's place of residence without the other parent's consent.

On the other hand, however, the Civil Code of the Republic of Lithuania states that a parent who does not live with the child has the right and duty to communicate with and

participate in the upbringing of the child, while the child whose parents live separately has the right to communicate with both parents permanently and directly irrespective of the place of residence of the parents. The parent with whom the child lives has no right to hinder the other parent's communication with and participation in the upbringing of the child.

Thus, in accordance with the Lithuanian law, the issue of the child's place of residence is resolved in case of dissolution of marriage and no establishment of the custody rights takes place. Therefore, in practice problems arise while determining whether the parent with whom the child lives by court decision also has the custody rights with respect to the child.

Malta – Malte :

The Child Abduction and Custody Act was enacted in 2000 – copy attached.

Mexico – Méxique :

En principio el artículo 133 Constitucional referido. Vease respuesta 11. que le da a la Convención una jerarquía de Ley Suprema.

La Tesis Jurisprudencial no. LXXXVII/99. Tratados Internacionales. Se ubican jerárquicamente por encima de las leyes federales y un segundo plano respecto de la Constitución.

Monaco – Monaco :

La convention se suffit à elle-même et son application sur le territoire monégasque n'a nécessité aucune modification législative. En outre, les juridictions lui clairement reconnu une valeur supérieure à la loi.

Netherlands – Pays-Bas :

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

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

New Zealand – Nouvelle Zélande :

The Care of Children Act 2004 has replaced the Guardianship Act 1968.

Nicaragua – Nicaragua :

En la actualidad la Corte Suprema de Justicia; ha iniciado un proceso de selección de jueces, para crear dos juzgados de Familia en la circunscripción de Managua, se considera oportuno encontrar un mecanismo de articulación entre éstos Juzgados, el Ministerio de la Familia, Autoridad Administrativa encargada de aplicar las medidas de protección especial, y la Secretaría Ejecutiva del CONAPINA; quines operativizan de manera coordinada los trámites de las solicitudes de Restitución Internacional de los niños, niñas, y adolescentes en el marco de aplicación del Convenio antes relacionado.

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Panama – Panama :

Lo propio es remitir copia del Libro IV, Capitulo III que comprende el procedimiento común ordinario y del Decreto Ejecutivo No. 222 del 31 de octubre de 2001.

Paraguay – Paraguay :

Sí, existen en la legislación nacional, como se ha mencionado en el párrafo anterior, desde la Constitución Nacional, así como la Ley 1680/01 "Código de la Niñez y Adolescencia" en sus artículos 70; 92; 94 y 100 respectivamente.

Art. 70: "Del Ejercicio de la Patria Potestad". El padre y la madre ejercen la patria potestad sobre sus hijos en igualdad de condiciones. La Patria Potestad conlleva el derecho y la obligación principal de criar, alimentar, educar y orientar a sus hijos".

Art. 92: "De la Convivencia familiar". El niño o adolescente tiene el derecho a la convivencia con sus padres, a menos que ella sea lesiva a su interés o convivencia, lo cual será determinado por el Juez, conforme a derecho.

"En todos los casos de conflicto, el Juez deberá oir la opinión del niño o adolescente y valorarla teniendo en cuenta su madurez y grado de desarrollo".

Art. 94: "De la restitución". En caso de que uno de los padres arrebate el hijo al otro, aquél puede pedir al Juez la restitución del mismo por medio del juicio de trámite sumarísimo establecido en este artículo, bajo declaración jurada de los hechos alegados".

Art. 100°: "De la autorización para viajar al exterior". En el caso de que el niño o adolescente viaje al exterior con uno de los padres, se requerirá la autorización expresa del otro. Si viaja solo se requerirá la de ambos. La autorización se hará en acta ante el Juez de Paz que corresponda.

Corresponderá al Juez de la Niñez conceder la autorización para que el niño o adolescente viaje al exterior en los siguientes casos:

a) cuando uno de los padres se oponga al viaje; y
b) cuando el padre, la madre o ambos se encuentren ausentes, justificado con la presencia de dos testigos.

La legislación Nacional se inscribe dentro del marco internacional, aunando esfuerzos para la aplicación del Principio del "Interés Superior del Niño", Declaración de las NNUU.

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Poland – Pologne :

Under the Article 91 § 1 of the Constitution of the Republic of Poland an international agreement ratified and published in the Journal of Laws becomes legally binding and integrated into the domestic law and takes priority over the Polish law. Therefore, no separate procedure to implement the Convention was required. However, the law of 19 July 2001 (amending the Law on Court Costs in Civil Cases and the Law on Judicial Officers and Execution-the Polish Code of the Civil Procedure) published in the Journal of Laws of 2001 No. 96 Item 1169 introduced the new Polish regulations on execution of the court judgments on return of a child in the cases under The Hague Convention of 25 October 1980 as well as under the provisions of the Polish Family and Guardianship Code. The law took effect on 27 September 2001 as a part of the Polish Code of Civil Procedure (attached you will find an electronic copy of the legislation).

Portugal – Portugal :

Yes, there are.

Romania – Roumanie :

Until the development and implementation of Law no. 369/2004 (which entered into force on December 29th 2004), the cases based on the Hague Convention were settled in accordance with the provisions of the common civil law procedures (the Code of civil procedure). This engendered several difficulties: lengthy procedure, dispersal of the cases tried throughout the country; heterogeneous judicial practice.

We believe that tings have improved significantly following the implementation of Law No 369/2004.

Slovakia – Slovaquie :

No important developments.

South Africa – Afrique du Sud :

A case where a child has objected to being returned is currently before our High Courts. The court's decision therein will be persuasive in other jurisdictions in future applications.

Spain – Espagne :

Es perfectamente posible proporcionar copias electrónicas de la legislación actualmente vigente en España. Actualmente se esta desarrollando una nueva legislación sobre la materia contendida en el Anteproyecto español de Ley de Jurisdicción Voluntaria, que es plenamente respetuosa con la normativa anterior y adecuada a las previsiones constitucionales y del Convenio de 1980.

Sweden – Suède :

The most recent developments in Swedish legislation are those from 1 July 2006. The Stockholm City Court is now the only competent court to hear Hague cases (see section 6 above) and the court proceedings shall be in accordance with the Law (1996: 242) Regarding Court Proceedings (see Section 7b).

Switzerland – Suisse :

Un projet de loi fédérale sur les enlèvements internationaux d'enfants est en consultation et devra être soumis au Parlement en 2007 (voir réponse au point 6).

Ce projet tend principalement à :

- Réduire le nombre d'instances judicaires (une seule instance au niveau cantonal)
- Promouvoir les solutions amiables avec la participation d'un nombre limité d'experts ou organismes appropriés.
- Assurer la représentation obligatoire de l'enfant dans la procédure par un avocat
- Tenir mieux compte de l'intérêt de l'enfant dans l'appréciation des motifs de refus de l'article 13 de la Convention.
- Diminuer le nombre d'instances d'exécution et régler les modalités d'exécution dans la décision de retour.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

In Scotland, the system for handling access applications has been reviewed. In light of the leading case of Donofrio v Burrell, Scotland has amended Rule 70.5(2) which deals with access applications under the Convention. The amendment took effect on 18 September 2001 and preserved the special expedited procedure used in all Convention applications, whilst clarifying the circumstances in which such an application can be

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brought. In cases pursued under the Convention, legal aid is given on receipt of a valid application.

The Family Law (Scotland) Act 2006 makes provision for the domicile of persons under 16 (s.22); parental responsibility and parental rights are given to unmarried fathers (s.23), and it also makes provision for the effect of a parents' marriage in determining status depending on the law of the domicile (s.41).

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

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

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

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

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

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

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

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

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

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

United States – Etats Unis :

No new federal level legislation has emerged regarding the implementation of the Convention since the last 2001 Special Commission. Custody law among the states has been updated with the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which has been adopted by 44 of 50 U.S. states and the U.S. Virgin Islands, as of June 2006. See http://www.law.upenn.edu/bll/ulc/uccjea/final1997act.htm. The UCCJEA broadens state enforcement provisions of the earlier uniform legislation (UCCJA, adopted in all 50 states and D.C.) pertaining to Hague return or access orders, permitting direct enforcement of Hague orders across state lines (Sec. 302). In addition, state and local law enforcement are empowered to assist in location and recovery of abducted children (Sec. 315). Foreign custody orders were also made directly enforceable in the U.S. (Sec. 105).

Some federal cicuits have clarified the question of whether an ongoing custody hearing in a state court prevents a federal court from hearing a Hague petition. In *Hazbun Escaf v. Rodriguez*, 52 Fed. Appx. 207 (4th Cir. 2002) the federal court reasoned that neither the *Younger* doctrine nor the *Colorado River* doctrine applied in Hague cases, as the questions to be addressed in Convention cases differed from the custody questions addressed in state custody hearings. This reasoning was likewise applied in *Yang v. Tsui*, 416 F.3d 199 (3rd Cir. 2004), where the Third Circuit held that a federal district court should not abstain from hearing a left behind parent's Hague petition when a state court custody proceeding was pending. The court held that the federal proceeding did not interfere with the ongoing state proceeding where the state court had entered an interim custody order in favor of the abducting parent.

See response to question 13 for other developments in U.S. case law.

Uruguay – Uruguay :

No, no hay desarrollos específicos.

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Question 13	
Please indicate any important developments since the Special Commission of 2001 in your jurisdiction in the interpretation of Convention concepts, in particular the following:	**Veuillez indiquer les développements pertinents qui se sont produits depuis la Commission spéciale de 2001 dans votre pays, en rapport avec l'interprétation de notions de la Convention, notamment :**
a) rights of custody (Articles 3 *a)* and 5 *a)*);	**a) le droit de garde (articles 3 *a)* et 5 *a)*) ;**
b) habitual residence (Articles 3 *a)* and 4);	**b) la résidence habituelle (articles 3 *a)* et 4) ;**
c) rights of access (Article 5 *b)*);	**c) le droit de visite (article 5 *b)*) ;**
d) the actual exercise of rights of custody (Articles 3 *b)* and 13(1) *a)*);	**d) l'exercice effectif du droit de garde (articles 3 *b)* et 13(1) *a)*) ;**
e) the settlement of the child in his / her new environment (Article 12(2));	**e) l'intégration de l'enfant dans son nouveau milieu (article 12(2)) ;**
f) the one year period for the purposes of Article 12;	**f) le délai d'un an prévu à l'article 12 ;**
	g) le consentement ou l'acquiescement au déplacement ou au non-retour de l'enfant (article 13(1) *a)*) ;

g) consent or acquiescence to the removal or retention of the child (Article 13(1) *a*));	
h) grave risk (Article 13(1) *b*));	**h) le risque grave (article 13(1) *b*)) ;**
i) exposure to physical or psychological harm (Article 13(1) *b*));	**i) l'exposition à un danger physique ou psychique (article 13(1) *b*)) ;**
j) intolerable situation (Article 13(1) *b*));	**j) la situation intolérable (article 13(1) *b*)) ;**
k) the child objects to being returned (Article 13(2)); (see also question 9)	**k) l'opposition de l'enfant à son retour (article 13(2)), voir également la question 9 ;**
l) fundamental principles relating to the protection of human rights and fundamental freedoms (Article 20). (See also question 10)	**l) les principes fondamentaux sur la sauvegarde des droits de l'homme et des libertés fondamentales (article 20), voir également la question 10.**

Argentina – Argentine :

En Diciembre de 2005, se dicto la Ley 26.061 sobre "Protección integral de los derechos de niños, niñas y adolescentes", la cual en su artículo 1° indica que tiene por objeto la protección integral de los derechos de las niñas, niños y adolescentes, garantizando el ejercicio y el disfrute pleno, efectivo y permanente de los derechos reconocidos en el ordenamiento jurídico nacional y en los tratados internacionales en los que Argentina es parte.

Entre otras cuestiones de relevancia, presenta definiciones de conceptos y cuestiones vinculadas con la Convención de La Haya de 1980, como por ejemplo el Interés Superior del Niño, definido en esta norma como la máxima satisfacción, integral y simultánea de los derechos y garantías reconocidos por la ley. Asimismo, define a la residencia habitual o centro de vida como el lugar donde las niñas, niños y adolescentes hubiesen transcurrido la mayor parte de su existencia, si bien el su Decreto reglamentario expresa que residencia habitual será entendida en el sentido otorgado en los Convenios internacionales de las cuales Argentina es parte. También establece que los niños tienen derecho a no ser objeto de secuestros o tráfico para cualquier fin o en cualquier forma, tienen derecho a ser oídos y expresar su opinión en los ámbitos de su vida cotidiana y en los procedimientos que los conciernen, y también el derecho a la identidad, incluído el derecho a la preservación de su origen y de sus relaciones familiares.

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Australia – Australie :

a) State Central Authority v Keenan [2004] FamCA 724

This matter concerned a five year old child who was removed by his mother to Australia from the United States (US). The main issue in this matter was whether the removal of the child was a removal within the meaning of the Australian Child Abduction Regulations, that is, whether it was in breach of a right of custody in the father. It is noted that certain matters were common ground in this matter. It was not disputed that prior to his removal the child was habitually resident in the US and that the father had been exercising normal parental rights and obligations.

The parents in this matter met over the internet in 1998. The child was conceived in the same year, when the mother, an Australia citizen, travelled to the US to visit the father. The mother then returned to Australia where the child was born. In 1999, the mother obtained court orders granting her residence and sole responsibility for the care, welfare and development of the child. The father's contact was reserved.

In 2000, the mother and child moved to the US to live with the father. The parties married in December that year, residing together in the State of Virginia until October 2002, when the mother, without notice to the father, removed the child to Australia.

On 20 December 2002, a request was forwarded to the Australian Central Authority to issue proceedings for the child's return. The father, in the meantime, filed a complaint in a Virginia state court seeking custody and return of the child. The Australian proceedings were adjourned to await the outcome of the US proceedings. The Virginian court held it had no jurisdiction to grant relief as the child had been resident in the state for less than six months before the application was made, and Virginia was not, therefore, the 'home state' of the child. A direction was made however, that the matter remain on the court docket.

The return proceedings in Australia were eventually heard on 22 July 2004. The return was ordered. The removal was wrongful having breached rights of custody held by the father.

The trial Judge noted that under the Uniform Child Custody (Jurisdiction and Enforcement) Act of the Code of Virginia, a child custody order of a foreign state is general enforceable as if it were an order of the State of the US. This suggested that the Australian orders granting the mother residence would have full force in the State of Virginia and the father had no rights of custody under State law.

An issue arose however as to whether the parties' subsequent marriage nullified the effect of those orders in Virginia. The trial Judge heard conflicting expert evidence on this issue, ultimately preferring the evidence of the father's expert. He argued that although there was no authority in Virginia on this issue, there was authority in other states that a Virginian court would find persuasive that the effect of a remarriage was to nullify a prior custody order. The fact that the parties' had subsequently married rather than remarried was a 'distinction without difference'.

Alternatively, the trial Judge was willing to find that the term 'rights of custody' was sufficiently wide to encompass the inchoate or de facto rights of custody exercised by the father prior to the child's removal.

Brooke v Department of Community Services [2002] FamCA 258

The parents of a child born in July 1999 separated in Canada in March 2001. After separation the child remained in her mother's care. On 27 April 2001 the mother applied to the Supreme Court of British Columbia (BC) seeking orders for the sole custody of the child and permission to take the child to live in Australia. On 14 May 2001 the mother's application was adjourned until 22 May 2001 and an order was made that the child not be removed from the jurisdiction of the BC court 'for a period of one week or until the hearing on the merits of the parties' respective applications'. At some date prior to 21 May 2001 the mother left BC, together with the child. The trial judge ordered that the child be returned to BC.

The mother appealed this decision to the Full Court of the Family Court of Australia on the basis that overseas authorities were not applicable because the term 'rights of custody' in the Australian Child Abduction Regulations was to be construed in terms of Australian law and not jurisprudence in relation to the Convention.

There was no dispute that the child had been habitually residence in British Columbia (BC) immediately before her removal to Australia. The sole issue in the appeal was whether the Supreme Court of BC was a body that had rights of custody in relation to the child in the context of the Australian Abduction Regulations when the child was taken from BC to Australia by her mother.

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In dismissing the mother's appeal, the Full Court held:

* At the time the child was removed by the mother from BC, the Supreme Court of BC had the right to determine the place of residence of the child and had 'rights of custody' over the child.

* The words of the Australian Child Abduction Regulations are 'clear and unambiguous'. There was a removal of a child in breach of the rights of custody of a body that had the right to determine the place of residence of the child. At the time of remove, those rights were actually being exercised. Those rights of custody arose by operation of law and by reason of a judicial decision.

* In the Full Court's view, the evidence clearly disclosed that at the time the child was removed by her mother from BC, the Supreme Court of BC had the right to determine the place of residence of the child and that the removal of the child was in breach of that right.

b) [No answer]

c) MQ and A v Director of Community Services [2005] FamCA 843

The application related to a child born in the United States in July 2001. Her parents were married and had joint rights of custody. The child lived in the United States until she was unilaterally taken to Australia by her mother in March 2004. The mother also took a daughter from a previous marriage, who was aged 12. The father issued a return application in April 2004.

The mother did not challenge the father's standing to make the return application himself and on 6 May the Family Court of Australia issued a return order.

On 26 May the 12 year old step-sister, through her maternal grandmother applied for leave to intervene in the proceedings in order to stay the return order. This was granted the next day.

The step-sister argued that the father had no standing to make the return application in the light of the terms of the regulations implementing the Convention in Australia. She further sought to argue that in making the return order no account had been made of her human rights.

On 10 June the step-sister's application was dismissed by the Family Court of Australia.

On 22 October the Full Court of the Family Court of Australia allowed an appeal by the step-sister, finding that under Australian law the father, as an individual, had no standing to make a return application in his own right. Permission was nevertheless granted for a new return application to be made by the Commonwealth Central Authority. The step-sister argued that her application for contact should have paramountcy over the orders requiring the return of her half sister to the United States. This ground of appeal was rejected by the Full Court which held that the issue of contact could only be considered once the issue of return was adjudicated upon. Moreover the issue of contact would also depend on the outcome of any proceedings in the United States as to custody. Consequently it would be appropriate to decline the step-sister's application to review, out of time, the decision reached in the abduction proceedings.

In its conclusion the Full Court noted that issues of contact between the step-sisters were matters that would be properly considered in the custody proceedings that would be held in the United States. It also held that in the event of any conflict of interests between the half siblings the focus should be on the best interests of the abducted child.

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On 29 October the Commonwealth Central Authority served a notice indicating that it would not pursue the application to be substituted in the return application.

On 22 November the Full Court set aside the return order and dismissed the father's application.

On 24 February 2005 the United States Central Authority requested that the Commonwealth Central Authority commence return proceedings.

The step-sister sought to intervene in the proceedings whilst the mother sought to dismiss the Central Authority's application.

On 11 May the step-sister's application was dismissed and an order was made for the return of the child.

On 30 June an application for review made by the mother was dismissed, as was an application on behalf of the step-sister for an extension of time to file an application for review. The mother and the step-sister appealed.

On 8 July 2005 the trial judge refused to order a stay of the return order. The mother appealed against this order to the Full Court of the Family Court of Australia.

On 26 September the same bench of the Full Court which rejected the mother and step-sister's appeals on 5 September rejected the appeal of the refusal to stay the return order: MQ v Director General Department of Community Services (NSW) [2005] FamCA 916. The Full Court held that there was not a substantial prospect of the mother being granted special leave to appeal to the supreme jurisdiction in Australia, the High Court.

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Kellie Dally-Watkins v Director-General, Department of Child Safety

This case was an appeal to the Full Court of the Family Court of Australia. In this case, the mother is an Australian citizen who met the child's father in the USA in May 2003. The child was conceived in the USA in August 2003. After some period or periods of co habitation with the father, the mother returned to Australia on 13 February 2004 and remained there until the child's birth on 25 May 2004. On 13 July 2004 the mother and child returned to the USA on a one-way ticket provided by the parents of the father. The child travelled to the USA on an Australian passport with a 90 day visitor's visa for the USA. At that time the mother apparently has permanent resident status in the USA but on a conditional basis. On their arrival in the United States in July 2004 the mother and child moved into the father's home where they remained until 2 October 2004. The mother and child returned to Australian on 4 October 2004. An application for the return of a child under the Hague Convention was initiated in July 2005, and orders were handed down in October 2005 for the return of the child to the USA. The mother appealed the decision.

The appeal rested on statements by the mother that she and the child initially travelled to the USA so the mother could "see how things "worked out"" with the father and whether the child was habitually resident. The court relied on previous case law that held that habitual residence of the child is that of the parents with a settled purpose in that country. The court held that it would be wrong to conclude that a person who has taken up residence in a particular country to see how a relationship with a resident of the country would "work out" either had a settled intention to take up long term residence in that country or have adopted an abode in that country for settled purposes as part of the regular order of his or her life, and was accordingly "habitually resident" in that country. The court found that there was no shared intention on the part of the parents of the child in question habitual residence refers to the parents' habitual abode in a country, which they have adopted voluntarily and for a settled purpose. It was held that there was no settled intention of the part of the parents of the child that the USA was to be their

habitual residence. Therefore the child was not habitually resident in the USA immediately prior to the departure from the USA.

d) Director-General, Department of Child Safety & R [2005] FamCA 1116

The applicant father was a citizen of the United States residing in New Zealand. The mother was a New Zealand Citizen. The mother and father had a "brief sexual relationship" which resulted in the mother's pregnancy. The child was born in New Zealand. In April 2005, the mother travelled to Australia with the child with the father's permission for a one month holiday. The mother retained the child in Australia.
The mother argued in this case that the father had no rights if custody under New Zealand law because she and the father were not living together at the time the child was born. The mother also argued that the father was neither exercising rights of custody nor would have exercised those rights if she had not retained the child.
The Court held that the father did not have rights of custody under New Zealand law. As the Central Authority had failed to discharge the onus upon it to establish that the father had rights of custody at the date of retention, the onus did not shift to mother to establish that the father was not exercising the rights of custody.

e) [No answer]

f) State Central Authority v CR [2005] Fam CA 1050.

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The application concerned a young boy, who was born in Australia in October 2003. The Australian mother and American father met via the Internet early in 2002. During their relationship the parties lived in the United States and Australia at various times, returning to the United States five months after the child was born. Six months later, without the father's knowledge or consent the mother left Arkansas taking the child with her. She boarded a flight in Los Angeles late on 20 July. The plane did not leave until 21 July and arrived in Melbourne on the morning of 22 July.

The father submitted a return application to the United States State Department in late June 2005. On 21 July a return application was filed in the Family Court of Australia at Melbourne.

The court ordered a return as the removal was wrongful and the exception invoked, Article 12(2), was not applicable.

In deciding whether the application was filed within one year of the child's removal, the Court relied on State Central Authority v Ayob (1997) FLC 92-746 and held that the moment on which time began to run was the time the child was removed from its place of habitual residence rather than the time it was brought to Australia. Considering the precise time of the removal from the United States the court found that this had to be calculated in accordance with local time at the place where the wrongful removal occurred, namely California. Since the plane left on 21 July Californian time the return application had been submitted within the one year time limit and therefore Article 12(2) was not applicable.

g) Director General of the Department of Community Services v Mandana Schulz (2002)

In this case the child, Marcel Schulz, was taken to Australia from Germany by his mother in October 2001 and an application for the return of the child under the Hague Convention was initiated by the father. It was the mother's evidence that in February 2000 she decided to move to Australia to live with members of her family and that her children told her their father agreed that they could go to Australia with her. It was the mother's evidence that she secured a note signed by the father, witnessed by a Notary Public dated 28 August 2000 giving permission for the children to migrate to Australia. This note was accepted by the Australian Embassy in Berlin who granted visas for the

children to enter Australia. It was submitted by the applicant that the father had been told that mother and children were travelling to the Netherlands for a weekend in mid October 2001. The father denied giving written permission for the children to leave Australia.

The Court noted that it falls to the applicant to satisfy the Court that the father did not consent which is a precondition to a finding of wrongful removal. The Court held that in this case it was not possible to make a positive finding regarding the issue of consent. In arriving at this decision the Court held that evidence about the authority dated 28 August 2000 was unsatisfactory. The Australian authorities had accepted the document as genuine and it was not unambiguously repudiated by the notary. As the applicant had not established that the father did not consent the court refused to order the return of the child.

Director-General, Department of Child Safety v Stratford [2005] Fam CA 1115

This case related to a girl who was 9 months old at the date of the alleged wrongful removal. She was born and lived in England, but had also spent 4 months in Australia. The parents were not married and separated a few months after the birth. On 6 September 2004 the mother unilaterally removed the child to Australia. The father initiated return proceedings.

The mother alleged that the father had consented to the removal and the court turned to consider whether the issue of consent, if established, would be relevant to whether the removal was in fact wrongful. The mother's case that the father had consented to the removal was based on actions of and statements by the father. There was though no independent evidence to support the case of either side.

A key argument for the mother was that in the aftermath of the separation in June 2004 she announced that it was her intention to return to Australia and the father had replied that this could not happen soon enough. The Court held however that this retort had to be considered in the context of the ending of the relationship and fell short of being a clear and unequivocal communication of consent on which the mother could properly rely. In this the trial judge referred by analogy to the comments of Lord Browne-Wilkinson in the English House of Lords' decision *Re H.* (Abduction: Acquiescence) [1998] AC 72

In the light of all the evidence the trial judge concluded that there were no grounds for rejecting the father's testimony and that there were inconsistencies and improbabilities in the mother's evidence. She concluded by stating that even if she had found there to have been consent she would have exercised her discretion to make a return order.

h) Zafiropoulos and the Secretary of the Department of Human Services State Central Authority [2006] FamCA 466

The issue in this case was whether the children should be returned to their habitual residence of Greece and if there was the existence of grave risk of physical or psychological harm to the children on a return to Greece. This case concerned some extreme levels of domestic violence perpetrated by the applicant father.

The mother, father and three children lived in Greece. The mother and the children came to Australia on holiday. The mother informed the father that she was not going to be returning to Greece. Father instituted Hague proceedings for the return of the children to Greece.

The Family Court of Australia held that the purpose of a return order under the Australian regulations is to enable the courts of habitual residence to determine the parenting issues. It would not necessarily follow that the children would be required to permanently reside in Greece or that the Greek Courts would require the children to reside in a

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situation where they were placed at physical or emotional risk. The court also held that the mother had done nothing to alleviate the risk she alleged by making contact with the appropriate authorities in Greece. Further the mother had not persuaded the trial judge that a return to Greece would raise a grave risk of harm tot eh children or otherwise place them in an intolerable situation. This finding was open to the trial judge. The mother's challenge to the trial judge's failure to rely upon the objection of the eldest child failed. The child was less than eight years old at the time of the hearing.
The court held that the mother had failed to adequately make out the element of grave risk. There was no evidence brought before the court that the Greek authorities would be unable to provide mother and children with appropriate protection upon return to Greece. The children were ordered to return to Greece.

i) *DP v Commonwealth Central Authority; JLM v Director-General, NSW Department of Community Services* [2001] HCA 39

In DP v Commonwealth, the case concerned the grave risk of harm arising from the alleged lack of medical facilities available for a disabled child. In relation to grave risk, the approach endorsed by the Full Court was "To ensure that the child is adequately protected, the Art 13b enquiry must encompass some evaluation of the people and circumstances awaiting that child in the country of his habitual residence." It supported the view that the person opposing return must establish the risk and not the certainty of the harm. The Full Court considered that the Commonwealth Central Authority should have investigated more fully the facilities available in the requesting country and in future should make its own enquiries rather than rely on the onus placed on the person opposing return. This case was heard in the High Court of Australia on appeal. The appeal was allowed and the majority of the Full bench of the High Court found that the primary judged erred in two ways. First he wrongly acted upon the speculation of the specialist paediatrician about the availability of services elsewhere in the requesting country, and he asked the wrong legal question about justification for removal rather than gravity of risk of exposure to harm.

The grave risk of harm arose from the mother's threat of suicide if she was ordered to return the child to Mexico. The Full Court reviewed the evidence of the mother's suicide threat as causing the grave risk of harm to the child. It held that there was no evidence that the effect of an order returning the child to Mexico, as opposed to the child being returned to the father, would be a worsening of the mother's medical condition, but that medical treatment was not available for the mother in Mexico. The matter was appealed to the High Court. The majority of the full bench of the High Court held that the Full Court's decision was wrong to hold that there was no evidence which warranted the primary judge reaching the conclusions he did. In the circumstances of the case the High Court held that the Full Court would not say that is was "not open" to the primary judge to make the findings that he did.

j) In this case the mother and father of the child were married in 2001 in the overseas country. The child was born on 2 November 2004. In early 2005, the mother and child moved out of the matrimonial home and in May 2005, the mother and child left for Australia without the father's knowledge or consent. The father commenced proceedings for the return of his child under the Hague Convention on 13 September 2005. In reply, the mother asserted that there would be a grave risk that the child would be exposed to physical or psychological harm or otherwise placed in an intolerable situation if a return order was made due to the father's violent history. In her sworn affidavit, the mother alleged that the father was violent to her during their marriage, including yelling at her, slapping her on the head and threatening to kill himself in front of her. Prior to her and her child travelling to Australia, the mother and child lived in a women's refuge. Further the mother asserted that she would not have accommodation in the requesting country, nor a source of income to support herself and her child.

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The Court found that the return of the child would pose a grave risk of harm or an intolerable situation. However, the child was ordered to return but conditions were imposed to create a situation for the child 'which would mean the return to [Requesting Country] would no longer pose a grave risk of harm or an intolerable situation'. Several of the initial conditions imposed on the return order were difficult to measure the implementation of could not readily be enforced in the jurisdiction of the requesting country. These included:

- the government of the requesting country provide visas for the mother and child
- the government of the requesting country permit the mother to work for remuneration
- the father obtain an order in the requesting country restraining him from assaulting, molesting, approaching or interfering with the mother or child, in effect getting a protection order against himself;
- the father of the government of the requesting country provide the mother and child with income;
- the mother and child be given accommodation immediately upon arrival in the requesting country; and
- the mother be given legal aid by the government of the requesting country.

The Central Authority of the requesting country and the lawyer of the applicant parent did not agree to the orders and the Central Authority of the requesting country stated that they could not be expected to enforce such orders.

The NSW Central Authority and the Australian Central Authority liaised heavily with the requesting country to draft enforceable conditions. Assurances were sought from the government of the requesting country and the father. The draft condition include requiring the left behind parent to provide a specific sum of funds for the first month after the mother's return to the requesting country. The drafting of enforceable and measurable orders was important to achieve the objective of the Convention, that is, the return of the child to her habitual residence. An appeal of the conditions would have reduced the applicant's prospects of success and could have possibly reversed the decision and created a non-return order.

k) Re F (Hague Convention: Child's Objections) [2006] FamCA 685 - 28/07/2006.

The case concerned a child brought to Australia from the USA in 2003 when he was 9 years old and wrongfully retained in Australia by mother. Consent orders were made in 2004 by a Judicial Registrar for the return of the child to the USA.

Over a period of approximately 18 months, various arrangements and undertakings for the return of the child were not honoured and the child remained in Australia with the mother. The father travelled to Australia early in 2006 to arrange child's return and following two failed attempts to return the child to the United States (due to the child refusing to board the plane), the mother filed an application out of time to review the original orders made in 2004 relying on the child's objections.

The mother's appeal was allowed and the return refused. The court found that the objections of the child were of sufficient strength to activate the Article 13(2) exception.

l) Please see the reply to question 10.

Austria – Autriche :

No important developments can be found.

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Canada – Canada :

a) Common law jurisdictions

Chan v. Chow [2001] 2001 BCCA 276, 15 R.F.L. (5th) 274, 199 D.L.R. (4th) 478, 90 B.C.L.R. (3d) 222, [2001] 8 W.W.R. 63, 152 B.C.A.C. 176, 250 W.A.C. 176, [2001] B.C.J. No. 904, 8 W.W.R. 63 (BCCA)

Facts
The mother and father married in Canada in 1993. Their child, a girl, was born in 1994. The mother and father separated in December 1995. The child lived with the mother after the separation. In January 1996, the mother obtained an order for interim custody on a motion brought without notice to the father. In February 1996, the mother flew to Australia with the child. Later in 1996 the mother moved with the child to Hong Kong. In April 1996, the mother's order of interim custody was set aside, and the father was granted interim custody. In late 1996, the father located the mother and child in Hong Kong. The father moved to Hong Kong and lived with the mother and child for a short time. In 1997, the mother and father again separated. In April 1997, the parties obtained a divorce and an order for joint custody in Canada. In July 1998 the mother and father reconciled and lived together in Canada. In June 1999 they moved back to Hong Kong. A month later, the mother and father again separated and shared custody of the child in Hong Kong. In March 2000 the father removed the child to Canada without the mother's knowledge or consent. In November 2000 the mother applied for an order of return. The judge at first instance dismissed the mother's application. The mother appealed to the British Columbia Court of Appeal.

Ruling
Appeal dismissed and return refused; the removal was wrongful but the standard of harm required under Article 13(1)(b) had been proved.

Legal basis for decision

Rights of Custody (Art. 3)
The mother had rights of custody pursuant to the order for joint custody that had been granted in Canada. Rights of custody may be based on any judicial or administrative decision, not just a judicial or administrative decision from the state where the abduction occurred. The mother also had rights of custody by operation of law.

Habitual Residence (Art. 3)
Habitual residence is a question of fact to be decided by reference to all the circumstances of the case. A habitual residence is established by residing in a place for an appreciable period of time with a settled intention. A child's habitual residence is tied to the habitual residence of his or her custodian.

The parties' residence in Hong Kong for 9 months satisfied the requirement of an appreciable period of time. That the mother and father were employed in Hong Kong and the child went to school in Hong Kong indicates that the parties had a settled intention to make Hong Kong their home. Therefore the child was habitually resident in Hong Kong at the time of her removal.

Art. 13(1)(b)
Returning the child to Hong Kong would create a grave risk of harm. The mother and child did not have immigration status in Hong Kong. If the child were returned to Hong Kong, she would have been forced to move again within a few months and this would have given rise to an intolerable situation. The mother had had a very unstable life, and if the child were returned to Hong Kong there would be a grave risk the mother will prevent the child from seeing the father. In addition, the father could not travel outside of Canada for 2 years because of a criminal conviction and he therefore could not participate in custody proceedings in Hong Kong during that period.

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Hewstan v. Hewstan [2001] 2001 BCSC 368 B.C. S.C. [In Chambers]

Facts
The mother and father, Canadian citizens, were married in Canada in 1992. In March 1999, they moved with their 3 children, ages 6, 5 and 3, from Canada to England. On 12 January 2001, while the father was away, the mother returned to Canada with the children. The father applied for a return order. The mother applied for interim custody.

Ruling
Return ordered; the removal was wrongful and none of the exceptions had been proved to the standard required under the Convention.

Legal basis for decision

Rights of Custody (Art. 3)
The father provided evidence that under English law he had parental responsibility, and by extension, rights of custody in respect of all three children because he and the mother were married when they were born. One of the father's rights of custody under English law was the right to veto the removal of the child from the jurisdiction. The removal of the children without his consent was a breach of his rights of custody.

Habitual Residence (Art. 3)
The question of habitual residence is a question of fact determined by reference to all the circumstances of the case. There must be a degree of settled purpose that is general or specific.

The children lived for almost two years in England before their removal. They were enrolled in schools and activities and had made friends in England. It is a matter of common sense that where a child was residing with both parents, his habitual residence was where the parents resided. Before their marital difficulties arose, the parents had agreed to stay in England for at least the term of the father's employment contract. The mother resigned her employment in Canada. They sold their house in Canada and bought one in England. The evidence showed that the parties had a settled purpose to reside in England.

Article 13(1)(b)
The children had settled into their home in Canada and moving them back to England would be disruptive, but such disruption would rarely constitute the level of harm contemplated by Article 13(1)(b).

The Objections of a Child to a Return (Art. 13(2))
The mother provided a report of a registered clinical counselor on her interview with the eldest child, a girl of 6. The court found that the child was not of an age and maturity at which it was appropriate to take into account her views. In any case, the child's view as reported were that she liked living in England and she also liked living in Nanaimo.

Toiber v. Toiber [2006] O.J. No. 1191 (ONCA)

Facts
The parties were married in the Ukraine in 1990, and immigrated to Israel in 1994. They were divorced in Israel in 2003, at which time custody of the children was granted to the mother, with visitation rights for the father. The custody and visitation order prevented the children from being removed from Israel. In July, 2004, the Israeli court granted leave for the appellant to take the children out of the jurisdiction to visit the appellant's aunt in Europe on the condition that they be returned to Israel by September 1, 2004.

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The mother and the two children (ages 13 and 8) ended up in Canada, where the mother launched a refugee claim on behalf of her and the children, without the knowledge and consent of the father.

The appellant relied on Article 13 of the Hague Convention, which provides the circumstances when a court is not bound to return the children, namely that there was a grave risk that the children's return would expose them to physical or psychological harm, or otherwise place them in an intolerable situation, and that they objected to being returned and had attained an age and degree of maturity at which it is appropriate to take account of their views. The application judge rejected the mother's arguments on relating to both exceptions, and ordered the children returned to their father, the respondent, in Israel. On appeal, the appellant mother also sought to introduce fresh evidence, which she claimed could not have been obtained before the hearing of the application due to communication difficulties with her counsel.

Ruling
Return ordered. Appeal dismissed. There was no error of law in the detailed and careful reasons of the application judge, who correctly determined that there was no corroboration in support of the appellant's allegations of risk or harm, and that the sentiments of the children were no more than those often expressed by a child caught in a custody battle, and were issues best dealt with by the courts in the jurisdiction in which they were habitually resident. In terms of the application to admit fresh evidence, it was not evidence that, if believed, could reasonably be expected to have affected the result when taken with the other evidence, and, in any event, it could, with due diligence, have been adduced on the application.

Legal basis for decision

Rights of Custody (Art. 3)
The Court found that there were rights of custody residing in the father (in Israel) and in the institution of the Israeli Court that had Ordered that the children could be removed from Israel for a visit abroad but also Ordered that "It [was] incumbent upon the mother to return the minors to Israel no later than date 1.9.04."

Article 13(1)(b)
Based on the mother's affidavit evidence the Court did not find there was sufficient evidence to conclude there would be a grave risk of harm to the children should they be returned to Israel. The mother's allegations of abuse were uncorroborated. The judge at first instance characterized the absence of any corroboration as a "deafening silence" [Toiber v. Toiber (2005) 2005 CarswellOnt 8366 at para. 20]

The Objections of a Child to a Return (Art. 13(2))
Attached to the respondent mother's Affidavit was a handwritten letter from her 13 year old daughter Liliya essentially stating that she did not like her father and did not want to go back to Israel. The Court took respectful notice of child child's objection to being returned. However the Court characterized her sentiments as mirroring her mother's in that they were no more "than those often expressed by a child caught in the vortex of a custody battle." (*supra*, at para. 36).

Innes v. Innes [2005] CarswellBC 1296 2005 BCSC 771, [2005] W.D.F.L. 3282, [2005] W.D.F.L. 3254, [2005] B.C.W.L.D. 4802, [2005] B.C.W.L.D. 4859 (BCSC)

Facts
Mr and Mrs Innes were married in Nepal in 1985. Subsequently (the date was not stated), they moved to Canada where they lived until about 1992, when they moved to the United States. They went there on a three-year visa which was extended to 1998, and then expired. Shortly thereafter the parties applied for permanent residency in the United States.

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In the Spring of 2001, by which time they had separated, Mr Innes informed Mrs Innes that their application for permanent residency had been denied. Mrs Innes then decided that she would move back to Canada with the children. Because Mr Innes was at that time opposed to her making such a move, she began custody proceedings which resulted in an Order being made by the North Carolina court on January 2, 2003, in which the parties were granted joint legal custody of their two children Gabriel (then 17) and Govinda (then 10). Mrs Innes was granted primary care and control. Mr Innes had periods of care and control.

The parties were involved in continuing litigation over the periods of access to the father, and how those periods of access were being exercised. During litigation on the access issue Mrs Innes moved the children to British Columbia. The Court in North Carolina made a specified access order envisaging that Mr Innes would send plane tickets to British Columbia and Mrs Innes would send the children for a visit. She did not do so. A month later, the Court in North Carolina issued a temporary custody order in favour of Mr Innes. Pursuant to that temporary order of custody Mr Innes applied to the British Columbia Supreme Court under the Hague Convention for the return of the children to him in North Carolina.

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Ruling
Application dismissed and return refused. The habitual residence was North Carolina. However, the father’s rights of access did not mean that the removal and retention of the children was wrongful. Furthermore, Mrs Innes failure to return the children pursuant to the order of temporary custody in favour of the father did not amount to a wrongful retention. British Columbia would be the appropriate jurisdiction to hear the issue of custody. The wishes of the younger child (now 12) were taken into account by the applications judge given the finding that he had attained an age and degree of maturity at which it was appropriate to take account of his views. The wishes of the now 19 year old Gabriel were moot because he had attained the age of majority, but his evidence was persuasive in terms of communicating his younger sibling’s wishes.

Legal basis for decision

Rights of Custody (Art. 3 and Art. 5(a))
The North Carolina Court made an order of temporary custody in favour of Mr Innes. In the opinion of the learned applications judge the retention of the child in British Columbia was not unlawful. No request was made under Article 15 by the requested state (British Columbia) that the requesting state (North Carolina) find the removal or retention was wrongful. There is nothing in the Convention that requires the recognition of an *ex post facto* custody order, commonly referred to as a “chasing order.”

Rights of Access (Art. 5(b))
Mr Innes had a right of access. However the Court found that notwithstanding his right, “The mandatory return dictated by the Convention is limited to cases where the removal or retention of the a child is in violation of the custody rights of a person, institution or other body, and a removal or retention of a child in breach of mere access rights is not “wrongful” within the meaning of Article 3 of the Convention.” (*supra*, at para. 44)

Article 13(2)
The Child, 12 years old at the time of the application, was interviewed by a psychologist and was found to be a mature 12 year old. His wishes were clear. He wanted to remain with his mother and older brother. He felt at home and liked his school. And although he wanted to remain in contact with his father he was “afraid” and would rather visit with his father first in Canada. He stated that he might be open to traveling to his father’s home in the U.S. after his father had visited him in Canada. The judge agreed. “His views should be taken into account, and I find them sufficient reason to refuse to order his return.” (*supra*, at para. 71)

Mr Innes subsequently sought to appeal the decision. The British Columbia Court of Appeal allowed him an extension of time to file a Notice of Appeal. However, he was out of time with respect to filing other materials and the appeal never proceeded.

Quebec

B.M.U. *v.* S.L., [2001] R.D.F. 509 (S.C.)

The parties married in Ireland in 1997, but lived in Germany. They had a child who was born in Germany in 1998. By the fall of 1999, the wife, a Quebecker, was thinking about moving back to Quebec, claiming her husband was abusive, controlling and given to verbal abuse. When he found out, the husband filed an application in German court in January 2000 seeking parental authority and the right to determine the child's place of residence. At the hearing, however, the husband agreed to have the right to determine the child's place of residence granted to his wife because of her plan to move to Quebec with her son. The parties subsequently relocated to Belgium together, and the wife continued making plans to move to Quebec, but without the husband's knowledge. She left Belgium in June 2000 and informed her husband in July that she intended to live in Quebec with the child. The husband, who had initially agreed to let the child go to Quebec, thinking that it was only for a visit, went back to Germany and applied unsuccessfully to the German courts to have the February 2000 order amended. In the meantime, the wife obtained a judgment in Quebec giving her temporary custody of the child. In April 2001, the husband's application to a German court under Article 15 of the *Convention on the Civil Aspects of International Child Abduction* for a determination that the child was wrongfully removed to or retained in Canada was dismissed. The father then went to the Quebec Superior Court and asked for the child to be returned immediately to his State of habitual residence.

In this case, the parents essentially had joint custody of the child even though the mother alone was permitted to determine his place of residence. The Court, finding in the order no territorial or time limit on the mother's right to determine the child's place of residence, found that the removal was not wrongful within the meaning of the Convention. The Court noted in passing that the custody rights the father was able to claim had not actually been exercised since the couple separated.

S.S.C. *v.* G.C., [2003] R.D.F. 845 (S.C.) (Appeal dismissed, [2003] R.D.F. 796)

The parties married in Montreal in 1996 and had three children. The first two were born in Quebec, the third in the United States, where the couple moved in 2000. The couple would, however, spend summer vacations in Quebec, where they had purchased a second home. In the summer of 2003, they again planned a trip to Quebec, but did not set the departure date. On June 29, the father left very early with the children, unknown to his wife, who joined them later that day in Quebec. On July 1, the husband filed separation papers in Quebec court. A few days later, the wife went back to Connecticut without the children. On July 10, an interim order rendered *ex parte* by the Superior Court gave custody of the children to the father, with visiting rights for the mother. The judgment also ordered both parties not to leave Quebec with the other's consent. On July 12, the wife filed for divorce in Connecticut. A few days later, she asked the Quebec court to defer jurisdiction to the Connecticut court and requested that the children be returned under the Convention.

Challenging the request for return of the children, the father claimed that there was no wrongful retention since the children lived in Quebec under a *bona fide* judgment from the Quebec Superior Court. The Court rejected that argument. The interim order issued by the Superior Court could not reverse the wrongful nature of the retention of the children. Accepting the respondent's position would have allowed the abducting parent to confer on the forum of his choice jurisdiction over the custody of the children. That is precisely what the Convention seeks to prevent.

M.B.G.A. *v.* R.V.M., [2004] R.D.F. 500 (C.A.) (Leave to appeal to the Supreme Court of Canada denied on December 2, 2004)

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The parents, citizens of Mexico, married in 1997. Their son was born in 1999, and the couple separated a year later. On December 6, 2001, a judgment rendered in Mexico gave the mother temporary custody of the child, with visiting rights for the father. In that context, the mother obtained a birth certificate for the child, stating that she was a single parent and did not know the identity of the father. On June 24, 2002, a tourist visa in hand, she arrived in Quebec with the child and a son from a previous relationship. She immediately took steps to immigrate to Canada. As part of the process, she had to go back to Mexico in February 2003, but she returned to Quebec the following May 28. On April 28, a Mexican court gave the father temporary custody of the child, but six months later, the judgment was overturned and the parties reverted to the situation they were in on December 6, 2001 (temporary custody for the mother with visiting rights for the father). After spending a few hours in the United States the following November, the mother was arrested for abduction at the Canadian border. She then asked the Quebec court to grant her custody of the child. The same day, the father requested that the child be returned immediately to Mexico, and the trial judge issued an order to that effect.

The mother claimed that she still had custody of the child, whereas the father had only visiting rights, and that there was therefore no wrongful removal. She argued that the fact that the Mexican penal code states that the consent of both parents is required for their child to leave the country did not alter the situation in any way. The opposite interpretation would imply that the Convention would have to be applied whenever the legislation of the child's State of habitual residence established equal rights in exercising parental authority.

The Court of Appeal found that there was wrongful removal of the child because, in breach of Mexican law, the father's consent was not obtained prior to removal. The position taken by the Court of Appeal in this case means that the definition of custody within the meaning of the Convention, which includes the right to determine the child's place of residence, does not broaden the scope of the custody rights established by the law of the child's State of habitual residence.

b) Common law jurisdictions

Wilson v Huntley [2005] W.D.F.L. 2824, 13 R.F.L. (6th) 435 (ONSC)

Facts

The child, a girl, was 3 1/2 at the date of the alleged wrongful retention. She was born in January 2000. Her parents separated in June 2001. An agreement entered into by the parents in December 2001 provided for joint custody with the mother having primary care. The agreement was amended in February 2003 to allow the mother to move to Germany with her new fiancee. The terms were changed to provide for shared custody on an alternating basis between the parents in Germany and Canada. The agreement further provided that the courts of Alberta were to retain jurisdiction over issues of custody and access.

The shuttle custody arrangement operated reasonably successfully during 2003 and the first part of 2004, even though the mother moved to the United Kingdom and the father from Alberta to Ontario.

In September 2004, a few weeks before the child was to return to Europe, the father informed the mother that he wanted the child to stay in Canada. He held that she was being unsettled by the custody arrangement.

The mother did not consent and the father commenced proceedings in Canada. The mother petitioned for the return of her child to the United Kingdom, her application being lodged on 19 January 2005.

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<u>Ruling</u>
Application dismissed; the child was not habitually resident in another Contracting State at the date of the retention.

<u>Legal basis for decision</u>

<u>Habitual Residence (Art. 3)</u>
To determine whether the Convention could apply to the application it had to be determined whether the child was habitually resident in the United Kingdom.

Reviewing a selection of case law the Court held first that the child could only have one habitual residence at any particular time. It then accepted that a person, including a child, could have consecutive, alternating habitual residences in two different States at separate times. Considering the agreement entered into by the parents the Court held that this was the situation in the present case and that therefore at the time of the retention the child was habitually resident in Canada.

It was argued for the mother that such a conclusion would undermine the policy objectives of the Convention. This was rejected by the Court.

The trial judge held, inter alia, that the objective of ensuring that the child's best interests were determined by litigation upon the merits in the place of the child's habitual residence had less force where the child had two such residences in alternating time frames. In the instant case that policy objective had been met, not defeated, by allowing the litigation to take place in Canada.

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<u>DeHaan v. Gracia</u> [2004] ABQB 74, [2004] A.W.L.D. 278, [2004] W.D.F.L. 284, 351 A.R. 354, 1 R.F.L. (6th) 140 (ABQB)

<u>Facts</u>
The children, two girls, were aged almost 8 and 6 1/2 at the date of the alleged wrongful retention. Parents and children had lived together in France. In June 2002 the parents initiated divorce proceedings. An interim court order granted the parents joint parental authority, but the mother residential care of the children.

In late November 2002 the parents agreed to attempt a reconciliation and the divorce proceedings were discontinued. The parents agreed to move to Canada to start a new life (the mother & children had Canadian citizenship).

The mother and children left on 31 December and the father was to follow in April 2003.

In March 2003 the father arrived in Calgary, Canada and stated that he wanted to take the children back to France. The mother commenced custody proceedings in Calgary and in June the father petitioned for the return of the children under the Hague Convention.

<u>Ruling</u>
Application dismissed; the retention was not wrongful because the children had lost their habitual residence in France upon departure and had acquired a habitual residence in Alberta, Canada.

<u>Legal basis for decision</u>

<u>Habitual Residence (Art. 3)</u>
If the father's application was to succeed he had to establish that the children were still habitually resident in France on the date from which he alleged they were being retained against his will.

The Court rejected this submission. It found that the parents had established a clear intention to establish a permanent residence in Canada prior to relocating there. On leaving France the children lost their habitual residence there. The Court also suggested that the children were habitually resident in Canada on 31 December 2002.

It was not open to the father to subsequently change his mind and revoke his consent to the move. His application thereby failed.

See also:

- *Chan v. Chow*, *supra*
- *Hewstan v. Hewstan*, *supra*

Quebec

The ruling by the Court of Appeal in Droit de la famille-2454[8] established the scope and meaning of the concept of habitual residence. The Honourable Jacques Chamberland, writing for the Court, stated:

> "[TRANSLATION] The reality of children alone must be taken into account in order to determine their place of 'habitual residence'. In that regard, the Court must rely on the child's experience; the wishes, desires and intentions of the parents matter not when a determination is being made as to the child's place of 'habitual residence' at the time of removal. In that context, the entire debate over the intentions of a mother and father regarding the sequence of events is unimportant in a situation where, as in the case at bar, the parents shared custody of their children."

This approach has been reiterated many times in case law.[9]

More recently, the Court of Appeal ruled that a certain period of time is needed for a child to form ties and show signs of integration into his or her new environment before it can be concluded that the child has a new habitual residence. In a 2002 judgment,[10] the Superior Court ruled that "habitual residence" within the meaning of the Act and the Convention did not have to be permanent; it could be for a limited period. In that case, even though the children had lived in Florida for only four months, the Court found that they had acquired a new place of habitual residence.

More significant, however, is the presence in Quebec case law of reservations about the relevance of using the notion of "settled purpose" to determine a child's place of habitual residence or, more specifically, a possible change in habitual residence. Two judgments bear noting.

A.K. *v.* E.F., [2001] R.D.F. 334 (S.C.)

The applicant was born in England, the respondent in Montreal. The couple married in New York City in 1997 and had three children, born in Israel. Following their wedding, the couple lived in Montreal and in England for a few weeks. They then spent two years in Israel on three-month tourist visas so that the applicant could finish school. When the visas expired, the couple returned to Canada or England and went back to Israel with new visas. The applicant obtained from Israeli authorities certificates of non-Israeli citizenship for the children born in Israel. The couple returned to Montreal with the children in October 1999 to attend the wedding of the respondent's sister in Quebec. The applicant then traveled to New York City to visit his own family, and the respondent was to meet him there with the children. However, the respondent informed the applicant that she wanted a divorce and that she was staying in Montreal with the children.

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[8] [1996] R.J.Q. 2509
[9] See, for example, *Droit de la famille – 3713*, [2000] R.D.F. 585 (C.A.); *S.E.* v. *T.R.*, J.E. 2003-1679 (S.C.)
[10] *R.A.* v. *B.As.*, [2002] R.D.F. 429 (S.C.)

The applicant asked that the children be forced to return to Israel, their home and place of habitual residence. The respondent opposed the application, claiming that neither the parties nor the children habitually resided in Israel, that she was the victim of a cruel and abusive marriage, and that the children could be at serious risk if they were compelled to go back to Israel with their father.

The Court turned to an English decision in order to establish the framework for analysing the notion of habitual residence. It wrote:

"[10] […]
The governing principle for ascertaining the elements of habitual residence is contained in the speech of Lord Scarman in R. v. Barnet London Borough Council *ex parte* Shah [1983] 2 A.C. 309, where he says, at page 314:

...and there must be a degree of settled purpose. The purpose may be one or there may be several. Pt may be specific or general. All that the law requires is that there is a settled purpose. That is not to say that the propositus intends to stay where he is indefinitely. Indeed his purpose while settled may be for a limited period. Education, business or profession, employment, health, family or merely love of the place spring to mind as common reasons for a choice of regular abode, and there may well be many others. All that is necessary is that the purpose of living where one does has a sufficient degree of continuity to be properly described as settled.

[11] After their wedding in July 1997 the parties lived in Montreal for three weeks. In August they went to England for two weeks and then on to Israel where petitioner was to continue his studies at Yeshiva Brisk.

[12] They entered Israel on a three month tourist visa. After the expiry of their visa they would leave for Canada or England, and soon after return on another tourist visa. On leaving Israel they would claim a reimbursement of the VAT (value added tax) that they had paid in Israel.

[13] From September 1997 to September 1999 while the parties were on and off in Israel they lived in three different apartments. Petitioner obtained certification from Israeli authorities that the children, although born in Israel were not to be considered Israeli citizens. <u>Their residency in Israel was always meant to be temporary</u>." [Emphasis added.]

In that particular case, the Court took an approach to determination of the child's place of habitual residence that seemed to go beyond a purely factual examination of the child's situation. The parents' intentions apparently played a key role in the decision that was made.

C.E.S. *v*. E.V., [2002] R.D.F. 874 (S.C.) (upheld on appeal: V.(E.) *v.* S. (C.E.), REJB 2002-38187 (C.A.))

The father, born in Honduras, was a permanent resident of the United States, while the mother, born in Colombia, was a Canadian citizen. They married in 1994 in New York City, where the father worked and the mother was a student. In 1996, the wife, pregnant with her first child, returned to Quebec because she wanted her child to be born and grow up where she had lived from the age of two. After the child was born, the parents essentially lived apart for almost three years. The father attempted to settle in Quebec in 1998, but went back to the united States after four months. He filed for divorce in 1999, but the couple later reconciled. The mother went back to her husband in late 1999, and a second child was born in 2000. The parties lived together until July 2002, when the mother, after telling the father that she no longer wanted to live with him, left North Carolina with the two children, her mother and her sister, who had come to help her.

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The father filed an application to have the children returned immediately to North Carolina, which he claimed was their place of habitual residence. The mother acknowledged that both parents had parental authority under North Carolina law and that a custody right had been violated. However, she objected to the children being returned, claiming that their place of residence was in Quebec prior to removal, that the father had agreed to the removal and that there was a grave risk that their return would expose them to psychological harm because they would be placed in an intolerable situation.

Noting that the law does not define the notion of habitual residence, the Court underscored the position of the Quebec Court of Appeal that only the reality of the child should be taken into account and that the wishes and intentions of the parents were not pertinent considerations. The Court stated that that point of view does not appear to be widely recognized by the international legal community. The Court outlined the American position requiring a certain level of "settled purpose" in order to determine place of habitual residence. Care should therefore be taken to avoid confusing habitual residence with actual or *de facto* residence.

Based on the facts of the case, the Court, while satisfied that the circumstances supported the conclusion that there was "settled purpose" within the meaning of international case law because the parents' stated intent was to live in the United States, rejected that approach in favour of the approach advocated by Quebec case law focusing on the child's reality alone. The Court wrote:

"[TRANSLATION] […] One thing remains certain. The approach advocated by Chamberland J. in DF-2454, which puts the emphasis on the child's reality rather than the parents' intentions, has the clear advantage of sparing the courts an exercise that in many cases will prove fastidious. Probing the hearts and mind of parents who have everything to gain from denying bald reality in order to reap the greatest possible benefit from a situation which, by dint of circumstance, is almost always fluid and in disarray, is perhaps not the most effective way of resolving this type of dispute."

c) *Innes v. Innes*, *supra*

d) [No answer]

e) Common law jurisdictions

A.(J.E.) v. M. (C.L.) 2002 CarswellNS 425 2002 NSCA 127, 209 N.S.R. (2d) 248, 33 R.F.L. (5th) 1, 656 A.P.R. 248, 220 D.L.R. (4th) 577 (NSCA)

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Facts
The mother and father were married in the United States in 1990. Their child, a girl, was born in January 1992. The mother and father divorced in the United States in 1993. Under the divorce decree the parents had joint custody, the mother having physical care, the father access.

In 1995, on the basis of allegations of physical and sexual abuse, the father's access was first suspended and then ordered to be supervised. The father sought to enforce his supervised access rights, but he was unsuccessful and had no access after March 1995. An investigation into the abuse allegations completed in June 1995 indicated no sexual abuse and only spanking of the child by the father.

The mother fled with the child to Canada in July 1995, using falsified US passports. The mother remarried in October 1996 and moved with her husband and the child to Nova Scotia. The mother and her second husband separated in May 2001.

In the Spring of 2001, the father located the child, who was then 9 years old. It then became known to the authorities that the mother and child were in Canada illegally, and the mother was unable to work pending resolution of her immigration status.

The father applied for an order for return of the child. The mother defended the application on the basis that the child objected to being returned and that the child was now settled in her new environment. The Supreme Court of Nova Scotia ordered the return of the child. The mother appealed to the Nova Scotia Court of Appeal.

<u>Ruling</u>
Appeal dismissed and return ordered; the removal was wrongful and none of the exceptions had been proved to the standard required under the Convention.

<u>Legal basis for decision</u>

<u>Aims of the Convention (Preamble, Art. 1 and 2)</u>
The Convention seeks to deter international child abductions, to secure the rapid return of children, to restore the status quo and to defer, in so far as determining the child's best interests is concerned, to the courts of the place of habitual residence.

<u>The Objections of a Child to a Return (Art. 13(2))</u>
The basis of the child's objections to return was fear of abuse by the father. The trial judge had ruled that there was no grave risk that ordering the child's return would expose her to physical or psychological harm or otherwise place her in an intolerable situation. This ruling was not challenged on appeal. To give effect to the child's objections in these circumstances would undermine the objectives of the Convention. In addition, there was evidence that the child's views were influenced by the mother.

<u>Article 12(2)</u>
Cromwell, J.A., for the court, stated that Article 12(2) "requires the court to weigh directly certain aspects of the child's best interests - particularly that of not being uprooted - even though the individual child's best interests are not generally the focus of the inquiry under the Convention. The difficulty is that refusal to return based on the assessment of the child's best interests tends to undermine the fundamental objectives of the Convention. Thus, if interpreted too broadly, the settled exception would undermine the effective operation of the Convention. On other hand, if interpreted too narrowly, the exception would be robbed of any practical effect."

In applying the settled exception courts ought to examine the child's present circumstances in the new environment in light of the objectives of the Convention.

In this case, it had been 7 years since the child's wrongful removal, and an order for return at this point would not further the Convention's objective of prompt return. At the time of the abduction, there was no meaningful contact between the father and the child, and therefore restoration of the status quo was not a compelling objective.

However, the Convention's objective of deterring abductions would be served by ordering return in this case. The circumstances of this abduction were particularly egregious. The mother and those who had assisted her must be shown that courts will deal firmly and unequivocally with child abduction and that Nova Scotia is not a haven for child abductors.

The objective of having the child's best interests determined by the court of the habitual residence would also be served by an order for return, even though the child had been absent from her habitual residence for the past 7 years. The child's father and extended family were in the United States, as were those who investigated the allegations of abuse. The courts there were thus in the best position to continue the process begun in 1995 to determine what was in the child's best interests.

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The child is now established in her new environment in terms school, friends and activities, but the court must also consider the instability of her position and that of her mother, on whom the child is dependent.

f) Common law jurisdictions

M. (V.B.) v. J. (D.L.) [2004] NLCA 56, 245 D.L.R. (4th) 135, 6 R.F.L. (6th) 330, 240 Nfld. & P.E.I.R. 147, 711 A.P.R. 147 (NLCA)

Facts
The child, a girl, was aged 5 at the date of the alleged wrongful removal. She was born in Canada, but six months after her birth her parents moved to Washington State in the United States. The parents' relationship eventually broke down and on 11 December 2002 the mother returned to Canada, her State of origin, and took her daughter with her.

The girl was located in St John's, Newfoundland and Labrador in October 2003.

On 8 December 2003 the provincial Central Authority filed a Notice in the Unified Family Court to notify the Court that it had received a Convention application. A return application was filed in the Unified Family Court by the father on 2 March 2004.

On 30 July the Unified Family Court ordered that the child be returned into the care of the child protection services in Washington State until all child protection issues had been determined by the State superior court.

The mother appealed.

Ruling
Appeal allowed; the return application had been issued more that 12 months after the removal of the child. The case was remitted to the Supreme Court of Newfoundland and Labrador Unified Family Court to determine whether the child was now settled in its new environment.

Legal basis for decision

One year period (Art. 12)
The mother did not contest that the removal was wrongful. The attention of the Court therefore focused on the application of Article 12 and the date of the commencement of the proceedings. If the proceedings were commenced within a year of the wrongful removal the return of the child was to be ordered forthwith, subject to the standard exceptions. However if more than a year had elapsed the return should still be ordered but the Court had in addition to consider whether the child was now settled in its new environment.

It was argued for the mother that the trial judge had erred in finding that less than a year had elapsed between the wrongful removal and the commencement of proceedings.

The Court considered the steps which had been taken following the discovery of the girl and assessed whether these amounted to the 'commencement of proceedings before the judicial or administrative authority of the Contracting State where the child [was]'.

The father's application for assistance to the Central Authority in Washington State could clearly not be characterized as commencing proceedings before the courts of Newfoundland and Labrador, nor could his Application for Assistance to the Central Authority in that province.

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The Court held that it was clear that the reference to "administrative" in "administrative authority" (Article 12) or "administrative proceedings" (Article 7(f)) did not mean the Central Authority. Rather, the judicial or administrative authority under Article 12 meant the entity charged with the responsibility of determining whether an order should be made to return the child.

The Court then considered the notice filed by the Central Authority on 8 December 2003 to advise the Unified Family Court of Article 16 of the Convention. It held that there was a distinction between giving notice and commencing a proceeding. Article 12 clearly contemplated something more than notice under Article 16 being given to the court. For Article 12 to apply an application must first be lodged.

The Court held that such an interpretation was consistent with the provisions in Article 11 with regard to delay. This was because if notice with respect to Article 16 was sufficient to commence proceedings, the six week period specified in Article 11(2) to reach a decision would be engaged, and potentially expire, as in the present case, before an application was filed requesting that the court make a determination under the Convention. Ordinary principles of interpretation dictated that such an anomalous result should be avoided.

The father's application was therefore commenced on 2 March 2004. Consequently it had to be determined whether the child was now settled in her new environment.

<u>Quebec</u>
R.V.M. *v.* M.B.G.A., [2004] R.D.F. 154 (S.C.); overturned by [2004] R.D.F. 500 (C.A.) (leave to appeal to the Supreme Court of Canada denied on December 2, 2004)

The parents, citizens of Mexico, married in 1997. Their son was born in 1999, and the couple separated a year later. On December 6, 2001, a judgment rendered in Mexico gave the mother temporary custody of the child, with visiting rights for the father. In that context, the mother obtained a birth certificate for the child, stating that she was a single parent and did not know the identity of the father. <u>On June 24, 2002, a tourist visa in hand, she arrived in Quebec with the child and a son from a previous relationship. She immediately took steps to immigrate to Canada. As part of the process, she had to go back to Mexico in February 2003, but she returned to Quebec the following May 28</u>. On April 28, a Mexican court gave the father temporary custody of the child, but six months later, the judgment was overturned and the parties reverted to the situation they were in on December 6, 2001 (temporary custody for the mother with visiting rights for the father). After spending a few hours in the United States the following November, the mother was arrested for abduction at the Canadian border. She then asked the Quebec court to grant her custody of the child. The same day, the father requested that the child be returned immediately to Mexico, and the trial judge issued an order to that effect.

The trial court ruled that the mother could not successfully use the defence of integration because the wrongful removal of the child did not occur until late May 2003, that is, after the mother completed the process of immigrating to Canada. The Court found that the mother and her child visited Quebec as tourists between June 2002 and February 2003. The evidence did not show that the mother had indicated at that time that her intention was to stay in Quebec longer.

The majority of the Court of Appeal did not share that view, however. Mailhot J., writing for the majority, set the starting point for calculation of the one-year period at June 24, 2002, the date on which the mother and her child first arrived in Quebec with tourist visas. That conclusion appears to be based on the fact that Mexican law prohibited the mother from leaving the country with her child without the father’s consent. The mother’s temporary return to Mexico to complete the process of immigrating to Quebec did not alter the situation. Morin J., dissenting, held instead that the date should be 28 May 2003, the date of the wrongful removal of the child, since that was the date on which the mother and child left Mexico <u>for good</u>.

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g) Common law jurisdictions

Katsigiannis v. Kottick-Katsigiannis [2001] 144 O.A.C. 387, 203 D.L.R. (4th) 386, 18 R.F.L. (5th) 279, 55 O.R. (3d) 456, 12 C.P.C. (5th) 191 (ONCA)

Facts

The mother and father were married in Canada in 1992 and subsequently moved to Greece. They had two children, a girl born in Greece in 1998 and a boy born in Canada in 1999. The mother returned to Canada in June 1999 for the birth of her son and remained in Canada with the children until December 1999, when she returned to Greece.

On 23 April 2000, the mother flew with the children to Canada to visit her family. The return flight was prepaid and most of the belongings of the mother and children were left in Greece. The father consented to the trip and to an extension. The mother applied in Canada for custody of the children in July 2000. The father applied for an order for a return order in August 2000. The Ontario Superior Court of Justice held that the retention of the children was wrongful and ordered that the children be returned to Greece.

The mother appealed to the Court of Appeal for Ontario.

Ruling

Appeal dismissed and return ordered; the retention was wrongful and none of the exceptions had been proved to the standard required by the Convention.

Legal basis for decision

Acquiescence (Art 13(1)(a))

Osborne, A.C.J.O., for the court, stated that the words 'consent' and 'acquiescence' should be given their ordinary meaning so that they would be consistently interpreted by courts of contracting states.

Osbourne, A.C.J.O. further stated that: " 'Consent' and 'acquiescence' were related words. 'To consent' is to agree to something, such as the removal of children from their habitual residence. 'To acquiesce' is to agree tacitly, silently, or passively to something such as the children remaining in a jurisdiction which is not their habitual residence. Thus, acquiescence implies unstated consent."

To meet the test in Article 13(1)(a) the mother would have to show some conduct of the father that was inconsistent with the summary return of the children to their habitual residence. There would have to be clear and cogent evidence of unequivocal consent or acquiescence on the part of the father. The mother failed to prove acquiescence to the standard required by the Convention.

Quebec

The recent case law brings to light conditions essential to the validity of consent/acquiescence to the removal or retention of a child. Consent or acquiescence must be given freely, unconditionally and permanently: A.M.I. *v.* D.T.L., [2001] R.D.F. 221 (C.A.); J.T. *v.* L.-A.B., [2002] R.D.F. 50 (S.C.); L.Y.P. *v.* M.E., J.E. 2005-250 (S.C.)

In that vein, the Court of Appeal ruled in M.T. *v.* T.B., [2004] R.D.F. 28 (C.A.), that while in some cases a parent's behaviour may amount to acceptance of the new situation and constitute valid acquiescence to removal or retention of the child, that was not so in the matter at hand, since the father's failure to act was the result of misrepresentations by the mother as to her true intentions. Like any other consent, the consent invoked as an exception to the return of a child to his or her State of habitual residence must be informed consent.

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In D.P. *v.* J.T., J.E. 2005-294 (S.C.), the parties married in Quebec in 1995 and moved to Greece several months later. They had three children. In May 2002, the mother returned to Quebec with the children unbeknownst to the father. In October 2002, she filed for separation in Quebec court. In November 2002, she was granted temporary custody of the child [*sic*] by a Greek court in proceedings initiated by the father. In December 2002, the father signed consent to interim measures, but that consent was never approved by a court. In June 2004, the father finally applied to have the children returned to Greece.

The mother admitted that the removal was wrongful, but argued that there was acquiescence from the father and the children were integrated into their new environment.

The Court ruled that the father's signing of consent to the interim measures to be applied during the proceedings initiated by the mother in Quebec, the fact that he did not request return of the children until June 2004, and his regular visits to Quebec to see the children were sufficient evidence to establish his acquiescence to the retention of the children in Greece.

h) Common law jurisdictions

Jabbaz v. Mouammar [2003] 171 O.A.C. 102, 226 D.L.R. (4th) 494, 38 R.F.L. (5th) 103 (ONCA)

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Facts
The mother and father, Canadian citizens, lived together in Canada for three years. They had one child, a boy, who was six years old at the time of the Court's decision. The mother and father separated in 1998. They entered into an agreement for joint custody with primary residence to be with the mother. Under the agreement, the mother was permitted to relocate with the child from Canada to the United States.

The mother and the child moved to the United States where they lived with the mother's fiancé for three and a half years. During the summer of 2002, the mother's relationship with her fiancé ended. The mother and father agreed that the child would live with his father until the mother was resettled. The mother resettled in the United States in October 2002 and then asked the father for the return of the child. The father refused.

In December 2002, the father applied in Canada for custody of the child, and the mother applied for a return order. The judge at first instance ruled that the retention of the child by the father was wrongful and that the mother had not acquiesced in the retention. However, the judge ruled that returning the child to the United States would place the child in an intolerable situation within the meaning of Article 13(1)(b) and would be contrary to public policy because of the mother's uncertain immigration status in the United States.

The mother appealed to the Court of Appeal for Ontario.

Ruling
Appeal allowed and return ordered, provided that the child was permitted to enter the United States. The retention was wrongful and none of the exceptions had been proved to the standard required by the Convention.

Legal basis for decision

Art. 13(1)(b)
The circumstances in which a court may refuse to order the return of a child under Article 13 are exceptional. The risk of physical or psychological harm or an intolerable situation must be "grave." The term "intolerable" means an extreme situation that is too severe to be endured.

The uncertain immigration status of the mother and child in the United States did not create a grave risk that return would place the child in an intolerable situation. The absence of regularized immigration status did not approach the very high threshold required to fall under Article 13(1)(b). California courts were in a better position to consider concerns about the child's uncertain immigration status and to determine what was in the best interests of the child.

Article 20

The judge at first instance did not refer to Article 20, but a second basis for the judge's decision was that returning the child would be contrary to public policy because of the mother's uncertain immigration status. The Court of Appeal rejected this reasoning and stated that "courts should be very wary of grafting new public policy exceptions on to the Convention in the face of the very clear public policy represented in the Convention itself."

Kovacs v. Kovacs [2002] 1429 212 D.L.R. (4th) 711, 21 Imm. L.R. (3d) 205, 59 O.R. (3d) 671, [2002] O.T.C. 287 (ONSC)

Facts

The parents were married in Hungary in 1991 and their son was born there in 1997. In 2001, the mother and father separated. A few days after the separation, the mother took the child to Canada without the knowledge or consent of the father. On her arrival in Canada, the mother claimed refugee status on her own behalf and on behalf of the child. The basis of the mother's refugee claim was that she had been physically and psychologically abused by the father, that the child was physically abused by the father, and that the state of Hungary was unable or unwilling to protect her or her child.

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When the father learned of the mother's whereabouts, he applied for a return order. The mother's claim for refugee status had not been determined at the time the father's return application was heard.

At the return hearing the parties submitted conflicting evidence with regard to the father's criminal conviction in Hungary. To resolve the conflict, Ferrier, J. ordered counsel for the Ministry of Citizenship and Immigration and the Attorney General of Ontario to request Canada's Central Authority to determine whether the father had been convicted of fraud. Hungary's Ministry of Justice confirmed that the father had been convicted and sentenced to six years in prison, that there were outstanding arrest warrants for the father and that the whereabouts of the father were unknown.

Ruling

Return refused; the removal was wrongful, but there was a grave risk that a return would expose the child to psychological harm and place him in an intolerable situation.

Legal basis for decision

Aims of the Convention (Preamble, Art. 1 and 2)

An order for return of a child can be made while a refugee claim on behalf of the child is pending. The Convention requires that applications for return be dealt with expeditiously. Convention applications can usually be completed within a few months. Refugee claims take a year or more. A refugee claim could not be allowed to defeat the aims of the Convention.

Article 13(1) *b)*

The mother's claims of abuse against herself and the child by the father were not proven to the standard required by Article 13(1)(b). However, there was a grave risk that an order of return would expose the child to psychological harm because the child would effectively be returned to the father who was a fugitive from justice. Even if the child were in the care of the mother or a third party in Hungary, the child would be in an

intolerable situation because of the risk of abduction by the father, who had a long history of fraud, deceit and violence.

Heimann v. Dookeran, Court of Queen's Bench (Family Division) Winnipeg Centre, Aug. 30, 2002 (unreported)

A left behind father in Germany applied for return of his 4 1/2 year old son who was being wrongfully retained in Manitoba by the mother. Among other things, the mother argued that she and the child (both persons of colour) would somehow be at risk of being victims of racism if they returned to Germany. The court found no evidence to support that submission and further, if the racism argument was successful it would bring down the entire Hague Convention. Return was ordered.

See also:

- *Chan v. Chow*, *supra*
- *Toiber v. Toiber*, *supra*

<u>Quebec</u>
It is increasingly clear that <u>unless there are special circumstances</u>, the fact that children can be deprived of a special relationship with one parent where the court orders that they be returned to their State of habitual residence until the competent court determines whether custody constitutes a "grave risk" within the meaning of Article 13(1)(*b*) of the Convention: R.F. *v.* M.G., [2002] R.D.F. 785 (C.A.); L.Y.P. *v.* M.E., J.E. 2005-250 (S.C.). This "risk" can be neutralized by "undertakings" from the applicant parent (see R.F. *v.* M.G., [2002] R.D.F. 785 (C.A.)).

i) <u>Common law jurisdictions</u>
Struweg v. Struweg [2001] 2001 SKQB 283, 208 Sask. R. 243, [2001] 9 W.W.R. 581, 9 W.W.R. 581 (SKQB)

<u>Facts</u>
The mother and father, South African nationals, were married in 1993. Their child, a boy, was born in Canada in May 1995. The family returned to South Africa during the summer of 1995 and lived there for a year. In August 1996 they returned to the United States and lived in Pennsylvania.

The mother brought the child to Saskatchewan for a one-month visit in August 2000. After her arrival she decided to stay and applied for custody. In September 2000, the father applied for custody in Pennsylvania and applied for the return of the child.

<u>Ruling</u>
Return ordered; the retention was wrongful and none of the exceptions had been proved to the standard required under the Convention.

<u>Legal basis for decision</u>

<u>Article 13(1) *b)*</u>
The mother claimed that the child would be at risk of psychological harm if exposed to the father's homosexual lifestyle, his violence and his drinking. The court ruled that the evidence relating to the risk of harm fell far short of the standard required by Article 13(1) *b)*.

The mother also argued that to she could not work in the United States and that to put the child in a situation where his mother could not work; had no means of support, entitlement to social assistance or legal aid and no medical coverage would place him in an intolerable situation. The court agreed that the circumstances that a parent may face in the event of return may be a relevant consideration but that in this case the circumstances relied on by the mother existed while she lived with the child in

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Pennsylvania before the removal and did not amount to an intolerable situation. Any concerns about the mother's return could be met by appropriate undertakings.

The mother pointed to the rights protected by the UN Convention on the Rights of Children, and argued that these rights could best be protected by allowing the child to stay in Canada. The court pointed out that it was not determining whether the child would be better off living in Saskatchewan or what was in the best interests of the child, and that a return must be ordered unless one of the narrow exceptions was made out.

See also:

- *Kovacs v. Kovacs*, *supra*

Quebec

Quebec courts have developed a position on domestic violence which, if not unanimous, is shared by a large majority. The position is that evidence of alleged domestic violence (violence usually committed by the father) does not, unless there are extraordinary circumstances, constitute a grave risk of the children being exposed to physical or psychological harm within the meaning of Article 13(1)(*b*) of the Convention. Noting that exceptions to the return of a child must be interpreted narrowly, Quebec courts tend, in the absence of evidence of violence or abuse toward the child whose return to the State of his or her habitual residence has been requested, to take the view that it is up to the court with jurisdiction over custody to assess the merit and impact of allegations of domestic violence in the best interests of the child. See D.T. *v.* H.D., [2003] R.D.F. 216 (S.C.); T.B. *v.* M.T., [2004] R.D.F. 174 (S.C.), upheld [2004] R.D.F. 28 (C.A.); C.T. *v.* L.D., [2004] R.D.F. 808 (S.C.).

L.D. *v.* N.H., J.E. 2002-1776 (S.C.) is a noteworthy case. In its decision, the Quebec court refused to order the children returned to France on the grounds that they might be exposed to psychological harm because of the sexual assaults they claim they suffered at the hands of their cousins. The mother had custody of the children, while the father had visiting rights. Several times after the couple divorced in 1995, the mother applied for and obtained changes to the father's access. On one of those occasions, an expert report suggesting that the girls might have been sexually assaulted by their cousins was entered in evidence. The assaults allegedly took place at the home of the children's grandparents. Accordingly, the French court ordered that the cousins no longer be allowed to be present during the father's visits. In June 2001, the mother took the children to Quebec. The father therefore requested that the children be returned to their State of habitual residence.

The Quebec judge, after hearing the two children regarding the sexual assaults committed by their cousins, noted their objection to being returned to France and declined to order such return because the father would in all likelihood bring them back to their grandparents' home, which constituted a grave risk of exposing the children to psychological harm.

j) Common law jurisdictions

Jabbaz v. Mouammar, supra
Kovacs v. Kovacs, *supra*

k) Common law jurisdictions

A.(J.E.) v. M. (C.L.), supra
Toiber v. Toiber, supra
Innes v. Innes, supra

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Case in Saskatchewan: The abducting parent refused to return the children based on their objections. In that case, the judge ordered a specific type of Custody/access assessment, Hearing Children's Voices reports, which focus on the child. The judge provided guidelines for the assessor, so that the focus of the assessment would be on the nature of the children's objections rather than on their preferences for custodial arrangements. The children had indicated that they didn't feel they were able to spend enough time with their father while in their mother's care, so wished to reside with their father. The judge ordered the return of the children.

l) Common law jurisdictions

Jabbaz v. Mouammar, supra

**

a) Juridictions de common law

Chan c. Chow [2001] 2001 BCCA 276, 15 R.F.L. (5th) 274, 199 D.L.R. (4th) 478, 90 B.C.L.R. (3d) 222, [2001] 8 W.W.R. 63, 152 B.C.A.C. 176, 250 W.A.C. 176, [2001] B.C.J. N° 904,
8 W.W.R. 63 (C.A.C.-B.)

Les faits
La mère et le père se sont mariés au Canada en 1993. Leur enfant, une fille, est née en 1994. Les parents se sont séparés en décembre 1995. L'enfant a vécu avec sa mère après la séparation. En janvier 1996, la mère obtient une ordonnance de garde provisoire à la suite d'une requête qui n'a pas été signifiée au père. En février 1996, la mère s'envole pour l'Australie avec son enfant. Plus tard dans la même année, elle s'installe à Hong Kong avec son enfant. En avril 1996, l'ordonnance obtenue par la mère est annulée et le père obtient la garde provisoire de l'enfant. Vers la fin de la même année, le père parvient à localiser la mère et la fille à Hong Kong. Il part pour Hong Kong où il vit avec la mère et sa fille pendant une brève période. En 1997, la mère et le père se séparent de nouveau. En avril 1997, les parties obtiennent le divorce et une ordonnance de garde partagée au Canada. En juillet 1998, les parents se réconcilient et décident de se réinstaller au Canada. En juin 1999, ils retournent à Hong Kong. Un mois plus tard, ils se séparent de nouveau et partagent la garde de l'enfant à Hong Kong. En mars 2000, le père ramène l'enfant au Canada à l'insu de sa mère et sans son consentement. En novembre 2000, la mère présente une demande afin d'obtenir le retour de son enfant. Le juge de première instance rejette la demande de la mère. Celle-ci interjette appel devant la Cour d'appel de la Colombie-Britannique.

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Décision
L'appel est rejeté et le retour refusé : l'enlèvement était illégal, mais le risque de danger a été prouvé d'une manière qui correspond aux exigences de l'article 13(1)*b*).

Fondements juridiques de la décision

Droits de garde (art. 3)
La mère avait des droits de garde en vertu de l'ordonnance de garde partagée qui avait été rendue au Canada. Les droits de garde peuvent se fonder sur toute décision judiciaire ou administrative et non seulement sur une décision judiciaire ou administrative rendue dans le pays où l'enlèvement a eu lieu. La mère avait également des droits de garde par l'effet de la loi.

Résidence habituelle (art. 3)
La question de la résidence habituelle est une question de fait qui doit être tranchée en tenant compte de toutes les circonstances de l'affaire. Une résidence habituelle est établie en demeurant à un endroit pendant une assez longue période avec l'intention de

s'y établir. La résidence habituelle d'un enfant est liée à celle de la personne qui en a la garde.

Le fait que les parties aient résidé à Hong Kong pendant neuf mois répondait au critère de la période assez longue. Le fait que la mère et le père aient tous deux travaillé à Hong Kong et que l'enfant soit allée à l'école à Hong Kong constituaient autant d'indications que les parties avaient l'intention de s'y établir. Hong Kong était donc le lieu de résidence habituelle de l'enfant au moment de son déplacement.

L'article 13(1) *b*)
Retourner l'enfant à Hong Kong l'exposerait à un risque grave de danger. La mère et l'enfant n'ont pas le statut d'immigrantes à Hong Kong. Si l'enfant y avait été renvoyée, elle aurait dû déménager de nouveau quelques mois plus tard, et cela aurait constitué une situation intolérable. La mère menait une vie très instable, et le retour de l'enfant à Hong Kong aurait entraîné un risque très grave que la mère empêche l'enfant de voir son père. De plus, le père ne pouvait quitter le Canada pendant deux ans en raison d'une condamnation criminelle et il n'aurait pas pu se rendre à Hong Kong pour participer aux instances visant à décider de la garde durant cette période.

Hewstan c. Hewstan [2001] 2001 BCSC 368 C.S. C.-B. [En chambre]

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Les faits
La mère et le père, tous deux citoyens canadiens, se sont mariés au Canada en 1992. En mars 1999, ils ont quitté le Canada pour l'Angleterre avec leurs trois enfants de 6, 5 et 3 ans. Le 12 janvier 2001, pendant que le père était absent, la mère est revenue au Canada avec les enfants. Le père a demandé le retour des enfants. La mère a demandé une garde provisoire.

Décision
Le retour est ordonné : le déplacement était illégal et aucune exception n'a été prouvée d'une manière qui correspond aux exigences de d'une manière qui correspond aux exigences de la Convention.

Fondements juridiques de la décision

Droits de garde (art. 3)
Le père a présenté des preuves établissant que la loi britannique lui confiait la responsabilité parentale, et par extension, les droits de garde sur les trois enfants parce que leur mère et lui-même étaient mariés lors de leur naissance. Parmi les droits de garde accordés au père en droit britannique, mentionnons celui de s'opposer au déplacement des enfants en dehors du pays. Le déplacement des enfants sans son consentement constituait donc une violation de ses droits de garde.

Résidence habituelle (art. 3)
La question de la résidence habituelle est une question de fait qui doit être tranchée en tenant compte de toutes les circonstances de l'affaire. On doit retrouver la manifestation d'une intention générale ou particulière de s'établir en un lieu.

Les enfants ont vécu presque deux ans en Angleterre avant leur déplacement. Ils y fréquentaient l'école, y étaient inscrits à des activités et s'y étaient fait des amis. Il tombe sous le sens que la résidence habituelle d'un enfant vivant avec ses deux parents est celle de la résidence de ses parents. Avant que ne surviennent leurs difficultés conjugales, les parents s'étaient entendus pour demeurer en Angleterre au moins jusqu'à la fin du contrat de travail du père. La mère avait démissionné de son emploi au Canada. Ils avaient vendu leur maison au Canada et en avaient acheté une autre en Angleterre. La preuve démontre que les parties avaient décidé de résider en Angleterre.

L'article13(1) *b*)
Comme les enfants se sont installés dans leur maison au Canada, il est certain que leur retour en Angleterre les dérangerait. Toutefois, ce dérangement ne constitue pas le danger envisagé par l'article 13(1)*b*).

Les objections d'un enfant à son retour (art. 13(2))
La mère a fourni le rapport de l'entrevue entre une thérapeute familiale et son aînée, sa fille de 6 ans. Le tribunal a conclu que cette dernière n'avait ni l'âge ni la maturité permettant de prendre en compte son point de vue. De toute façon, cette enfant avait déclaré aimer vivre en Angleterre et aussi à Nanaimo.

Toiber c. Toiber [2006] O.J. N° 1191 (C.A. Ont.)

Les faits
Les parties se sont mariées en Ukraine en 1990 et ont émigré en Israël en 1994. Lors de leur divorce en Israël en 2003, la garde des enfants a été confiée à la mère, le père se voyant reconnaître des droits de visite. L'ordonnance de garde et de droits de visite prévoyait que les enfants ne devaient pas être déplacés d'Israël. En juillet 2004, un tribunal israélien accordait à l'appelante le droit de quitter le territoire israélien avec ses enfants pour rendre visite à sa tante qui résidait en Europe, à la condition que les enfants soient de retour en Israël au plus tard le 1er septembre 2004.

La mère et les deux enfants (âgés de 13 et 8 ans) se sont retrouvés au Canada où la mère a revendiqué le statut de réfugié pour elle-même et ses enfants, à l'insu et sans le consentement du père.

L'appelante a invoqué l'article 13 de la Convention de La Haye qui prévoit les circonstances dans lesquelles un tribunal n'est pas tenu d'ordonner le retour des enfants, et plus particulièrement lorsque leur retour les exposerait à un danger physique ou psychique ou les placerait dans une situation intolérable, lorsqu'ils s'opposent à leur retour et qu'ils ont atteint un âge et une maturité où il se révèle approprié de tenir compte de cette opinion. Le juge saisi de la demande a rejeté les arguments de la mère relativement aux deux exceptions et a ordonné que les enfants soient retournés à leur père, en Israël. En appel, la mère appelante a également cherché à présenter de nouvelles preuves qu'elle n'avait pu, prétendait-elle, obtenir avant l'audition de sa demande en raison de problèmes de communication avec son avocat.

Décision
Le tribunal a rejeté l'appel et ordonné le retour des enfants. Le juge saisi de la demande n'a commis aucune erreur de droit dans son raisonnement détaillé et soigneux et c'est à juste titre qu'il a conclu que rien ne corroborait les allégations de l'appelante selon lesquelles ses enfants couraient un danger quelconque, que l'opinion des enfants ne correspondait à rien de plus que ce qu'il est courant d'entendre de la part d'enfants qui se retrouvent au cœur d'un différend portant sur leur garde et que c'était les tribunaux du pays où ils résidaient habituellement qui étaient les mieux placés pour trancher ces questions. En ce qui concerne la demande visant à présenter de nouvelles preuves, il ne s'agissait pas de preuves qui, si on y avait prêté foi, auraient modifié l'issue de l'affaire compte tenu des autres éléments de preuve et, de toute façon, si l'appelante avait fait preuve de diligence raisonnable, ceux-ci auraient été présentés au moment de la demande initiale.

Fondements juridiques de la décision
Droits de garde (art. 3)
Le tribunal a conclu qu'il restait des droits de garde au père (en Israël) et dans l'institution du tribunal israélien qui avait accordé à la mère la permission de quitter le territoire israélien pour faire une visite à l'étranger, mais qui avait également ordonné qu'il [TRADUCTION] « incomb[ait] à la mère de ramener les enfants mineurs en Israël au plus tard le 1er septembre 2004 ».

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L'article 13(1) *b*)
Se fondant sur la déclaration assermentée de la mère, la Cour a estimé qu'il n'y avait pas de preuve suffisante pour conclure qu'il existait un risque grave que le retour des enfants en Israël ne les expose à un danger physique ou psychique. Les allégations de violence faites par la mère n'étaient pas corroborées. Le juge de première instance a qualifié cette absence de toute corroboration de [TRADUCTION] « silence assourdissant » [*Toiber c. Toiber* (2005) 2005 CarswellOnt 8366, au par. 20].

Les objections d'un enfant à son retour (art. 13 (2))
Jointe à la déclaration assermentée de la mère se trouvait une note manuscrite de la fille de 13 ans, Liliya, déclarant essentiellement qu'elle n'aimait pas son père, et qu'elle ne voulait pas retourner en Israël. Le tribunal a tenu compte comme il se doit des objections de l'enfant à son retour, mais il a conclu que ceux-ci ne faisaient que reproduire les doléances de sa mère et qu'ils ne correspondaient à rien de plus [TRADUCTION] « que les sentiments souvent exprimés par un enfant pris dans le tourbillon d'un conflit sur sa garde » (*supra*, par. 36).

Innes c. Innes [2005] CarswellBC 1296 2005 BCSC 771, [2005] W.D.F.L. 3282, [2005] W.D.F.L. 3254, [2005] B.C.W.L.D. 4802, [2005] B.C.W.L.D. 4859 (C.S.C.-B.)

Les faits
M. et Mme Innes se sont mariés au Népal en 1985. Par la suite (à une date qui n'a pas été indiquée), ils ont déménagé au Canada et ils y sont demeurés jusqu'en 1992, pour ensuite partir s'établir aux États-Unis. Ils y ont séjourné avec un visa de trois ans qui a été prorogé jusqu'en 1998 et qui est ensuite arrivé à expiration. Peu après, les parties ont présenté une demande de résidence permanente aux États-Unis.

Au printemps 2001, au moment où ils étaient séparés, M. Innes a informé son épouse que leur demande de résidence permanente avait été rejetée. Mme Innes a alors décidé de revenir au Canada avec les enfants. Parce que M. Innes s'opposait alors au retour au Canada de Mme Innes avec les enfants, cette dernière a engagé une procédure qui a amené un tribunal de la Caroline du Nord à prononcer, le 2 janvier 2003, une ordonnance de garde conférant conjointement aux parents la garde légale de leurs deux enfants Gabriel (alors âgé de 17 ans) et Govinda (alors âgé de 10 ans). Mme Innes se voyait confier la responsabilité principale des soins et du contrôle, tandis que M. Innes obtenait une responsabilité occasionnelle de ceux-ci.

Les parties étaient constamment devant les tribunaux au sujet des droits de visite du père et de la manière dont ils devaient être exercés. Pendant que les tribunaux étaient saisis de ce litige, Mme Innes est déménagée avec ses enfants en Colombie-Britannique. Le tribunal de Caroline du Nord a rendu une ordonnance relative aux droits de visite prévoyant précisément que M. Innes ferait parvenir des billets d'avion en Colombie-Britannique pour que Mme Innes envoie les enfants le visiter. Elle ne l'a pas fait. Un mois plus tard, le tribunal de Caroline du Nord rendait une ordonnance confiant provisoirement la garde des enfants à M. Innes. Invoquant cette ordonnance de garde provisoire et la Convention de La Haye, M. Innes s'adressa aux tribunaux de Colombie-Britannique pour obtenir le retour des enfants en Caroline du Nord.

Décision
La demande est rejetée et le retour refusé. La résidence habituelle des enfants se trouvait en Caroline du Nord. Cependant, les droits de visite du père n'avaient pas pour effet de conférer un caractère illicite au déplacement et au non-retour des enfants. En outre, le défaut par Mme Innes de retourner les enfants conformément à une ordonnance de garde provisoire prononcée en faveur du père n'est pas assimilable à un non-retour illicite. La Colombie-Britannique était le ressort compétent pour se prononcer sur la garde. Le juge saisi de la demande a tenu compte des vœux du benjamin (maintenant âgé de 12 ans), ayant statué qu'il avait atteint un âge et une maturité où il se révèle approprié de tenir compte de cette opinion. Ceux de Gabriel (maintenant âgé de 19 ans)

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n’avaient pas de portée pratique parce qu’il était désormais majeur, mais son témoignage était convainquant quant aux vœux de son jeune frère.

Fondements juridiques de la décision

Droits de garde (art. 3 et 5*a*))

Le tribunal de Caroline du Nord a rendu une ordonnance de garde provisoire en faveur de M. Innes. Le juge saisi de la demande a estimé que le fait que l’enfant reste en Colombie-Britannique ne constituait pas un non-retour illicite. La province requise (la Colombie-Britannique) n’a pas invoqué l’article 15 pour demander à l’État requérant (la Caroline du Nord) de conclure au caractère illicite du déplacement ou du non-retour. Rien dans la Convention n’exige la reconnaissance d’une ordonnance de garde « ex post facto », communément appelée « ordonnance de retour ».

Droits de visite (art. 5*b*))

M. Innes avait un droit de visite. Le tribunal a toutefois statué qu’en dépit de son droit [TRADUCTION] « [l]e retour obligatoire prescrit par la Convention est limité aux cas où le déplacement viole le droit de garde d’une personne, d’une institution ou d’un autre organisme et le déplacement ou le non-retour d’un enfant en contravention du droit de visite seulement ne serait pas un déplacement ou un non-retour illicite au sens de l’article 3 de la Convention » (*supra*, au par. 44).

L’article 13(2)

L’enfant, âgé de 12 ans au moment de la demande, a eu une entrevue avec un psychologue qui a conclu à sa maturité pour son âge. Ses vœux étaient clairs. Il souhaitait demeurer avec sa mère et son frère aîné. Il se sentait chez lui et aimait son école. Et même s’il souhaitait continuer à entretenir des rapports avec son père, il avait « peur » et souhaitait tout d’abord le revoir au Canada. Il a déclaré qu’il serait éventuellement disposé à rendre visite à son père aux États-Unis après l’avoir revu au Canada. Le juge était d’accord. [TRADUCTION] « Il y a lieu de tenir compte de son opinion et le tribunal y voit un motif suffisant de refuser d’ordonner son retour » (*supra*, au par. 71).

Par la suite, M. Innes a voulu interjeter appel de cette décision. La Cour d’appel de la Colombie-Britannique lui a accordé une prorogation du délai pour déposer un avis d’appel, mais il était trop tard pour produire d’autres documents et son appel ne fut jamais entendu.

Québec

B.M.U. c. S.L., [2001] R.D.F. 509 (C.S.)

Les parties se sont mariées en 1997 en Irlande mais ont résidé en Allemagne. Elles ont eu un enfant, né en 1998 en Allemagne. Dès l'automne 1999, l'épouse, qui est québécoise, envisageait un retour au Québec, reprochant à l'époux son attitude méprisante, contrôlante et teintée de violence verbale. Alerté, l'époux a déposé, en janvier 2000, une requête au tribunal allemand afin que lui soient confiés l'autorité parentale et le droit de fixer le lieu de résidence de l'enfant. Lors de l'audience, l'époux a toutefois consenti à ce que le droit de fixer le lieu de résidence de l'enfant soit confié à l'épouse compte tenu de son projet de venir s'établir avec son fils au Québec. Les parties ont, par la suite, déménagé ensemble en Belgique et l'épouse a continué ses démarches pour s'établir au Québec, mais à l'insu de l'époux. Elle a quitté la Belgique en juin 2000 et, en juillet, elle a annoncé à l'époux son intention de demeurer au Québec avec l'enfant. L'époux, qui avait consenti au départ de l'enfant pour le Québec, croyant à un séjour temporaire, est alors rentré en Allemagne et s'est adressé sans succès aux tribunaux allemands pour faire modifier l'ordonnance rendue en février 2000. Entre-temps, l'épouse a obtenu au Québec un jugement lui accordant la garde provisoire de l'enfant. En avril 2001, la demande de l'époux devant le tribunal d'Allemagne, conformément à l'article 15 de la Convention sur les aspects civils de l'enlèvement international d'enfants, d'une attestation constatant que l'enfant aurait été déplacé ou retenu de façon illicite au Canada a été rejetée. Le père saisit ensuite la Cour supérieure du Québec et demande le retour immédiat de l’enfant dans l’État de sa résidence habituelle.

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Dans cette affaire, les parents disposaient en principe de la garde conjointe de l’enfant, bien que seule la mère pouvait décider de son lieu de résidence. Le Tribunal, ne décelant dans cette ordonnance aucune limite territoriale ou temporelle au droit de la mère de décider du lieu de résidence de l’enfant, conclura que le déplacement n’est pas illicite au sens de la Convention. Subsidiairement, le Tribunal note que le droit de garde auquel pouvait prétendre le père n’était pas exercé effectivement depuis leur rupture.

S.S.C. c. G.C., [2003] R.D.F. 845 (C.S.) (Appel rejeté, [2003] R.D.F. 796)
Les parties se sont mariées à Montréal en 1996 et ont eu trois enfants. Les deux premiers sont nés au Québec et le dernier, aux États-Unis, où les époux ont déménagé en 2000. Les époux revenaient cependant passer les vacances d'été au Québec, où ils avaient acquis une résidence secondaire. À l'été 2003, ils avaient de nouveau planifié un séjour au Québec, mais la date de départ n'avait pas été fixée. Le 29 juin, le père est parti très tôt avec les enfants, à l'insu de son épouse, qui les a rejoints le même jour au Québec. Le 1er juillet, le mari a intenté des procédures en séparation de corps devant le tribunal québécois. Quelques jours plus tard, l'épouse est retournée au Connecticut sans les enfants. Le 10 juillet, une ordonnance intérimaire de la Cour supérieure rendue ex parte confiait la garde des enfants au père tout en accordant à la mère des droits d'accès. Le jugement ordonnait également à chacune des parties de ne pas quitter le Québec sans le consentement de l'autre. Le 12 juillet, l'épouse intentait une action en divorce au Connecticut. Quelques jours plus tard, elle demandait au tribunal québécois de décliner compétence en faveur du tribunal de cet État et réclamait le retour des enfants en vertu de la Convention.

Contestant la requête en vue du retour des enfants, le père prétendra qu’il n’y a pas de non-retour illicite puisque les enfants demeurent au Québec en vertu d’un jugement valide de la Cour supérieure du Québec. Le Tribunal ne retiendra pas cet argument. L’ordonnance intérimaire rendue par la Cour supérieure ne peut rendre licite le non-retour des enfants. Retenir la position de l’intimé aurait pour conséquence de permettre au parent ravisseur de conférer au forum de son choix la compétence sur la garde des enfants. Or, c’est précisément ce que la Convention veut prévenir.

R.V.M. c. M.B.G.A., [2004] R.D.F. 500 (C.A.) (Permission d’en appeler devant la Cour Suprême du Canada refusée le 2 décembre 2004)

Les parents, citoyens du Mexique, se sont mariés en 1997. Leur fils est né en 1999 et la séparation a eu lieu un an plus tard. Le 6 décembre 2001, un jugement rendu au Mexique accorde la garde provisoire de l'enfant à la mère, avec des droits d'accès en faveur du père. Dans ce contexte, la mère fait délivrer un certificat de naissance pour l'enfant en indiquant qu'elle était monoparentale et que le père était inconnu. Le 24 juin 2002, munie d'un visa de touriste, elle arrive au Québec avec l'enfant et un fils né d'une union précédente. Elle entreprend immédiatement des démarches pour immigrer au Canada. À cette fin, elle doit retourner au Mexique en février 2003 mais revient au Québec dès le 28 mai suivant. Le 28 avril, un tribunal mexicain attribue provisoirement la garde de l'enfant au père mais, six mois plus tard, le jugement est annulé et les parties remises dans l’état où elles étaient le 6 décembre 2001 (garde provisoire à la mère avec droits d’accès au père). À la suite d'un séjour de quelques heures aux États-Unis au mois de novembre suivant, la mère est arrêtée à la frontière canadienne au motif d'enlèvement. Elle demande par la suite au tribunal québécois de lui octroyer la garde de l'enfant. Le même jour, le père demande le retour immédiat de l'enfant au Mexique, ce que le juge de première instance ordonne.

La mère plaidait avoir toujours eu la garde de l’enfant alors que le père ne bénéficiait que de droits d’accès. Il n’y aurait donc pas eu de déplacement illicite. Selon elle, le fait que le Code pénal mexicain édicte que l’autorisation des deux parents est requise afin que leur enfant quitte le pays ne modifie en rien la situation. L’interprétation contraire impliquerait que la Convention devrait s’appliquer chaque fois que la législation de l’État

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de la résidence habituelle de l'enfant prévoit l'égalité des droits dans l'exercice de l'autorité parentale.

La Cour d'appel est d'avis qu'il y a eu déplacement illicite de l'enfant par la mère puisque, contrairement à la prescription du droit mexicain, l'autorisation du père n'a pas été obtenue préalablement au déplacement. La position prise par la Cour d'appel dans cette affaire signifie que la définition de la notion de garde au sens de la Convention qui inclut le droit de décider du lieu de résidence de l'enfant n'a pas pour effet d'élargir la portée du droit de garde prévu par le droit de l'État de la résidence habituelle de l'enfant.

b) Juridictions de common law

Wilson c. Huntley [2005] W.D.F.L. 2824, 13 R.F.L. (6th) 435 (C.S.Ont.)

Les faits
L'enfant, une fillette, avait 3 ½ ans au moment du prétendu non-retour illicite.

Elle est née en janvier 2000. Ses parents se sont séparés en juin 2001. L'entente conclue entre les parents en décembre 2001 prévoyait une garde partagée, la mère conservant la responsabilité première de l'enfant. L'entente a été modifiée en février 2003 pour permettre à la mère de s'installer en Allemagne avec son nouveau fiancé. Les conditions ont été changées pour prévoir une garde partagée en alternance entre les parents au Canada et en Allemagne. La nouvelle entente prévoyait aussi que les tribunaux de l'Alberta conservaient compétence sur les questions de garde et de droits de visite.

Cette entente comportant bien des navettes a plutôt bien fonctionné en 2003 et pendant la première partie de 2004, même si la mère s'était réinstallée entre-temps au Royaume-Uni et le père en Ontario.

En septembre 2004, quelques semaines avant le retour de l'enfant en Europe, le père a informé la mère qu'il voulait que l'enfant reste au Canada. Il prétendait que les ententes de garde la perturbaient.

La mère a refusé et le père a entrepris une procédure au Canada. Le 19 janvier 2005, la mère a demandé au tribunal une ordonnance pour le retour de son enfant au Royaume-Uni.

Décision
Requête rejetée : la résidence habituelle de l'enfant n'était pas dans un autre État contractant au moment du non-retour.

Fondements juridiques de la décision
La résidence habituelle (art. 3)
Pour décider si la Convention s'applique à la demande, il faut décider si la résidence habituelle de l'enfant se trouve au Royaume-Uni.

Après examen d'une série de décisions, le tribunal a d'abord statué qu'à un moment quelconque l'enfant ne pouvait avoir qu'une seule résidence habituelle. Puis, il a reconnu qu'une personne, y compris un enfant, pouvait résider habituellement en alternance dans deux pays différents à des moments différents. Vu l'entente intervenue entre les parents, le tribunal a statué que c'était le cas en l'espèce et qu'au moment du non-retour, la résidence habituelle de l'enfant était au Canada.

L'avocat de la mère a fait valoir qu'une telle conclusion avait pour effet de miner les objectifs de la Convention. La Cour a rejeté cet argument.

Pour le juge au procès, l'objectif de s'assurer que le meilleur intérêt de l'enfant soit tranché au fond par un tribunal du lieu de résidence habituelle de l'enfant avait beaucoup moins d'importance lorsque la résidence habituelle de l'enfant alternait entre deux

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endroits à des moments différents. En l'espèce, cet objectif était atteint, et non compromis, en permettant que le litige soit tranché au Canada.

DeHaan c. Gracia [2004] ABQB 74, [2004] A.W.L.D. 278, [2004] W.D.F.L. 284, 351 A.R. 354, 1 R.F.L. (6th) 140 (C.B.R. Alb.)

Les faits

Les enfants, deux fillettes, avaient presque 8 ans et 6 ½ ans au moment du prétendu non-retour illicite. Les parents et les enfants avaient vécu ensemble en France. En juin 2002, les parents ont engagé une procédure de divorce. Une ordonnance provisoire a confié aux parents l'exercice conjoint de l'autorité parentale, mais la garde physique des enfants à la mère.

Vers la fin de novembre 2002, les parents décident de tenter une réconciliation et abandonnent leur procédure de divorce. Ils conviennent de venir s'installer au Canada pour refaire leur vie sur de nouvelles bases (la mère et les enfants ont la citoyenneté canadienne).

La mère et les enfants quittent l'Europe le 31 décembre, le père devant venir les rejoindre en avril 2003.

En mars 2003, le père arrive à Calgary et déclare vouloir ramener les enfants en France. La mère engage une procédure à Calgary, et en juin, le père s'adresse au tribunal pour demander le retour des enfants en invoquant la Convention de La Haye.

Décision

Demande rejetée : le non-retour n'était pas illicite parce que la résidence habituelle des enfants n'était plus la France depuis leur départ pour le Canada, où leur résidence habituelle est maintenant en Alberta.

Fondements juridiques de la décision

La résidence habituelle (art. 3)

Pour obtenir gain de cause, le père devait établir qu'à la date depuis laquelle il prétendait que les enfants étaient retenus contre sa volonté, la résidence habituelle des enfants était toujours la France.

La Cour a rejeté cette prétention. Elle a conclu que les parents avaient clairement manifesté l'intention de venir s'installer de façon permanente au Canada avant de passer aux actes. En quittant la France, les enfants se trouvaient à y perdre leur résidence habituelle. La Cour a aussi laissé entendre que les enfants avaient leur résidence habituelle au Canada le 31 décembre 2002.

Le père ne pouvait pas changer d'idée par la suite et retirer son consentement à la réinstallation au Canada. Sa demande a donc été rejetée. Voir aussi:

- *Chan c. Chow*, *supra*
- *Hewstan c. Hewstan*, *supra*

Québec

Depuis l'arrêt rendu par la Cour d'appel dans l'affaire Droit de la famille-2454[11], la portée et le sens de la notion de résidence habituelle sont circonscrite. La cour, sous la plume de l'honorable Jacques Chamberland, écrit :

La réalité des enfants doit seule être prise en compte pour déterminer le lieu de leur « résidence habituelle »; à cet égard, le tribunal doit s'en tenir à l'expérience des enfants, les désirs, souhaits ou intentions de leurs parents ne comptant pas lorsqu'il s'agit de décider du lieu de leur « résidence habituelle » au moment de leur

[11] [1996] R.J.Q. 2509.

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déplacement. Dans ce contexte, tout le débat entourant les intentions de monsieur et de madame quant à la suite des événements est sans importance dans un contexte où, comme en l'espèce, les deux parents avaient la garde de leurs enfants.

Cette approche a été maintes fois réitérée par la jurisprudence[12].

Plus récemment, la Cour d'appel statuait qu'une certaine période de temps est nécessaire pour qu'un enfant établisse des liens et montre des signes d'intégration dans son nouveau milieu avant que l'on puisse conclure à l'acquisition d'une nouvelle résidence habituelle. Or, dans un jugement rendu en 2002[13], la Cour supérieure décidait que la notion de résidence habituelle au sens de la Loi et de la Convention n'a pas besoin d'avoir un caractère de permanence, elle peut être pour une période limité. Dans cette affaire, bien que les enfants vivaient en Floride depuis seulement quatre mois (4), le Tribunal statua qu'ils avaient acquis une nouvelle résidence habituelle.

Plus significatif cependant est la présence d'une certaine hésitation dans la jurisprudence québécoise quant à la pertinence de l'utilisation de la notion de « settled purpose » afin de déterminer le lieu de la résidence habituelle de l'enfant ou plus particulièrement un éventuel changement de sa résidence habituelle. Deux jugements méritent d'être mentionnés.

A.K. c. E.F., [2001] R.D.F. 334 (C.S.)

Le requérant est né en Angleterre et l'intimée, à Montréal. Les parties se sont mariées en 1997 à New York et ont eu trois enfants, nés en Israël. Après leur mariage, les parties ont résidé à Montréal et en Angleterre quelques semaines. Puis, pendant deux ans, elles ont séjourné en Israël, avec des visas de touriste de trois mois, pour permettre au requérant de terminer ses études. À l'expiration des visas, elles revenaient au Canada ou en Angleterre et retournaient en Israël avec un nouveau visa. Le requérant a obtenu, pour les enfants nés en Israël, un certificat des autorités israéliennes de non-citoyenneté israélienne. Devant se rendre au mariage de la sœur de l'intimée au Québec, les parties sont revenues à Montréal avec les enfants en octobre 1999. Le requérant s'est alors rendu à New York auprès de sa propre famille et l'intimée devait l'y rejoindre avec les enfants. Cette dernière a toutefois avisé le requérant qu'elle voulait divorcer et qu'elle restait à Montréal avec les enfants.

Le requérant demande le retour forcé des enfants en Israël, lieu de leur domicile et de leur résidence habituelle. L'intimée s'oppose à la requête, alléguant que ni les parties ni les enfants n'ont habituellement résidé en Israël, qu'elle est la victime d'un mariage abusif et cruel, et que les enfants pourraient subir un risque grave s'ils devaient retourner en Israël avec leur père.

Le Tribunal réfère à un arrêt anglais pour déterminer le cadre d'analyse de la notion de résidence habituelle. Il écrit :

> [TRADUCTION]
> « [10] […]
> Le principe directeur pour cerner les éléments de la résidence habituelle sont contenus dans l'énoncé de lord Scarman dans *R. c. Barnet London Borough Council ex parte Shah*, [1983] 2 A.C. 309, où il dit, à la p. 314 :
> […] et il doit y avoir un degré de dessein établi. Il peut y avoir un dessein ou il peut y en avoir plusieurs. Ils peuvent être spécifiques ou généraux. Tout ce que la loi exige, c'est qu'il y ait un dessein établi. Ce n'est pas à dire que la personne en cause entend demeurer indéfiniment là où elle est. En effet, le dessein, bien qu'établi, peut avoir une durée limitée. Études, affaires ou profession, emploi, santé, famille ou simple amour de l'endroit viennent à l'esprit à titre de raisons courantes de choisir un lieu de résidence régulier, et il se peut bien qu'il y en ait plusieurs autres. Tout ce qu'il faut, c'est que le dessein dans lequel on vit là où l'on

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[12] Voir par exemple : *Droit de la famille – 3713*, [2000] R.D.F. 585 (C.A.); *S.E.* c. *T.R.*, J.E. 2003-1679 (C.S.)
[13] *R.A.* c. *B.As.*, [2002] R.D.F. 429 (C.S.)

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vit a un degré suffisant de continuité pour que l'on puisse le décrire à juste titre comme établi.

[11] Après leur mariage en 1997, les parties on vécu à Montréal pendant trois semaines. En août, elles sont allées en Angleterre pendant deux semaines, puis en Israël, où le requérant devait poursuivre ses études à la Yeshiva Brisk.

[12] Ils sont entrés en Israël au titre d'un visa de touriste d'une durée de validité de trois mois. Après l'expiration de leur visa, ils prévoyaient partir pour le Canada ou l'Angleterre, puis revenir peu après avec un autre visa de touriste. En quittant Israël, ils réclameraient un remboursement de la TVA (taxe sur la valeur ajoutée) qu'ils avaient payée en Israël.

[13] De septembre 1997 à septembre 1999, au cours de leurs séjours successifs en Israël, les parties ont vécu dans trois appartements différents. Le requérant a obtenu un certificat des autorités israéliennes selon lequel les enfants, bien que nés en Israël, ne devaient pas être considérés comme des citoyens israéliens. Leur résidence en Israël avait toujours été censée être temporaire. » [Je souligne.]

Dans ce dossier particulier, le Tribunal adopte donc une approche de détermination de la résidence habituelle de l'enfant qui semble aller au-delà de l'examen de la situation purement factuelle de celui-ci. L'intention des parents semble avoir joué un rôle déterminant dans la décision prise.

C.E.S. c. E.V., [2002] R.D.F. 874 (C.S.) (confirmé en appel : V.(E.) c. S. (C.E.), REJB 2002-38187 (C.A.))

Le père, né au Honduras, est résident permanent des États-Unis tandis que la mère, née en Colombie, est citoyenne canadienne. Ils se sont mariés en 1994 à New York, où le père occupait un emploi et la mère poursuivait des études. En 1996, cette dernière, enceinte de son premier enfant, est revenue au Québec, car elle voulait que son enfant naisse et grandisse là où elle avait vécu depuis l'âge de deux ans. Après la naissance, les parents ont vécu pour ainsi dire séparés pendant près de trois ans. Le père a tenté de s'installer au Québec en 1998 mais est retourné aux États-Unis après quatre mois. Il a intenté une action en divorce en 1999, mais il y a eu réconciliation par la suite. La mère est allée rejoindre son mari à la fin de 1999 et un deuxième enfant est né en 2000. Les parties ont cohabité jusqu'en juillet 2002 alors que la mère, après avoir avisé le père qu'elle ne voulait plus vivre avec lui, a quitté la Caroline du Nord avec les deux enfants, accompagnée de sa mère et de sa sœur, qui étaient venues à sa rescousse.

Le père a demandé le retour immédiat des enfants en Caroline du Nord, où était, selon lui, leur résidence habituelle. La mère a reconnu que les deux parents avaient l'autorité parentale en vertu des lois de cet État et qu'il y avait eu violation d'un droit de garde. Elle s'est toutefois opposée au retour des enfants, alléguant que leur résidence était au Québec avant le déplacement, que le père avait consenti au déplacement et qu'il existait un risque grave que leur retour ne les expose à un danger psychique en les plaçant dans une situation intolérable.

Rappelant que la loi ne définit pas la notion de résidence habituelle, le Tribunal souligne la position de la Cour d'appel du Québec selon laquelle seule la réalité des enfants devrait être prise en compte et que les désirs et intentions des parents ne seraient pas des considérations pertinentes. Or, selon le Tribunal, ce point de point ne semble pas être généralement reconnu par la communauté juridique internationale. Le Tribunal fait entre autre état de la position américaine exigeant un certain degré de « settled purpose » pour qualifier la résidence de résidence habituelle. Il faudrait par conséquent éviter de confondre le concept de résidence habituelle avec celui de résidence réelle ou effective.

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Dans les faits de l'espèce, le Tribunal, bien que convaincu que les circonstances du dossier permettent de conclure à l'existence d'un « settled purpose » au sens de la jurisprudence internationale puisque l'intention arrêtée des parents était de résider aux États-Unis, rejettera cette approche au profit de celle préconisée par la jurisprudence québécoise mettant l'accent sur la seule réalité des enfants. Elle écrit :

[…] Une chose demeure certaine. L'approche préconisée par le juge Chamberland dans DF-2454, qui consiste à mettre l'accent sur la réalité des enfants plutôt que sur l'intention des parents, a le net avantage d'éviter aux tribunaux de se livrer à un exercice qui s'avérera, dans bien des cas, fastidieux. Sonder les reins et les cœurs de parents qui ont tout intérêt à nier la réalité objective afin de tirer le plus possible profit d'une situation qui, par la force des choses, s'avère presque toujours floue et désordonnée, n'est peut-être pas la méthode la plus efficace pour résoudre ce genre de conflit.

c) Juridictions de common law
Innes c. Innes, *supra*

d) [Pas de réponse]

e) Juridictions de common law
A.(J.E.) c. M. (C.L.) 2002 CarswellNS 425 2002 NSCA 127, 209 N.S.R. (2d) 248, 33 R.F.L. (5th) 1, 656 A.P.R. 248, 220 D.L.R. (4th) 577 (C.A.N.-É.)

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Les faits
Le père et la mère se sont mariés aux États-Unis en 1990. Leur enfant, une fille, est née en juillet 1992. Les parents ont divorcé aux États-Unis en 1993. Le jugement de divorce prévoit une garde partagée, la mère obtenant la garde physique et le père des droits de visite.

En 1995, à la suite d'allégations de violence sexuelle et physique, les droits de visite du père ont d'abord été suspendus, puis rétablis sous surveillance. Le père a cherché à exercer ses droits de visite surveillée, mais n'y est pas parvenu et n'a pas vu ses enfants après mars 1995. Les résultats de l'enquête sur les accusations de violence sexuelle qui a pris fin en 1995 indiquaient que le père n'avait pas commis d'abus sexuel et qu'il n'avait rien fait de plus que donner la fessée à l'enfant.

La mère s'est enfuie au Canada avec son enfant en juillet 1995, en utilisant des passeports américains falsifiés. Elle s'est remariée en octobre 1996 et est partie s'installer avec son époux et son enfant en Nouvelle-Écosse. Elle s'est séparée de son deuxième époux en mai 2001.

Au printemps 2001, le père est parvenu à retrouver son enfant, alors âgée de 9 ans. Les autorités canadiennes ont alors appris que la mère et son enfant se trouvaient en situation irrégulière au Canada, et la mère n'a pu travailler en attendant la décision sur son statut d'immigrante.

Le père a demandé une ordonnance afin d'obtenir le retour de son enfant. La mère s'est opposée à cette demande en alléguant que l'enfant s'opposait à ce retour et qu'elle était désormais intégrée dans son nouveau milieu. La Cour suprême de Nouvelle-Écosse a ordonné le retour de l'enfant et la mère a interjeté appel de cette décision devant la Cour d'appel de Nouvelle-Écosse.

Décision
Appel rejeté et retour ordonné : le déplacement de l'enfant était illicite et aucune des exceptions n'avait été prouvée d'une manière qui correspond aux exigences de la Convention.

Fondements juridiques de la décision.

Objets de la Convention (préambule, art. 1 et 2)
La Convention a pour objet de décourager les enlèvements internationaux d'enfants, d'assurer qu'ils soient rapidement retournés, de rétablir le statu quo et de s'en remettre aux tribunaux du lieu habituel de résidence de l'enfant pour trancher la question du meilleur intérêt de l'enfant.

Objections de l'enfant à son retour (art. 13(2))
L'enfant s'opposait à son retour par crainte d'être maltraitée par son père. Le juge de première instance a conclu qu'il n'existait pas de risque grave que le retour de l'enfant ne l'expose à un danger physique ou psychique, ou de toute autre manière ne la place dans une situation intolérable. Cette conclusion n'a pas été contestée en appel. Tenir compte des objections de l'enfant dans de telles circonstances reviendrait à contrecarrer les objectifs de la Convention. Qui plus est, il y avait preuve que l'enfant avait été influencée par sa mère.

L'article 12(2)
S'exprimant pour le tribunal, le juge Cromwell a déclaré que l'article 12(2) [TRADUCTION] « exige que le tribunal apprécie directement certains aspects du meilleur intérêt de l'enfant – en particulier celui de ne pas être déraciné – même si le meilleur intérêt de l'enfant ne constitue pas généralement l'objet de l'enquête requise par la Convention. Le problème qui se pose est que le refus de retourner un enfant sur la base de son meilleur intérêt tend à contrecarrer les objectifs fondamentaux de la Convention. Une interprétation trop large de l'exception fondée sur l'intégration de l'enfant dans son nouveau milieu aurait pour effet d'aller à l'encontre des objectifs fondamentaux de la Convention. D'un autre côté, une interprétation trop stricte aurait pour effet de lui enlever tout intérêt pratique ».

Dans leur application de l'exception reconnue, les tribunaux devraient examiner les circonstances dans lesquelles l'enfant se trouve dans son nouveau milieu à ce moment précis, compte tenu des objectifs visés par la Convention.

En l'espèce, sept ans s'étaient écoulés depuis le déplacement illicite de l'enfant et une ordonnance décrétant son retour à ce stade ne permettrait pas d'atteindre l'objectif de retour rapide visé par la Convention. Au moment de l'enlèvement, le père et l'enfant n'avaient pas de rapports significatifs et le rétablissement du *statu quo* ne constituait donc pas un objectif impérieux.

Toutefois, l'objectif de la Convention de décourager les enlèvements d'enfants serait atteint si son retour était ordonné en l'espèce. Les circonstances de cet enlèvement étaient particulièrement flagrantes. Il faut montrer à la mère et aux personnes qui l'ont aidée que les tribunaux vont traiter avec fermeté les enlèvements d'enfants et agir sans équivoque, et que la Nouvelle-Écosse n'est pas un refuge pour les ravisseurs d'enfants.

L'objectif de faire déterminer le meilleur intérêt de l'enfant par le tribunal du lieu de sa résidence habituelle serait également bien servi par le retour de l'enfant, même si celle-ci a été absente de sa résidence habituelle pendant les sept dernières années. Le père de l'enfant et sa famille élargie se trouvent aux États-Unis, tout comme les personnes qui ont enquêté sur les allégations de violence et d'abus. Les tribunaux américains se trouvent donc les mieux placés pour poursuivre le processus amorcé en 1995 et déterminer le meilleur intérêt de l'enfant.

L'enfant est maintenant intégrée dans son nouveau milieu, avec son école, ses amis et ses activités, mais le tribunal doit également prendre en compte la précarité de sa situation et de celle de sa mère dont elle dépend.

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f) Juridictions de common law

M. (V.B.) c. J. (D.L.) [2004] NLCA 56, 245 D.L.R. (4th) 135, 6 R.F.L. (6th) 330, 240 Nfld. & P.E.I.R. 147, 711 A.P.R. 147 (C.A.T.-N.-L.)

Les faits
L'enfant, une fille, avait 5 ans au moment du prétendu déplacement illicite. Elle est née au Canada, mais ses parents sont partis s'établir dans l'État de Washington, aux États-Unis, six mois après sa naissance. Les parents ont fini par rompre et, le 11 décembre 2002, la mère rentrait au Canada, dont elle était originaire, avec son enfant.

L'enfant a été localisée à St John's, Terre-Neuve-et-Labrador, en octobre 2003.

Le 8 décembre 1993, l'autorité centrale de la province a déposé un avis devant le Tribunal unifié de la famille pour informer ce tribunal qu'elle avait reçu une demande fondée sur la Convention. Le 2 mars 2004, le père déposait une demande de retour auprès de ce tribunal.

Le 30 juillet 2004, le Tribunal unifié de la famille ordonnait que l'enfant soit remis aux services de protection de l'enfance de l'État de Washington jusqu'à ce que les questions relatives à la protection de l'enfant aient été tranchées par la cour supérieure de l'État.
La mère a interjeté appel.

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Décision
Appel accueilli : la demande de retour a été déposée plus de 12 mois après le déplacement de l'enfant. L'affaire a été renvoyée au Tribunal unifié de la famille de la Cour suprême de Terre-Neuve-et-Labrador afin de déterminer si l'enfant était maintenant intégrée dans son nouveau milieu.

Fondements juridiques de la décision

La période d'un an (art. 12)
La mère n'a pas contesté le fait qu'il s'agisse d'un déplacement illicite. Le tribunal s'est donc penché sur l'application de l'article 12 et sur la date du début des procédures. Si les procédures avaient été entreprises dans l'année qui avait suivi son déplacement illicite, le tribunal aurait ordonné le retour immédiat de l'enfant, sous réserve des exceptions prévues. Toutefois, si plus d'un an s'est écoulé, le retour devrait encore être ordonné, mais le tribunal devrait vérifier en plus si l'enfant était désormais intégrée dans son nouveau milieu.

L'avocat de la mère a fait valoir que le juge de première instance avait erronément conclu que moins d'un an s'était écoulé entre le déplacement illicite et le début des procédures.

Le tribunal a examiné les démarches qui avaient été entreprises après la découverte de l'enfant pour déterminer si celles-ci équivalaient à « l'introduction [d'une] demande devant l'autorité judiciaire ou administrative de l'État contractant où se trouve l'enfant ».

La demande d'aide que le père a adressée à l'autorité centrale de l'État de Washington ne pouvait manifestement pas constituer l'introduction d'une demande devant les tribunaux de Terre-Neuve-et-Labrador, pas plus que sa demande d'aide à l'autorité centrale de cette province.

Le tribunal a statué qu'il était évident que les expressions « autorité administrative » (article 12) et « procédure administrative » (article 7*f*)) ne visaient pas l'autorité centrale. Elles se rapportaient plutôt à l'entité chargée de déterminer s'il y avait lieu ou non d'ordonner le retour de l'enfant.

Le tribunal s’est ensuite penché sur l’avis déposé par l’autorité centrale le 8 décembre 2003 pour informer le Tribunal unifié de la famille de la réception d’une demande présentée aux termes de l’article 16 de la Convention. Il a alors statué qu’il y avait une distinction entre donner un avis et introduire une demande. L’article 12 visait manifestement plus qu’un simple avis transmis aux termes de l’article 16. Pour que l’article 12 puisse s’appliquer, il faut d’abord qu’une demande ait été introduite.

Le tribunal a statué qu’une telle interprétation s’harmonisait avec les dispositions de l’article 11 relatives au délai parce que, si un avis déposé en vertu de l’article 16 suffisait pour constituer l’introduction d’une demande, la période de six semaines prévue à l’article 11 (2) pour rendre une décision aurait commencé et aurait pu prendre fin, comme en l’espèce, avant qu’une demande ne soit déposée auprès du tribunal pour qu’il rende une décision aux termes de la Convention. Les principes ordinaires d’interprétation exigent qu’on évite un résultat aussi anormal.

Il s’ensuit donc que la demande du père a été introduite le 2 mars 2004. Par conséquent, il fallait maintenant déterminer si l’enfant était bien intégrée dans son nouveau milieu.

Québec

R.V.M. c. M.B.G.A., [2004] R.D.F. 154 (C.S.); Infirmé par [2004] R.D.F. 500 (C.A.) (Permission d’en appeler devant la Cour Suprême du Canada refusée le 2 décembre 2004)

Les parents, citoyens du Mexique, se sont mariés en 1997. Leur fils est né en 1999 et la séparation a eu lieu un an plus tard. Le 6 décembre 2001, un jugement rendu au Mexique accorde la garde provisoire de l'enfant à la mère, avec des droits d'accès en faveur du père. Dans ce contexte, la mère fait délivrer un certificat de naissance pour l'enfant en indiquant qu'elle était monoparentale et que le père était inconnu. Le 24 juin 2002, munie d'un visa de touriste, elle arrive au Québec avec l'enfant et un fils né d'une union précédente. Elle entreprend immédiatement des démarches pour immigrer au Canada. À cette fin, elle doit retourner au Mexique en février 2003 mais revient au Québec le 28 mai suivant. Le 28 avril, un tribunal mexicain attribue provisoirement la garde de l'enfant au père mais, six mois plus tard, le jugement est annulé et les parties remises dans l’état où elles étaient le 6 décembre 2001 (garde provisoire à la mère avec droits d’accès au père). À la suite d'un séjour de quelques heures aux États-Unis au mois de novembre suivant, la mère est arrêtée à la frontière canadienne au motif d'enlèvement. Elle demande par la suite au tribunal québécois de lui confier la garde de l'enfant. Le même jour, le père demande le retour immédiat de l'enfant au Mexique, ce que le juge de première instance ordonne.

Le Tribunal de première instance décide notamment que la mère ne pouvait faire valoir avec succès la défense d’intégration puisque le déplacement illicite de l’enfant n’avait eu lieu qu’à la fin du mois de mai 2003, soit après que la mère eut complété les démarches en vue de son immigration au Canada. Le Tribunal juge que la mère et son enfant ont visité le Québec à titre de touriste entre juin 2002 et février 2003. La preuve ne démontrerait pas que la mère aurait alors manifesté l’intention de rester plus longtemps au Québec.

La majorité de la Cour d’appel ne partage cependant pas ce point de vue. L’honorable juge Mailhot, pour la majorité, fixe le point de départ du calcul du délai d’un an au 24 juin 2002, soit au moment où la mère et son enfant sont arrivés pour la première fois au Québec munis d’un visa de touriste. Cette conclusion semble s’appuyer sur le fait que la législation mexicaine interdisait à la mère de quitter le pays avec son enfant sans le consentement du père. Le retour temporaire de la mère au Mexique dans le but de compléter ses démarches d’immigration au Québec ne modifie pas cette situation. Le juge Morin, dissident, est plutôt d’avis qu’il faut fixer au 28 mai 2003 le moment du déplacement illicite de l’enfant puisqu’il s’agit de la date où la mère et l’enfant ont quitté le Mexique de façon définitive.

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g) Juridictions de common law

Katsigiannis c. Kottick-Katsigiannis [2001] 144 O.A.C. 387, 203 D.L.R. (4th) 386, 18 R.F.L. (5th) 279, 55 O.R. (3d) 456, 12 C.P.C. (5th) 191 (C.A.Ont.)

Les faits
Le père et la mère se sont mariés au Canada en 1992, avant d'aller s'installer en Grèce. Ils ont eu deux enfants, une fille née en Grèce en 1998, et un fils né au Canada en 1999. La mère est revenue au Canada en juin 1999 pour donner naissance à son garçon et est restée au pays avec les enfants jusqu'en décembre 1999 pour ensuite retourner en Grèce.

Le 23 avril 2000, la mère est revenue en avion avec ses enfants pour rendre visite à sa famille. Ils avaient pris un billet aller-retour et la plupart de leurs effets personnels étaient demeurés en Grèce. Le père a consenti au voyage ainsi qu'à une prolongation de celui-ci. En juillet 2000, la mère a demandé la garde des enfants au Canada. En août 2000, le père a demandé leur retour. La Cour supérieure de justice de l'Ontario a statué que la rétention des enfants était illicite et a ordonné leur retour en Grèce.

La mère a interjeté appel de cette décision devant la Cour d'appel de l'Ontario.

Décision
L'appel est rejeté et le retour ordonné : la rétention des enfants était illicite et aucune exception n'a été prouvée d'une manière qui correspond aux exigences de la Convention.

Fondements juridiques de la décision

L'acquiescement (art. 13(1)*a*))
S'exprimant au nom du tribunal, le juge en chef associé de l'Ontario, le juge Osborne a précisé qu'il fallait donner aux mots « consentement » et « acquiescement » leur sens ordinaire de façon qu'ils puissent toujours être interprétés de la même façon par les tribunaux des États contractants.

Le juge Osborne a ajouté que [TRADUCTION] « les mots 'consentement' et 'acquiescement' sont apparentés. 'Consentir', c'est accepter quelque chose, comme le déplacement d'un enfant du lieu de sa résidence habituelle. 'Acquiescer', c'est accepter tacitement, en silence ou passivement, par exemple, que des enfants demeurent dans un lieu autre que celui de leur résidence habituelle. L'acquiescement comporte donc un consentement implicite ».

Pour répondre au critère de l'article 13(1), la mère devrait faire la preuve d'un certain comportement du père qui aurait été incompatible avec le retour immédiat des enfants au lieu de leur résidence habituelle. Il aurait fallu qu'il y ait une preuve claire et convaincante de consentement ou d'acquiescement sans équivoque de la part père. La mère n'a pas réussi à faire la preuve de l'acquiescement d'une manière qui correspond aux exigences de la Convention.

Québec
À la lumière de la jurisprudence récente se dégagent des conditions essentielles à la validité du consentement/acquiescement au déplacement ou au non-retour de l'enfant. Ce consentement ou acquiescement doit être donné de manière libre, inconditionnelle et permanente : A.M.I. c. D.T.L., [2001] R.D.F. 221 (C.A.); J.T. c. L.-A.B., [2002] R.D.F. 50 (C.S.); L.Y.P. c. M.E., J.E. 2005-250 (C.S.)

Dans cette foulée, la Cour d'appel, dans *M.T. c. T.B.*, [2004] R.D.F. 28 (C.A.), statua que bien que dans certains cas le comportement d'un parent puisse équivaloir à une acceptation de la nouvelle situation et constituer un valable acquiescement au déplacement ou au non-retour de l'enfant, ce ne peut être le cas en l'espèce puisque

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l'inaction du père résulte de <u>représentations inexactes</u> de la mère quant à ses véritables intentions. Comme tout autre consentement, celui qui est invoqué comme exception au retour de l'enfant dans l'État de sa résidence habituelle doit donc être donné de manière éclairée.

Dans L'affaire D.P. c. J.T., J.E. 2005-294 (C.S.), les parties se sont mariées au Québec en 1995 et se sont établies en Grèce quelques mois plus tard. Elles ont eu trois enfants. En mai 2002, la mère revient au Québec avec les enfants à l'insu du père. En octobre 2002, elle intente des procédures en séparation de corps devant le tribunal québécois. En novembre 2002, elle se fait accorder la garde provisoire de l'enfant par un tribunal grec dans le cadre d'une procédure initiée par le père. En décembre 2002, le père signe un consentement aux mesures provisoires qui ne sera toutefois jamais entériné par un tribunal. En juin 2004, le père demande enfin le retour des enfants en Grèce.

La mère admet qu'il s'agissait d'un déplacement illicite mais soutient qu'il y a eu acquiescement de la part du père et intégration des enfants dans leur nouveau milieu.

Le Tribunal juge que la signature par le père d'un consentement aux mesures provisoires à valoir durant l'instance introduite par la mère au Québec, le fait qu'il n'ait jamais demandé le retour des enfants avant le mois de juin 2004 et ses visites régulières au Québec pour voir les enfants constituent des éléments de preuve suffisants pour établir son acquiescement au non-retour des enfants en Grèce.

h) <u>Juridictions de common law</u>

Jabbaz c. Mouammar [2003] 171 O.A.C. 102, 226 D.L.R. (4th) 494, 38 R.F.L. (5th) 103 (C.A.Ont.)

<u>Les faits</u>
La mère et le père, tous deux citoyens canadiens, ont vécu ensemble au Canada pendant trois ans. Ils ont eu un fils, âgé de six ans au moment où le tribunal a rendu sa décision. Les parents se sont séparés en 1998. Ils ont conclu une entente de garde partagée fixant la résidence principale de l'enfant au domicile de la mère. En vertu de cette entente, la mère était autorisée à s'établir aux États-Unis avec son fils.

La mère et l'enfant se sont établis aux États-Unis où ils ont vécu avec le fiancé de la mère pendant trois ans et demi. Au cours de l'été 2002, la mère et son fiancé ont rompu. Le père et la mère ont alors convenu que l'enfant irait vivre chez son père, le temps que la mère se réinstalle. En octobre 2002, la mère s'est réinstallée aux États-Unis et a demandé au père de lui retourner l'enfant. Ce dernier a refusé.

En décembre 2002, le père a présenté une demande au Canada pour obtenir la garde de l'enfant et la mère a demandé le retour de celui-ci. En première instance, le juge a conclu que le non-retour de l'enfant par le père était illicite et que la mère n'y avait pas acquiescé. Il a ajouté, cependant, que le retour de l'enfant aux États-Unis aurait pour effet de le placer dans une situation intolérable selon les termes de l'article 13(1)*b*), en plus d'aller à l'encontre des politiques canadiennes étant donné le statut incertain de la mère face à la législation américaine relative à l'immigration.

La mère a porté cette décision en appel devant la Cour d'appel de l'Ontario.

<u>Décision</u>
L'appel est accueilli et le retour ordonné, à condition que l'enfant obtienne le droit d'entrer aux États-Unis. Le non-retour était illicite et aucune exception n'a été prouvée d'une manière qui correspond aux exigences de la Convention.

<u>Fondements juridiques de la décision</u>

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L'article 13(1)*b*)

Les circonstances dans lesquelles un tribunal peut refuser de retourner un enfant conformément à l'article 13 sont exceptionnelles. Le risque de danger psychologique ou physique doit être « grave ». L'expression « intolérable » signifie une situation extrême qui est trop pénible à endurer. Le statut incertain de la mère et de l'enfant face aux lois américaines sur l'immigration ne constitue pas un risque grave de placer l'enfant dans une situation intolérable. L'absence de régularisation du statut d'immigrante ne correspond pas au risque très élevé de danger prévu par l'article 13(1)*b*). Les tribunaux de la Californie sont mieux placés pour juger de la précarité du statut de l'enfant face aux lois américaines sur l'immigration et pour déterminer ce qui est dans son meilleur intérêt.

L'article 20

Le juge de première instance n'a pas mentionné l'article 20, mais il donne comme autre motif de sa décision le fait que le retour de l'enfant serait contraire aux politiques canadiennes en raison du statut incertain de la mère face aux lois américaines sur l'immigration. La Cour d'appel a rejeté ce raisonnement et a déclaré que [TRADUCTION] « les tribunaux devraient éviter d'ajouter des exceptions d'intérêt public à la Convention devant l'intérêt public exprimé très clairement dans la Convention elle-même ».

Kovacs c. Kovacs [2002] 1429 212 D.L.R. (4th) 711, 21 Imm. L.R. (3d) 205, 59 O.R. (3d) 671, [2002] O.T.C. 287 (C.S.Ont.)

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Les faits

Les parents se sont mariés en Hongrie en 1991 et leur fils y est né en 1997. En 2001, le père et la mère se sont séparés. Quelques jours après cette séparation, la mère a emmené son fils au Canada sans le consentement du père et à l'insu de celui-ci. En arrivant au Canada, la mère a revendiqué le statut de réfugié pour elle-même et pour son fils. Elle invoquait le fait qu'elle avait été victime de violence physique et psychologique de la part du père de l'enfant, que l'enfant avait été battu par son père et que la Hongrie n'est pas capable de les protéger, elle et son enfant, ou n'est pas disposée à le faire.

Lorsque le père a découvert où la mère s'était enfuie, il a demandé une ordonnance de retour. Les autorités ne s'étaient pas encore prononcées sur la revendication du statut de réfugié de la mère lorsque la Cour a entendu la demande du père.

Lors de l'audience sur la demande de retour, les parties ont présenté des preuves contradictoires sur le dossier criminel du père en Hongrie. Pour résoudre le différend, le juge Ferrier a ordonné à l'avocat du ministère de la Citoyenneté et de l'Immigration et à celui du procureur général de l'Ontario de demander à l'autorité centrale canadienne de déterminer si le père avait ou non été condamné pour fraude. Le ministère de la Justice de Hongrie a confirmé que le père avait été condamné à six ans de prison, qu'il y avait plusieurs mandats d'arrestation lancés contre lui et qu'on ne savait pas où il se trouvait.

Décision

Le retour est refusé : le déplacement était illicite, mais il existe un risque grave que le retour expose l'enfant à un danger psychologique et le place dans une situation intolérable.

Fondements juridiques de la décision

Objets de la Convention (préambule, art. 1 et 2)

Une ordonnance pour le retour d'un enfant peut être rendue pendant que sa revendication du statut de réfugié est à l'étude. La Convention prévoit l'audition en urgence des demandes de retour. Les demandes présentées en vertu de la Convention peuvent généralement être tranchées en quelques mois, tandis que les revendications du statut de réfugié peuvent prendre un an ou même plus. Il ne faut pas permettre que la revendication d'un tel statut puisse contrecarrer les objectifs de la Convention.

L'article 13(1)*b*)
La mère n'a pas prouvé suivant la norme requise par la l'article 13(1)*b*) ses allégations de violence du père à son endroit et à l'endroit de son enfant. Cependant, il existe un risque grave qu'une ordonnance de retour expose l'enfant à un danger psychologique étant donné qu'il serait effectivement retourné à un père qui fuit la justice. Même si l'enfant était confié aux soins de sa mère ou d'un tiers en Hongrie, sa situation serait intolérable en raison du risque d'enlèvement par un père, qui traîne un lourd passé de fraudes, d'escroqueries et de violence.

Voir également :

- *Chan c. Chow,* supra
- *Toiber c. Toiber*, supra

Quebec
Il semble de plus en plus clair qu'à moins de circonstances particulières, le fait que des enfants puissent être privés d'un lien privilégié avec l'un des deux parents dans l'éventualité où le tribunal ordonnerait leur retour dans l'État de leur résidence habituelle jusqu'à ce que le tribunal compétent statue que la garde ne constitue pas un « risque grave » au sens de l'article 13 (1) b) de la Convention : R.F. c. M.G., [2002] R.D.F. 785 (C.A.); L.Y.P. c. M.E., J.E. 2005-250 (C.S.). Ce « risque »peut d'ailleurs être neutralisé en ayant recours à des « engagements » de la part du parent requérant (voir à ce sujet R.F. c. M.G., [2002] R.D.F. 785 (C.A.)).

i) Juridictions de common law

Struweg c. Struweg [2001] 2001 SKQB 283, 208 Sask. R. 243, [2001] 9 W.W.R. 581, 9 W.W.R. 581 (C.B.R.Sask.)

Les faits
Le père et la mère, tous deux ressortissants d'Afrique du Sud, se sont mariés en 1993. Leur enfant, un garçon, est né au Canada en mai 1995. La famille est retournée en Afrique du Sud à l'été de 1995 et y a vécu un an. En août 1996, ils ont déménagé aux États-Unis et se sont installés en Pennsylvanie.

En août 2000, la mère a emmené son enfant en Saskatchewan pour une visite d'un mois. Après son arrivée, elle a décidé de rester et fait une demande pour obtenir la garde de l'enfant. En septembre 2000, le père a demandé tant la garde de l'enfant en Pennsylvanie que son retour dans cet État.

Décision
Le retour est ordonné : le déplacement de l'enfant était illicite et aucune exception n'a été prouvée d'une manière qui correspond aux exigences de la Convention.

Fondements juridiques de la décision.

L'article 13(1) *b*)
La mère a prétendu que l'enfant était exposé à un risque de danger psychologique du fait du mode de vie homosexuel du père, de sa violence et de sa consommation d'alcool. Le tribunal a statué que la preuve du danger était loin de correspondre à celle qu'exigeait l'article 13(1) *b*).

La mère a également fait valoir qu'elle ne pouvait travailler aux États-Unis et que cela plaçait son fils dans une situation intolérable étant donné que sa mère serait sans travail, sans moyen de subvenir à ses besoins, sans droit à l'aide sociale ou à l'aide juridique et sans couverture médicale. Le tribunal a reconnu que la situation dans laquelle un parent pouvait se retrouver en cas de retour pouvait être pertinente, mais qu'en l'espèce, la situation invoquée par la mère existait avant le déplacement de l'enfant, pendant qu'elle vivait avec lui en Pennsylvanie, et qu'elle ne constituait pas une situation intolérable. Il

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était possible de répondre aux préoccupations de la mère quant à son retour au moyen des engagements nécessaires de la part du père.

La mère a également invoqué la Convention des Nations-Unies relative aux droits de l'enfant et a fait valoir que ces droits seraient mieux protégés si l'enfant était autorisé à rester au Canada. Le tribunal a souligné qu'il ne s'agissait pas de savoir s'il était préférable pour l'enfant de vivre en Saskatchewan ni quel était son meilleur intérêt. Son retour doit être ordonné, sauf si l'une des exceptions très limitées est prouvée.

Voir aussi:

- *Kovacs c. Kovacs*, *supra*

Quebec

Sur la question de la violence conjugale, les tribunaux québécois ont développé une position largement majoritaire, sinon unanime, selon laquelle la preuve d'une allégation de violence conjugale (violence généralement exercée par le père) ne constitue pas, sauf circonstances exceptionnelles, un risque grave d'exposer les enfants à un danger physique ou psychique au sens de l'article 13 (1) b) de la Convention. Rappelant que les exceptions au retour de l'enfant doivent être interprétées de manière restrictive, les tribunaux québécois, en l'absence d'une preuve de violence ou d'abus envers l'enfant dont on demande le retour dans l'État de sa résidence habituelle, ont tendance à considérer qu'il appartient au tribunal compétent pour statuer sur la garde d'évaluer le mérite et l'impact des allégations de violence conjugale et ce, dans le meilleur intérêt de l'enfant. Voir à ce sujet : D.T. c. H.D., [2003] R.D.F. 216 (C.S.); T.B. c. M.T., [2004] R.D.F. 174 (C.S.), conf. [2004] R.D.F. 28 (C.A.); C.T. c. L.D., [2004] R.D.F. 808 (C.S.).

Par ailleurs, l'affaire L.D. c. N.H., J.E. 2002-1776 (C.S.) mérite d'être mentionnée. Dans ce dossier, le tribunal québécois a refusé d'ordonner le retour des enfants en France puisque celles-ci pourraient être exposées à un danger psychique en raison des agressions sexuelles qu'elles prétendent avoir subies de la part de leurs cousins. Dans cette affaire, la mère bénéficiait de la garde des enfants avec droits d'accès au père. À plusieurs reprises depuis le divorce des parties en 1995, la mère avait demandé, et obtenu, la modification des droits d'accès du père. À l'une de ces occasions, un rapport d'expert suggérant que les enfants aient pu être l'objet d'agressions sexuelles impliquant leurs cousins a été mis en preuve. Ces agressions auraient été commises au domicile des grands-parents des enfants. En conséquence, le tribunal français ordonna que les droits d'accès du père ne soient plus exercés en présence des cousins. En juin 2001, la mère amène les enfants au Québec. Le père demande donc le retour de celles-ci dans l'État de leur résidence habituelle.

Le juge québécois, après avoir entendu les deux enfants au sujet des agressions sexuelles commises par leurs cousins, a pris acte de leur opposition à un retour en France et décidé de ne pas ordonner ce retour puisque le père les ramènerait vraisemblablement chez leurs grands-parents, ce qui constitue un risque grave d'exposer les enfants à un danger psychique.

j) Juridictions de common law

- *Jabbaz c. Mouammar*, *supra*
- *Kovacs c. Kovacs*, *supra*

k) Juridictions de common law

- *A.(J.E.) c. M. (C.L.) supra*
- *Toiber c. Toiber*, *supra*
- *Innes c. Innes*, *supra*

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Affaire de la Saskatchewan: un parent ravisseur a refusé de retourner les enfants parce que ceux-ci s'y opposaient. Le juge a ordonné une évaluation particulière de garde/visite, soit des rapports établis suivant les principes de « Écouter le point de vue des enfants », qui sont centrés sur l'enfant. Le juge a donné des directives à l'évaluateur pour s'assurer que son évaluation porte sur la nature des objections des enfants plutôt que sur leurs préférences en ce qui a trait au régime de garde. Les enfants ont indiqué qu'ils n'avaient pas l'impression de pouvoir passer suffisamment de temps avec leur père pendant qu'ils étaient confiés à la garde de leur mère, de sorte qu'ils préféreraient vivre avec leur père. Le juge a ordonné le retour des enfants.

l) Juridictions de common law

Jabbaz v. Mouammar, supra

Chile – Chili :

Lamentablemente no ha habido ningún desarrollo en los ítems planteados.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

a) to l) here are no imporant developments.

China (SAR Macao) – Chine (RAS Macao) :

There is no relevant development.

Colombia – Colombie :

El concepto de residencia habitual es considerado por interpretación jurídica del Convenio como un derecho fundamental de los Niños y el actuar rápidamente nos permite garantizar ese derecho. Este es un criterio relevante que se destaca en las jornadas de capacitación y permite una mayor comprensión del Convenio.

El derecho de Visitas, igualmente considerado como derecho fundamental de los niños, que comporta el derecho a tener contacto con el otro padre.

Posteriormente a la celebración de la Comisión del 2001, hubo un pronunciamiento jurisprudencial de la Corte Constitucional, el cual cambió la forma de ejecución del Convenio, en cuanto al tema de la competencia, que se constituyó en antecedente para la expedición de la Ley 1008 de 2006 mencionada anteriormente.

Costa Rica – Costa Rica :

Por motivos obvios de separación de poderes, esta pregunta no compete ser respondida por esta Autoridad Central. Es decir, la información pertinente debe ser solicitada al Poder Judicial de la República de Costa Rica.

Cyprus – Chypres :

There is case law on habitual residence, rights of custody, consent or acquiescence to the removal or retention of the child, grave risk, exposure to physical or psychological harm and intolerable situation. Also another important development is the procedural law enactment of 2002 mentioned above.

Czech Republic – République tchèque :

No important developments.

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Denmark – Danemark :

a) Section 3 in the Danish Act on Custody and Access has been extended so it is made clear that both parents – if joint custody – must consent if a child's stay in a foreign country is extended beyond what is decided or agreed.
In March 2005 The Danish Ministry of Family and Consumer Affairs set a committee on Custody and Access. The committee has now made a report with suggestions to a new Act on Custody and Access It is expected that the Minister of Family and Consumer Affairs will introduce a new bill on Custody and Access on the basis of the committees suggestions.

b) to f) No comment.

g) See above answer to question 13 (a).

h) to l) No comment.

Ecuador – Equateur :

A partir de julio de 2003 entró en vigencia en el Ecuador el Código de la Niñez y Adolescencia, que contiene normas relativas a restitución de niños, niñas y adolescentes, señaladas en la pregunta anterior.

El Salvador – El Salvador :

En el caso de El Salvador, se cuenta con un solo caso planteado en la vía judicial, por lo que no han existido mayores avances en cuanto a la interpretación de conceptos.

Finland – Finlande :

[No answer]

France – France :

Il n'y a pas eu d'évolution notable de la législation française sur ces points, à la suite de la commission spéciale de 2001.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

i) Ley de Protección integral que ya toca el tema del maltrato físico y psicológico que puede sufrir un niño, como se define así como el procedimiento especifico en materia de protección utilizado para restituir el derecho violado al niño.

Iceland – Islande :

In general the most important development is the new Children's Act (see answer to question No 12) and the reform made in June 2006, whereby rights of custody have been changed in the event of legal separation and divorce, awarding parents automatic joint custody by law, unless otherwise decided.

There is no special comment on sub-paragraphs a) to g). Regarding h), i) and j), national courts have in recent years taken a more restrictive approach to the interpretation of those key concepts mentioned, and the burden of proof is of course laid on the party claiming such reasons for the child's non-return.

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As regards sub-paragraph k) there is a decision of the Supreme Court dated 9 May 2006 in case no. 203/2006, where the Court overturned a district court ruling that a 13 year old child should be returned to its custodial parent in Sweden. The argument for that Supreme Court decision is debatable.

There is no special comment on l).

Ireland – Irlande :

a) There is an important abd useful judgement, *RC -v- IS* (High Court (Finlay-Geoghegan J) unreported, 2003 92M), which sets out the relationship between the concepts of rights of guardianship, custody and access under Irish law, on the one hand, and the "rights of custody" and "rights of access" in the Hague Convention, on the other.

b) The expression "habitual residence" is interpreted by the Irish Courts as to be equated with ordinary residence.

c) See above in relation to rights of custody.

d) [No answer]

e) [No answer]

f) [No answer]

g) [No answer]

h) [No answer]

i) The Irish Courts have interpreted this as covering only serious psychological harm. The Courts may consider undertakings by the parties concerned as a means to removing the risk of damage to the child.

j) [No answer]

k) [No answer]

l) See answer to question 10.

Israel – Israël :

a) Civil Appeal 001085/01, (b) M.A. v. B, District Court of Tel Aviv. The court held that a court order forbidding the removal of a child from the country (ne exeat) is sufficient to establish "custodial rights" for a non-custodial parent within the meaning of the Convention. This Judgment was confirmed by the Supreme Court of Israel.

b) In the past, Israeli courts have normally viewed habitual residence as a factual physical situation based on the location of the child and from the child's perspective in terms of where is the center of his life, regardless of the parents' future plans or intentions. However, in recent cases there has on occasion been a shift to the "parental intentions" test. Therefore the approach taken has not been totally consistent.

In Family Appeal 575/04 Y.M. v. A.M., an Israeli family went to England for the purpose of the father's studies at a University. After 3 1/2 years, the mother came to Israel with the children for a vacation, with the father's consent, and then decided not to return to Israel. The lower court held, based on the day-to-day reality test that the children's habitual residence was in England. The appeal court split on its approach to determining habitual residence. Two judges agreed with the lower court, holding that habitual residence is determined by looking at the past and present and not at the future. The

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third judge adopted the parental intention approach, and held that the habitual residence had always been Israel. He noted, inter alia, that the parties planned to be in England for a limited period, after which they would return to Israel, and that they had not sold their home in Israel.

Family Court (Tel Aviv) 46252/04- The parents, both Israeli, moved to Paraguay, and also lived in Uruguay, in connection with the father's employment. Their two children were born, one in Paraguay and one in Uruguay, during this period. The mother traveled to Israel with the two children, neither of whom had ever lived there. She refused thereafter to return to Paraguay, claiming that the father had always agreed that she could return to live in Israel. The Court in Israel adopted the "parental intention" approach to the determination of the children's habitual residence. The fact that the children were born abroad, had never lived in Israel, and that the family's overseas residence was not for a fixed period of time were not decisive elements. The judge held that a temporary trip abroad with no intention of uprooting from Israel could not change the children's habitual residence. The judge concluded that the evidence showed that the parties did not intend to uproot from Israel. The father had promised the mother that if she was not happy abroad the family would return to Israel (even though this promise was made before the children were born). In addition, the family had to leave Paraguay every three months to extend their visa. Therefore the court held that the intended habitual residence of the children was Israel, not Paraguay. An appeal to the District Court was dismissed, and the Supreme Court of Israel refused to allow leave to appeal.

In contrast, in Family Application 4810/05 Plonit v. Ploni (Jerusalem Family Court), the mother, of Costa Rican origin, immigrated to Israel where she met and married the Israeli father in 1997. In 2001, they moved to Costa Rica with their three year old son. Their daughter was born there a few months later. In 2003 the father moved out of the family home, and in February 2004 he returned to live in Israel. In December 2004 the children traveled to Israel to visit him, and he subsequently refused to return them. The father claimed that the habitual residence remained Israel as the stay in Costa Rica was intended to be temporary and he only agreed to go there based on the mother's agreement that if he wanted to return to Israel, she would go back with him. The court rejected these claims, holding that they were not consistent with the ordinary meaning of habitual residence. It emphasized that the older child had spent half of his life in Costa Rica and that the younger child had lived all of her life there.

In the case of Family Application 1430/05 P.R. v. T.A.A., the judge adopted the objective "center of the child's life" approach. The children, who initially had been habitually resident in Israel, were abducted to Italy by their mother. The Italian courts refused to return the children to Israel, in what is widely viewed as an erroneous judgment. Three years later, the father re-abducted them to Israel. He claimed, inter alia, that he was simply returning them to their habitual residence in Israel. The court rejected this claim, holding that even though they had previously been abducted from Israel to Italy by the mother, they had now been in Italy for three years, during which they had established roots and integrated well. They were settled in an educational framework, had formed social connections and become attached to the mother's family. This has raised great controversy. The children, whose original habitual residence was in Israel, acquired a new habitual residence in Italy because of what is widely viewed to be an erroneous Judgment of the Italian courts. As a result of this error, three years later the Israeli courts were faced with the reality that the center of the children's lives for the past three years was Italy.

c) [No answer]

d) In Family Application 005110/05 – D.L. v. F.L. – Nazareth Family Court, 28 February 2006. The parents were Argentinean nationals who lived in Argentina and were the parents of one child. They encountered financial difficulties, which resulted in the father going to work in the United States for six months. The mother, together with the child, moved into the home of her parents. When the father returned to Argentina, he

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moved in with his parents, 1,800 kilometers distance from the mother's residence. The mother traveled to see him, and expected that he would return to live with her and the child. The father decided to remain in his parents' home, and made no efforts to see the child. Five months later, the mother moved to Israel with the child, without the father's knowledge or consent. Seven months after that, the father applied to the Argentinean Central Authority, claiming that the child had been abducted. A Hague Application was forwarded to the Central Authority for Israel. In the subsequent proceedings in the Israeli court, the court held that Argentina was the child's habitual residence. However, as the father made no effort to see the child for the five months prior to the removal, the court found that he did not exercise his custodial rights. The court further held that in the circumstances, given that the father took a further seven months to apply for the child's return, his behavior constituted acquiescence to the abduction. The court therefore refused to order the return of the child.

e) [No answer]

f) Case no. 548/04, B. v. B., District Court of Jerusalem - in this case, a father applied to the Central Authority in France 10 months after his children were abducted to Israel, and filed his suit in the Court in Israel 23 months after the abduction. The District Court overturned the decision of the Family Court which held that the one-year period is calculated from the date of the application to the Central Authority. The reference to "administrative authority in Article 12(2) refers to an administrative authority which has the authority to order return of the child. In Israel, as in many countries, only a court can order the return of the child. Therefore the one-year period refers to the date of the application to the judicial authority. As more than one year had passed and between the date of the wrongful removal and the date of the application to court and it was proven that the children had adapted to their new environment, the court dismissed the application for return.

g) In Family Appeal 575/04 Y.M. v. A.M. (see subsection (b) above), both the Jerusalem Family Court and the Jerusalem District Court held that the father's actions immediately after being informed that the mother was not returning to England with the children showed that he accepted that they should remain in Israel. He registered the children in school in Israel, rented an apartment near that of the mother and talked with friends and relatives about the children remaining in Israel. In addition, he did not apply to the court immediately, but rather only several weeks after the retention following the failure of negotiations between the parties about the financial aspects of the divorce.

In Family Application 046252/04 Ploni v. Almonit (see subsection (b) above), the Tel Aviv Family Court held that the fact that the father, upon discovering that the mother did not intend to come back to Paraguay with the children, returned by himself, earlier than intended, and submitted a divorce petition to the court in Israel without making any mention of the return of the children, showed that he acquiesced to their remaining in Israel. However the District Court overturned this finding, holding that the time that passed since the outbreak of the dispute between the parties and the submission of the application under the Convention was very short, and the father's actions during this time were not sufficiently clear and definitive to support a finding of acquiescence.

In Family Appeal 592/04 R.K. v. C.K, the Jerusalem District Court held that failure to attempt to enforce a return order can amount to acquiescence. The father had obtained an order for the return of his three children to the United States and took one child with him, but took no initiative to return the two other children, nor did he contact them for four months. The court held that he had waived his right to their immediate return and had thus acquiesced in accordance with Article 13(2). It held that if a parent who has not taken any action to return his child can be considered to acquiesce in the removal, then *a fortiori* a parent who has a court ruling instructing the return of the child but doesn't take any measure to realize this right should be treated as acquiescing in the removal.

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In Family Appeal 621/04 D.Y. v. D.R., the Tel Aviv District Court held that the fact that the father had not seen his children for the past year and a half, even though he had had the opportunity to do so, constituted acquiescence.

h) [No answer]

i) The Israeli courts have consistently interpreted this exception very strictly, in accordance with the 1996 Supreme Court decision of R. v. R.

In Family Application 058309/05 S. v. S., the Tel Aviv Family Court ordered the return of two children to France despite finding that the father was physically and emotionally violent towards the mother, had a very irritable and domineering temperament and was unstable emotionally. It held that the exception in Article 13(b) was not proven as it did not believe that returning the children to the father in France would cause them serious harm in the short term. The children loved their father and missed him and were not afraid of him. Thus the allegations about the father's temperament and behavior should be taken into account in the custody proceedings in France. However, the court further held that because of an ex parte order obtained by the father in France giving him sole occupancy of the family home and sole custody, ordering the unconditional return of the children to France was liable to cause them grave harm. Thus, the court made the order of return subject to conditions, including: 1) requiring the father to deposit 10,000 Euros to cover the mother's living expenses for the first few months in France; 2) requiring that the father rent an apartment for the mother or undertake to let her and the children remain in the family home until the hearing of the case in France; 3) the return would be delayed for 30 days after the depositing of the monies by the father, to allow the mother time to apply for cancellation of the ex parte decision of the French court, unless the father undertakes to allow the children to remain in the mother's custody pending a hearing in the court in France.

In Family Appeal 621/04 both the Tel Aviv Family Court and Tel Aviv District Court relied on an unequivocal opinion of a clinical psychologist, appointed by the court, which stated that the return of five girls to New York, from where they had been wrongfully removed in 2002, would expose them to severe psychological harm in light of the various traumatic upheavals that they had already suffered. In particular, the family, which was of French origin and had moved to New York in 1998, had not been accepted by the community in New York. The children had not established any connections with New York and their experiences there had been negative and traumatic. The court distinguished this case from the Supreme Court case of R. v. R. as in that case the father undertook not to have any contact with the child and the welfare authorities in England could be relied on to ensure that there was no immediate danger to the child. In this case, the damage to the children was derived from their being in the United States and not just from contact with the father.

j) In Family Appeal 621/04 D.Y. v. D.R. (see above), the court also held that the inability of the mother to support the family in New York would place them in an intolerable situation.

However, in Family Application 43220/03 the court dismissed the mother's claim that the fact that she did not have a visa to work in the United States would place the child in an intolerable situation and was a breach of her basic right to work and to support herself. The court did, however, make the return of the child conditional on the father depositing the amount of $6,000 in advance and in renting an apartment for her.

k) 1) In Family Application 1430/05 P.R. v T.A.E., the children were aged 9 and a half and 12 at the date of the hearing. They had been born in Italy to a Christian Italian mother and a Muslim Israeli father. The children and parents moved to Israel in 1997. In July 2002, the mother traveled to Italy with the minors for a short holiday and did not return. The father’s application under the Hague Convention to the Italian courts was

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dismissed in a very controversial Judgment, and his appeal from that decision was dismissed. The mother was granted sole custody by the Italian courts.

In September 2005, the father abducted the children from Italy to Israel. The mother applied to the Israeli court for return of the children under the Convention. The father relied inter alia on the children's objections to return to Italy. The court requested reports both from the welfare officer and a psychiatrist to report to the court on the question of whether the children objected to return to Italy, and if so what were their reasons. The psychiatrist reported that the children objected to return to Italy, but in her view they should still be returned because this was in their best interests and because the Israeli court should accept the Italian court's custody decision.

The first instance judge criticized the psychiatrist for going beyond her brief and addressing issues which on she was not asked to give her opinion. He therefore decided only to relate to the parts of her opinion dealing with the children's wishes. On examination in court, the expert said that the children's objection to returning to Italy reflected their independent views and that they were consistent in expressing this view. She also stated that their judgment in relation to their age and development was completely sound (although she did say that in her view, children of this age found it difficult to look to the future and tend to see the short term only).

The judge emphasized the fact that the children had previously lived in Israel for five years and that their objection to returning to Italy was not disconnected to their experience of life in both countries. The judge rejected the mother's claim that a child will always be influenced by the parent who he/she is living with at the time because if this were accepted then it would render art 13(2) redundant. There was no evidence of brainwashing by the father in this case. Furthermore, automatically assuming that the children's views were a result of the attention they had received in Israel made the child's right to have his view taken into consideration worthless. Thus, the judge dismissed the mother's application for return of the children.

However, her appeal to the District Court was accepted. The Court emphasized the need to interpret the child's objection exception narrowly, as reiterated many times by the Supreme Court, in order to fulfill the objective of the Convention. The Court accepted the view of the experts that the children's views were influenced both by the fact that they were enjoying a significant measure of freedom in Israel (they had not yet returned to full time studying) and the attention they were receiving from the father's family. In addition, the court accepted the claim that the children tend to be dependent on, and loyal to, the parent in whose care they are currently.

The father's appeal to the Supreme Court was dismissed. The Court has not yet handed down the reason for its decision.

2) In Family Appeal 621/04 D.Y. v. D.R., the Jerusalem District Court, in determining the age at which it is appropriate to take into account a child's wishes, referred to sources of Jewish law in relation to the age at which a minor's oath is valid – 12 for girls and 13 for boys.

3) In Family Appeal 001085/01, the Tel Aviv District Court stressed the importance of the judge meeting with the child, stating that the purpose of such a meeting is not only to clarify the child's views for the purpose of the exception in Article 13 (the child's objections) but also to fulfill the child's right to be heard under Article 12 of the UN Convention on the Rights of the Child 1989.

l) See answer to question 10 above.

Italy – Italie :

Aucun développement.

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Latvia – Lettonie :

Since 1st January, 2003 when amendments in Civil Law of the Republic of Latvia have come in force in our legislation are the following improvements which are related to the key concepts of the Convention. The Convention related key concepts are stated in the 3rd sub-chapter called "Custody".

- Custody

In accordance with Article 177 of the Civil Law until reaching legal age (Section 219), a child is under the custody of his or her parents.

Custody is the rights and duties of parents to care for the child and his or her property and to represent the child in his or her personal and property relations.

Care for a child means his or her care, supervision and the right to determine his or her place of residence.

Care of the child shall mean his or her maintenance, i.e., ensuring food, clothes, dwelling and health care, tending of the child and his or her education and rearing (ensuring mental and physical development, as far as possible taking into account his or her individuality, abilities and interests and preparing the child for socially useful work).

Supervision of the child means care for the safety of the child and the prevention of endangerment from third persons.

By the right to determine the place of residence of the child is understood the choice of the geographic place of residence and choice of dwelling.

Care for the property of the child means care for the maintenance and utilisation of the property of the child by preserving and increasing it.

In the Article 178 of the Civil Law is stated that parents living together shall exercise custody jointly. If any differences of opinion arise between the parents, such differences shall be adjudicated by an Orphan's court unless otherwise provided for by law.

In Article 178.[1] of the Civil Law is stated that if the parents are living separately, the joint custody of the parents continues. Daily custody shall be implemented by the parent with whom the child is living. In respect of issues, which shall significantly affect the development of the child the parents shall take a joint decision. Differences of opinion shall be resolved according to the procedures specified in Section 178 of this Law.

The joint custody of the parents shall terminate upon the establishment on the basis of an agreement between the parents or a court adjudication of the separate custody of one parent.

The parent with whom the child is located in separate custody has all the rights and duties, which arise from custody. The other parent has access rights in conformity with the provisions of Sections 181 and 182 of this Law.

Disputes between parents regarding custody rights shall be decided taking into account the interests of the child and ascertaining the views of the child if only he or she is able to formulate such.

If the parent in whose custody the child is located dies, as well as if it is not possible for him or her to implement custody, the child shall pass to the custody of the other parent, except in the case, where an Orphan's court has recognised in the interests of the child the need to appoint a guardian for him or her.

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- Rights of Access

In the Article of 181 of the Civil Law is stated that a child has the right to maintain personal relations and direct contact with any of the parents (access rights).

Each of the parents has a duty and the right to maintain personal relations and direct contact with the child. This provision shall be applicable also if the child is separated from one of the parents or both of the parents. The parent who does not live with the child has the right to receive information regarding him or her, especially information regarding his or her development, health, educational progress, interests and domestic circumstances.

A child has the right to maintain personal relations and direct contact with brothers, sisters and grandparents, as well as with other persons with which the child has lived with for a long time in an undivided household if such conforms to the interests of the child.

Parents and persons who have access rights in relation to the child or in whose care the child is located, have a duty to refrain from such activities as may negatively influence the relationship of the child with one of the parents.

In the Article 182 of the Civil Law is stated that in case of dispute, the procedures by which access rights may be utilised shall be determined by a court, requesting an opinion from the Orphan’s court. As soon as the opinion of the Orphan’s court has been received, the court shall without delay invite the parties to submit an explanation and shall determine temporary access rights utilisation procedures.

A court may specify that the child spend a certain period of time (weekends, school holidays, parents leave periods and similar) with such parent who has not been granted custody rights, or also his or her meeting times.

Access rights in relation to a child may be restricted, moreover, if necessary, it may be specified that it is allowed to meet with the child only in the presence of third persons or at a specific place insofar as this conforms to the interests of the child. A court may temporarily revoke access rights if the access is harmful to the interests of the child and the harm cannot be otherwise prevented.

Translation in English of the Civil Law is available at the website of The State Agency “Translation and Terminology Centre” –
http://www.ttc.lv/index.php?squery=civil+law&srchtype=trans&id=2&l=EN&seid=search

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Lithuania – Lituanie :

During the period from 2001 till 1 July 2006, out of the terms referred to in paragraph 13, only the term “permanent place of residence” (sub-paragraph 13(b)) has undergone changes. In accordance with Article 3(2) of the Republic of Lithuania Law on the Declaration of the Place of Residence (Official Gazette 1998, No.66-1910), place of residence is defined as “<main place where the person actually lives most often and with which he/she is mostly connected”. The term was changed by adopting the Law on Amendments to Articles 3, 4, 6, 7, 8, 9, 10 and 11 of the Law on the Declaration of the Place of Residence (Official Gazette, 2002, No 45-1711) and came into effect on 1 January 2003.

Malta – Malte :

At the time of the Special Commission, the Convention was still quite new to Malta. The first case to go to Court was in 2003 and so far there have only been five court cases, one of which is still pending. Thus, Malta has had an insufficient number of judgements to be able to assess the outcome, and whether there has been any significant development.

Mexico – Méxique :

México ha impulsado consistentemente reformas legislativas y acciones de política pública, con el objetivo primordial de consolidar la defensa y promoción de los derechos humanos y dar cumplimiento a las obligaciones contraídas en foros y organismos regionales e internacionales. Se realizaron en enmiendas a los artículos 4 y 8 constitucionales en los años de 2000 y 2006, que afianzan la protección de los derechos de los niños.

Monaco – Monaco :

Il est à noter que la loi 1.278 du 29 décembre 2003 ayant modifié la Section I du Chapitre II du Titre IX du Livre I du Code civil anciennement intitulée "Des attributs de la puissance paternelle" a institué l'autorité parentale conjointe et a conduit à la modification de l'interprétation des notions susmentionnées (voir les articles 300 à 332 du code civil). Ainsi, l'exercice de l'autorité parentale conjointe a modifié l'appréciation de la résidence habituelle de l'enfant.

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Netherlands – Pays-Bas :

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

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

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

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

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

h) to j) Article 13, paragraph 1, sub b is generally interpreted restrictively (*e.g.* Supreme Court, 18 October 2002, NJ 2003, 345, LJN: AE5804). However, one case is known in which the concept of grave risk of article 13 paragraph 1 b was given a broad interpretation (Gerechtshof Amsterdam, 3 November 2005, LJN: AV0718). In this case the Court of Appeal decided the child should not return to its habitual residence as the mother could not return together with her young child (age 2). The mother alleged she could not re-obtain a residence permit in the state of habitual residence of the child. Therefore the court denied the request for the return of the child, because the return would constitute a grave risk for the child, as it would be separated from its primary carer and would reside in the state of habitual residence without its mother. It is further noted that questions were raised as to the ability of the requesting father to take care of the child alone. The court was not convinced the father would be able to do so and concluded that the return of the child was not in the best interest of the child.

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

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

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

New Zealand – Nouvelle Zélande :

a) [No answer]

b) The Court of Appeal has addressed the issue of habitual residence twice in recent times: in Punter v Secretary for Justice [2006 CA 221/05], and in SK v KP [2005] 3 NZLR 590, (2005) 24 FRNZ 518.

The starting point is that habitual residence is to be a factual inquiry, without resort to presuppositions or presumptions. Certain legal principles have developed about how the factual inquiry is to be conducted. The principles cannot be applied rigidly, or the ultimately factual nature of the inquiry can be obscured.

- Attaining habitual residence generally requires an actual period of residence along with a settled purpose. Settled purpose of a child is said to usually follow that of their parent. Settled purpose to leave a place can mean that habitual residence is immediately lost.
- a person can be without habitual residence for a period.
- A long period of residence without a settled purpose can also result in the acquisition of a new habitual residence.
- A different culture and language can mean that a longer period of residence is required for a new habitual residence to be gained.
- Unilateral purpose generally cannot change the habitual residence of the child, but a "very lengthy period" of residence in such a situation could eventually change the child's habitual residence.
- Where the parents' shared intent is for a limited stay (*e.g.* holiday or shuttle custody in another state), generally loss of habitual residence can only result as a

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gradual weakening of the connections to the former state due to the orientation of the child in the new state.

c) In Jenson v Olagues [Hague Convention: Access] (2002) 22 FRNZ 625, [2003] NZFLR 19 Judge Twaddle held that the term "rights of access" does not require an access order to be in place in the State of the applicant. As long as the applicant has a right to access they can apply under the Hague Convention to exercise that access provided that they were exercising access or can show that contact has been denied.

d) [No answer]

e) [No answer]

f) [No answer]

g) [No answer]

h) The traditional approach in New Zealand has been to confine the risk to the return to the home country, and to evaluate the defence against an expectation that the legal system in the home country will be able to protect the child (A v Secretary for Justice [1996] 2 NZLR 517 (CA)). The Court of Appeal's view is that "grave risk" should receive a narrow interpretation and be evaluated against the expected protection of the legal system in the habitual residence. However there need not be a presumptive approach when a defence is raised. So, it is possible to raise the grave risk defence where the home country has an unexceptional legal system, but the defence will be difficult to make out, and the ability of the home country to protect the child will be a highly relevant consideration.

An example of the grave risk defence being successfully established where the home country (Australia) would normally be expected to be able to protect the child is Secretary for Justice v MF Te N [2006] NZFLR 306. In this case it was shown on the facts that there was a risk to the child because the Australian State welfare agency had not acted to protect the child in circumstances where it would normally be expected to act. This was overcome by undertakings from the agency so the child was ultimately returned.

i) In DA v MS [Hague Convention Application], (10 March) FC WAIT FAM 2005-034-000057, the grave risk defence was discussed in terms of whether the detrimental impact on the mental and physical wellbeing of the abducting parent should they be forced to return, could amount to a grave risk of exposure to psychological harm to the child. It was held that it is possible to make out the defence in this way, although the burden is high. If the defence is made out there is still a discretion to return, which will often be exercised having regard to the principles of the Convention of having the merits of the case decided in the home country.

In VP v A [2005] NZFLR 817 it was found that domestic violence suffered by the mother would result in her psychological state deteriorating to the point the children would suffer psychological harm. The return order was refused for this reason in conjunction with the fact the children had witnessed the domestic violence, and had a justifiable objection to returning. This case was exceptional, as even though the Dutch authorities could protect the children and mother from physical harm, the level of psychological trauma that would result from a return would be debilitating and prevent the mother from providing for the children with their heightened needs.

j) [No answer]

k) [No answer]

l) [No answer]

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Nicaragua – Nicaragua :

[Sin respuesta]

Panama – Panama :

En el año 2001, se reglamento la Ley 22 de diciembre de 1993, que aprueba el Convenio sobre los Aspectos Civiles de la Sustracción Internacional de Menores, con el Decreto Ejecutivo No. 222 del 31 de octubre del año precitado. En el decreto mencionado se determina los conceptos contenidos en el Convenio.

a) Derecho de Custodia con arreglo al derecho vigente en el Estado de residencia habitual del menor de edad antes de su traslado. También puede ser establecido dentro de un acuerdo vigente o de una resolución judicial de la autoridad del Estado de la residencia habitual del menor de edad retenido o traslados.

b) Residencia Habitual no se desarrolla concepto, sin embargo se establece que para acreditarlo se debe aportar pruebas que certifiquen escolaridad (créditos) atención médica regular constancias de vacunas, y cualquier otro documento que pruebe esta situación de estabilidad, singularidad.

c) Derecho de Custodia con arreglo al derecho vigente en el Estado de residencia habitual del menor de edad antes de su traslado. También puede ser establecido dentro de un acuerdo vigente o de una resolución judicial de la autoridad del Estado de la residencia habitual del menor de edad retenido o traslados.

d) El ejercicio efectivo de derecho de custodia, lo define nuestro ordenamiento jurídico. Art. 55 Constitución Nacional, art. 319 Código Judicial de Familia cuando hace referencia a los deberes y derechos de los progenitores de velar por su vida y salud, tenerlos en su compañía, suplir sus necesidades afectivas, alimentarlos, educarlos y procurarles una formación integral, corregirlos razonable y moderadamente y representarlos.

e) No existe desarrollo de concepto en estos aspectos

f) No existe desarrollo de concepto en estos aspectos

g) No existe desarrollo de concepto en estos aspectos

h) Grave riego y exposición de peligro físico o encontrarse desarrollando, en términos generales, en el artículo 498 del Código de la Familia que describe los diversas situaciones de riesgo social en que puede encontrarse todo niño y lo establece en el artículo 2 de la Ley 38 de 2001.

i) Ver h)

j) No se ha desarrollado concepto sobre estos aspectos, lo propio seria examinar las jurisprudencia para determinar causisticamente se ha invocado estas excepciones y como han sido conceptualizadas al momento de ser considerados.

k) Ver j)

l) Podemos invocar los principios constitucionales que guarda relación a esta materia como los artículos 52 (protección Integral), art. 59 jurisdicción Especial de Menores; los principios fundamentales en materia de Protección, art. 1 - 5, 484, 485, 486, 487, 488, 489 de Código Judicial, la Ley 19 de 1990, etc. Las normas citadas están dirigidas a salvaguardar el Interés Superior del niño, no debiendo ser separado de sus progenitores sobre circunstancias excepcionales establecidos en la ley con finalidad de protegerlo.

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Paraguay – Paraguay :

Desde la celebración del Seminario realizado los días 06 y 07 de marzo se han logrado importantes avances en el sentido de consensuar criterios en cuanto a los ítems a, b, c, d.

Poland – Pologne :

There have not been any important developments regarding the issues of the Convention mentioned in the points a) to l) in the question 13 within the specified time. This is due to the fact that after the introduction of the amendment to the provisions of the Polish Code of Civil Procedure in 2001 the cases under the Convention are not subject to review in the cassation appeal with the Supreme Court. The ongoing interpretation of the Hague Convention is within the competence of District and Regional Courts.

Portugal – Portugal :

Yes. The Portuguese authorities have introduced the flowed terms for the paragraph(es):

h) and i) The *Promotion and Protection Law for the Children and Young in Risk* (Lei de Promoção e Protecção das Crianças e Jovens em Perigo) entered into force in 1 January 2001, and in its article 3 turned into clear the notion "danger/risk" under the Portuguese internal law.

k) The same law established that 12 years is the reasonable age for a child to be heard by the Court.

Romania – Roumanie :

[No answer]

Slovakia – Slovaquie :

No important developments in these fields so far.

South Africa – Afrique du Sud :

a) No important developments.

b) None.

c) None.

d) None.

e) The matter referred to in Question 12 above.

f) As is in (e) above.

g) None.

h) None.

i) Refer to (e) above.

j) Refer to (e) above.

k) Refer to (e) above.

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l) None.

Spain – Espagne :

En España, tanto las medidas de desarrollo para facilitar la aplicación del Convenio como las decisiones judiciales, se han dirigido hacia los conceptos claves del Convenio citados en la pregunta. En la legislación comunitaria, particularmente el Reglamento 2201/2003, se han abordado los puntos claves del Convenio en temas de residencia habitual, derechos de custodia, riesgo grave de daño físico o psíquico, situación intolerable, consentimiento o aquiescencia, periodo de un año e integración del menor en el nuevo ambiente, ejercicio efectivo de los derechos de custodia y derechos de visita. Allí se modalizan los artículos 12 y 13 del Convenio en la esfera comunitaria, alterando el sistema central decisorio en orden a que son los Estados de residencia habitual del menor antes de la sustracción, los que conservan la posibilidad de adoptar una decisión final, pese a que inicialmente se haya dictado una orden de no retorno. Basta ver las definiciones de conceptos claves que hace el Art. 2 del Reglamento comunitario, para entender que la coordinación futura con el Convenio de La Haya es imprescindible.

En España, las resoluciones del Juez acerca de si procede o no la restitución del menor, siempre tienen en cuenta su interés, como se establece desde el Art. 1905 hasta el Art.1908 de la L.E.C., manteniéndose una interpretación restrictiva de las causas de denegación de la restitución.

Un tema objeto de cierta controversia en relación a peticiones de restitución procedentes de países del continente Americano, es el de la conceptuación del derecho de custodia. En el reciente seminario sobre sustracción de menores, Estados Unidos – España, que tuvo lugar en Madrid del 24 al 26 de enero de 2006 en la sede del Consejo General del Poder Judicial español, y en las conclusiones de las jornadas adoptadas por unanimidad ya se hizo constar que:" e*l concepto de custodia contemplado en el articulo 5 del CH 80, siempre debe de interpretarse con arreglo al derecho del lugar de la residencia habitual del menor, anterior al traslado o retención ilícita. Debe de entenderse que el derecho a decidir sobre el lugar de residencia, es un elemento que caracteriza el derecho de custodia, y que puede ser ostentado incluso por una persona que solo ejerza el derecho de visitas….".*

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Sweden – Suède :

Only in the areas of special interest there will be an explanation of important developments. Otherwise, an explanation of the implementation of the Hague Convention into the Swedish legislation will be made.

a) Article 3 *a)* has been implemented in article 11(2) in the Law (1989:14) on Recognition and Enforcement of Foreign Decisions Concerning Custody etc. and Return of Children (the 1989 Act).
Concerning the right of custody regulated in article 5a and what is included in this right, an equivalent regulation exists in the Children and Parents Code Chapter 6, Sections 11-14.

b) Article 3 *a)* has been implemented in Article 11(2) in the 1989 Act.

Article 2 in the 1989 Act states, in similarity with article 4 in the Hague Convention that the law shall cease to apply when the child attains 16 years old. Concerning the habitual residence prerequisite, Section 11 in the 1989 Act prescribes, similar to article 4 in the Hague Convention that a wrongfully removed or retained child shall be returned to the state where the child was habitually resident before ant breach of custody or access rights.

c) Article 5 *b)* is not implemented into Swedish legislation. Article 5b points out the right to take a child for a limited period of time to a place other than the child's habitual

residence. Chapter 6, Section 15-15 a) and b) in the Swedish Children and Parents Code recognize the right to access in Sweden. The Swedish legislation has a more detailed account than in article 5b in the Hague convention of how the access right shall be exercised.

d) Article 3 *b)* has a similar definition in Section 11(2) in the 1989 Act, which states that the removal or retention of a child is to be considered wrongful where at the time of removal or retention those rights (custody) were actually exercised or would have been so exercised but for the removal or retention.

Article 13(1) *a)*, regarding that the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, is not implemented into Swedish legislation.

e) Section 12(1) in the 1989 Act states that a return order can be refused if more than one year has elapsed since the application of removal was made or the child has settled in its new environment. The Swedish Central Authority is in favor of the possibility to return a child, even if the proceedings have been commenced after the expiration of the period of one year, even if Article 12(2) has had a limited application in Sweden.

f) The Swedish Central Authority finds that the one-year limit is suitable and that it would be unsuitable with a reduction of the one-year time frame.

g) Section 17 in the 1989 Act and the Swedish Children and Parents code recognize that the Court has to obtain information from the child, concerning the child's view in the case. However, the child's maturity and age has to be taken into consideration. For more information about the in what circumstances and by what procedures /methods children are heard in Hague proceedings see section 9 above.

h) Article 13(1) *b)* has been implemented in Section 12(2) in the 1989 Act.

i) Article 13(1) *b)* has bee implemented in Section 12(2) in the 1989 Act.

The interesting development in this area concerning the member states of the European Union, is that the Brussels II Regulation in Section 11(4) makes it possible to send a child back even if there is a risk of physical or psychological harm on the basis of Article 13 *b)* of the Hague Convention it is proofed that adequate arrangements have been made to secure the protection of the child after his or her return. For more information about this see section 60 below.

j) Article 13(1) b has been implemented in Section 12(2) in the 1989 Act.

k) The same way as regarding Article 13(2) in the Hague Convention, section 17 of the 1989 Act states that before reaching a decision, the court should procure the child's view, provided that the child has reached a proper level of maturity. The Brussels II Regulation also states the importance of the child's view being taken into consideration (Section 11 (2)). For information about under what circumstances children is heard in Hague proceedings see section 9 above.

l) Article 20 in the Hague Convention has its equivalence in the Swedish legislation in section 12(4) in the 1989 Act. The Swedish courts endeavor to interpret, as far as possible the key concepts of the Convention in accordance with the intentions and the ideology of the Convention. The courts have continued to interpret Article 20 very restrictively. The courts have never applied this Article as a ground for refusal. (See more about Article 20 in section 10 above).

Switzerland – Suisse :

Lettres e) à i): se référer aux remarques sous question 12 et 47.

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United Kingdom (Scotland) – Royaume Uni (Écosse) :

a) In *AJ* v *FJ* (judgment of 29 April 2005 [2005CSIH36]), the Inner House of the Court of Session decided that a mother who had been granted only 'contact rights' by the courts in Scotland had 'custody rights' for the purpose of the Hague Child Abduction Convention because she had the right to determine the child's place of residence (see Article 5). The reason being that sections 2(3) and (6) of the Children (Scotland) Act 1995 confers upon the 'contact' parent the right to grant or withhold consent to the child's removal from the United Kingdom.

In *PUW*, judgment of 19 August 2003, Lady Smith decided that a sheriff court had custody rights in relation to the child because the unmarried father of the child who had lodged proceedings in that sheriff court was seeking what would amount to custody rights within the meaning of the Convention. In doing so she was following the decision of the House of Lords in *In re H (A Minor) (Abduction: Rights of Custody)* [2000] 2 AC 29. Lady Smith also decided that in terms of Article 8 of the Convention it is possible for the father to apply for a return order even though it is the court that has the custody rights that have been breached under the Convention.

b) In *D* v *D*, 2002 SC 33, the Inner House of the Court of Session was prepared to proceed on the following basis in determining the question of the 'habitual residence of a child' for the purposes of the Hague Convention: 'habitual residence is a question of fact; that to acquire a new habitual residence it is necessary to spend "an appreciable period of time" in the state concerned; and that while the existence of a settled intention is an important factor, it is not necessary that the settled intention should be to remain in the chosen state permanently or indefinitely but that the intention need only be to remain there for some time.' (at page 40)

In this case the mother, father and child were all resident in Germany but had moved to Switzerland just 5 weeks before the mother took the child to Scotland. The court decided that at the time when the mother took the child to Scotland the child was not habitually resident in Switzerland. The father and mother had no shared intention of having their habitual residence in Switzerland. The court said: 'the period spent in Switzerland was substantially too short and the conditions and circumstances of the parties' living there were too unsettled and uncertain to justify an inference that anyone, particularly the child, had acquired a habitual residence there' (at page 40.)

c) [No answer]

d) In *AJ* v *FJ*, cited above, the Inner House adopted the test set forth in *Friedrich* v *Friedrich* (78F 3d 1060 (1996)) that 'if a person has valid custody rights to a child under the law of the country of the child's habitual residence, that person cannot fail to "exercise" those custody rights under the Hague Convention short of acts that constitute clear and unequivocal abandonment of the child.'

e) In *J*, judgment of 23 May 2002, Lady Paton decided that even though the child had been in Scotland for just over 2 years he should be returned to Canada. She applied the test established by the Inner House in *Soucie* v *Soucie*, 1995 SC 134 at 139, 'in considering the proviso to Article 12 what must be clearly shown is that the settlement in a new environment is so well established that it overrides the otherwise clear duty of the court to order the return of the child.' Despite the fact that the 5 year old child was settled in Scotland and in a primary school there Lady Paton felt the inevitable disruption of sending him back to Canada did not outweigh the primary purpose of the Convention in returning the child to his habitual residence before the wrongful removal.

f) [No answer]

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g) The Inner House of the Court of Session, overturning the Lord Ordinary, upheld a claim by the mother that the father had consented to her leaving Australia with their two children. In doing so the Inner House followed the leading English authorities on 'consent' in the context of the Hague Child Abduction Convention. (See *KT* v *JT*, judgment of 15 October 2003). Lord President Cullen set out the test to be applied at paragraph 14 of his judgment: 'the onus is on the parent who asserts that the removal was with the consent of the other parent to prove that this was so. Proof is on the balance of probabilities, the cogency of the evidence which is required depending on the degree of improbability that consent has been given… The consent has to be real, positive and unequivocal.'

In this case the Inner House found that on the balance of probabilities the father had consented to the mother taking the children to Scotland even though he hoped they would all return. This was because he admitted that when, before she left Australia, his wife said to him that she might get a house and a job and stay in Scotland he had replied: 'If that's what you've got to do to make you happy, then that's what you've got to do'. This was also against a finding that the father accepted that the children should live with their mother.

h) [No answer]

i) [No answer]

j) In *PW* v *AL or W*, judgments of 12 June and 7 August 2003, the Inner House of the Court of Session decided that it was not an intolerable situation for children to return to Australia without their mother (due to her not being able to get a visa to go back) but that it would be appropriate to delay execution of the order to return for a short period to ensure that the mother could obtain a visa to return. In this case the Court of Session expressed some concerns that Australia was only able to issue the mother a tourist visa that would not permit her children to have schooling in Australia or provide non-emergency medical care for her and her children.

k) In *W* v *W*, judgment of 12 June 2003, 2003 SLT 1253, the Inner House of the Court of Session decided that although a nine and a half year old child was of sufficient age and maturity to have her views heard it was not appropriate to take account of her views. The decision whether or not it is 'appropriate to take account of a child's views' being one that judges in Scotland take in any case where the child is old enough to have his or views heard. It is only if it is appropriate to take account of the child's views and the child objects to being returned that the court should then exercise its discretion under Article 13 whether or not to return the child against that child's wishes. In doing so the Inner House expressly adopted the same approach as the English Court of Appeal in *Re T (Abduction: Child's Objection to Return)* [2000] 2 FLR 192. The matters to establish are as follows: '(1) Whether the child objects to being returned to the country of habitual residence. It is also necessary to ascertain *why* the child objects. (2) The age and degree of maturity of the child. The child has to know what has happened to him or her, and to understand that there is a range of choice available. The child has to have gained a level of maturity at which it can make a decision independent from parental influence. (3) Once a discrete finding as to age and maturity has been made, it is necessary to decide whether it is appropriate to take account of the child's views. That requires an assessment of the strength and validity of those views.' Article 13 requires the courts to determine whether a child 'has attained an age and degree of maturity *at which* it is appropriate to take account of its views' (emphasis added), which suggests that the courts should be asking whether the child is old enough and mature enough for the court to regard it as appropriate to take account of its views, and not be testing the appropriateness of the child's views in isolation.

The approach of the Inner House was followed by Lord Menzies in I.I, judgment of 13 February 2004 and by Lord Hardie in *W*, judgment of 13 August 2003. In both cases the Lord Ordinary decided that it was not appropriate to take account of the views of the child (in the former aged 10 and in the latter aged 12).

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However, the correctness of that approach was questioned in *M Petitioner 2005 SALT 2* because it seemed to be envisaged that a qualitative assessment of the child's views would enter into the assessment of whether he was of an age and maturity that his views should be taken into account. Age and maturity should, rather, be considered as a discrete issue, separate from that of whether or not the child's views on the matter of return are such as should be given effect to, something which did not arise until the court was considering whether or not to exercise its discretion *after* having decided that the child was of an age and maturity that his views could be considered.

l) [No answer]

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

The replies below relate to the jurisdiction of England/Wales; the courts in Northern Ireland would have regard to the case law in England and Wales in relation to the interpretation on Convention concepts.

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

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Inchoate rights of custody:

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

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

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

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

Generally:

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

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

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

c) [No answer]

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

e) [No answer]

f) [No answer]

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

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

i) Article 13(b) names three risks, interlinked by the use of the word "otherwise". The proper course for the court when considering an Article 13(1)(b) defence is to consider the grave risk of harm as a discrete question and then consider the Article in the round, asking if the risk of harm was established to the extent that led one to say that the child would be placed in an intolerable situation if returned: Re S (A Child) [2002] EWCA Civ 908, INCADAT HC/E/UKe 469.

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

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

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

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

k) Please see the reply to question 9.

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

l) Please see the reply to question 10.

United States – Etats Unis :

Below, we describe how some courts around the United States are interpreting key Convention concepts. However, it is important to note that U.S. state and federal district courts are only required to follow the holdings of federal circuit cases in their own circuit. Different circuits are approaching these cases differently, and the U.S. Supreme Court has so far declined to hear any Convention cases. Therefore, none of the cases described below can be said to accurately reflect the settled law of the land.

a) There is currently a split among circuits on whether to interpret *ne exeat* clauses as rights of custody or not. The Second Circuit defines a *ne exeat* provision as merely a veto on the custodial parent's right to expatriate the child. See *Croll v. Croll*, 229 F.3d 133 (2d Cir. 2000). The *Croll* court found that "negative rights," such as those conferred by *ne exeat* clauses, do not constitute custody rights under the Convention. Thus, the *Croll* court held that it could not order a return where the custodial parent had violated a *ne exeat* clause because, in spite of that clause, the other parent only had access rights, which could not be enforced through the Convention. The Second Circuit's reasoning in Croll has been adopted by the Fourth and Ninth circuits. See *Fawcett v. McRoberts*, 326 F.3d 491 (4th Cir. 2003) and *Gonzalez v. Gutierrez*, 311 F.3d 942 (9th Cir. 2002). The Tenth Circuit held that it is the law of the country in which the child was habitually resident that governs decisions as to whether custody rights existed at the time of removal. *Shealy v. Shealy*, 295 F.3d 1117 (10th Cir. 2002). Thus, the *Shealy* court found that a removal was not wrongful based on a German court's decision that a German order with a *ne exeat* provision had not been violated by the taking parent.

The Eleventh circuit, on the other hand, disagrees with *Croll*. In *Furnes v. Reeves*, 362 F.3d 702 (11th Cir. 2004), the Eleventh Circuit found that a father who had access rights under a Norwegian order that included a *ne exeat* provision, did have rights of custody under the Convention. See also *Lalo v. Malca*, 318 F. Supp. 2d 1152 (S.D. Fla. 2004), where the court held that an award of *patria potestas* coupled with the father's *ne exeat* right gave the father sufficient rights of custody under the Convention to bring a Hague petition.

There have also been conflicting decisions among Circuit courts as to whether the legal concept of *patria potestas* confers right of custody within the meaning of the Convention. The Ninth Circuit held that *patria potestas* does not confer rights of custody upon the non-custodial parent where a competent Mexican court has already decided the rights and obligations of both parties. However, the First and Eleventh Circuits have found that *patria potestas* does give a father rights of custody sufficient to support a Hague petition. See, *Whallon v. Lynn*, 230 F.3d 450 (1st Cir. 2000) and *Lalo v. Malca*, 318 F. Supp. 2d 1152 (S.D. Fla. 2004).

b) *Mozes v. Mozes*, 239 F.3d 1067 (9th Cir. 2001) is the leading case that defines the test to determine habitual residence. In order to acquire a new habitual residence, there must first be a shared parental intention to abandon the previous habitual residence. Second, there must be an actual change in geography combined with the passage of a period of time sufficient for acclimatization. The Third Circuit has held that the intent to abandon a former habitual residence for proscribed term could nevertheless constitute a change in habitual residence. In this case, the court ordered a very young child returned to Canada, the new habitual residence, where the parents had signed a custody agreement that stated that the child would live in Canada with her mother for two years

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and then return to the United States. *Whitting v. Krassner*, 391 F.3d 540 (3rd Cir. 2004). See also, *Koch v. Koch*, 2006 U.S. App. LEXIS 14417 (7th Cir. 2006). The *Whitting* court also held that, when the child is very young, acclimatization is not as important as the settled purpose and shared intent of the child's parents in choosing a particular habitual residence. *Id.*at 550, citing *Feder v. Evans-Feder*, 63 F.3d 217 (3d Cir. 1995). The *Mozes* test for habitual residence has been followed by most circuits that have addressed the issue. See, *Holder v. Holder*, 392 F.3d 1009 (9th Cir. 2004); *Gitter v. Gitter*, 396 F.3D 124 (2nd Cir.). According to the 4th Circuit, habitual residence must be established by a preponderance of the evidence, not "beyond a reasonable doubt." *Humphrey v. Humphrey*, 434 F.3D 243 (4th Cir.)

In *Karkkainen v. Kovalchuk*, 445 F.3d 280 (3d Cir. 2006), the court held that the child's stated desire to stay in the United States and the actions she took to effectuate a change of residence (including enrolling in school in the United States and saying goodbye to teachers and friends in Finland) prior to her retention in the United States demonstrated that she had a "settled purpose" to remain in the United States and that she had become acclimatized to her new home such that it became her new habitual residence. Finding that the U.S. was the child's habitual residence just prior to the retention, the court refused to return the child to Finland. However, the court's refusal to return was not based solely on the child's acclimatization. The court found that the parents had a shared intent to allow their daughter to decide where she would live after spending a summer with her father, and that the record reflected, through expert testimony and the testimony of the child, that the child was both mature and intelligent for her age.

c) In *Cantor v. Cohen*, 442 F.3d 196 (4th Cir. 2006), the Fourth Circuit held that federal courts are not authorized to hear access claims under ICARA. Custody matters are typically handled in state court in the United States. Federal courts do not generally have jurisdiction to hear custody matters. The Convention authorizes federal courts to hear petitions for return based on wrongful removals or retentions. Removals or retentions are wrongful only if they are in breach of rights of custody. Therefore, federal courts have reasoned that they only have jurisdiction to hear Hague petitions seeking to enforce rights of custody, not rights of access. Access claims must be filed in state court. The *Cantor* court held that ICARA, the implementing legislation for the Convention in the United States the U.S. District Court, also limited the jurisdiction of federal courts to hearing return claims based on custody rights, not access claims.

While the Convention provides for the judicial remedy of return when there has been a wrongful removal or retention, it does not provide for return as a remedy for a violation of access rights. The First Circuit, in *Whallon v. Lynn*, 230 F.3d 450 (1st Cir. 2000), asserts that the remedies for violating access rights are less drastic than return and could include ordering the abducting parent to reimburse the other parent for expenses incurred in exercising his or her rights of access. The *Whallon* court's suggestions for potential remedies short of return that can be ordered for a violation of access rights has been cited favorably by the Fourth Circuit in *Katona v. Kovacs*, 148 Fed. Appx. 158 (4th Cir. 2005)

Also, see discussion in question # 13(a) of cases determining whether access orders with a *ne exeat* provision are rights of custody.

d) U.S. courts have found that the test for finding the non-exercise of custody rights under the Hague Convention is stringent. If a person has valid custody rights under the laws of the country of a child's habitual residence, the court will not find non-exercise of such rights absent acts that constitute clear and unequivocal abandonment of the child. See *Baxter v. Baxter*, 423 F.3d 363 (3rd Cir. 2005) *citing Friedrich v. Friedrich*, 78 F.3d 1060 (6th Cir. 1996) and *In re Application of Adan*, 437 F.3d 381 (3rd Cir. 2005). The Eleventh Circuit has found that courts should liberally find that a parent has exercised his or her custody rights if they have kept or sought to keep any sort of regular contact with his or her child. See, *Giampaolo v. Erneta*, 390 F. Supp. 2d 1269 (N.D. Ga. 2004); *In re Cabrera*, 323 F. Supp. 2d 1303 (S.D. Fla. 2004).

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e) The Second Circuit found that whether or not a child has settled in its new environment can be considered as one factor in the Article 13(b) analysis to help determine whether or not the child is at gave risk of harm if it is returned to its habitual residence. *Blondin v. Dubois*, 238 F.3d 153, 164 (2d Cir. 2001). However, the court takes care to emphasize that the question of whether the child is settled is not sufficient without other evidence of grave risk to refuse to return a child. The court contrasts its Article 13(b) analysis with Article 12, where the court may refuse to return a child based solely on the facts that the child is well settled and more than a year has elapsed between the abduction and the petition for return. Several courts have followed *Blondin* and considered the well settled argument as a factor to be weighed in determining whether grave risk applies. See *Danaipour v. McLarey*, 286 F.3d 1 (1st Cir. 2002) and Anderson v. Acree, 250 F. Supp. 2d 876 (S.D.Ohio 2002).

See discussion of *Belay v. Getachew*, 272 F.Supp. 2d 553 (D.Md. 2003) in response to question # 13(f) – where a judge ordered a child returned even though she had become well-settled in her new home because the child only became well settled because of the wrongful actions of the taking parent.

f) The U.S. Supreme Court has stated that, unless Congress states otherwise, equitable tolling should be read into every federal statute of limitations. *Young v. U.S.*, 535, U.S. 43, 122 S.Ct. 1036, 1040, 152 L.Ed. 2d 79 (2002). Several courts have held that equitable tolling may be applied to ICARA petitions for the return of a child where the parent removing the child has secreted the child from the parent seeking the return. The courts reason that if they did not permit equitable tolling, the parent who abducts and conceals children for more than a year will be rewarded for this misconduct by creating eligibility for an affirmative defense not otherwise available. The Eleventh Circuit has held that the one year limitation period begins on the date the petitioner discovers the new residence of a child whose whereabouts have been concealed by the other parent. *Furnes v. Reeves*, 362 F.3d 702 (11th Cir. 2004), *Bocquet v. Ouzid*, 225 F. Supp. 2d 1337 (S.D.Fla. 2002); *Mendez Lynch v. Mendez Lynch*, 220 F. Supp. 2d 1347 (M.D.Fla. 2002). In *In re Cabrera*, the father had given the mother permission to take their child from Argentina to the United States for one year. After one year, the father realized that the mother was not returning the child and he began Hague proceedings. The court found that Article 12's statute of limitations should be equitably tolled to the time when the left-behind parent becomes aware of the taking parent's intent to remove or retain the child, providing the child is not settled in its new environment. *In re Cabrera*, 323 F. Supp. 2d 1303 (S.D.Fla. 2004).

In *Belay v. Getachew* a mother abducted her child from Sweden to Colorado and concealed her whereabouts. The father searched for three years before he located them and filed for a return under the Hague Convention. The court determined that the mother wrongfully removed the child, but that she had established that the child was well-settled in its new environment. The court held that although the mother had established the "well-settled" defense, equity mandated that the child be returned because the child only became well-settled as a result of the mother's concealment of their whereabouts. The court held that to allow the Article 12 defense to apply in such a case would essentially be rewarding the behavior that the Convention specifically seeks to deter. *Belay v. Getachew*, 272 F.Supp. 2d 553 (D.Md. 2003).

g) The defenses of consent and acquiescence under article 13(a) are both narrow. The focus in both defenses is on the petitioner's subjective intent. In examining a consent defense, the court must consider what the petitioner actually contemplated and agreed to in allowing the child to travel outside its home country. If a parent's consent was limited or conditional, the court should not find that consent is a defense to return under Article 13. See *Baxter v. Baxter*, 423 F.3d 363 (3rd Cir. 2005), where a petitioner consented to his child being taken to the United States for a visit with his grandparents, but did not consent to the child's permanent relocation to the United States, the Court held that it could not find consent under Article 13.

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h) Generally, courts have held that 13(b) is a narrow defense. In *Danaipour v. McLarey*, 286 F.3d 1 (1st Cir. 2002), the First Circuit applied a strict interpretation to Article 13(b) grave risk claims, stating that "grave" means a more than serious risk. Even evidence of real but sporadic or isolated incidents of physical abuse does not support application of the "grave risk" exception. *McManus v. McManus*, 354 F.Supp. 2d 62 (Ma. 2005), citing *Whallon v. Lynn*, 230 F.3d 450 (1st Cir. 2000). For the grave harm exception to apply, the respondent must cite specific evidence of potential harm to the child upon his return. See *Baxter v. Baxter*, 423 F.3d 363 (3rd Cir. 2005), where a petitioner parent has subsequently relocated, the inquiry into grave risk focuses on the present living situation to which the child would be returned. One court found that where there was evidence of spousal abuse, but the couple has subsequently divorced and there was never any evidence of abuse to the child, there was insufficient evidence to support a finding that returning the child to her habitual residence represented a grave risk of harm to the child. *Belay v. Getachew*, 272 F.Supp. 2d 553 (D.Md. 2003).

Most courts follow *Friedrich v. Friedrich,* 78 F.3d 1060 (6th Cir. 1996), which held that even where there is a grave risk, article 13(b) does not bar return when the State of the habitual residence is capable of protecting the child or where protective undertakings will protect the child. Some circuits go on to state that before a court can deny return based on Article 13(b), it must examine the full range of options that might make possible the safe return of a child to the home country. *Blondin v. Dubois*, 238 F.3d 153, 163 (2d Cir. 2001). The Ninth Circuit found that a lower court erred when it denied a return to Canada based on the children facing a grave risk of psychological harm because the court had failed to consider alternative means of allowing the children to return to Canada without facing a grave risk. See *Gaudin v. Remis*, 415 F.3d 1028 (9th Cir. 2005). See also, *In re Application of Adan*, 437 F.3d 381 (3rd Cir. 2005), where the Third Circuit held that, if the district court found that a grave risk of harm had been proven, the district court must then consider whether Argentine authorities were unable or unwilling to protect the child from harm.

Several circuits have been unwilling to return a child who would be at grave risk of harm on return, even where there are adequate laws available to protect the child in the home country or there are potentially some types of undertakings that could be imposed to keep the child safe. In *Van De Sande v. Van De Sande*, 431 F.3d 567 (7th Cir. 2005), the Seventh Circuit recognized that "comity among nations argues for a narrow interpretation of the 'grave risk of harm' defense," but held that "the safety of the children is paramount." It stated that "[t]o give a father custody of children who are at great risk of harm from him, on the ground that they will be protected by the police of the father's country, would be to act on an unrealistic premise. The rendering court must satisfy itself that the children will in fact, and not just in legal theory, be protected if returned to their abuser's custody." The *Van De Sande* court and the *Danaipour* court (see below) found that, in instances of child abuse, it is less appropriate to order return plus extensive undertakings than to deny the return request.

The First Circuit ultimately disagrees with the idea that all ameliorative measures must be exhausted before a finding of grave risk can be found. The *Danaipour* court first held that it is the obligation of the court in the receiving country (where the return hearing is being held) to adjudicate the grave risk question. Therefore, where an allegation of abuse is made that, if true, would justify application of the Article 13(b) exception, the court must make any necessary predicate findings. In the facts of this case, the court held that it was the duty of the district court in the U.S. to determine if the father had sexually abused his daughter before it could order a return because that information was critical to the determination of whether a return would constitute a grave risk to the child. The circuit court disagreed with the district court's decision to order return, but condition it on the foreign court's entry of an order to do an evaluation of the child. On remand, the district court did find that one of the children was sexually abused by her father. The court determined that returning the children to Sweden would cause great psychological harm to the children, regardless of any possible conditions or undertakings imposed,

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because the children would believe that their return was a sign that they were not believed or were being punished for their disclosures about their father. The First Circuit held that once the district court found that the return of the children would result in grave risk of psychological harm, it had satisfied the Article 13(b) exception and it did not need to make further inquiries into remedies available to the Swedish court or possible undertakings.

A new line of cases is developing where return is denied based on a diagnosis of post traumatic stress disorders (PTSD). These cases depend heavily on the testimony of experts. In the leading PTSD case, the Second Circuit held that where the evidence shows that the mere return of a child to the country where he or she was abused by a parent would trigger PTSD, there are no ameliorative steps that a State can take to protect the child and therefore it is proper to refuse to return the child. *Blondin v. Dubois*, 238 F.3d 153 (2d Cir. 2001).[14] See discussion in the response to question 13(e) above about how the *Blondin* court looked at the child's being well settled in his new environment and the objection of the child to being returned as factors to be considered in its decision of whether a grave risk of harm upon return existed. See also *Elyashiv v. Elyashiv*, 353 F.Supp.2d 394 (E.D.N.Y. 2005) and *Olhuin v. Del Carmen Cruz Santana*, 2005 U.S.Dist. LEXIS 408 (E.D.N.Y. 2005), where courts in the Second Circuit refused to return children to the habitual residence on the basis that their return would trigger PTSD and no special arrangements could effectively mitigate the risk. Other circuits have followed the *Blondin* court's reasoning in denying return on the basis of PTSD, including the 9th Circuit in *Tsarbopoulos v. Tsarbopoulos*, 176 F. Supp. 2d 1045 (E.D.Wash. 2001).

i) See above discussion of Grave Risk cases.

j) In *Danaipour v. McLarey*, 286 F.3d 1 (1st Cir. 2002), the First Circuit stated that it is the policy of the United States to view sexual abuse as an intolerable situation. Courts have held that several factors may combine to form an "intolerable" home life, even when none of the factors alone would move the court to apply the "grave risk" analysis. *Didur v. Viger*, 392 F.Supp.2d 1268, 1272 (D.Kan. 2005), citing *Walsh v. Walsh*, 221 F.3d 204 (1st Cir. 2000).

k) At least one court has refused to return children based on the children's objection, where the testimony of the children, as well as expert testimony, demonstrated that the children were cognitively and emotionally mature. *McManus v. McManus*, 354 F.Supp. 2d 62. The *McManus* court noted that ICARA set a higher bar for establishing a "grave risk" than for establishing the "objection" exception to return. A "grave risk" must be proven by clear and convincing evidence, whereas the children's objection may be established using a preponderance of the evidence.

In *Giampaolo v. Erneta*, 390 F. Supp. 2d 1269 (N.D. Ga. 2004), the court found that a mother had been successful in proving that her 10-year-old daughter objected to being returned to Argentina. The court, however ordered a return in spite of the child's objections. The court considered the child's views, but did not find them determinative in this case.

Also, see analysis of *Karkkainen v. Kovalchuk*, discussed in (b) above, where court refused to return a child who did not want to return to Finland, but where the court used the child's wishes to stay in the United States as part of its analysis to determine whether

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[14] The *Blondin* court took care to emphasize that the testimony offered by an expert on behalf of the taking parent was not controverted. The left behind parent offered plenty of evidence that French authorities would be able to facilitate the safe repatriation of the children, but he did not offer any evidence that refuted the diagnosis of PTSD or refuted the doctor's conclusion that the children would almost certainly suffer a recurrence of PTSD just by returning to the country where the abuse occurred. The court noted in a footnote that its "interpretation of Article 13(b) by no means implies that a court must refuse to send a child back to its home country in *any* case involving allegations of abuse, on the theory that a return to the home country poses a grave risk of psychological harm. Rather, [it reached its] conclusion on the basis of the specific facts presented in this case, and, in particular, on the absence of testimony contradicting [the doctor's] conclusions." *Blondin* at 163, n.12.

the child's habitual residence had changed before her retention in the United States. The court held that the habitual residence had changed prior to the retention and, therefore, there was no wrongful removal.

l) **See question 10***

Uruguay – Uruguay :

No hay desarrollos de particular relevancia.

4. Direct international judicial communication – Communication internationale directe entre autorités judiciaires

Question 14	
Please describe any developments in the area of direct international judicial communication. If your country has responded to the 2002 Questionnaire on direct international judicial communication please describe any developments in this area since your response was made. (The Questionnaire is available on the website of the Hague Conference at: < www.hcch.net > → Child Abduction Section → Questionnaire & Responses).	**Veuillez décrire tout développement intervenu dans le domaine des communications internationales directes entre les autorités judiciaires. Si votre pays a répondu au questionnaire de 2002, veuillez nous faire part de tout nouveau développement dans ce domaine depuis votre réponse de 2002 (le questionnaire est disponible sur le site Internet de la Conférence de La Haye à l'adresse < www.hcch.net >→ Espace enlèvement d'enfants → Questionnaires & réponses).**

Argentina – Argentine :

Hasta el momento no se ha desarrollado el tema de las comunicaciones entre los Jueces de Enlace.

Australia – Australie :

The concept of international judicial co-operation is gradually being seen in Australia as one way to ensure the Hague Convention operates more effectively. The efforts of Justice Kay of the Family Court of Australia as Hague Convention Liaison judge have increased an awareness of judicial cooperation in Hague matters. This role does not preclude other Judges from initiating contact with judges in other jurisdictions to co-operate in matters.

In a recent case in Queensland, Justice Barry took the opportunity to liaise with a Dutch Judge in a matter before him. This followed the previous invitation of Justice Kay to provide contacts for the Australia Family Court judicial officers seeking to make contact with overseas judicial officers. In this particular case Justice Barry sought contact in an attempt to gain a greater understanding of the relevant domestic laws in that country with the view to making return orders.

Austria – Autriche :

No developments since the 2002 – reply.

Canada – Canada :

At its September 2006 Annual Meeting, the Canadian Judicial Council approved the establishment of a "Liaison Judge International Parental Child Abduction Special Committee" whose only members will be the two appointed liaison judges for Canada as

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part of the international network of liaison judges promoted by the Fourth Special Commission of The Hague Conference on Private International Law regarding the *Convention on the Civil Aspects of International Child Abduction*.

The Canadian Judicial Council also appointed Mr. Justice Jacques Chamberland (Quebec, civil law jurisdiction) and Madam Justice Robyn M. Diamond (rest of Canada, common law jurisdiction) as the two liaison judges for Canada.

The "Liaison Judge International Parental Child Abduction Special Committee" is to report once a year, in time for its annual meeting, to the Executive Committee of the Canadian Judicial Council.

The Canadian Judicial Council was created in 1971, with a broad legislative mandate in the area of judicial governance. The main objective of the Council is still the same today – to promote efficiency and uniformity, and to improve the quality of judicial service in all superior courts in Canada.

The Canadian Judicial Council is composed of the chief justices and associate chief justices of Canada's superior courts. The Council is chaired by The Right Honourable Beverley McLachlin, Chief Justice of Canada (www.cjc-ccm.gc.ca).

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Saskatchewan
In some circumstances, a foreign judge has directly communicated with a Saskatchewan judge. This can be important where a judge is ordering the return of children on the condition or understanding that legal proceedings will be continued in the jurisdiction of habitual residence.

Quebec
In 1996, a Quebec Superior Court judge telephoned the California judge overseeing divorce proceedings between parties in California before ordering the children returned to the United States. Apparently, the Quebec judge wanted clarification of 1. the scope of an interim order made several weeks earlier by the California judge and 2. what would happen once the children arrived back in California. The docket shows that the California judge answered the Quebec judge's questions in a letter. The return order issued by the Superior Court was appealed to and upheld by the Court of Appeal (reported in [1996] R.D.F. 512 (Superior Court) and Droit de la Famille – 2454, [1996] R.J.Q. 2509 (Court of Appeal).

No similar situation has arisen since.

**

Lors de sa réunion de septembre 2006, le Conseil canadien de la magistrature a approuvé la mise sur pied d'un "Comité spécial des juges liaison en matière d'enlèvement international d'enfants par un parent", dont les seuls membres seront les deux juges liaison désignés pour le Canada comme faisant partie du réseau international de juges liaison, lequel a été soutenu par la quatrième Commission spéciale de la Conférence de la Haye de droit international privé sur le fonctionnement de la Convention de la Haye sur les aspects civils de l'enlèvement international d'enfants.

Le Conseil canadien de la magistrature a également désigné M. le juge Jacques Chamberland (Québec, juridiction de droit civil) et Mme le juge Robyn M. Diamond (reste du Canada, juridictions de common law) comme étant les deux juges liaison pour le Canada.

Le "Comité spécial des juges liaison en matière d'enlèvement international d'enfants par un parent" devra faire rapport une fois par année au Comité exécutif, lors de la réunion annuelle de ce dernier.

Le Conseil canadien de la magistrature fut créé en 1971, avec un vaste mandat législatif en matière de gouvernance judiciaire. Le principal objectif du Conseil est le même aujourd'hui encore, à savoir de promouvoir l'efficacité et l'harmonisation et d'améliorer la qualité des services judiciaires dans toutes les cours supérieures du Canada.

Le Conseil canadien de la magistrature est compose des juges en chef et des juges en chefs associés des cours supérieures du Canada. Le Conseil est présidé par la très honorable Beverley McLachlin, juge en chef du Canada (www.cjc-ccm.gc.ca).

Saskatchewan
Dans certains cas, un juge étranger a communiqué directement avec un juge de la Saskatchewan. Cela peut être important lorsqu'un juge ordonne le retour à la condition que des procédures judiciaires se poursuivent dans le ressort de la résidence habituelle.

Québec
En 1996, un juge de la Cour supérieure du Québec a communiqué par téléphone avec le juge californien saisi des procédures de divorce opposant les parties en Californie avant d'ordonner le retour des enfants aux États-Unis. Apparemment, le juge québécois voulait obtenir des précisions 1) sur la portée d'une ordonnance intérimaire prononcée quelques semaines plus tôt par le juge californien et 2) sur la suite des événements à partir du moment où les enfants seraient de retour en Californie. Le dossier révèle que le juge californien a répondu par lettre aux interrogatoires du juge québécois. L'ordonnance de retour prononcée par la Cour supérieure a été portée en appel puis confirmée par la Cour d'appel (rapportée à [1996] R.D.F » 512 (Cour supérieure) et Droit de la Famille – 2454, [1996] R.J.Q. 2509 (Cour d'appel).

Depuis, aucune autre situation analogue ne s'est produite.

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Chile – Chili :

Aún no se ha designado a un Juez de enlace para Chile, sin embargo esta Autoridad Central está haciendo las gestiones pertinentes para que sea designado uno, de esperarse, en breve plazo.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

There are no significant developments.

China (SAR Macao) – Chine (RAS Macao) :

The MSAR answers to the 2002 Questionnaire and there is no further development.

Colombia – Colombie :

Debe insistirse ante el Consejo Superior de la Judicatura para que esta comunicación (telefónica – vía Internet – mail) entre jueces de familia de Colombia y los competentes en los otros países que hayan adherido al Convenio sea efectivamente una herramienta que de celeridad a los trámites.

Costa Rica – Costa Rica :

Por motivos obvios de separación de poderes, esta pregunta no compete ser respondida por esta Autoridad Central. Es decir, la información pertinente debe ser solicitada al Poder Judicial de la República de Costa Rica.

Cyprus – Chypres :

Cyprus is one of the first three countries who appointed a liaisn judge in terms of direct international communication.

Czech Republic – République tchèque :

Not in the field of the Child Abduction Convention yet.

Denmark – Danemark :

Please see answer to question 5 and our previous answer from 2002.

Ecuador – Equateur :

No hay comunicación judicial internacional directa.

El Salvador – El Salvador :

[Sin respuesta]

Finland – Finlande :

[No answer]

France – France :

L'autorité centrale française rappelle que la communication entre les autorités judiciaires s'inscrit dans le cadre de la mise en oeuvre des instruments et conventions existantes en la matière.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

[No answer]

Iceland – Islande :

No comment.

Ireland – Irlande :

This office has not completed the 2002 Questionnaire on direct international judicial communication.

Israel – Israël :

The President of Israel's Supreme Court has been approached with respect to the idea of appointing a liaison judge in Israel. It is hoped that discussions on the matter will take place in the near future. In the interim, the Israeli Central Authority has encouraged and facilitated such communication where it was felt to assist in clarifying particular issues, such as questions of law.

Italy – Italie :

L'Autorité Centrale italienne s'est dotée du site Internet (voir question 3).

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Latvia – Lettonie :

At the Latvia's Court there was (is) heard only one case under Convention, wherewith direct international judical communication isn't developed at present.

Lithuania – Lituanie :

On 1 May 2004 Lithuania became a Member State of the European Union. In the pre-accession period Lithuania undertook measures to harmonise its national law with the EU *acquis* and assumed obligations under international treaties covered by the EU *acquis*. The following EU legal acts governing legal cooperation in criminal, civil and commercial cases became binding upon Lithuania:

1. 1959 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union established by the Council in accordance with Article 34 of the Treaty on European Union (ratified by law No. IX-2007 on 5 February 2004). Took effect on 23 August 2005 and is applied among the EU Member States that have ratified it.
2. Protocol to the 1959 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union established by the Council in accordance with Article 34 of the Treaty on European Union (ratified by law No. IX-2007 on 5 February 2004).
3. Council Regulation of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial cases (EC) No. 1348/2000.
4. Council Regulation of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial cases (EC) No. 1206/2001.

Furthermore, the Additional Protocol to the 1959 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union took effect with respect to Lithuania on 19 March 2004.

These acts enable judicial authorities of the Republic of Lithuania to directly liaise with foreign judicial authorities, which results in speedier and more effective legal cooperation.

Malta – Malte :

Both Judges serving in the Family Court attended the Malta II Conference, where this subject was brought up, and they are both aware of the possibility and the benefits of direct communication between judges.

Mexico – Méxique :

[Sin respuesta]

Monaco – Monaco :

Sans objet.

Netherlands – Pays-Bas :

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

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New Zealand – Nouvelle Zélande :

Principal Family Court Judge Boshier recently submitted an article on direct judicial communication, which is to be published in the Hague Conference Judges' Newsletter. The article gives recent examples of such communication emanating from New Zealand.

Nicaragua – Nicaragua :

A la fecha, a la Autoridad central de Estado de Nicaragua, no se le ha solicitado el envió de este formulario.

Panama – Panama :

Actualmente no existe comunicación judicial directa, por lo que se espera que el proyecto de red de jueces pueda implementarse de manera eficaz.

Paraguay – Paraguay :

Estamos en ejercicio de la Autoridad Central desde diciembre de 2004, no disponemos de ningún material que nos permita conocer algún tipo de iniciativa o gestión que se haya realizado en la anterior administración.

Poland – Pologne :

Poland supports the idea of further developments in the area of communication between the courts in different countries. The number of cases in Poland in which such contacts take place is constantly increasing not only for legal but also for factual reasons. It should be noted that the Council Regulations (EC) introduced direct communication between the courts in the EU member states regarding service of documents, hearing the evidence or performing any other actions in the proceedings for the return of a child. The development of the European Judicial Network in civil and commercial matters as well as the Polish internal network including judges constituting links for transmission of the information and court officers, who specialize in cases regarding the international conduct of legal transactions is here essential. Moreover, the constant development of the communication between the Polish courts is to a great extent facilitated by the wider and easier access to the modern means of communication such as the Internet, Fax, telephone or videoconference. An important factor is also the increasing number of Polish authorities officers who have a command of at least one foreign language, which is highly appreciated by the Polish authorities. It should also be noted that the Polish Central Authority in the Ministry of Justice, the duties of which are performed by the family judges, remains in a constant and direct contact with individual Polish courts and provides aid and advice in contacting the right institutions, transmitting, obtaining and exchanging all the necessary information.

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It needs to be mentioned, however, that the constant development of the communication between the courts cannot infringe on the independence of judges.

Portugal – Portugal :

Only a few direct communications are made through the European Judicial Network in Civil and Commercial Matters.

Romania – Roumanie :

We hold no information regarding direct communication among judicial authorities.

Slovakia – Slovaquie :

No developments in the field of the Child Abduction Convention yet.

South Africa – Afrique du Sud :

No developments in this regard.

Spain – Espagne :

En el área de las comunicaciones judiciales internacionales directas, en España está plenamente desarrollada y operativa la Red Judicial Española de Cooperación Judicial Internacional que presta apoyo directo a los jueces españoles en cuestiones de índole internacional. Igualmente está operativa la Red Judicial Europea Civil y Mercantil con diversos puntos de contacto. España tiene igualmente sus representantes en INCADAT. No existe creada ni desarrollada una red de jueces de enlace para el ámbito de la Conferencia de La Haya. En concreto la Red Judicial Española de Cooperación Judicial Internacional, REJUE, creada por el Acuerdo Reglamentario 5/2003, del Consejo General del Poder Judicial, realiza una labor en materia de cooperación judicial internacional, con asistencia a los Juzgados y Tribunales Españoles, para una correcta aplicación de los Tratados Internacionales. Existen Puntos de Contacto Institucionales, Técnicos, Miembros de la Red, y Colaboradores. Independientemente de lo antes expuesto, en relación con la Red Judicial Europea en materia Civil, existen cuatro Puntos de Contacto en España, dos en el Consejo General del Poder Judicial y dos en el Ministerio de Justicia (Subdirección general de Cooperación Jurídica internacional) para proporcionar información y atender consultas de las autoridades judiciales en materias de índole civil, entre las que se incluye la sustracción de menores. Existe un Convenio entre el Reino de España y el Reino de Marruecos, sobre asistencia judicial, reconocimiento y ejecución de resoluciones judiciales en materia de derecho de custodia y derecho de visitas y devolución de menores, hecho en Madrid el 30 de mayo de 1997. El papel activo en la ejecución de las decisiones lo tienen : 1. La Autoridad Central: Ministerio de Justicia. 2. Los Juzgados de Primera Instancia y de Familia, cuya relación y direcciones figuran en el ATLAS JUDICIAL CIVIL, http//europa .eu.int/comm/justice-homejudicialatlascivil, 3. Fiscalía e 4. INTERPOL

Sweden – Suède :

It is preferable with direct international judicial communication, when it can be assumed that the procedures will go faster. However, the negative part of this is the language obstacles that may occur. This can also lead to misunderstandings and consequently delay the process.

Switzerland – Suisse :

[Pas de réponse]

United Kingdom (Scotland) – Royaume Uni (Écosse) :

The Central Authority for Scotland has appointed a Hague Liaison Judge and has also stipulated that all direct judicial communication should be fully documented and made available to the parties of a particular case. Ideally, the communication should be made in the presence of the parties' representatives.

As indicated by Lord Justice Thorpe, judges from all UK jurisdictions including Scotland, have participated in essential meetings with members of the judiciary of Pakistan and Egypt. Scotland's Hague Liaison judge believes that the existence of the protocol with Pakistan is proving to be a useful tool in cases of child abduction. To date, the Central Authority for Scotland has had very limited dealings with the UK/Pakistan Protocol. However, it fully welcomes this as a positive step forward in providing a useful mechanism for returning children in non-Convention cases.

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United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

In January and September 2003 the Judges of the United Kingdom entered into an agreement with the Judges of Pakistan (generally known as the Pakistan Protocol). Essentially the protocol introduces a jurisdictional rule to determine which state has primary jurisdiction and ensure the reciprocal enforcement of the orders of the primary jurisdiction. The protocol also provides for the appointment of a liaison judge for each state. Internally all Anglo/Pakistani cases are reported to the Liaison Judge in London and, where appropriate, referred to the Liaison Judge in Islamabad for his assistance. Some fifty cases a year are reported internally. In March 2006 the operation of the protocol was reviewed at a further meeting between the judges of the United Kingdom and the judges of Pakistan. A number of refinements of the protocol were agreed.

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

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

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

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

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

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United States – Etats Unis :

The National Center for Missing & Exploited Children (NCMEC) is in the process of developing a network of liaison judges (the Judicial Advisory Council) to facilitate at the international level communications and cooperation between judges and to assist in ensuring the effective operation of the Hague Convention. The main purposes of the Judicial Advisory Council will be: (a) International Judicial Communication and Outreach; (b) Domestic Judicial Education and Outreach; (c) Domestic Implementing Legislation Analysis and Reform. Because of variation in the U.S. federal system, we have attempted to ensure representation from the judicial circuits where we have the highest volume of Hague Convention cases

NCMEC will administer the Council in cooperation with the Department of State and will connect the appropriate judge with each task or inquiry. Some selected judges are

Spanish-speakers, and NCMEC has access to the AT&T language line, which will allow Judges to communicate in 140 different languages. We have selected a preliminary list of Judges to participate in the Council, but formal invitations have not yet issued to the majority of our invitees. A training program is planned for March 2006.

Uruguay – Uruguay :

Las comunicaciones en los casos de restitución internacional de menores se realizan básicamente a través de la Autoridad Central.

5. Immigration / asylum / refugee matters – Questions en matière d'immigration / de droit d'asile / de réfugiés

Question 15	
Have you any experience of cases in which immigration / visa questions have arisen as to the right of the child and / or the abducting parent to re-enter the country from which the child was abducted or unlawfully retained? If so, how have such issues been resolved?	**Avez-vous connaissance de cas présentant des problèmes d'immigration ou de visa concernant le droit de l'enfant et / ou du parent ravisseur de retourner dans l'Etat où l'enfant a été enlevé ou illicitement retenu ? Dans l'affirmative, comment de tels problèmes ont-ils été résolus ?**

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Argentina – Argentine :

No.

Australia – Australie :

Several matters have given rise to visa/immigration issues for the abducting parent in relation to applications linked to the USA and involved the parent overstaying a visa in the USA. This presents challenges when seeking to negotiate a voluntary return of the parent/child to the USA. Where these issues have arisen the State Central Authority has liaised closely with the USA Consulate about developments in the Hague proceedings. Similarly, the Central Authority has become aware of a process in which the abducting parent can seek to waiver any proceedings against them in the USA pending the resolution of any domestic proceedings undertaken in that country.

An additional example involves the return of an abducting parent and child to Australia. In a recent case, both parents and the child were not Australian citizens but were living in Australia. The mother abducted the child to England. The English Court ordered the return of the child on the basis that the child's habitual residence was Australia. The mother and child returned to Australia. The father is the main visa applicant in Australia. The mother has also been advised that she can not become a permanent resident as she is no longer the partner of the father. The mother is now only on a temporary visa, which does not entitle her to any social security or welfare. The Australian Central authority is currently investigating the options available to the mother in regards to the provision of financial assistance while she is in Australia.

Austria – Autriche :

Austria has no experiences with immigration/visa problems concerning abduction cases.

Canada – Canada :

The mandate of the Consular Affairs Bureau at Foreign Affairs Canada is to assist Canadian citizens and/or Canadian Permanent Residents abroad. Therefore, this Bureau would not assist in the return of children who do not have Canadian citizenship and/or Canadian Permanent Residency status.

Ontario

A recent case has been opened with the Ontario Central Authority (incoming return case), in which the Respondent was in a particular State illegally. The Respondent left from that State to come to Ontario illegally with the child. In the midst of pursuing a voluntary return, it came to Ontario's attention that the Respondent was not allowed back into that State, which is the child's habitual residence. Presently, a case has been opened with the Canadian Border Services Agency, who have placed the Respondent in a pre-removal risk assessment. The Ontario Central Authority has been advised if the Respondent is not able to return to the State after the assessment, the Respondent will be deported to the native Country. In relation to immigration/visa issues, the Ontario Central Authority currently has an active outgoing return case in which the Respondent has agreed to a voluntary return of the child. However, the reciprocating State's passport office is refusing to issue any travel documents for the child. This poses a problem due to the fact that the child cannot travel back to Ontario without proper documentation. This is now delaying the process in returning the child back to the Applicant.

British Columbia

In one case a child was ordered to be returned to his father in New Jersey in order for the court there to determine custody. The order permitted the mother to travel to New Jersey with the child. Serious concerns had been raised about the father and his family's life style. This order was made in spite of the fact that the mother, who had no legal status in USA, might be deported before the conclusion of the custody proceedings.

We currently have a case where a family from Brazil had remained in British Columbia beyond the time permitted in their visitor's visa. The parents separated and the father subsequently abducted the child to the USA. Father was arrested in Philadelphia and he and the child were placed in an immigration detention centre. The mother is required to appear at a hearing under the Immigration Act. It is not known whether she will make a refugee claim. The Hague Application for return of the child was forwarded to the US Central Authority but was not heard. The father and child were returned to Canada by US Immigration on July 5.

Saskatchewan

In one of our cases, the parents and child were all Canadian citizens, but had been habitually resident in the U.S. for some time. When the abducting parent's visa expired, he returned to Canada, and arranged for the child to return to Canada. Her visa expired after she was taken to Canada. The left –behind parent had a current visa. The left-behind parent had been assured over the phone that she would be able to return with the child and tend to any necessary applications once she was home. (It was noteworthy that an American court had already ordered the return of the child to the U.S.) Following a return order, she was not able to take the child, which necessitated her staying in Canada almost a week while the application for a visa for the child was processed on an expedited basis.

In another case involving an application for a return order, the judge order the left-behind parent to provide a written undertaking that he would continue proceedings to obtain a green card and extend whatever status would be available to the child and the abducting parent.

Quebec

Yes. In S.S.-C. *v.* G.C., August 15, 2003, 500-04-033270-035, AZ-50191172 (SOQUIJ) (Chambers), the parents were living in the United States with the three children. The father had a temporary non-immigrant visit allowing him to work there. American immigration authorities considered the status of the mother and the children to be dependent on the father's status. After he wrongfully removed the children, the father withdrew his application for temporary status, which affected the status of both the mother and the children in the eyes of American authorities. The Quebec judge presiding over the application for return of the children heard American immigration experts

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explain that the mother and children would not really have any trouble going back to the United States and staying there long enough for the children to finish the school year and the courts to rule on custody of the children.

In a new case referred to us by the United Kingdom Central Authority in January 2006, we discovered that the child (whose father is English) and the mother had been deported from the United Kingdom under that country's *Immigration Act, 1971*. The application was denied by the Quebec Central Authority under Article 27 of the Hague Convention.

In L.Y.P. *v.* M.E., December 15, 2004, 500-04-037577-047, AZ-50287571 (SOQUIJ), the mother refused to return the three children to the United States. Checks with the Quebec Central Authority done at the request of the judge hearing the case revealed that the family was "tolerated" by American immigration authorities because the children were born in the United States. The children were ordered returned. However, the mother notified American authorities of the situation, and they refused to allow the father to enter the country when he tried to return to the United States with the children. The father has been living in Quebec since then, and the parties have come to an agreement on custody.

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Le mandat du Bureau des affaires consulaires du ministère des Affaires étrangères du Canada est de fournir de l'assistance aux citoyens et aux résidents permanents canadiens à l'étranger. Par conséquent, le Bureau ne fournira pas d'assistance aux enfants enlevés qui ne possèdent pas la citoyenneté canadienne ou le statut de résident permanent canadien.

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Ontario
L'Autorité centrale de l'Ontario a récemment ouvert un nouveau dossier (demande de retour provenant de l'étranger) dans une affaire où l'intimé se trouvait illégalement dans un certain État. L'intimé avait quitté cet État pour venir illégalement en Ontario avec l'enfant. Au cours des démarches faites en vue d'obtenir le retour volontaire de l'enfant, l'Ontario a appris que l'intimé n'avait pas le droit de retourner dans l'État en question, qui est le lieu de résidence habituelle de l'enfant. À l'heure actuelle, on a ouvert un dossier auprès de l'Agence canadienne des services frontaliers, qui a procédé à une évaluation du risque préalable au renvoi. L'Autorité centrale de l'Ontario a été avisée que si l'intimé ne parvient pas à retourner dans l'État en question, il sera renvoyé dans son pays d'origine. Pour ce qui concerne les questions d'immigration / de visas, l'Autorité centrale de l'Ontario a actuellement un dossier actif relatif à une demande de retour faite à l'étranger dans lequel l'intimé a convenu de raccompagner volontairement l'enfant. Cela pose problème en raison du fait que l'enfant ne peut pas revenir en Ontario sans la documentation adéquate. Cela retarde maintenant le processus de retour de l'enfant auprès de la partie requérante.

Colombie-Britannique
Dans une affaire, on a ordonné à un enfant de retourner auprès de son père au New Jersey afin que le tribunal de ce ressort statue sur la garde. L'ordonnance permettait à la mère d'accompagner l'enfant au New Jersey. De sérieuses préoccupations avaient été soulevées quant au style de vie du père et de sa famille. Cette ordonnance a été rendue en dépit du fait que la mère, qui n'avait aucun statut légal aux États-Unis, pourrait être déportée avant la fin de la procédure relative à la garde.

Nous avons actuellement un cas où une famille du Brésil est demeurée en Colombie-Britannique au-delà du délai permis aux termes d'un visa de touriste. Les parents se sont séparés et le père a ensuite emmené illicitement l'enfant aux États-Unis. Le père a été arrêté à Philadelphie et lui et l'enfant ont été placés dans un centre de détention des services d'immigration. Le père et l'enfant pourraient être renvoyés soit au Brésil soit au Canada. La mère doit se présenter prochainement à une audience en vertu de la *Loi sur l'immigration et la protection du statut de réfugié*. On ne sait pas si elle revendiquera le

statut de réfugié. La demande de retour en vertu de la Convention de La Haye a été transmise à l'Autorité centrale des États-Unis. On ne sait pas encore si le tribunal américain se déclarera compétent pour statuer sur l'affaire et rendra une ordonnance ou si l'enfant peut être raccompagné au Canada dans ces circonstances.

Saskatchewan
Dans un de nos dossiers, les parents et l'enfant étaient tous des citoyens canadiens, mais ils résidaient habituellement aux États-Unis depuis un bon moment. Lorsque le visa du parent ravisseur a expiré, il est revenu au Canada et il a pris des dispositions pour que l'enfant revienne au Canada. Le visa de l'enfant a expiré après son retour au Canada. La mère avait un visa en cours de validité. On lui avait assuré au téléphone qu'elle pourrait revenir avec l'enfant et faire toutes les demandes nécessaires une fois rentrée. (Il convient de noter qu'un tribunal américain avait déjà ordonné le retour de l'enfant aux États-Unis.) À la suite de l'ordonnance de retour, elle n'a pas pu prendre l'enfant, et elle a donc dû rester au Canada pendant près d'une semaine pendant que l'on traitait à titre urgent la demande de visa pour son enfant.

Dans une autre affaire relative à une demande de retour, le juge a ordonné au parent requérant de s'engager par écrit à poursuivre la procédure en vue d'obtenir un visa de travail et d'étendre à l'enfant et au parent ravisseur tout statut éventuellement accordé.

Québec
Oui. Dans S.S.-C. c. G.C., 15 août 2003, 500-04-033270-035, AZ-50191172 (SOQUIJ) (Chambers). Les parents vivaient aux États-Unis avec les 3 enfants. Le père possédait un visa temporaire de non-immigrant lui permettant d'y travailler. Du point de vue des autorités américaines de l'immigration, le statut de la mère et des enfants dépendait de celui du père. Suite au déplacement illicite des enfants par le père, celui-ci retira sa demande de statut temporaire, affectant d'autant le statut de la mère et des enfants auprès des autorités américaines. Le juge québécois saisi de la demande de retour des enfants a pu entendre des experts américains en immigration lui expliquer que la mère et les enfants n'auraient pas vraiment de difficultés à y retourner et y rester le temps que les enfants terminent l'année scolaire et pour que les tribunaux décident de la garde des enfants.

Dans une nouvelle affaire qui nous était transmise par l'Autorité centrale du Royaume-Uni en janvier 2006, nous avons découvert que l'enfant (né d'un père anglais) et la mère avaient été expulsés du Royaume-Uni en application de leur Immigration Act 1971. Cette demande a été refusée par l'Autorité centrale du Québec en application de l'article 27 de la Convention de La Haye.

Dans L.Y.P. c. M.E., 15 décembre 2004, 500-04-037577-047, AZ-50287571 (SOQUIJ), la mère refusait de retourner les 3 enfants aux USA. Des vérifications faites par l'Autorité centrale québécoise, à la demande du juge qui entend cette cause, révèlent que la famille est «tolérée» par les autorités américaines de l'immigration en raison du fait que les enfants y sont nés. Le retour des enfants est ordonné. La mère avise toutefois les autorités américaines de la situation et celles-ci refusent au père l'entrée sur le territoire américain lors de son retour avec les enfants. Depuis, le père réside au Québec et les parties se sont entendues sur la garde.

Chile – Chili :

No.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We do not have experience of such cases.

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China (SAR Macao) – Chine (RAS Macao) :

There is one case which is not yet resolved.

Colombia – Colombie :

Si hemos tenido algunos casos, en especial con los Estados Unidos. Estos han sido resueltos con la cooperación de la Embajada Americana en Colombia.

Existe un caso en el que se reglamentaron las visitas a favor del padre residente en Chile, pero no se han hecho efectivas por que el padre no puede entrar a Colombia ya que fue expulsado de nuestro país. Actualmente las visitas se están cumpliendo con los abuelos paternos y el aplicante a través de apoderado se encuentra realizando los trámites ante las autoridades migratorias para que se le levante el impedimento.

Costa Rica – Costa Rica :

No.

Cyprus – Chypres :

No such experience.

Czech Republic – République tchèque :

We have not such experience yet.

Denmark – Danemark :

No, we do not have such experience.

Ecuador – Equateur :

No.

El Salvador – El Salvador :

No se tiene experiencia con este tipo de casos.

Finland – Finlande :

Central authority of Finland does not have experience on these types of cases.

France – France :

L'autorité centrale française a été confrontée à des situations où le parent vivant en France d'un enfant vivant dans un pays étranger, ne peut pas pour autant s'y rendre, notamment lorsqu'il a déjà séjourné dans ce pays, et en a été expulsé pour y être resté au-delà de la durée maximale à laquelle il était autorisé.

Greece – Grèce :

No.

Guatemala – Guatemala :

[No answer]

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Iceland – Islande :

There is not much experience such cases. In one case a parent had to request a *significant public benefit parole* in the United States through the Icelandic Central Authority. The request was desided quickly and favorably by the US authorities.

Ireland – Irlande :

This office was involved with one case, where a married couple resident in Ireland travelled to Bosnia on holiday. Once there, the father took the mother's passport and those of their three children, to prevent them leaving the country. The mother was able, through the help of the Bosnian police, to get her passport returned. She returned to Ireland and applied under the Hague Convention for the return of her children. The Bosnian courts ordered the return of the children, but the issue of passports needed to be resolved. It was believed that the father had destroyed the children's passports, so this office liaised with the District Court in Dublin for an order to be made dispensing with the need for the father's consent for new passports for the children, who were Irish citizens, and allowing the mother to obtain passports at her request alone.

Israel – Israël :

In a very small number of Hague Convention cases, an abducting parent who has only temporary residence status in Israel has been ordered to return a child to Israel. In such cases, that parent must apply to Israel's Ministry of the Interior and request permanent status to remain in Israel. The parent will, in the interim, be granted temporary status to return to Israel pending custody proceedings in the Israeli court. The permanent status request will be brought before a special committee who, when considering the request, will apply, inter alia, humanitarian considerations. The disposition of the request for permanent status may then be relevant in a custody application or a request for relocation.

The Israeli Central Authority has never experienced a case where a child abducted to another country has been ordered to be returned to Israel but has not been able to re-enter Israel legally.

Italy – Italie :

Aucun cas à signaler.

Latvia – Lettonie :

We do not have such experience.

Lithuania – Lituanie :

The Migration Department under the Ministry of the Interior of the Republic of Lithuania has had no practice in such cases.

Malta – Malte :

There have been no such problems with regard to cases with other State Parties.

Mexico – Méxique :

No.

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Monaco – Monaco :

Non. Toutefois, il est à noter que le Département de l'Intérieur applique des procédures dans le cadre de l'application de la convention de La Haye de 1980 en matière de contrôle aux frontières et de coopération notamment au niveau de la prévention des enlèvements.

Netherlands – Pays-Bas :

Yes, there have been cases in which the abducting parent had problems re-entering the country of habitual residence of the child, because his or her visa had expired.

During legal proceedings or shortly afterwards these problems were solved by providing the abducting parent with all (the information about the) documents (she/he needed to apply for a valid visa.

New Zealand – Nouvelle Zélande :

Yes. The Central Authority liaises with Immigration and Foreign Affairs for information on how to obtain visas. Good co-operation with immigration and our consulate offices.

Nicaragua – Nicaragua :

No se tiene experiencia bajo estas circunstancias.

Panama – Panama :

No.

Paraguay – Paraguay :

No tenemos conocimiento de ningún tipo de experiencia.

Poland – Pologne :

So far none of the cases handled in Poland under the Hague Convention has experienced the problems mentioned in questions 15 to 18. Generally, the cases regarding granting asylum or refugee status are handled in the course of administrative proceedings and remain within the competence of the Ministry of the Interior and Administration. Some decisions concerning minors might also be taken by the Guardianship Court under the Polish law in case of emergency. We have encountered such cases, where one of the parents (a Polish national) was not granted an entry visa although the reason for his visit to another country was seeing his child.

Portugal – Portugal :

No.

Romania – Roumanie :

No.

Slovakia – Slovaquie :

The Slovak CA has not had any such experience by now.

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South Africa – Afrique du Sud :

No such case in our jurisdiction. We know of one abducting who after her return to British Colombia had lost her residency status, which reduced her chances of securing employment there(this is her own version).

Spain – Espagne :

Sí, tenemos un caso sin resolver aún con el Reino Unido. Menor nacido en Reino Unido de padres ecuatorianos. El menor sustraído de España por la madre con pasaporte falso a R.U. El Tribunal británico dicta orden de retorno. El menor no posee pasaporte y la madre se niega a solicitar un pasaporte ecuatoriano. Para solicitar el pasaporte ecuatoriano del menor se exige el consentimiento de ambos padres.

Sweden – Suède :

The Swedish Central Authority has no experiences of cases in which immigration/visa questions have arise as to the right of the child and/or the abducting parent to re-enter the country from which the child was abducted or unlawfully retained.

Switzerland – Suisse :

Oui : de telles difficultés peuvent surgir dans les cas où le parent ravisseur et/ou l'enfant n'ont pas de statut fixe en Suisse (requérant d'asile p.ex.). Une attestation de l'Autorité centrale sur l'existence d'une procédure pendante selon la convention a normalement permis de résoudre le problème. Des problèmes se posent également lorsqu'un enlèvement a entraîné le dépôt d'une plainte pénale ou lorsque le ravisseur peut pour d'autres motifs liés à l'enlèvement ne plus retourner dans le pays d'origine.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

The Central for Scotland has only recent experiences of this in relation to visas. In the case in question the matter was swiftly resolved and was co-ordinated throughout by the Central Authority who dealt with foreign officials to ensure that the parent ordered to return to their country of habitual residence with the child could do so with the minimal amount of delay, given the court order.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

On an occasional basis.

In such circumstances the Central Authorities and the external solicitors liaise with the requesting Central Authority and with relevant government departments and consular authorities to try and resolve such issues.

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

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

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document, although the returning parent/child were not British. The requesting State has not recognised this document for the purpose of entry to the requesting State.

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

United States – Etats Unis :

As part of its obligations under the Hague Convention, the U.S. Central Authority (USCA) facilitates the participation of foreign applicants in Hague proceedings in the United States. When an applicant's presence in the U.S. is required, for a custody hearing or to accompany a minor child, and the applicant is not otherwise eligible for entry, the applicant may be eligible for significant public benefit parole (SPBP). The USCA works with our immigration officials to get the taking parent paroled into the country for the purpose of participating in court proceedings. The parent must first be found ineligible for a visa, then a formal request for parental SPBP should be made through the foreign government office, typically the foreign Central Authority, for transmission to the USCA. The USCA will then assist in presenting the application to immigration authorities here. Although most parole request cases will be decided quickly and favorably, the abducting parent may still be ineligible to enter the United States if, for example, there is a criminal warrant pending for his or her arrest (parental kidnapping warrants not included), if he or she is believed to be a terrorist, or if her or she is completely and totally destitute. In addition, the USCA works with the National Center for Missing and Exploited Children to expedite visa processing where foreign Hague applicants must enter the U.S. on short notice to participate in Hague hearings.

Uruguay – Uruguay :

No.

Question 16	
Have you any experience of cases involving links between asylum or refugee applications and the 1980 Convention? In particular, please comment on any cases in which the respondent in proceedings for the return of a child has applied for asylum or refugee status (including for the child) in the country in which the application for return is to be considered. How have such cases been resolved?	**Avez-vous connaissance de cas présentant des liens entre des demandes de droit d'asile ou de statut de réfugiés et la Convention de 1980 ? Notamment, veuillez fournir des informations concernant les cas dans lesquels le défendeur à la procédure de retour de l'enfant a déposé une demande de droit d'asile ou d'obtention du statut de réfugié (y compris au nom de l'enfant) dans l'Etat où la demande de retour est examinée. Comment ces affaires sont-elles résolues ?**

Argentina – Argentine :

No.

Australia – Australie :

There have been two instances where there has been a link between asylum or refugee applications and the 1980 Convention.

The first concerns a Pakistani couple and child living in Germany as refugees. In 2001 when the child was 13 the mother removed him from Germany to Western Australia without the consent of the father. The Family Court of Western Australia ordered that the child be returned to Germany. Therefore, the father, applied for a visa to enter Australia with the purpose of travelling to Australia to escort his son back to Germany. However

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his visa application was refused. He did not have a right to have the visa refusal decision reviewed. The mother was unwilling to accompany the child the Germany. The Australian Central Authority attempted to make arrangements to return the child in accordance with the orders. The Central Authority liaised with the German Central Authority in attempting to reach an arrangement for the return of the child. However, the father withdrew the application once the child turned 14.

The second instance concerns a Tunisian born Swedish national, married to a Swedish national in Sweden, who removed two of his three children to Australia. The father left Sweden in March 2000 without telling the mother and travelled around Europe. When in Italy he purchased tickets to Australia for himself and his two younger daughters. The elder son was left in an orphanage in Italy. The father applied for refugee status and stated that if it was not granted he would kill himself and the children. The Family Court of Australia ordered the return of the children to Sweden. The father was deported by the Department of Immigration.

Austria – Autriche :

See reply 15.

Canada – Canada :

Ontario
Kovacs v. Kovacs, [2002] O.J. No. 3074, 59 O.R. (3d) 671

In the Kovacs case, the Ontario Superior Court of Justice concluded that an Order for the return of a child under the Hague Convention can be made while there is a pending claim on the child's behalf for refugee status in Canada. The Hague Convention requires an application for the return of the child to be dealt with expeditiously. The whole thrust of the Convention is to have the child returned to his home State immediately unless the Respondent can establish one of the defences available, based on the risk of harm to the child or contravention of fundamental rights. Applications under the Hague Convention can usually be completed in three to four months in Ontario. The refugee determination process usually takes about a year, and another year can pass if judicial review of the determination is sought. A refugee claim on behalf of the child cannot be allowed to defeat the major purpose of the Hague Convention.

Toiber v. Toiber [2006] 2006 CarswellOnt 1833 (Ont. C.A.)

In the Toiber case, the Ontario Court of Appeal affirmed the Kovacs decision.

Quebec
For several years, Immigration Canada investigators have contacted the Quebec Central Authority to check whether children living in Quebec with their mother have been reported missing to other Central Authorities. There seems to have been an increase in the number of mothers leaving their country with their children and claiming "refugee" status when they arrive in Canada. The practice is to immediately check with Immigration Canada as soon as an application for the return of non-Canadian children is received. If a refugee claim has already been made, the immigration officer puts the file on hold pending a decision on the Hague Convention.

The cases with a refugee claim are:
L.D. *v.* N.H., September 12, 2002, 500-04-030247-028, AZ-50143782 (SOQUIJ), J.E. 2002-1776 (S.C.) (return not ordered)
J.E.B.G. *v.* A.D.C., September 3, 2003, 500-04-033162-034, AZ-50193733 (SOQUIJ), J.E. 2003-1856 (S.C.) (return ordered)
R.V.M. *v.* M.B.G.A., January 7, 2004, 500-04-034363-037, AZ-50213792 (SOQUIJ), J.E. 2004-439 (S.C.) (return not ordered)

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M.B.G.A. *v.* R.V.M., June 8, 2004, 500-09-014099-048, AZ-50256444 (SOQUIJ), J.E. 2004-1276 (C.A.) (return not ordered)
Cruz Lesbros *v.* Vargas De Luna (the parties negotiated an amicable resolution).

**

Ontario
Kovacs v. Kovacs, [2002] J.O. n° 3074, 59 O.R. (3d) 671

Dans l'affaire *Kovacs*, la Cour supérieure de justice de l'Ontario a conclu qu'un jugement ordonnant le retour de l'enfant en vertu de la Convention de La Haye peut être rendu même lorsqu'une demande d'obtention du statut de réfugié au nom de l'enfant est en instance au Canada. La Convention de La Haye exige qu'une demande en vue du retour de l'enfant soit traitée rapidement. L'objectif général de la Convention est le retour rapide de l'enfant dans l'État de sa résidence habituelle à moins que l'intimé établisse un des moyens de défense admissibles, fondé sur le risque d'un préjudice à l'enfant ou d'une atteinte à des droits fondamentaux. Les instances relatives aux demandes relevant de la Convention de La Haye peuvent habituellement être conclues en trois à quatre mois en Ontario. Le processus de détermination du statut de réfugié prend habituellement environ un an, et une autre année peut s'écouler si la décision fait l'objet d'une demande de contrôle judiciaire. On ne peut permettre qu'une demande d'obtention du statut de réfugié au nom de l'enfant fasse échec à l'objet principal de la Convention de La Haye.

Toiber v. Toiber, [2006] 2006 CarswellOnt 1833 (C.A. Ont.)

Dans l'affaire *Toiber*, la Cour d'appel de l'Ontario a confirmé la décision dans *Kovacs*.

Québec
Depuis quelques années, les enquêteurs d'Immigration Canada contactent l'Autorité centrale du Québec pour vérifier si des enfants, qui se trouvent au Québec avec leur mère, sont portés disparus auprès de certaines autorités centrales. Il semble y avoir une augmentation de mères qui quittent leur pays avec leurs enfants pour demander le statut de « réfugié » en arrivant au Canada. La pratique veut que, dès la réception d'une demande de retour concernant des non-canadiens, des vérifications sont immédiatement faites auprès d'Immigration Canada. Si une demande de statut de réfugié est déjà faite, l'agent d'immigration met le dossier en suspens pour attendre la décision sur la Convention de La Haye.

Voici les dossiers avec une demande de statut de réfugié :
L.D. c. N.H., 12 septembre 2002, 500-04-030247-028, AZ-50143782 (SOQUIJ), J.E. 2002-1776 (C.S.) (retour non-ordonné)
J.E.B.G. c. A.D.C., 3 septembre 2003, 500-04-033162-034, AZ-50193733 (SOQUIJ), J.E. 2003-1856 (C.S.) (retour ordonné)
R.V.M. c. M.B.G.A., 7 janvier 2004, 500-04-034363-037, AZ-50213792 (SOQUIJ), J.E. 2004-439 (C.S.) (retour non-ordonné)
M.B.G.A. c. R.V.M., 8 juin 2004, 500-09-014099-048, AZ-50256444 (SOQUIJ), J.E. 2004-1276 (C.A.) (retour non-ordonné)
Cruz Lesbros c. Vargas De Luna (les parties ont négocié une entente à l'amiable).

Chile – Chili :

No.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We do not have experience of such cases.

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China (SAR Macao) – Chine (RAS Macao) :

Until now, there are no such cases.

Colombia – Colombie :

Si.

El primero con Venezuela. Solicita la restitución el padre porque la madre y la abuela de los niños los sacaron de Colombia, con permiso del padre por un periodo de vacaciones. Estando los niños en Venezuela, la abuela que goza de estatus de refugiada en Canadá, pretendió llevarse los niños para ese país para incluirlos en esa condición. Al enterarse el padre solicitó la intervención de la Oficina del Alto Comisionado de las Naciones Unidas en Venezuela y se enteró por esa entidad que los que los niños no pudieron salir de Venezuela porque los documentos con los que iban a salir hacia Canadá eran falsos y se frustró el trámite para otorgarles calidad de refugiados. Actualmente la Autoridad central Venezolana no se ha pronunciado aún sobre la solicitud de restitución. Se está insistiendo ante la autoridad central de la República Bolivariana de Venezuela para que proceda de conformidad, máxime si se tiene en consideración las falsedades en que ha incurrido la familia materna de los niños.

El segundo caso es con Costa Rica. Solicita la restitución el padre porque la madre se llevó a su hijo hacia ese país quien inmediatamente al ingresar con documentos falsos, solicitó el estatus de refugiada. A pesar de haberse iniciado el proceso de restitución estando en curso el administrativo para la concesión de estatus de refugiada y haberse solicitado la suspensión de ese proceso, éste siguió su curso y tanto el niño como la madre adquirieron dicha estatus. Actualmente el proceso de restitución fue resuelto luego de más de dos años de duración negando el retorno del niño a Colombia. Esta sentencia fue apelada y está en curso. Este caso fue puesto en conocimiento de la Conferencia Internacional de la cual se espera un pronunciamiento al respecto.

Costa Rica – Costa Rica :

En el primer caso formal de la historia jurídica de Costa Rica, el cual –por cierto- todavía espera sentencia de segunda instancia por apelación del padre solicitante, la madre sustractora había solicitado concesión de refugio político ante el Ministerio de Gobernación, previo al inicio del proceso judicial. Empero, antes de emitirse la sentencia judicial de primera instancia, el indicado Ministerio denegó la solicitud al comprobar inexactitudes en el motivo de la petición, luego del procedimiento administrativo de rigor.

Cyprus – Chypres :

No.

Czech Republic – République tchèque :

Not yet.

Denmark – Danemark :

No, we do not have such experience.

Ecuador – Equateur :

Si, Autoridad Central del Ecuador tramita un caso en el cual el padre del niño, que reside en Colombia, solicitó la restitución de su hijo que se encuentra en el Ecuador junto con su madre. Sin embargo conocimos que el padre llegó al Ecuador junto con su familia solicitando refugio para todos ellos, y luego, por problemas conyugales se regresó a Colombia.

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El Salvador – El Salvador :

No se tiene experiencia con este tipo de casos.

Finland – Finlande :

No experience.

France – France :

L'autorité centrale française connaît d'une situation dans laquelle un couple originaire d'un pays d'Afrique noire s'est séparé en arrivant en France. L'un des parents a ensuite quitté le domicile conjugal établi, pour partir avec plusieurs enfants dans un autre Etat de l'union européenne, dans lequel il a demandé le statut de réfugié politique. L'issue de cette situation n'est pas connue pour l'instant.

Greece – Grèce :

No.

Guatemala – Guatemala :

[No answer]

Iceland – Islande :

No.

Ireland – Irlande :

Yes, this office has dealt with three cases where the issue of asylum or refugee applications was involved.

In the first, a couple from Zaire sought asylum in Ireland. They asserted that they had been married in Zaire, but did not have any documentary evidence to prove this. A child was born to the couple, and when the child was one year old, the mother abducted the child, and removed him to Germany, where she once again sought asylum, under a different name. She alleged that she had never been married to the applicant, and that therefore, as an unmarried father, the applicant had no rights of custody over the child under Irish law. The German authorities requested an Article 15 declaration, which the Irish court refused to provide. Thus, the German Central Authority declined to accept the application.

Our second case involved a married couple who had sought leave to remain in the state on the basis of being parents of an Irish born child. The father removed the child to Romania, where the Romanian courts ordered the return of the child. The difficulty was that the father would not return with the child, and the mother did not have a re-entry visa to enable her to leave the country to collect the child and return. This office was able to liaise with the Visa and Immigration sections of the Department of Justice, Equality and Law Reform in order to resolve the issue, and the mother travelled to Romania to collect the child and returned her to Ireland.

Our third case involved two Angolan nationals who sought asylum in Switzerland in 1990. The mother had to leave the family home in Switzerland in 2002 temporarily, because of domestic violence. However, in 2003, the father took the two children and sought asylum in Ireland. The children were living in a reception centre for asylum seekers in Ireland, along with the father's new partner and child (but not with the father, who had left them), when the mother made the application for the children's return to Switzerland in

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2005. This office initially tried to arrange a voluntary return of the children, and had various contacts with the Health Service Executive and with the Reception and Integration Agency within the Department of Justice, Equality and Law Reform. The plan was to establish telephone contact between the mother and the children, and the girls would then be returned to their mother with the help of the International Organisation for Migration. However, the mother disappeared from her residence in Switzerland and has not been contactable since. The application accordingly had to be treated as withdrawn.

Israel – Israël :

In a recent case involving the abduction by a mother of two children from Israel to Canada, the mother filed an application with the Refugee Board in Canada, seeking refugee status for herself and the two children. A Hague Convention application for return was submitted on behalf of the father. The lower court in Ontario ordered the return of the children to Israel. It's Judgment was upheld on appeal. She has filed leave to appeal in the Supreme Court of Canada. In the meantime, the mother's claim before the refugee board in Canada was heard, and the children testified at that hearing. The Israeli Central Authority was notified that should the Refugee Board grant the children refugee status prior to their being returned to Israel, this would create a problem – because the refugee board is under federal jurisdiction, a federal order would supersede a provincial court order under the Hague Convention.

The Israeli Central Authority expressed its serious concern in this matter. The refugee board refused to release any details to the father's attorney, claiming that the matter is confidential. It is conceivable that claims that were raised may have already been raised in the Hague Convention proceedings but were dismissed by the Ontario courts as not meeting the requirements of the defences under the Hague Convention. The Israeli Central Authority requested that the Judgments under the Hague Convention be made available to the refugee board, as these Judgments were made after a full review of the evidence presented by both parties and the children. It also pointed out that the proceedings with respect to the refugee claim were conducted without any representation on behalf of the father, and that the children, who testified, had been under the sole influence of the mother for well over a year prior to testifying. In such circumstances the proceedings with respect to the refugee claim cannot be conducted in a vacuum. The outcome of the refugee claim proceedings was not known at the time of the writing of this report.

The Israeli Central Authority, while realizing that there is a division in powers between provincial and federal authorities, is very concerned about the impact that such federal proceedings could have on the operation of the Hague Convention in Canada. This is an issue that must be looked into, so that the goals of the Hague Convention are not undermined.

Italy – Italie :

Aucun cas à signaler.

Latvia – Lettonie :

We do not have such experience.

Lithuania – Lituanie :

The Migration Department under the Ministry of the Interior of the Republic of Lithuania has had no practice in such cases.

Malta – Malte :

There have been no such problems with regard to cases with other State Parties.

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Mexico – Méxique :

No.

Monaco – Monaco :

Non.

Netherlands – Pays-Bas :

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

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

New Zealand – Nouvelle Zélande :

The Department of Labour Refugee Status Branch (RSB) is not aware of any such cases but cannot confirm this as they do not file claims by this detail. If they did have such a case, Hague Convention issues would not affect whether or not they found someone to be a refugee. The RSB assess only refugee status and do not make decisions on matters such as residence, immigration status, etc.

Nicaragua – Nicaragua :

No se tiene experiencia bajo estas circunstancias.

Panama – Panama :

No.

Paraguay – Paraguay :

No tenemos conocimiento de ningún tipo de experiencia.

Poland – Pologne :

Please see answer to question 15.

Portugal – Portugal :

No.

Romania – Roumanie :

No.

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Slovakia – Slovaquie :

The Slovak CA has not had any such experience by now.

South Africa – Afrique du Sud :

None.

Spain – Espagne :

No.

Sweden – Suède :

The Swedish Central Authority has no experience of cases involving links between asylum or refugee applications and the 1980 Convention.

Switzerland – Suisse :

Oui: les autorités suisses concernées (asile/police/autorité centrale) ont cherché à trouver un terrain d'harmonie entre les exigences du droit d'asile (par rapport au parent défendeur réfugié en Suisse) et celles du droit civil (par rapport à l'enfant et au parent demandeur s'agissant de leurs contacts personnels). La préséance des règles de droit public accordée à l'asile implique pour l'autorité centrale suisse des restrictions d'information sur le lieu de séjour de l'enfant se trouvant avec l'auteur de l'enlèvement, demandeur d'asile. Un équilibre entre les besoins de la procédure d'application de la convention et la sauvegarde des intérêts personnels du parent demandeur d'asile a pu être trouvé moyennant une activité d'intermédiaire particulièrement soutenue de l'autorité centrale : celle-ci a dû jouer le rôle d'interlocuteur exclusif du parent demandeur, le parent défendeur n'apparaissant pas au grand jour, l'enfant et son droit à des contacts personnels avec ses deux parents demeurant l'unique lien.

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United Kingdom (Scotland) – Royaume Uni (Écosse) :

No.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

No. The reported cases have arisen in the context of non-Convention cases.

United States – Etats Unis :

In one Hague case submitted by a Hungarian applicant father, the respondent mother asserted an Article 13(b) defense and cited the fact that the United States had granted her domestic-violence based asylum. The California Judge denied the Hague return under Article 13(b), based on the grant of asylum to the mother under immigration law and the child's derivative status. The U.S. Central Authority disagrees with the decision, because the standard for asylum is much lower than the 13(b) standard, and because asylum hearings are not contested hearings. Unfortunately, as this case was heard in a California state court and was not appealed, the decision stands.

Uruguay – Uruguay :

No se han planteado.

Question 17	
Have you any experience of cases in which immigration / visa questions have affected a finding of habitual residence in the State from which the child was removed or retained?	**Avez-vous connaissance de cas présentant des problèmes d'immigration ou de visa venus troubler la détermination de la résidence habituelle dans l'Etat où l'enfant a été enlevé ou illicitement retenu ?**

Argentina – Argentine :

Hemos tenido un caso con Estados Unidos, en el cual si bien se había producido el traslado ilícito de la menor desde la República Argentina, la niña se encontraba viviendo en ese país desde hacía más de un año. Esta Autoridad Central entendió que sería más viable tramitar visitas internacionales, pero la Autoridad Central de Estados Unidos accedió a dar trámite a la restitución, y de hecho la restitución fue otorgada por la justicia de ese país. Ello toda vez que el Juez no consideró que Estados Unidos fuera el lugar de residencia habitual, atento la condición precaria migratoria que ostentaba la menor en ese país. Es decir que la cuestión migratoria resultó determinante para el otorgamiento de la restitución, puesto que el Juez consideró que dado su status ilegal, la niña no podía insertarse adecuadamente a su entorno y debía por ende ser restituída a la República Argentina.

Australia – Australie :

No.

Austria – Autriche :

See reply 15.

Canada – Canada :

For the reason explained in questions 15, the Consular Affairs Bureau at Foreign Affairs Canada would not have any experience/knowledge in such cases.

<u>Ontario</u>
Please see general response.

<u>British Columbia</u>
A child was ordered returned to New Zealand in spite of the fact that the mother had made a claim for refugee status for herself and the child and that a date for the refugee hearing had been set.

**

Pour les raisons fournies à la question 15, le Bureau des affaires consulaires du ministère de la Justice du Canada n'aurait pas de connaissance ou d'expérience à propos de tels cas.

<u>Ontario</u>
Voir la réponse générale.

<u>Colombie-Britannique</u>
On a ordonné le retour d'un enfant en Nouvelle-Zélande malgré le fait que la mère avait formulé une demande d'obtention du statut de réfugié en son nom propre ainsi qu'au nom de l'enfant et que la date d'audition de cette demande avait été fixée.

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Chile – Chili :

No.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We do not have experience of such cases.

China (SAR Macao) – Chine (RAS Macao) :

No.

Colombia – Colombie :

No.

Costa Rica – Costa Rica :

No.

Cyprus – Chypres :

No.

Czech Republic – République tchèque :

No.

Denmark – Danemark :

No, we do not have such experience.

Ecuador – Equateur :

No.

El Salvador – El Salvador :

No se tiene experiencia con este tipo de casos.

Finland – Finlande :

No experience.

France – France :

Non.

Greece – Grèce :

No.

Guatemala – Guatemala :

[No answer]

Iceland – Islande :

No.

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Ireland – Irlande :

No.

Israel – Israël :

No.

Italy – Italie :

Aucun cas à signaler.

Latvia – Lettonie :

We do not have such experience.

Lithuania – Lituanie :

The Migration Department under the Ministry of the Interior of the Republic of Lithuania has had no practice in such cases.

Malta – Malte :

There have been no such problems with regard to cases with other State Parties.

Mexico – Méxique :

No.

Monaco – Monaco :

Non.

Netherlands – Pays-Bas :

No.

New Zealand – Nouvelle Zélande :

No. The Department of Labour is not aware of any such cases.

Nicaragua – Nicaragua :

No se tiene experiencia bajo estas circunstancias.

Panama – Panama :

No.

Paraguay – Paraguay :

Ejemplo: Caso nuevo aún no presentado. "Sofía Belén Núñez Machuca". Niña nace en Asunción en 2003. Los padres paraguayos. Se remitió a A.C. x mail solicitud de informes sobre situación legal de los padres (Migraciones) Luego de recibir el informe será presentada al Juzgado de la Niñez de Turno.

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Poland – Pologne :

Please see answer to question 15.

Portugal – Portugal :

No.

Romania – Roumanie :

No.

Slovakia – Slovaquie :

The Slovak CA has not had any such experience by now.

South Africa – Afrique du Sud :

None.

Spain – Espagne :

En España todos los niños están escolarizados y disponen de asistencia sanitaria con independencia de la situación regular o irregular en la que se hallen sus padres, por lo que se puede probar su residencia.

El problema surge cuando uno de los padres (en situación irregular) sustrae al menor y lo lleva al país del que son originarios, y las autoridades de este país no restituyen al menor alegando que la residencia irregular es contraria al interés del menor.

Sweden – Suède :

The Swedish Central Authority has no experience of cases in which immigration / visa questions have affected a finding of habitual residence in the State from which the child was removed or retained.

Switzerland – Suisse :

Non : un cas où des enfants, initialement réfugiés en Suisse, ont été enlevés puis ont disparu dans l'Etat requis, paraît pouvoir se résoudre si la décision de retour devient exécutable (mineurs retrouvés) ; en effet la loi suisse applicable en l'espèce n'exclut pas une « réadmission » de personnes, dans la mesure où elles n'ont pas quitté le territoire helvétique de leur propre volonté.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

No.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

No.

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

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United States – Etats Unis :

In general, we have seen cases where courts look at the immigration/visa status of the parents as indications of the parents' intent to make a place the child's habitual residence. For example,

In *Delvoye v. Lee*, 329 F.3d 330 (3rd Cir. 2003) an American mother and Belgian father who met in the United States decided to have their baby in Belgium. The mother and child moved back to the United States two months later. When the father filed a Hague application a year later, the court considered the fact that the mother had only received a three-month visa to go to Belgium as evidence that the parents did not show a shared intent to make Belgium the child's habitual residence. Therefore, the judge did not find the mother's removal of the child to be wrongful.

In *Armiliato v. Zaric-Armiliato*, 169 F. Supp. 2d 230 (S.D.N.Y. 2001), the court looked at the fact that the taking mother and child entered the United States on a three-month visa that did not permit the mother to work as one factor that counted against finding the United States to be the child's habitual residence. The court found that the child's habitual residence was Italy and ordered the child returned there. In *Choi v. Kim (In re Kim),* 404 F.Supp. 2d 495 (S.D.N.Y. 2005), the court found that the parents' attempts to get an F-2 visa for their daughter were evidence that the mother had consented to her daughter staying in New York with the father. Therefore, the court held that the retention was not wrongful and denied return of the daughter to Canada.

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Uruguay – Uruguay :

No.

Question 18	
Have you any experience of cases in which immigration / visa questions have inhibited the exercise of rights of access?	**Avez-vous connaissance de cas dans lesquels des problèmes de visa / immigration ont empêché l'exercice du droit de visite ?**

Argentina – Argentine :

En el caso de los Estados Unidos, resulta dificultoso organizar y ejecutar regimenes de visitas internacionales. Se presentan varios supuestos:

- padre que no puede ingresar a ese país ya que no califica para la visa.
- menor que no puede viajar a visitar a su padre, ya que al estar ilegal en Estados Unidos, si abandona ese país, no podrá reingresar.
- padres que no pueden viajar a las audiencias (tanto en procedimientos de restitución y visitas), por no acceder a la visa que les permita ingresar.

Australia – Australie :

No.

Austria – Autriche :

See reply 15.

Canada – Canada :

<u>Saskatchewan</u>
In one of our cases, both parents were resident in Italy, however neither were Italian citizens. The mother applied for a custody order in Italy, which also provided for access

to the father in Italy. When the mother's visa expired, she re-located with a new partner to Canada. She applied for landed immigrant status in Canada, however pending her application, she and the child were not able to leave Canada. She wanted access to occur in Canada. The father application under the Convention for enforcement of his right to access. The mother then successfully brought an application in Saskatchewan to vary the terms of access so that access could take place in Saskatchewan.

Ontario
The Ontario Central Authority has recently had a case where an application for access was made; however, it came to Ontario's attention that the Applicant had previously been deported from Canada. The Ontario Central Authority advised the Applicant to file a claim with Immigration Canada to try and obtain a Visa in order to enter Canada for access.

British Columbia
No cases at this date but see answer to question 15.

**

Saskatchewan
Dans un de nos dossiers, les deux parents résidaient en Italie, mais ni l'un ni l'autre n'étaient citoyens italiens. La mère a demandé une ordonnance de garde en Italie, qui accordait aussi des droits de visite au père en Italie. Lorsque le visa de la mère a expiré, elle a déménagé avec son conjoint au Canada. Elle a demandé le statut d'immigrante reçue au Canada, mais pendant que sa demande était traitée, elle et l'enfant ne pouvaient pas quitter le Canada. Elle voulait que les droits de visite soient exercés au Canada. Le père a déposé une demande en vertu de la Convention de La Haye pour faire valoir ses droits de visite. La mère s'est alors adressée aux tribunaux de la Saskatchewan et a réussi à faire modifier les modalités relatives aux droits de visite de manière à ce que ceux-ci puissent s'exercer en Saskatchewan.

Ontario
L'Autorité centrale de l'Ontario a récemment eu un cas où une demande d'accès a été formulée; cependant, l'Autorité centrale de l'Ontario a appris que le demandeur avait été renvoyé du Canada auparavant. Elle a suggéré au demandeur de déposer une demande auprès d'Immigration Canada pour tenter d'obtenir un visa lui permettant d'entrer au Canada pour exercer ses droits d'accès.

Colombie-Britannique
Aucun cas à ce jour, mais voir la réponse à la question 15.

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Chile – Chili :

Hay casos que no prosperan por que el solicitante no ha podido adquirir visa para entrar, específicamente con EE.UU.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We do not have experience of such cases.

China (SAR Macao) – Chine (RAS Macao) :

No.

Colombia – Colombie :

Si, existe un caso en el que el padre solicitó a la Autoridad Central de España en primera instancia la restitución, la cual le fue negada y posterior a ello solicitó se le regulara un régimen de visitas cuyo proceso está en trámite, sin embargo ese derecho de visitas no

va a poder ser ejercido por el padre porque La Embajada de España en Colombia le exige acreditar ingresos y muchas condiciones para otorgarle la visa. ¿Podría la oficina permanente de La Haya apoyar la solicitud ante los respectivos gobiernos con la exclusiva finalidad de lograr el acceso entre padres e hijos?

El otro caso es el mismo relacionado en la respuesta a la pregunta número 15.

Costa Rica – Costa Rica :

No.

Cyprus – Chypres :

No.

Czech Republic – République tchèque :

No.

Denmark – Danemark :

No, we do not have such experience.

Ecuador – Equateur :

No.

El Salvador – El Salvador :

No se tiene experiencia con este tipo de casos.

Finland – Finlande :

No experience.

France – France :

Oui. Dans certaines situations, le parent demeurant en France ne peut se rendre dans l'Etat dans lequel réside habituellement l'enfant, notamment lorsqu'il en a été précédemment expulsé, par exemple parce qu'il y a séjourné en violation des règles de l'immigration de cet Etat.

Il peut alors être difficile d'obtenir pour ce parent une révision de sa situation par les services de l'immigration de l'Etat dans lequel il a séjourné irrégulièrement, de sorte qu'il ne peut exercer son droit de visite sur l'enfant.

Greece – Grèce :

No.

Guatemala – Guatemala :

[No answer]

Iceland – Islande :

No.

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Ireland – Irlande :

No.

Israel – Israël :

Not in Israel. However in the case with Italy [the case is detailed in our response to (k) 1 above] the father has informed us that when he tried to extend his Italian passport, he was informed by the Consul that as there was an open police complaint against him, the were unable to extend his passport thereby causing problems to the exercise of his rights of access.

Italy – Italie :

Aucun cas à signaler.

Latvia – Lettonie :

We do not have such experience.

Lithuania – Lituanie :

No cases in which similar problems arise are known.

Malta – Malte :

There have been no such problems with regard to cases with other State Parties.

Mexico – Méxique :

[Sin respuesta]

Monaco – Monaco :

Non.

Netherlands – Pays-Bas :

No.

New Zealand – Nouvelle Zélande :

Yes. If the left behind parent does not qualify for entry to NZ, the terms of access are tailored accordingly.

Nicaragua – Nicaragua :

No se tiene experiencia bajo estas circunstancias.

Panama – Panama :

No.

Paraguay – Paraguay :

No hay experiencia.

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Poland – Pologne :

Please see answer to question 15.

Portugal – Portugal :

No.

Romania – Roumanie :

No.

Slovakia – Slovaquie :

The Slovak CA has not had any such experience by now.

South Africa – Afrique du Sud :

None.

Spain – Espagne :

No.

Sweden – Suède :

The Swedish Central Authority has no experience of cases in which immigration / visa questions have inhibited the exercise of rights of access.

Switzerland – Suisse :

Non : des solutions favorables au droit de l'enfant à des contacts personnels avec leurs deux parents (art. 9/10 Convention ONU Droits Enfant et 21 CLAH 80) ont été développées par les autorités centrales.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

Yes. In the relevant case, an applicant needed to apply for significant public benefit parole in the United States in order to gain entry to the U.S.A, to try and secure access.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

United States – Etats Unis :

The USCA/NCMEC has difficulty finding attorneys to handle access cases where the applicant parent cannot enter the U.S. because of immigration status or violation issues. These cases vary from cases where parents may only enter for limited visits, to cases where parents have been deported and are prohibited from further entry. Decisions about whether an applicant can enter the U.S. are made by the Department of Homeland Security (DHS). Department of State has, however, worked with DHS to develop a

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special category of parole, the "Significant Public Benefit Parole," to enable parents to enter the U.S. for the purpose of participating in court hearings or accomplishing court-ordered visitation.

Uruguay – Uruguay :

Se han conocido situaciones en que se han alegado dificultades para concretar visitas de hijos en el extranjero, en razón de trabas migratorias vigentes en el Estado donde residía el menor.

6. Criminal proceedings – Procédures pénales

Question 19	
Please comment on any issues that arise, and how these are resolved, when criminal charges are pending against the abducting parent in the country to which the child is to be returned.	**Veuillez décrire les questions qui se posent lorsque des poursuites pénales contre le parent ravisseur sont en cours dans le pays vers lequel l'enfant doit être retourné. Préciser comment de tels problèmes sont résolus.**

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Argentina – Argentine :

En la República Argentina se encuentra vigente la Ley 24.270, sobre impedimento de contacto, que prevee una pena agravada para el progenitor que impide el contacto de su hijo con el padre no conviviente, y lo traslada al extranjero.

En consecuencia, es muy común que el padre que ha sido separado de su hijo, inicie el procedimiento penal simultaneamente con el de restitución o visitas.

Esto puede llegar a ser un obstáculo para el padre sustractor, al momento de regresar al país de la residencia del menor, toda vez que este proceso en principio no puede ser desistido. Sin perjuicio de ello, muchas veces la situación se resuelve con la simple presentación del padre sustractor en el Juzgado y la manifestación de que el contacto ha sido restablecido.

Australia – Australie :

While criminal proceedings are pending against the abducting parent in the country of habitual residence the Australian courts may be reluctant to order the return of the child.

Where criminal charges exist, this is usually the subject of negotiations between the Australian Central Authority and the overseas Central Authority in order that the welfare of the returning parent and child are not adversely affected by the existence of any such charges.

It is often a condition attached to a return order that the requesting parent agrees not to institute any criminal proceedings against the returning parent. However, whether or not the court will make such an order depends on the circumstances. For example, in *Director General, Department of Community Services v Attanasio* (unreported, Cohen J, 24/3/00, Sydney), the Judge was critical of many of the orders sought by the Central Authority and of the many conditions imposed by the mother for her return. The Judge refused to make the order requiring the father's undertaking not to institute criminal proceedings against the mother in Italy. He said such orders "tend to defeat the purpose of being a signatory to the Convention…It must also be recognised that, as under the criminal law of Australia, certain acts will result in legal consequences where the best interests of a child of the perpetrator are irrelevant." The child was ordered to return. *(Note: The mother subsequently appealed this decision. Before the Appeal Court had handed down its decision, the father withdrew the application. The Court then allowed the mother's appeal.)*

On the other hand, in the first instance Family Court of Australia decision by Lindenmayer J in *Director-General Department of Families, Youth and Hobbs (2000) FLC 93 -007*, the father, who had initiated the Convention proceedings in respect of his daughter, was permitted by his Honour to file an affidavit that contained a range of undertakings, including that the father not institute or support any criminal or civil charges against the mother associated with the removal. These orders were to be filed as mirror orders in the habitual residence country.

Austria – Autriche :

There have been cases with criminal charges against the abducting parent. All of them were solved by the applicant withdrawing the criminal charge to enable the abducted parent to return (with) the child.

In the case 3 Ob 210/05m the OGH (Austrian High Court) decided that the danger of getting imprisoned for child abduction cannot justify the denial of return, because this would severely limit the convention's use.

Canada – Canada :

The Criminal Code of Canada contains provisions respecting parental child abductions. Sections 282 and 283 of the Criminal Code essentially apply to parental child abduction situations where there is a custody order made by a Canadian court and where there is no such custody order, respectively. Model Parental Child Abduction Charging Guidelines were approved by Canadian Federal/Provincial/Territorial Ministers responsible for Justice in 1998. Because parental child abduction cases depend on their own particular facts, the charging guidelines are general in nature. They do, however, recognize the unique nature of international cases and suggest Crown Attorneys and law enforcement officers be aware of the role of, and how to contact, the jurisdiction's Central Authority, to ensure awareness of pending/possible proceedings pursuant to the Hague Convention. The guidelines (which reproduce the relevant provisions of the *Criminal Code of Canada*) appear in Appendix C of *The Inventory of Government-Based Family Justice Services.* The *Inventory* is available in the "Parenting after Divorce" section of Justice Canada's website: www.justice.gc.ca (or directly at: http://www.justice.gc.ca/en/ps/pad/resources/fjis/ (English)).

Ontario
This has not been an issue in any of the Ontario cases. If there was a case in which Ontario based charges were acting as an impediment to the hearing of a Hague application, the Central Authority would communicate with the Criminal Crown's office to discuss options.

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British Columbia
In a recent case, the mother abducted the couple's two children to France contrary to an order of the Supreme Court of BC. The French court found that the Convention had been breached and ordered the children to be returned to Canada. The order was appealed and was upheld by the court of appeal and, subsequently, by the highest court in France. The children were returned to British Columbia. Before then, the mother travelled to BC for the purpose of defending her PhD thesis at the University of British Columbia. Charges were laid under the Criminal Code of Canada and the mother was arrested in BC and put in jail.

New Brunswick
The Court of Queen's Bench of New Brunswick, Family Division deals solely with the civil responsibilities of the Province under the Convention and does not interfere with nor take into consideration whether criminal charges may be pending.

Quebec

Abduction of a child less than 14 years of age by one of the parents is a criminal offence in Canada under sections 282 and 283 of the *Criminal Code* and is punishable by up to 10 years in prison.

The applicant parent can file with the police a charge of child abduction under those sections. An arrest warrant may then be issued for the abducting parent. Issuing an arrest warrant often has the effect of making it easier for police to find the abducting parent (and the child).

Usually, the abducting parent will face criminal charges and will have to accept the consequence of his or her actions. If there is an arrest warrant, the abducting parent is certain to be arrested when he or she returns to Quebec with the child. However, the judge hearing an application for return to the State of refuge may request (require) that the arrest warrant be cancelled so that the abducting parent can return with the child if the child is ordered returned. In Quebec, this cannot happen until the child is on Quebec soil. The current practice in Quebec, however, is for the Attorney General prosecutor to produce a letter of intent confirming that measures to cancel the arrest warrant will be taken as soon as the child returns to Quebec. Execution of the arrest warrant will therefore be suspended so that the abducting parent can enter Canada without being arrested. The abducting parent will then be required to report to the courthouse on a specified date so that the prosecutor can apply to have the arrest warrant withdrawn. Every situation is different, however; case-by-case analysis is needed. The final decision to make an arrest or stay criminal proceedings rests with the Attorney General prosecutor.

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Manitoba

This has not been an issue in any request for return being heard in the Manitoba Courts. With respect to requests for return sent from Manitoba to another country, questions with respect to criminal charges have occasionally arisen.

Manitoba has also had a case where the abducting parent was facing criminal charges unrelated to the parental child abduction that only came to light after that parent's return to Canada.

Alberta

If charges have been laid and the charges are interfering with the ability to resolve matters or are precluding arrangements for return of the child, the CA and the Crown discuss options.

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Le *Code criminel* du Canada comporte des dispositions relatives à l'enlèvement d'enfant par un parent. Les articles 282 et 283 du *Code criminel* visent respectivement l'enlèvement d'enfant par un parent en contravention avec une ordonnance de garde prononcée par un tribunal canadien et en l'absence d'une telle ordonnance de garde. Les ministres fédéral/provinciaux/territoriaux responsables de la justice ont adopté en 1998 un Modèle de lignes directrices sur le recours aux accusations criminelles dans le cas d'enlèvement d'enfant par un parent. Étant donné que les affaires d'enlèvement d'enfant par un parent dépendent beaucoup des faits de l'espèce, les lignes directrices sur le recours aux accusations criminelles ont un caractère général. Elles tiennent compte, cependant, du caractère particulier des affaires internationales et invitent les poursuivants et les responsables du contrôle d'application de la loi à se familiariser avec le rôle de l'Autorité centrale du ressort et à savoir comment communiquer avec elle pour s'enquérir de l'existence éventuelle de procédures en instance en vertu de la Convention de La Haye. Les lignes directrices (qui reprennent les dispositions pertinentes du Code criminel) apparaissent à l'Annexe C du Répertoire des services gouvernementaux en droit familial. Le répertoire est disponible dans la section "le rôle parental après le divorce" du site Internet de Justice Canada:

www.justice.gc.ca (ou directement http://www.justice.gc.ca/fr/ps/pad/resources/fjis/).

Ontario
Le problème ne s'est pas posé dans aucun des cas ontariens. Advenant le cas où des accusations criminelles portées en Ontario feraient obstacle à l'audition d'une demande relevant de la Convention de La Haye, l'Autorité centrale communiquerait avec le service des poursuites pénales pour discuter des solutions envisageables.

Colombie-Britannique
Dans une récente affaire, la mère avait emmené illicitement les deux enfants d'un couple en France en contravention d'une ordonnance prononcée par la Cour suprême de la Colombie-Britannique. Le tribunal français a jugé qu'il y avait eu violation de la Convention et a ordonné le retour des enfants au Canada. L'ordonnance a été frappée d'appel et elle a été confirmée en appel, puis par la Cour de cassation française. Les enfants ont été finalement ramenés au Canada. Avant cela, la mère était retournée en Colombie-Britannique pour y soutenir sa thèse de doctorat à l'Université de Colombie-Britannique. Des accusations ont été portées contre elle en vertu du *Code criminel* du Canada et la mère a été arrêtée en Colombie-Britannique et emprisonnée.

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Nouveau-Brunswick
La Cour du Banc de la Reine du Nouveau-Brunswick, Division de la famille, traite uniquement des questions qui relèvent des responsabilités de la province en matière civile en vertu de la Convention et elle n'intervient pas dans les procédures criminelles en instance, s'il en est, ni n'en tient compte.

Québec
L'enlèvement d'un enfant de moins de 14 ans par un des parents constitue un acte criminel au Canada en vertu des articles 282 et 283 du Code criminel et est passible d'un emprisonnement maximal de dix ans.

Il est possible pour le parent requérant de porter plainte à la police pour enlèvement d'enfant en vertu de ces articles. Un mandat d'arrestation pourra donc être émis contre le parent ravisseur. L'émission de ce mandat a souvent pour effet de faciliter la recherche du parent ravisseur (et de l'enfant) par les policiers.

En règle générale, le parent ravisseur devra faire face à la justice pénale et accepter les conséquences de son geste. Advenant l'existence d'un mandat d'arrestation, le parent ravisseur sera sûrement arrêté à son retour au Québec avec l'enfant. Toutefois, il arrive que le juge saisi d'une demande de retour dans l'État de refuge demande (ou exige) que le mandat d'arrestation soit annulé de façon à permettre au parent ravisseur de retourner avec l'enfant advenant que le retour de l'enfant soit ordonné. Au Québec, cela n'est pas possible tant que l'enfant n'est pas de retour en sol québécois. Par contre, selon la pratique actuelle, le Substitut du Procureur général du Québec produira une lettre d'intention confirmant que les démarches en vue de l'annulation du mandat d'arrestation seront entreprises dès que l'enfant sera de retour au Québec. L'exécution du mandat d'arrestation sera donc suspendue afin de permettre au parent ravisseur d'entrer au Canada sans se faire arrêter; celui-ci aura par la suite l'obligation de se présenter au Palais de Justice à une date déterminée afin que le Substitut du PGQ demande le retrait du mandat d'arrestation. Mais chaque situation est différente et il faut les évaluer cas par cas. La décision ultime d'arrêter ou de continuer les procédures criminelles appartient au Substitut du PGQ.

Manitoba
Cette question s'est posée dans le contexte de toutes les demandes de retour entendues par les tribunaux manitobains. Dans le contexte des demandes de retour envoyées depuis le Manitoba vers un autre pays, des questions se sont parfois posées relativement à des accusations criminelles.

Le Manitoba a aussi eu un cas où le parent ravisseur faisait face à des accusations criminelles sans rapport avec l'enlèvement d'enfant par un parent, qui ont seulement été mises au jour après le retour du parent au Canada.

Alberta

Si des accusations criminelles qui ont été déposées nuisent à la capacité de résoudre les questions contentieuses ou empêchent la prise de dispositions en vue du retour de l'enfant, l'Autorité centrale et le service des poursuites pénales discuteront des solutions envisageables.

Chile – Chili :

En Chile la sustracción entre padres no es delito penal, por lo tanto cualquier acusación a la Fiscalía por parte del padre abandonado, es desestimada y derivada a esta Autoridad Central para ser tramitada de acuerdo a la Convención de la Haya.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

For cases where the abducting parent is to return the child to our jurisdiction, there is not any one case known to us that there were criminal charges pending against the abducting parent. If there is such a case, we would liaise with the police and the social welfare agencies to ensure thjat the child is well taken care of on retun.

For cases where the abducting parent is to return the child to the requesting jurisdiction, we will laise with the Central Authority to ensure that the prompt and safe return of the child will not be affected by any pending criminal charges against the abducting parent.

China (SAR Macao) – Chine (RAS Macao) :

No available data.

Colombia – Colombie :

Existe un caso con Argentina. El padre solicitó la restitución internacional la cual le fue negada luego de dos años de proceso. El padre durante el transcurso del proceso de restitución formuló en Colombia denuncia penal en contra de la madre sustractora por el delito de secuestro simple. El fiscal que está conociendo de este proceso ha solicitado la extradición de la madre sustractora. Este proceso penal aún no ha sido resuelto porque se está pendiente de que el Gobierno de Argentina resuelva el pedido de extradición. En este caso podría la oficina permanente apoyar?

Un caso con estados Unidos. Dos niños bajo protección del Gobierno Americano, porque los padres estaban acusados de ocasionar la muerte de su otro hijo menor por negligencia. Los padres aprovechando un momento de visitas con al trabajadora social sustrajeron los niños de Estados Unidos y los trajeron a Colombia. El Departamento de Estado solicitó su ubicación y restitución. Una vez ubicados en Colombia, los padres fueron a prisión por existir una solicitud de extradición por el gobierno americano, los niños fueron dejados bajo custodia de su abuela materna quien reunía condiciones para cuidarlos, el Departamento de Estado desistió de la Restitución por esa razón. Actualmente el gobierno Colombiano negó la restitución de los padres y los niños se encuentran bajo seguimiento del Instituto Colombiano de Bienestar Familiar.

Costa Rica – Costa Rica :

En las veces que el PANI ha actuado como Autoridad Central Requirente, resulta que casi todos los padres desposeídos han tenido la iniciativa complementaria de interponer denuncia penal en contra de las madres sustractoras. Sin embargo, las autoridades administrativas penales han tendido a transferir los asuntos a la competencia civil del PANI, alegando diversos motivos, como p. ej. insuficiente adecuación del hecho al tipo

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penal vigente, y hasta problemas de jurisdicción o competencia. No obstante, por respeto al Ministerio Público y al OIJ, adviértase que esta pregunta no compete ser respondida por esta Autoridad Central. Es decir, la información pertinente debe ser solicitada a la Fiscalía General de la República, órgano jerarca del Ministerio Público de la República de Costa Rica.

Cyprus – Chypres :

This factor is not taken into account by the judge who decides the return or non return.

Czech Republic – République tchèque :

We had one case with the mother who abducted children from Ontario to the Czech Republic. Then she traveled to Ontario and left her children behind with her parents (maternal grand parents). Immediately after her arrival to Toronto she was arrested. After a couple of months she agreed with the return of the children to Ontario.

Denmark – Danemark :

We have had some cases where there were questions as to the right of the abducting Danish parent to re-enter the country from which the child was abducted. The situation in these cases was that the mother abducted the children to Denmark, and an arrest warrant was issued, and she was imposed a fine. In these cases the Danish enforcement court ordered the return of the children. Afterwards it was not possible for the parent to return because of the arrest order and the fine, and therefore it was not possible for them to attend the following custody case or to have access to the child.

In Denmark it is a criminal offence when a child is wrongfully removed from Denmark by one of its parents. However in order to ensure the return of the child we have experienced cases where the public prosecutor has accepted to drop the criminal proceedings in condition that the abducting parent returned to Denmark with the child.

Ecuador – Equateur :

Se tramita actualmente en la fase judicial el caso de una madre sustractora que tiene acusación penal en el país de residencia habitual de su hija. Sin embargo aun no hay pronunciamiento del juez al respecto de la restitución.

El Salvador – El Salvador :

No se tiene experiencia con este tipo de casos.

Finland – Finlande :

Central Authority of Finland has some experience on cases when the abducting parent has had difficulties entering the country of child's habitual residence (U.S.A.), to visit the child after the return, due to pending criminal charges. Situations have been solved with active cooperation and help of Central Authorities and a local lawyer.

We would like to underline the significance of an abducting parent being able to re-enter the country from which a child was abducted. The solution of this matter should be given highest priority after an abduction has occurred. The role of the Central Authorities is crucial in these situations.

France – France :

Il convient de relever que dans la quasi-totalité des cas dans lesquels une plainte pénale est déposée à l'encontre du parent "rapteur" dans l'Etat de résidence habituelle de l'enfant, cette information est portée à la connaissance de l'autorité centrale de l'Etat

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dans lequel il est retenu avant que la juridiction saisie de la demande de retour n'ait statué.

Lorsqu'une décision de retour d'un enfant illicitement retenu en France est prononcée, et que le parent ayant retenu l'enfant manifeste sa volonté de repartir avec lui, l'autorité centrale française prend l'attache de son homologue étranger, afin d'essayer de trouver un arrangement avec les autorités chargées de traiter la plainte pénale, dans l'intérêt bien compris de l'enfant et le souci de parvenir à un apaisement de la situation.

Elle procède de la même façon lorsque le parent qui a renvoyé l'enfant au lieu de sa résidence habituelle veut s'y rendre afin d'exercer son droit de visite, et que des plaintes pénales y ont été déposées lors du déplacement illicite.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

[No answer]

Iceland – Islande :

We have not much experience of such cases.

Ireland – Irlande :

Cases where criminal charges are pending against the abducting parent in the country to which the child is to be returned arise in only a limited number of applications in Ireland. Where the abductor is arrested and detained on foot of an extradition warrant for the particular offence, the child must be put in care (if the applicant parent is abroad). If the criminal charges are of a kind as to raise issues under 13(b) of the Hague Convention then the High Court could take such matters into account in deciding on custody of the child while the child is in the State.

See also reply to question 27 on undertakings.

Israel – Israël :

In cases where a parent has made a complaint to the Israel police with respect to an abduction, foreign courts have in some cases asked for an undertaking by the parent not to pursue criminal charges, as a condition of the child's return. That parent may inform the Israel police that they do not wish to pursue the charges. Pursuant to guidelines of Israel's State Attorney, police files concerning charges of parental abductions are to be provided to the Director of the Department of International Affairs, which functions as the Central Authority under the Hague Conventions, for a decision as to whether the file should be closed or whether an indictment should be filed. Guidelines of Israel's State Attorney set out the exceptional circumstances in which a criminal prosecution will be considered. These include: a) when an abduction has been carried out with the use of violence or with reckless disregard for the child's well-being; b) when there have been repeated breaches of court orders; c) where the child has been abducted to a non-Convention country and no other remedy is available. In most cases, such circumstances do not exist and if the child's return can be obtained through the Convention, the police will be instructed to close the file and the abducting parent can then return without any concern about criminal prosecution.

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Italy – Italie :

En Italie, l'infraction d'enlèvement d'enfants n'est pas punie par l'arrestation ; partant, si le mineur est reconduit en Italie, le parent ravisseur faisant l'objet d'un procès pénal à cause dudit enlèvement peut tranquillement entrer lui aussi en Italie sans craindre d'être appréhendé.

Latvia – Lettonie :

In the exclusive case where child's mother abducted child to Latvia, in the country from which she did it child's father has submitted application to the police, however it was refused on the basis of assumption that there is no ground for criminal proceedings.

Lithuania – Lituanie :

The Ministry of Justice has no information on cases where resolution of issues of children's return would be influenced by such circumstances as bringing charge against a parent – abductor in the country to which the child should be returned.

Malta – Malte :

No such circumstance has as yet been encountered.

Mexico – Méxique :

En México la sustracción y/o retención ilícita de menores se encuentra tipificada en el artículo 366 ter del Código Penal Federal (delito federal).

Se han registrado dos casos de menores que fueron trasladados ilícitamente a los Estados Unidos de América, donde los solicitantes trataron de recuperar a sus menores hijos por las dos vías la civil y la penal.

Los menores fueron restituidos a México gracias a los procedimientos instaurados bajo la Convención de La Haya sobre sustracción de menores, sin embargo y debido a que por virtud de la denuncia penal presentada por los solicitantes existía una orden de aprehensión en contra de los sustractores, éstos no han tenido la oportunidad de ingresar a México a defender la custodia de los menores en comento, por el peligro de ser detenidos.

Monaco – Monaco :

De manière générale, l'attente provoquée par la procédure en cours favorise l'établissement de l'enlèvement, toutefois, elle compromet gravement tout arrangement entre époux. Les poursuites pénales semblent être de nature à cristalliser le conflit qui oppose les parents. Une telle affaire est en cours en Principauté mais elle en est encore au stade du dépôt de plainte auprès du ministère public.

Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

[No answer]

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Nicaragua – Nicaragua :

En Nicaragua, nuestra legislación penal, no penaliza el secuestro Paren tal, de conformidad con el artículo 228, del Código Penal.

Panama – Panama :

No tenemos experiencia en este tipo de casos.

Paraguay – Paraguay :

Existe solo un caso. Sin embargo la A.C. Argentina aún no localiza a los menores, que en caso de ser restituidos al Paraguay, la madre sustractora tiene pendiente orden de captura nacional e internacional.

Poland – Pologne :

According to the provisions of the Article 211 of the Polish Penal Code and the rulings of the Supreme Court a parent may be deemed to have committed a crime of wrongful removal of a child on the condition that his parental custody of the child had been limited, suspended or terminated prior to abduction or retention of the child. In the case when the person who abducted the child expresses the intention to return to Poland together with the child despite the criminal charges pending against him, he may apply to a competent court for a safe conduct as a guarantee of remaining at liberty until the end of the criminal proceedings. Moreover, he is entitled to use all the rights of the persons suspected and accused provided for in the Polish law.

Portugal – Portugal :

When Portugal is a Requested State, the Central Authority establishes the competent contacts with the others agents like the Courts, INTERPOL, SIRENE, etc.

Romania – Roumanie :

[No answer]

Slovakia – Slovaquie :

The abduction of the child between under this Convention is not a criminal act in Slovakia. Therefore, if the abductor knows, that he has to face the charges in the requesting country, logically he cannot be expected to return voluntarily; subsequently the legislative criminalization of abduction in these cases does not assist to speed up the trial and to decrease the amount of stress caused to the children. In one case, the mother returned after 2 years from Slovakia to the country of origin, where she was almost immediately apprehended with the police. The children were preliminarily entrusted into the father's custody until the end of the divorce trial, which might have been quite stressful for the children.

South Africa – Afrique du Sud :

Normally, when return orders are issued, the order makes provision that the order for return is suspended until such time that any criminal proceedings that may be pending against the abducting parent is withdrawn, alternatively, that the left behind parent undertakes not to pursue any criminal proceedings.

Spain – Espagne :

Por lo que se refiere a los aspectos penales, tras la Ley Orgánica 9/2002, de 10 de diciembre, que entró en vigor el 12 de diciembre de 2002, las conductas de sustracción

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de menores encuentran sanción penal a través de los arts. 165, 223, 225 bis y 622 del Código Penal. Desde la L.O. 9/2002 citada, en España la sustracción de menores ha vuelto a tener consideración de delito con penas de cárcel de hasta cuatro años. El Código Penal de 1995 había suprimido como delito la sustracción de menores de siete años, única contemplada, y agravó la pena para los delitos de detención ilegal o secuestro, quedando sólo para amparar este tipo de actuaciones la falta de desobediencia genérica del art. 622 del código Penal en su regulación anterior. La problemática internacional, desde la perspectiva penal, de la sustracción de menores sólo presenta relevancia en la medida en la que se plantee un problema de vigencia espacial de la ley española. Por esta razón, es de aplicación en este punto el Art.23 LO 6/1985.

Se hallan pendientes de extradición dos casos, por delito de secuestro de menores.

Sweden – Suède :

The Swedish Central Authority has some experience of cases where the abducting parent has had difficulties entering the country of the child's habitual residence, to visit the child after the return, due too pending criminal charges. Situations have been solved with active cooperation and help from Central Authorities and a local lawyer.

The Swedish central authority would also like to underline the significance of an abducting parent being able to re-enter the country from which a child was abducted. The solution of this matter should be given highest priority after abduction has occurred. The role of the Central Authorities is crucial in these situations.

According to Chapter 7 Section 6 in the Swedish Penal Code, arbitrary conduct concerning a child may not be prosecuted by a public prosecutor unless prosecution is called for in the public interest.

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Switzerland – Suisse :

Lorsque la poursuite pénale pour enlèvement d'enfant au sens de la convention a lieu sur plainte (en d'autres termes le détenteur de l'autorité parentale et du droit de garde peut y renoncer ou retirer la plainte qu'il a déposée si les circonstances lui semblent favorables), la solution est recherchée à travers la négociation et la médiation entre les parents: l'argument selon lequel le juge de l'Etat requis pourrait estimer qu'une décision de retour mettrait l'enfant dans une situation intolérable si son parent venait à être arrêté dans l'Etat requérant » constitue un moyen important pour amener le demandeur à renoncer à la poursuite pénale.

D'après l'expérience de l'autorité centrale, le stade où se trouve la procédure pénale est important : lorsqu'une procédure va être ouverte ou vient de l'être, les autorités centrales ont encore la faculté d'influencer quelque peu l'évolution d'une affaire en rappelant par exemple au parent demandeur que la convention offre une voie civile efficace de restauration d'un droit de garde, qui plus est favorable à l'enfant. Lorsqu'une condamnation pour enlèvement ou non présentation d'enfant a déjà été prononcée dans l'Etat requérant, les autorités centrales saisies ont peu de moyens d'intervention par rapport au ravisseur. Par contre, l'autorité centrale doit alors chercher à aménager la protection au retour de l'enfant d'une manière particulièrement soigneuse, entre autres, si les motifs invoqués par le parent ravisseur à l'appui du déplacement international résidaient dans l'abus sexuel ou la maltraitance de l'enfant. Les autorités centrales, requérante et requise, doivent promouvoir (mettre en place) un système d'accueil pour l'enfant approprié (7h), soit jusqu'à détermination du juge de l'Etat requérant soit, sur son injonction, s'il a déjà repris l'affaire (mesure de protection pour l'enfant préliminaire à décision sur le fond quant aux droits parentaux). L'aménagement de contacts (droit de visite) entre l'enfant et le parent qui serait emprisonné doit également être envisagée et proposé. Les demandes d'amnistie, de transformation d'une peine de prison en autres condamnation plus favorable aux liens avec l'enfant sont aussi suggérées et soutenues (recommandées) cas échéant par l'autorité centrale.

La difficulté pour des Etats de localiser l'enfant dans le contexte conventionnel uniquement (art. 7a) implique certes la mise en œuvre de procédure pénale contre le ravisseur, avec les désavantages que cela peut comporter.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

The Central Authority for Scotland has only one experience of this issue. In the case in point the foreign authority stated that criminal proceedings would not be brought against the taking parent if they were ordered to return. The judge in Scotland therefore granted a return order and the taking parent was subsequently arrested when they returned to their country of habitual residence despite the assurances that had been given to the Scottish Court. Had the Court known that this would have been the case then quite arguably an Article 13b defence might have been considered as the child was in the sole care of the taking parent.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

Points for consideration when criminal charges are pending:

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

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

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

Northern Ireland
No experience of this.

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United States – Etats Unis :

The International Parental Kidnapping Crime Act (IPKCA) makes international parental kidnapping a federal crime, and each of the individual states in the United States has also criminalized parental child abduction. The United States believes that the preferred method of dealing with international parental abductions is through the application of the Hague Convention.

In *U.S. v. Cummings*, 281 F.3d 1046 (9th Cir. 2002), the Ninth Circuit held that the International Parental Kidnapping Crime Act (IPKCA) was constitutional under Congress' Commerce Clause authority, but that the Hague Convention "should be the option of first choice."

At times, requests for the return of a child received by the United States are coupled with a criminal warrant for the abducting parent. In some of these cases, law enforcement agencies required the filing of a criminal warrant in order for them to use their resources to help locate a kidnapped child. In these cases, NCMEC coordinates with Interpol to ensure that the civil Hague proceeding is ready to go forward at the time that law enforcement takes the abductor into custody. As a general matter, civil and criminal issues relating to the parental abduction are considered separately. Some jurisdictions

may be willing to suspend or vacate warrants if the child is returned; in other jurisdictions, criminal proceedings will go forward when the abducting parent returns to the United States.

Since a criminal arrest warrant out for the taking parent can make courts in the State of refuge hesitate to order returns, the USCA advises left-behind parents to pursue warrants only when clearly necessary to help locate an abductor or child. Courts in some jurisdictions require written statements from the U.S. that no criminal charges are pending. Parents and foreign Central Authorities must be advised that once charges have been brought, the decision to withdraw charges is in the hands of the prosecutor, not the civil court, not the U.S. Central Authority, and not the parent. If criminal charges are pending against a taking parent, two things can happen: One, the applicant can request that the state or federal prosecutor drop the criminal case against the taking parent. Of course, the final decision is made by prosecutor, and there is no guarantee the charges will be dropped. Second, the taking parent can voluntarily return with the child and face the charges.

Uruguay – Uruguay :

No hay información al respecto.

7. Médiation - Mediation

Question 20	
Are there any programmes of mediation available in your State for parents or other persons involved in Hague Convention cases? Please describe these, indicating *inter alia* the methods employed to ensure that mediated agreements are enforceable and respected by the parties, as well as the availability of, and training opportunities for, international mediators.	**Votre Etat offre-t-il des programmes de médiation aux parents qui sont parties aux affaires relevant de la Convention de La Haye ? Veuillez décrire ces programmes, en indiquant, entre autres, les mécanismes utilisés pour garantir l'exécution et le respect des solutions consenties lors de la médiation par les parties, ainsi que la possibilité de recourir à des médiateurs internationaux et l'existence ou non de formations de médiateurs internationaux**.

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Argentina – Argentine :

No.

Australia – Australie :

The Australian Central Authority does not currently access formal mediation programmes as a primary dispute resolution method for parties to Hague Convention cases. However, informal negotiations between parties to secure a voluntary return are common practice.

Some experience has suggested that the use of mediation may act to the detriment of a case. A Hague case heard in New South Wales in 2002 attempted formal mediation. It was seen that the mediation process significantly contributed to the delay of the proceedings.

The International Social Service (ISS) operates in Australia to provide information and support to families regarding international family relationships. While the service does not offer formal mediation programmes for parents or other persons involved in Hague Convention cases it provides a coordinated point for services that can be accessed by parties involved in international abduction cases. The ISS support service provides assistance on issues surrounding international parental child abduction, contact between parents and children and parenting across international borders. The service also

provides training and community education to agencies and community groups who wish to know more about international parent child abduction.

Austria – Autriche :

Programmes of mediation are available for parents or other persons involved in Hague Convention cases. Mediation never is compulsory but the judges have to give special advice to all parties in cases apparently fit for an amicable solution. Parties may select mediators from a list maintained by the Federal Ministry of Justice. Like all private agreements those made during a mediation process have to be approved by the court to become enforceable. The court has to examine whether the agreement is in the best interest of the child.

All listed mediators have to prove their training and ablity following sophisticated rules in the Austrian Civil Mediation Act.

As a reasonable amount of the listed mediators have international experiences (for example workshops with internationally renowned mediators like *Friedmann & Himmelstein* et al) mediation in English is available. There may be mediators able to speak (and to mediate in) other languages too.

Canada – Canada :

Ontario
Generally, there are no publicly funded mediation services employed by the Ontario Central Authority. If a matter appears before the Ontario Superior Court of Justice, Dispute Resolution Officers will attempt to settle the case on the first appearance.
The Ontario Central Authority also works with Non-Governmental Organizations to assist in re-unification issues.

British Columbia
Mediation was made available in the Grant case through the Ministry of Attorney General in BC and the French CA, as an exception. Efforts will be made to set up mediation for all appropriate Hague cases. Care must be taken to ensure that mediation attempts are genuine and not used to delay return applications. It is expected that mediation will be particularly helpful in access cases.

Saskatchewan
Information about Saskatchewan Justice's Dispute Resolution Office is available at: http://www.saskjustice.gov.sk.ca/DisputeResolution/family-mediation.shtml.

Parties are also able to hire a private mediator if they wish. Mediators do not act for either party, and do not provide legal advice. If the parties wished to have a legally binding agreement or court order, we would encourage them to seek legal advice. Enforceability of mediated agreements may be an issue. We are not aware of any training opportunities for international mediators.

New Brunswick
Mediation services are available free of charge through court mediators or by fee through private collaborative law mediators. A contract or agreement signed by the parties prior to commencing mediation governs protocol, enforceability, subsequent litigation if needed. Each judicial district of New Brunswick has its own in-house mediators. The Law Society of New Brunswick maintains a list of collaborative law practitioners.

Quebec
Yes. In June 2003, an organization called the "Association Internationale francophone des intervenants auprès des familles séparées" was created. Canada (Quebec), Belgium, France and Poland are the founding countries. Lorraine Filion, director of family mediation at the Montreal courthouse, is head of the Quebec branch.

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Two requests for international mediation in cases with France involving use of the Hague Convention to arrange and/or protect visiting rights were started. Unfortunately, the files were closed after the mothers refused to take part in mediation. In May 2005, an international conference was held in Brussels to evaluate cases in progress and look for ways to improve the process.

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Manitoba
Manitoba's Family Conciliation Services provides parents and family members with free mediation of custody, access and other family issues. Family Conciliation is Manitoba's designated social agency contact for International Social Services Canada. Family Conciliation has provided mediation services in Canadian inter-jurisdictional family cases (i.e. those involving a Manitoba parent and a parent in another Canadian province/territory). They could provide similar assistance in an appropriate international case.

Information about Family Conciliation is available via the Internet at:
http://www.gov.mb.ca/fs/childfam/family_conciliation.html (English)
http://www.gov.mb.ca/fs/childfam/family_conciliation.fr.html (French)

Alberta
Mediation has not yet been employed by the Alberta CA but we do have access to mediators who would be available through the courts once we had a better understanding of the practical application and process of international mediation.

Nova Scotia
Nova Scotia does not have any programs of mediation available in Nova Scotia for parents or other persons involved in Hague Convention cases.

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Ontario
De manière générale, l'Autorité centrale de l'Ontario n'offre aucun service de médiation financé par l'État. Si une affaire se présente devant la Cour supérieure de justice de l'Ontario, des agents de règlement des différends tenteront de régler l'affaire lors de la première comparution.

L'Autorité centrale de l'Ontario travaille aussi avec des organisations non gouvernementales pour faciliter la résolution des questions de réunification.

Colombie-Britannique
Des services de médiation ont été offerts dans l'affaire *Grant* par l'intermédiaire du ministère du procureur général de la Colombie-Britannique et de l'Autorité centrale française, à titre exceptionnel. Des efforts seront déployés pour offrir des services de médiation dans les affaires relevant de la Convention de La Haye. Il convient de prendre des précautions pour s'assurer que les tentatives de médiation sont sincères et ne sont pas employées pour retarder les demandes de retour. On s'attend à ce que la médiation soit particulièrement utile dans les cas de droit de visite.

Saskatchewan
Des renseignements au sujet du bureau de règlement des différends (Dispute Resolution Office) du ministère de la Justice de la Saskatchewan sont disponibles à l'adresse :

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http://www.saskjustice.gov.sk.ca/DisputeResolution/family-mediation.shtml Les parties peuvent aussi engager un médiateur du secteur privé si elles le souhaitent. Les médiateurs n'agissent pour le compte d'aucune des parties, et ils ne donnent pas de conseils juridiques. Si les parties souhaitaient avoir une entente juridiquement contraignante ou une ordonnance judicaire, nous leur conseillerions de consulter un avocat. L'exécution des ententes de médiation peut s'avérer problématique. Nous n'avons connaissance d'aucun programme de formation de médiateurs internationaux.

Nouveau-Brunswick
Des services de médiation sont offerts gratuitement par des médiateurs judiciaires ou, moyennant des frais, par des médiateurs en droit collaboratif du secteur privé. Un contrat ou une entente signé par les parties avant le début de la médiation régit le protocole, le caractère obligatoire et les litiges subséquents le cas échéant. Chaque district judiciaire du Nouveau-Brunswick a ses propres médiateurs internes. Le Barreau du Nouveau-Brunswick tient sa propre liste de praticiens du droit collaboratif.

Québec
OUI. En juin 2003, une association appelée «Association Internationale francophone des intervenants auprès des familles séparées» était créée. Le Canada (Québec), la Belgique, la France et la Pologne sont les pays fondateurs. Madame Lorraine Filion, directrice du service de médiation à la famille au Palais de Justice de Montréal est en charge de la branche du Québec.

Deux demandes de médiation internationale dans le cadre de dossiers avec la France en application de la Convention de La Haye pour organiser et/ou protéger des droits de visite ont été commencées. Malheureusement ces demandes ont été fermées suite au refus des mères de participer à la médiation. En mai 2005, une conférence internationale avait lieu à Bruxelles pour évaluer les dossiers en traitement et tenter d'améliorer le processus.

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Manitoba
Le Service de conciliation familiale du Manitoba offre aux parents et aux enfants des services gratuits de médiation en ce qui concerne la garde, les droits de visite et les autres questions familiales. Le Service de conciliation familiale est l'organisme social désigné du Manitoba pour Service social International Canada. Le Service a fourni des services de médiation dans des affaires familiales canadiennes interjuridictionnelles (c'est-à-dire des affaires mettant en cause un parent résidant au Manitoba et un parent résidant dans un autre territoire/province canadien). Il pourrait fournir une assistance similaire dans une affaire à dimension internationale qui s'y prêterait.

Des renseignements au sujet du Service de conciliation familiale du Manitoba sont disponibles à l'adresse
http://www.gov.mb.ca/fs/childfam/family_conciliation.html (anglais)
http://www.gov.mb.ca/fs/childfam/family_conciliation.fr.html (français)

Alberta
L'Autorité centrale de l'Alberta n'a pas encore eu recours à la médiation, mais nous avons accès à des médiateurs qui seraient disponibles par l'entremise des tribunaux si nous pouvions acquérir une meilleure compréhension de l'application et du fonctionnement pratiques de la médiation internationale.

Nouvelle-Écosse
La Nouvelle-Écosse n'offre pas de programmes de médiation aux parents qui sont parties aux affaires relevant de la Convention de La Haye.

Chile – Chili :

No.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We do not have any special programmes of mediation available for parents or other persons involved in Hague Convention cases. However, mediation service is available if both parents or other persons involved are within jurisdiction. The parties can appoint a mediator to resolve their dispute. They may choose any independent third party, including the family mediators registered with The Hong Kong International Arbitration Centre (HKIAC), as their mediator. HKIAC also provides training to family mediators and organises mediation seminars.

The mediated agreement reached by the parties may be embodied in the court order in the proceedings under the Convention, if proceedings are instituted in parallel to mediation. The order will then be enforceable in the court.

The parties may also reduce the mediated agreement into writing and signed the same as a formal agreement. The agreement will then be binding on both parties and has legal force as a contract.

China (SAR Macao) – Chine (RAS Macao) :

No. At the moment there are no programmes of mediation as it is understood differently from conciliation. Though, as referred above, within minors' jurisdiction, conciliation is constructed in the interest of the minor and in a very ample manner as a legal power / duty of both non-judicial and judicvial authorities.

Colombia – Colombie :

Existe en Colombia el mecanismo de resolución alternativa de conflictos, regulado por la Ley 446 de 1998, la cual en su Parte III establece los mecanismos alternativos de solución de conflictos como es la Conciliación. De igual manera la Ley 640 de 2001, que establece normas aplicables a la conciliación y las materias o asuntos que son susceptibles de conciliación.

Conforme a esta normatividad y a lo estipulado en la Ley 1008 de 2006, los procesos de restitución y regulación internacional de visitas en la fase administrativa como en la judicial contemplan este mecanismo de conciliación.

En relación con la ejecución de los acuerdos, si no se cumple en la fase administrativa el acuerdo realizado por los padres, el Defensor de Familia presenta la demanda ante el juez competente hasta culminar con una sentencia que define el tema de la restitución o la regulación internacional de visitas.

Si el acuerdo se da en la fase judicial y no se cumple, se puede lograr la ejecución de ésta sentencia aprobatoria del acuerdo, mediante una acción penal que se denomina fraude a Resolución judicial y civilmente existe una acción denominada proceso ejecutivo por ejecución de hacer que conmina judicialmente el cumplimiento de una obligación adquirida ante una autoridad competente.

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Costa Rica – Costa Rica :

No, pese a que el artículo 165° de la Ley denominada Código de Niñez & Adolescencia, contiene el siguiente mandato legal hasta la fecha incumplido por el PANI: "Las instituciones públicas o privadas a cargo de la atención o la protección de personas menores de edad, deberán crear los centros necesarios de resolución alternativa de conflictos para llevar a cabo la mediación en esta materia."

Cyprus – Chypres :

No such mediation programmes are available apart from the general mediation duties of the Central Authority described in Article 7. But there is a Bill in the Parliament on mediation dealing with every case of family law.

Czech Republic – République tchèque :

No such programmes yet.

Denmark – Danemark :

A co-operational group between the Central Authority, the Ministry of Foreign Affairs, the police and the Ministry of Social Affairs has proposed that mediation will be offered in Hague Convention return cases. It is the plan that the Governmental Offices shall handle the mediation after the parents are referred from the court. We expect that a bill with this proposal will be proposed within a year.

For the time being the judge is obligated to seek a voluntary return of the child or to bring about an amicable resolution.

In access cases mediation can be offered by the Governmental Office and an agreement can with the parents consent be written in a decision that can be enforced.

Ecuador – Equateur :

La mediación debería proceder, conforme lo señala el Código de la Niñez y Adolescencia, en todas las materias transigibles que no vulneren derechos irrenunciables de la niñez y adolescencia. Esta se debe llevar a cabo ante centros de Mediación autorizados legalmente para poder intervenir en las materias de que trata el Código. Sin embargo, de nuestra experiencia, hasta el momento esto no se ha aplicado. En la práctica los funcionarios de Autoridad Central han ayudado en el proceso de intento de devolución voluntaria o de un acuerdo entre las partes con buenos resultados.

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El Salvador – El Salvador :

En El Salvador, a través de la Unidad de Defensa de la Familia y el Menor, se procura lograr la restitución voluntaria, a través de la conciliación como método de resolución alterna de conflictos.

Para ejecutar los acuerdos el Juez de Familia tiene que aprobarlos siempre que no sea en menoscabo de los derechos que por su naturaleza sean irrenunciables, una vez aprobados por el juez produce los mismos efectos que la sentencia ejecutoriada.

Finland – Finlande :

There are no particular programmes for this,

France – France :

Dès 1999 a été mise en place une structure originale de médiation en matière de conflits familiaux à caractère transfrontière, la Commission parlementaire franco-allemande de médiation, laquelle a contribué au maintien des relations entre les enfants et leurs deux parents dans les litiges portant sur le droit de garde et les droits de visite, par la recherche de solutions de compromis permettant de prendre en compte les racines biculturelles des enfants.

Puis le Ministère de la Justice français a créé en 2001 la Mission d'Aide à la Médiation Internationale pour les Familles (MAMIF), afin d'essayer de favoriser par le biais de la médiation le règlement des litiges familiaux présentant une dimension internationale.
Si l'entrée en vigueur du règlement "Bruxelles II bis" a réduit l'intérêt de l'intervention de cette structure dans des litiges entre Etats membres de l'Union européenne - à l'exception du Danemark -, cette Mission continue de mener des actions de médiation dans des situations existant entre la France et un pays non membre de l'Union Européenne.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

En los procedimiento de familia guatemaltecos, siempre existe la mediación para resolver conflictos entre parejas, y con respecto a la custodia de sus menores hijos, ya que con ello se llega a un acuerdo entre partes que puede tener efectos posteriores de cumplimiento.

Al llegar a una conclusión siempre dentro de la sede del Juzgado se resuelve conforme a ello.

Los padres que se encuentren en disputa sobre la custodia de un menor pueden resolver sus conflictos en la primera etapa del juicio que seria el de la conciliación, sin embargo si no es positiva la conciliación se continua con el proceso hasta que sea dictada sentencia.

Iceland – Islande :

There are no special programmes of mediation available in this field, as Icelandic law stands today. However, the Central Authority will in all or most cases make the effort to reconcile the parties, although it works within a limited time schedule before commencement of proceedings at court level. By national procedural law district court judges are in general obliged to take appropriate measures to settle civil law cases, *inter alia* Hague return cases. Mediated agreements are always enforceable under provisions of Enforcement Procedures Act No. 90 of 1 June 1989, mentioned in the answer to question no. 7 b) above. To this date court rulings ordering the return of children have always been respected by the parties concerned.

Regarding training opportunities in the field of mediation, funding is limited in the Icelandic court system. Alas, there are no specialised mediators, either on national or international level. The liaison judge has however been specialising (privately) in this field and in the field of family law in general for the last five years with good results.

Official discussions are also taking place today on establishing mediation programmes in civil and criminal cases and by early next year some progress may have been reached in both fields.

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Ireland – Irlande :

The Children Act 1997 makes provision for mediation as an alternative to court proceedings concerning the custody of and access to children. It encourages couples who are in dispute to agree to the custody of and access to their children, without the needs for court intervention. Before instituting court proceedings for guardianship, custody or access, a solicitor is obliged, under this act, to discuss with the parent the possibility of engaging in counselling and mediation to assist in effecting an agreement between the parties. An agreement in writing between parties can be made a rule of court and thus become enforceable in the same way as if it were a court order.

The Family Support Agency brings together programmes designed to support ongoing parenting relationships for children. Its functions include the provision of a family mediation service, both directly of through support for others providing these services and the administering of grants for such purposes.

Israel – Israël :

Under Israeli law, the Family Court can refer pending cases, including Hague Convention cases, to certified family mediators who are listed in the court's roster. These mediators are required to be experienced social workers, psychologists or lawyers who have attended special training in family mediation. However, there are no mediation programmes which have been specifically established for parents or other persons involved in Hague Convention cases.

An official mediation service is also provided in the Family Court, within the framework of the Court's "*assistance units*". This service is staffed by social workers and psychologists who have expertise in difficult cases. Assistance units aim to prevent the escalation of conflicts within families by creating solutions which maintain family relationships and by curtailing the legal process. Cases under the Hague Convention can therefore be referred to the assistance units which have experience in mediation. In addition to the issue of return, mediation can also be used in order to resolve access arrangements pending the hearing of the return application.

Mediated agreements can be recognized by an Israeli court, and have the same effect as a court decision. The court must ensure that the mediation process is conducted in accordance with the Court Mediation Regulations and that the mediated agreement is in the best interests of the child.

The Central Authority has also done informal mediation in appropriate cases. Again, a court order would then be necessary to ensure that any agreements can be enforced. Plans are currently underway for Central Authority personnel to receive formal training in mediation.

Italy – Italie :

L'Italie n'a pas encore appliqué de projets de médiation.

Latvia – Lettonie :

In order to appraise the possibilities of implementation of the conciliation institute in Latvia in June 2006, in the framework of the National Program for the Improvement of the State of the Child and Family, the ministry has started to carry out conciliation (mediation) pilot project. During the pilot project, conciliation (mediation) services are provided free of charge for the families who have come to a conflict situation (int.al. situations of divorce or disputes related to extra-familial childcare). The services are offered by qualified teams of specialists – psychologists and lawyers. Connection of the pilot projects content to the project implemented in the framework of PHARE Transition Facility financial instrument is being ensured.

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According to the Civil Law of Latvia if the court considers that it is possible to retain the marriage, it may in order to reconcile the spouses suspend the adjudication of the case for a period up to six months. In Latvia, as compared to many other countries, conciliation is currently being left to the couple's discretion. Yet it should be noted that the courts are weighted with cases which could be settled out of court. Therefore one of the pilot project's aims is to relieve the judiciary system.

On the grounds of the pilot projects results and conclusions and the results and conclusions of the project implemented in the framework of PHARE Transition Facility financial instrument it is envisaged to draft a further model of conciliation in family matters in Latvia, where the possible versions of the conciliation (mediation) services could be out of court (at the Orphan's court (Parish court), at the centre for family support etc.) or at court (mediators could be judges or other court employees). In case of a dispute, for the spouses with children the conciliation (mediation) services could be obligatory.

Training of mediators was guided by the specialist of integrated mediation Mr A.Trosen from Germany.

Unfortunately till this time nobody from the parties involved in the cases of the Convention has entered for receiving of mediation services.

Lithuania – Lituanie :

No such programmes exist in Lithuania for the time being. All the cases involving disputes between parents residing in different states concerning changing of the child's place of residence were settled on private basis with the help of attorneys hired by the parties.

Malta – Malte :

Currently, mediation is linked to separation proceedings, and also deals with issues of child custody and access. Mediation in Malta does not deal with issues of wrongful removal/retention of children

Mexico – Méxique :

Si bien es cierto que la mediación se encuentra reglamentada en la legislación de algunos Estados de la Republica Mexicana, también lo es que la Autoridad Central no ha registrado algún caso donde se haya utilizado la mediación para resolver un asunto de La Haya.

Monaco – Monaco :

Sur l'existence de programmes de médiation en Principauté :

Il existe un Service de médiation familiale qui est composé d'un médiateur titulaire du Certificat d'aptitude à la fonction de médiateur familial.

Ouvert à toute personne domiciliée sur le territoire monégasque, le Service de médiation familiale peut être sollicité par les parents directement ou sur décision judiciaire.

A ce jour, les demandes de « médiations volontaires » émanant de couples binationaux ou biculturels sont largement représentées : Anglais, Suisses, Allemands, Italiens, Espagnols, Sri Lankais, Ivoiriens, Néerlandais, Ecossais, Mauriciens, Portugais, Libanais, Marocains, Danois et Iraniens, Lituanien, Canadien.

Le juge tutélaire, afin de faciliter la recherche par les parents d'un exercice consensuel de l'autorité parentale, a la possibilité de leur proposer une mesure de médiation et, après avoir recueilli leur accord, de désigner un médiateur familial pour y procéder. Les

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médiations familiales ordonnées par le juge tutélaire représentent un faible pourcentage de l'activité du service. Toutefois durant la médiation, le médiateur a l'obligation de refuser de poursuivre son action lorsque l'un ou l'autre parent « judiciarise » le conflit, ou en cas de condamnation pour enlèvement d'enfant.

En outre, un lieu d'accueil parents/enfants permet la mise en œuvre des mesures de « reprises de liens en présence de tiers », ordonnées par une Juridiction monégasque. Dans ce cadre, plusieurs parents auteurs de déplacements illicites d'enfants sont venus exercer leur droit de visite.

Enfin, en application de la Convention de La Haye du 19 octobre 1996 concernant la compétence, la loi applicable, la reconnaissance, l'exécution et la coopération en matière de responsabilité parentale et de mesures de protection des enfants, la Direction des Services judiciaires est désignée comme Autorité Centrale et Autorité Compétente pour faciliter, par la médiation, la conciliation ou tout autre mode analogue, des ententes à l'amiable sur la protection de la personne ou des biens de l'enfant ; le Service de médiation familiale n'ayant pas, à ce jour, été sollicité dans ce cadre.

D' après les informations obtenues auprès du médiateur familial un seul cas de médiation familiale internationale a été présenté, à ce jour, devant le Service de médiation familiale. La DSJ, en sa qualité d'Autorité Centrale l'a saisi suite à la réception d'un formulaire de demande de retour de l'enfant par l'Autorité Centrale britannique.

En dehors de ce cas précis, seuls les arrêts de la Cour ou des ordonnances du juge tutélaire relatifs à l'exercice du droit de visite ont été mis en place par ce service de médiation familiale.

Pour ces couples, aucun accord n'a pu aboutir en raison:

- des contradictions existant entre les différent systèmes juridiques nationaux et qui accentuent les traumatismes individuels et « créent un sentiment de défiance à l'égard des Etats qui n'exécutent pas les décisions » ;
- du fait que le conflit qui est soumis à la médiation est « ancien et bloqué ». Les parents et les enfants concernés sont « littéralement « calcinés » par la souffrance et emmurés dans le ressentiment ». Dans ces cas de très grande souffrance, « le processus de médiation n'est concevable qu'après un travail de préparation et de mise en condition psychologique de l'ensemble de la famille » et semble devoir s'accompagner, pour le médiateur familial, d'une bonne connaissance » des systèmes juridiques des Etats concernés, ainsi que d'une formation à la médiation familiale internationale.

En 2006, le Service de médiation familiale de la Principauté de Monaco dispose d'un médiateur familial certifié(diplôme universitaire) et formé à la médiation familiale internationale à l'Institut Universitaire KURT BOSCH à Sion en Suisse. La Commission de validation de la formation devrait se réunir prochainement.

Par ailleurs, un référent du Service Social International (SSI), dont le Secrétariat Général a son siège à Genève, a été désigné en juin 2004 à la Direction des Services Judiciaires.

Ainsi, en application de la Convention de La Haye sur les aspects civils de l'enlèvement international d'enfants du 25 octobre 1980, en cas de déplacements illicites d'enfants, de droit de visite non respecté, le Service Social International pourrait collaborer avec la Principauté de Monaco et proposer la mise en place de co-médiation avec un intervenant de chaque pays afin de renforcer la recherche de solution amiable et de médiation.

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Netherlands – Pays-Bas :

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

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

New Zealand – Nouvelle Zélande :

We are not aware of any specific transfrontier mediation services available in New Zealand. Counsel are instructed to initiate proceedings and after discussions with counsel acting for the abducting parent to determine if a voluntary return may be negotiated. Counsel may enter into negotiations at any time if they believe it may assist in reaching resolution.

Nicaragua – Nicaragua :

No existen programas de mediaciones específicos para estos casos concretos; sin embargo, la Autoridad central y la Autoridad Administrativa, tienen como prioritarios la realización de estos trámites.

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Panama – Panama :

En Panamá existen Programa de mediación dentro del Órgano Judicial pero no prevee en estos momentos que las personas involucradas en caso de Restitución Internacional hayan concurrido a utilizar estos servicios . Dentro de nuestro procedimiento se establece que el Juez procurará al inició conciliar a las partes, siendo necesario que esten presente el demandante y el demandado, de tal forma que puedan ambas partes escuchar las pretensiones de los mismos. De nuestra experiencia hemos podido lograr en un proceso de restitución internacional que las partes regresaran por voluntad propia al Estado de Residencia Habitual (Caso Argentina) Y en reclamación de Visita se llegaran acuerdo de llevar a cabo el cumplimiento de este derecho luego de la conversación de ambas partes y resolver los inconvenientes y temores surgidos en el ejercicio del régimen (Caso Estados Unidos - Panamá Smith).

Estimamos que debería la autoridad Central establecer acuerdo con el Órgano Judicial para que esta formula de mediación se emplee en los casos de restitución como forma de terminación anticipada del proceso. Al constar los acuerdos deberán ser remitidas a la mayor brevedad a la autoridad judicial competente para su ratificación y elevación a resolución judicial, de tal forma que ejerza obligatoriedad ente las partes. Sería preciso que los mediadores sean entrenados sobre el fin del convenio y que no sea confundido con los procesos de guarda y Crianza ordinarios.

Paraguay – Paraguay :

Existen programas de mediación del Poder Judicial de la Rca. Del Paraguay, pero el mismo no actúa en los casos relativos al Convenio. Sin embargo, desde esta A. C hemos obtenido la restitución voluntaria de niños en un caso, gracias a un procedimiento de mediación realizado desde esta A.C

Poland – Pologne :

In practice family courts in Poland use mediation procedure in cases concerning the scope of parental custody or the child abduction. The most desirable outcome of the proceedings is of course achieving its main goal, namely the return of the child to the place deemed as his habitual residence before the abduction and a peaceful regulation of the access rights in the course of mediation procedure. Under Article 183[1] § 1 and 2 of

the Polish Code of Civil Procedure (k.p.c.) the mediation procedure is voluntary and is undertaken either on the grounds of an agreement made by the parties in question or on the basis of a court decision. If the parties reach an agreement in the course of mediation, the content of the agreement is either included in the report or attached to it (Article 183[11] § 2 of the Polish Code of Civil Procedure). Further on, the agreement is approved by the court by virtue of a decision issued in a closed session. The agreement reached by the parties in the case of the return of a child to its place of habitual residence may be executed by ordering the compulsory taking away of the child by a probation officer and returning it to an authorized person. The agreement in the case of regulating the access rights may be executed through coercive measures under Article 1050 et seq. of the Polish Code of Civil Procedure.

Portugal – Portugal :

No, but the Portuguese Central Authority is now studding the possibility of increasing his team with psychologists, in order to start doing mediation. The Portuguese Central Authority wishes to start this kind of measures at the beginning of the proceedings.

Romania – Roumanie :

No; see the answer to question 4.

Slovakia – Slovaquie :

There are no special programmes of mediation in our country yet. The preventive measures taken by the Slovak CA are mentioned in the Question No. 4 of the Questionnaire.

South Africa – Afrique du Sud :

There are no separate mediation programmes in place. Family Advocates are trained mediators. In appropriate cases, mediation is utilized as a means to secure voluntary return in terms of article 10.

Spain – Espagne :

En España no existe una ley estatal que regule la mediación familiar, al margen de determinadas leyes autonómicas como la Ley 5/1997, de 25 de junio, que regula el sistema de servicios sociales en el ámbito de la Comunidad Valenciana, la Ley 4/2001, de 31 de mayo, reguladora de la mediación familiar en Galicia, la Ley 1/2001, de 15 de marzo de mediación familiar de Cataluña, la Ley de 19 de diciembre de 2001 de Valencia, la Ley 15/2003, de 8 de abril, de la mediación familiar de Canarias o la Ley de 2 de junio de 2005 de Castilla La Mancha. Ello no impide la posibilidad de alcanzar acuerdos entre las partes a lo largo del proceso, habiendo establecido el Art. 55 del Reglamento Comunitario 2201/2003 en el ámbito de la Unión Europea, que a petición de una autoridad central o de un titular de la responsabilidad parental, las autoridades centrales cooperaran en asuntos concretos con el fin de cumplir los objetivos del Reglamento y que a tal efecto adoptaran las medidas adecuadas para, entre otras cosas, facilitar la celebración de acuerdos entre los titulares de la responsabilidad parental a través de la mediación o por otros medios, y facilitar con este fin la cooperación transfronteriza. A nivel de la Unión europea existe la Propuesta de Directiva del Parlamento Europeo y del Consejo sobre ciertos aspectos de la mediación en asuntos civiles y mercantiles de 22 de octubre de 2004 tras la publicación de un previo Libro Verde en fecha 19 de abril de 2002 sobre las modalidades alternativas de solución de conflictos en el ámbito del derecho civil y mercantil, y esta prevista en el Plan de acción de junio de 2005, la adopción de una directiva sobre modalidades alternativas de solución de los conflictos - mediación a lo largo del año 2006.

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En materia de mediación familiar, la Ley 15/2005, de 8 de julio, declara en su exposición de motivos el establecimiento de la mediación como un recurso voluntario alternativo de solución de los litigios familiares por vía de mutuo acuerdo con la intervención de un mediador imparcial y neutral. Dicha Ley introduce una nueva regla 7ª al Art. 770 de la Ley de Enjuiciamiento Civil que permite a las partes de común acuerdo la facultad de solicitar la suspensión del proceso de conformidad con lo previsto en el Art. 19.4 de la Ley de Enjuiciamiento Civil, para someterse a mediación, existiendo el compromiso por parte del Gobierno en la disposición final tercera de la norma, de remitir un proyecto de Ley sobre mediación basada en los principios establecidos en la Unión Europea , y, en todo caso, en los de voluntariedad, imparcialidad, neutralidad y confidencialidad, y en el respeto a los servicios de mediación creados por las Comunidades Autónomas. Es importante así el impulso que la Ley 15/2005, de 8 de julio, pretende dar a la mediación en procesos familiares, sobretodo cuando a nivel de la Unión Europea, el Reglamento 2201/2003 , en su artículo 55 impone, como ya se ha dicho, la cooperación de Autoridades Centrales para facilitar la celebración de acuerdos entre los titulares de la responsabilidad parental a través de la mediación o por otros medios, y facilitar con este fin la cooperación transfronteriza. Existe en España la vigente Ley de Violencia de Género, Ley Orgánica 1/2004, de 28 de diciembre, de Medidas de Protección Integral contra la Violencia de Género, que en el Artículo 44 sobre Competencia, adiciona un artículo 87 ter en la Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial, donde se fija la competencia de los Juzgados de Violencia sobre la Mujer en el orden civil y penal, y donde se señala en el ordinal cinco que en todos estos casos está vedada la mediación.

Sweden – Suède :

There are no particular programmes for mediation in Sweden. However, to encourage a voluntary return, the Court has the possibility, in accordance with section 16 in the 1989 Act, to request that a representative of the social services, or another person deemed suitable, act as a mediator to try to reach a voluntary solution. However, this provides that such a measure presumably can result in the voluntary return of the child, without undue delay of the proceedings in the court. The maximum time frame allowed for mediation is a period of two weeks, which can only be prolonged under exceptional circumstances. (For information about the mediation process see above section 3g).

Even if Sweden does not have any specific mediation programmes, the Swedish Central Authority has taken part in several international conferences organized by Reunite, a well-reputed British NGO. At these conferences participants exchanged experience of every aspect of child abduction. The Swedish Central Authority has also initiated cooperation with Reunite concerning mediation in cases under the Convention where children have been abducted from Sweden to the UK. Sweden hosted a small group of countries, aiming at improving the international co-operation regarding child abductions and related issues in non-convention cases.

Switzerland – Suisse :

Non : toutefois, les parents peuvent être assistés par des organes de concertation ou de médiation relevant des cantons (spécialistes au sein d'autorités tutélaires ou services de protection de la jeunesse), voire mis en contact avec le Service social international ou d'autres organismes ad hoc privés ou semi privés (par ex : office d'assistance familiale/consultation conjugale etc). Un certain nombre d'avocats intéressés aux causes relevant de la convention sont par ailleurs titulaires d'un diplôme en médiation. Sur le plan international, des échanges de vues entre les autorités centrales concernées permettent de « déterminer un médiateur », si les parents le souhaitent.

Les accords de médiation conclus par les parties peuvent être pris en compte pour l'abandon d'une procédure déjà introduite devant un tribunal. Lorsqu'ils sont passés dans la phase de recherche d'une solution amiable, ils peuvent être conclus devant une autorité tutélaire et transmis ensuite aux autorités compétentes en matière de protection des enfants de l'Etat requérant (éventuellement application successive de CLAH-80 et

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CHAH-61). Le juge de l'Etat requérant est libre de donner à de tels accords la portée qu'il entend. (Il ne s'agit pas d'ordonnances miroir ou de décision judiciaire concertée).

Dans le futur la Suisse pourrait disposer d'un réseau de spécialistes susceptibles d'intervenir dans les affaires d'enlèvement international d'enfants en vue d'une médiation (voir proposition de la Suisse).

United Kingdom (Scotland) – Royaume Uni (Écosse) :

In Scotland, mediation is not generally used in Hague cases. It is a possibility however, and parties may be referred to mediation by a judge or by agreement between the agents. The child abduction charity reunite, carried out a mediation pilot recently. However, the Central Authority for Scotland did not participate.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

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

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

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

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

United States – Etats Unis :

The U.S. and Germany have agreed to implement a mediation pilot program for cases of international parental abduction involving our two countries. The pilot program proposed by the U.S.-German mediation task force involves a co-mediation model. Each mediation would involve two mediators: one female and one male; one with a psycho-social background and one with a legal background; one of German origin and one of American origin. This model is designed to create a level playing field and make the parents feel comfortable and understood. Ideally, mediation would take place in person, with both parents and both mediators convening in the country where the child is currently residing. If a left-behind parent travels to the country of the taking parent for purposes

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of mediation, the mediator could assist the parties to organize some form of appropriate interim contact between the left-behind parent and the child. In reality, economic limitations of the majority of families involved in these disputes dictate that mediation will occur through video teleconference or teleconference, in most cases. NCMEC is exploring the possibility of tapping into a nationwide network of video teleconferencing facilities that may be willing to offer use of their technology to parents for little or no charge. Modern Internet video teleconferencing and voiceover IP capabilities may prove a viable method of communication requiring only the availability of a computer and high-speed Internet access on both sides.

Uruguay – Uruguay :

El Juez de Familia nacional que es el que conoce de las solicitudes de reintegro internacional recibidas del extranjero, recibido el pedido, cierra fronteras respecto al niño y toma conocimiento de su situación y en audiencia intenta una solución amigable. En caso contrario, se inicia en proceso en el que es posible invocar las excepciones previstas por el texto convencional.

Question 21	
How do you ensure that mediation procedures do not unduly delay proceedings for the return of the child?	**Comment votre Etat s'assure-t-il que les procédures de médiation ne retardent pas inutilement la procédure relative au retour de l'enfant ?**

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Argentina – Argentine :

Fue contestado en la respuesta a la pregunta n° 4.

Australia – Australie :

The use of negotiations for parties to agree to a voluntary return in Hague cases is encouraged. There is, however, a reluctance to delay court proceedings specifically to attempt formal mediation. A delay in proceedings to facilitate mediation may risk achieving the expeditious return of the child. The hearing of the substantive matter in a case may be delayed and lead to the "creation" of defences that may not otherwise have been available to the abducting parent such as acquiescence, settlement or a child might develop an objection.

Any information negotiations or mediation between the parties is therefore managed in the context of pending legal proceedings.

Austria – Autriche :

As all mediation proceedings are voluntary, any party may cancel it without a particular justification. In such cases the courts are obliged to continue their proceedings immediately and to establish a decision. So there is no need for specific measures against undue delay – presuming that no delay can be considered as undue during voluntarily negotiations between the parents.

Canada – Canada :

In most Canadian provinces and territories, mediation has not been used to resolve applications for the return of children but rather has been useful in resolving access disagreements.

However, some Central authorities would ensure that all relevant Court documents were prepared (or filed, as the case may be) and an Article 16 notice filed. The Authority (or

the Court, if the matter was already pending before the Court) would also ensure that strict timelines for completion of the various stages of the mediation process were adhered to so as not to operate to unduly delay consideration of the request for return by the Court.

**

Dans certains territoires et provinces canadiens, la médiation n'a pas été utilisée pour régler des différends relatifs au retour de l'enfant, mais elle s'est avérée utile pour régler des désaccords concernant les droits de visite.

Cependant, certaines Autorités centrales s'assureraient que tous les documents pertinents aux fins de la procédure judiciaire sont établis (ou déposés, selon le cas) et qu'un avis en vertu de l'article 16 est signifié. L'Autorité (et le tribunal s'il était déjà saisi de l'affaire) s'assurerait aussi que l'on respecte des délais stricts quant à la réalisation des différentes étapes du processus de médiation de manière à ce que celui-ci n'ait pas pour effet de retarder indûment l'examen de la demande de retour par le tribunal.

Chile – Chili :

Al no aplicarse la mediación en los procedimientos Chilenos no se ha analizado que retrasen los procedimientos.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

Mediation should be conducted expeditiously. To avoid any delay, proceedings under the Convention should be instituted in parallel to the mediation. If mediation is successful, the terms reached in the mediation can be embodied in the order of the court.

China (SAR Macao) – Chine (RAS Macao) :

No available data.

Colombia – Colombie :

En Colombia en la fase administrativa el Defensor de Familia debe ser riguroso en la observancia del principio de celeridad reconocido en el Convenio de La Haya, el cual es incorporado expresamente en nuestra Constitución Política en los artículos 93 y 94 con prevalencia en el orden interno.

Con la expedición de la Ley 1008 de 2006, las autoridades administrativas o judiciales deben observar con rigurosidad éste principio. Para el efecto la citación a audiencias se hace en el menor tiempo posible y las citaciones se hacen a través de esta autoridad central, utilizando medios de comunicación rápidos.

Costa Rica – Costa Rica :

Si se implementara el anterior mandato legal, probablemente también estaría resuelto el punto en cuestión.

Cyprus – Chypres :

When a request comes from a foreign Central Authority it is forwarded immediately to the Office of the Attorney General; for the filling of the return application. In the meantime the Central Authority will try to see if there is possibility of an amicable solution in the scope of Article 7 but only if this will not of course alert the abductor. So in most cases the filing of the application is almost imminent.

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Czech Republic – République tchèque :

If the abductor does not follow the invitation to secure voluntarily the return of the child the case shall be immediately brought before the court.

Denmark – Danemark :

As mentioned in our answer of question 20 mediations is not offered for the time being in return cases.

Ecuador – Equateur :

No se ha aplicado.

El Salvador – El Salvador :

Para el caso de la conciliación, que es el método aplicado, se tiene en cuenta que el solicitante lo autorice, ya que en algunos casos puede ser contraproducente; asimismo, existen plazos y una sola cita, en caso de no comparecer, se procede a iniciar el procedimiento judicial.

Finland – Finlande :

[No answer]

France – France :

C'est un souci constant de l'autorité centrale française que de veiller à ce que la procédure judiciaire de retour de l'enfant soit engagée et poursuivie dans les plus brefs délais, indépendamment de l'introduction de toute demande de médiation.

La proximité institutionnelle de la MAMIF et de l'autorité centrale, qui dépendent de la même sous-direction au Ministère de la Justice, facilite sur ce point les communications entre les deux services.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

The lawyer responsible for individual Hague cases at administrative level and later the district court judge are respectively obliged to proceed expeditiously. If a settlement is not reached within days of commencement at administrative level the case will be brought to court. Both parties and/or their lawyers will then be summoned before the court in a matter of days. The procedure that then takes place is further described under answer to question no. 7 b). Normally submission of written documents and evidence should be available to the judge presiding within 2 weeks after he receives the case. In the following days he should summon the parties and/or lawyers before him and commence mediation. At this point it would be clear whether a settlement can be reached without further proceedings. If not, steps would be taken to obtain the views of the child/children concerned. Following an oral or written report on the child's standing, usually available within a week the judge would summon the parties and/or lawyers before him once again and try further mediation. In the case of non-settlement the case would be heard orally in the same court session or a date fixed for a court hearing a few

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days later, where the parties can make oral statements and, if necessary, oral evidence will be given. A decision should then be reached as soon as possible, normally within a matter of days and never later than in one or two week's time.

Ireland – Irlande :

This would be a matter for the solicitor involved.

Israel – Israël :

A mediation process should be provided as an option until the court proceedings take place so as not to cause any delay, or when the parties agree to delay the initiation of legal proceedings.

According to Israeli law, the period designated for the mediation process falls under the supervision of the court, and any extension of this period requires the permission of the court. However, any party may terminate the mediation process at any time, if they consider that it is causing an undue delay in proceedings. Moreover, under these regulations, the mediator has a duty to terminate the process in these circumstances.

Italy – Italie :

[No answer]

Latvia – Lettonie :

Up to now in our practice there were not used mediation measures in the cases under the Convention.

Lithuania – Lituanie :

Lithuania has no experience in mediation as there is no such institute for the settlement of family disputes. In accordance with the action plan for 2005-2012 drawn up under the State Policy for the Welfare of the Child approved by the Government of the Republic of Lithuania by its resolution No. 184 of 17 February 2005, the Ministry of Justice must prepare, by 2007, a concept for and the draft law on mediation in the resolution of family disputes.

Malta – Malte :

Not applicable.

Mexico – Méxique :

[Sin respuesta]

Monaco – Monaco :

La médiation par le Service de médiation familiale peut intervenir à tout moment de la procédure tant que la condamnation du parent qui a procédé à l'enlèvement de l'enfant n'est pas intervenue. Toutefois, il est difficile de porter une telle appréciation vu qu'une seule procédure de médiation familiale internationale n'a été proposée à ce jour en Principauté.

Il est à noter que, si les circonstances l'exigent, des mesures provisoires peuvent être prises en attendant l'issue de la médiation.

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Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

See question 4.

Nicaragua – Nicaragua :

Los tramites tendientes a realizar una posible mediación, no suspenden la tramitación de la solicitud de Restitución Internacional.

Panama – Panama :

La garantía que la mediación no atrase la restitución del niño es lograr que ambas partes comparezcan ante la autoridad central para su atención oportuna y en un breve tiempo sean referido con el mediador especializado en esta materia (Órgano Judicial) y luego remitir los acuerdos a la autoridad judicial competente para su respectivo trámite que debe ser establecido por ley, de manera sumaria.

Si no prosperara la mediación debe establecerse la audiencia oral para cumplir con el procedimiento especial para el caso de Restitución que debe desarrollarse y definirse por ley.

Paraguay – Paraguay :

Está plenamente garantizada, no retrasa el procedimiento para la restitución, muy por el contrario. Esta A.C. tiene experiencia positiva en ese sentido, se fija una audiencia para intentar la restitución voluntaria del niño, ni bien se recibe la solicitud de restitución, siempre y cuando el domicilio del sustractor fuera conocido y fuera posible notificarle. Si la mediación fracasa inmediatamente se presenta la causa ante el Juzgado de Niñez y Adolescencia de turno.

Poland – Pologne :

Under Article 183[10] § 1 of the Polish Code of Civil Procedure the mediation cannot result in undue delay in the court proceedings as the court sets a time limit for mediation which does not exceed a month unless the parties unanimously apply for postponing the deadline.

Portugal – Portugal :

[No answer]

Romania – Roumanie :

[No asnwer]

Slovakia – Slovaquie :

See Question 4 of the Questionnaire.

South Africa – Afrique du Sud :

Agreement will be put in place that if the mediation fails by a particular date , then the Central Authority will initiate legal proceedings.

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Spain – Espagne :

A la vista de la respuesta anterior, en este momento no se plantea tal cuestión en el marco de la legislación española.

Sweden – Suède :

According to section 16 in the 1989 Act, the maximum time frame allowed for mediation is a period of two weeks, which can only be prolonged under exceptional circumstances. This time- frame ensures that the mediation procedure do not delay the proceeding for the return of the child. To ensure that the timeframe is complied with, this would be a matter for the solicitor involved.

Switzerland – Suisse :

Une certain « retard » paraît inévitable, compte tenu du délai court de six semaines pour parvenir à une solution concertée : toutefois, la recherche d'une solution amiable ou une procédure de médiation est effectuée en accord avec le demandeur. Si la procédure devait se prolonger, ce dernier peut introduire une demande de retour directe auprès des instances judicaires. Lorsque l'Autorité centrale s'investit elle-même dans la recherche d'une solution amiable, elle exige de traiter le cas dans un certain délai. En cas de transfert du travail à une l'autorité cantonale partenaire (cf. art. 7, alinéa 1er de la convention) elle rappelle les exigences d'un traitement répondant aux buts de la convention et mentionne l'article 11. A l'avenir, il sera proposé qu'en cas d'échec de la médiation, la procédure devant l'autorité judiciaire puisse s'engager immédiatement, afin d'éviter toute perte de temps inutile.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

Not applicable.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

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

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

United States – Etats Unis :

Estimates for the duration of a successful, international family mediation range from 12 to 16 hours, spread across the course of 2 to 4 days. Strict time limits for completion of a mediation attempt should be applied (ideally, 2 to 3 weeks, but no more than 6 weeks) in order to avoid enabling parties to use mediation as a tool to delay resolution of the international custody dispute and close attention must be paid to the proximity of Hague filing deadlines.

The U.S.-German mediation task force has agreed that a successful mediation team would ideally be trained in the 1980 Hague Abduction Convention, including the necessity for expedited resolution; family law and custody matters; domestic violence; cultural sensitivity; the importance of reunification services and post-reunification therapy; enforceability issues; and numerous other topics.

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Uruguay – Uruguay :

Ver respuesta 20.

Question 22	
Do you have any other comments relating to mediation in the context of the 1980 Convention either at a preventive stage or when a removal or retention has occurred?	**Avez-vous d'autres observations à ajouter concernant une médiation offerte dans le cadre de la Convention de 1980 tant sur une base préventive qu'à l'instant où le déplacement ou le non-retour a lieu ?**

Argentina – Argentine :

Esta Autoridad Central entiende que siempre que sea posible ofrecer una salida amistosa a las partes y no judicializar la cuestión, es conveniente desplegar esfuerzos en ese sentido, no sólo por el ahorro de tiempo y recursos que esta alternativa conlleva, sino también porque muchas veces los padres son más propensos a cumplir aquellas cuestiones que han acordado entre ellos, que lo que les resulta impuesto por un Juez. Es por ello que antes de llevar el proceso de restitución o de visitas a la justicia, ofrecemos nuestra intermediación para tratar de resolver la cuestión de manera voluntaria.

Australia – Australie :

Australia notes the trial of mediation in Hague cases in other Contracting States such as the United Kingdom and is interested in its outcome.

Austria – Autriche :

Although this concept seems to be convincing, no case is known yet by CA, where the removal of the child has been solved with the help of mediation. That may be explained by the fact that only a small proportions of the cases is fit for mediation: If the parents are willing and able to communicate in a constructive manner, they may get to an amicable solution with the help of the judge or the Youth Welfare Authority. If not, the way to establish a new mode of communication may work in due time for access cases but not for removal cases.

Canada – Canada :

Quebec
At the request of Ms. Fillion, director of family mediation at the Montreal courthouse, the mediators on her team were given training on the operation of The Hague Convention and means of prevention. This exercise was considered very important as a way of helping mediators who may have to deal with a potential abduction or simply making them aware of the tools available to prevent abductions.

Manitoba
Provided mediation is being used in good faith by both parents and not as a mechanism to delay return of the child, it can provide a very useful tool to resolve requests for return, particularly for those cases where the left-behind parent's primary concern is maintaining contact/spending time with the child rather than obtaining primary/shared care of the child. It can also provide a useful mechanism for parents to arrange a mutually acceptable access schedule.

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Québec
À la demande de Madame Fillion, directrice du service de médiation à la famille au Palais de Justice de Montréal, une formation a été donnée aux médiateurs de son équipe sur le

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fonctionnement de la Convention de La Haye ainsi que sur les moyens de prévention. Cette démarche se voulait très importante pour aider les médiateurs qui peuvent faire face à un potentiel enlèvement ou seulement pour connaître les outils disponibles pour le prévenir.

Manitoba
Pourvu que les deux parents recourent à la médiation de bonne foi et non comme moyen de retarder le retour de l'enfant, la médiation peut s'avérer un moyen utile pour régler les demandes de retour, en particulier dans les cas où le principal souci du parent qui demande le retour est de maintenir le contact / de passer du temps avec l'enfant plutôt que d'obtenir la garde principale / partagée de l'enfant. La médiation peut également s'avérer un mécanisme utile pour permettre aux parents de convenir d'un calendrier de visites qui est acceptable aux deux parties.

Chile – Chili :

Es importante tener un buen sistema que permita el regreso voluntario de los niños, y hay que trabajar en ello.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We have no comments.

China (SAR Macao) – Chine (RAS Macao) :

Not applicable.

Colombia – Colombie :

A Colombia este mecanismo le ha dado buenos resultados, pues la mayoría de los casos se han resuelto en las dos fases a través de la mediación o conciliación.

Costa Rica – Costa Rica :

Sería bueno que la Oficina Permanente instara al gobierno interno del PANI en lo que respecta a la implementación definitiva del artículo 165° Código de Niñez & Adolescencia, toda vez que se está ante un asunto de mera voluntad política de la jerarquía del PANI.

Cyprus – Chypres :

No.

Czech Republic – République tchèque :

We believe that the mediation is very important at the both stages. The parties should be more motivated to participate in mediation. Specialized mediators should be educated. Concerning the "preventive mediation", Czech consular workers abroad are informed about abduction issues in order to be able to inform potential abductors about consequences of a wrongful removal of a child.

Denmark – Danemark :

No comment.

Ecuador – Equateur :

No.

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El Salvador – El Salvador :

Ver respuesta de pregunta número 19.

Finland – Finlande :

[No answer]

France – France :

Non. Il peut cependant sembler difficile de mener, dans le cadre de la convention de La Haye, une médiation avant le déplacement, sur une base préventive.

Greece – Grèce :

No.

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

It is the view of both the Icelandic Central Authority and the liaison judge that mediation at both stages should be encouraged as it is normally in the best interest of the child that reconciliation is reached between the dissenting parties.

Ireland – Irlande :

No comment

Israel – Israël :

Mediation should be encouraged whenever practical, both at a preventive stage or when a removal/retention has occurred. In the former case, if a custodial parent wishes to relocate and the left behind parent has concerns about access arrangements, mediation could assist in resolving these issues, thereby possibly preventing a situation of a wrongful retention due to dissatisfaction with access arrangements. In the latter case, care must be taken so that the mediation process is not used as a tool to avoid or delay the commencement of proceedings for the return of the child. It must be ensured that the abductor is acting in good faith during the mediation process. In exploring the possibility of mediation, only the smallest possible delay should be allowed

In two recent cases where foreign courts ordered the return of abducted children to Israel, the foreign central authority then tried to initiate a mediation process, suggesting that the left-behind parent, regardless of his succeeding on the request for return, reconsider allowing the children to remain in the country to which they had been abducted. It is suggested that this is an inappropriate use of the mediation process, and that once a court issues an order for return, the central authorities must act to ensure the immediate return of the children.

The mediation process need not be limited to the issue of the return of the child according to the Hague Convention, but rather, may include all the matters that are disputed between the parents, regardless of former court decisions.

Specialist mediators should draw up a model for a mediation process in cases heard under the Hague Convention, as well as a training course for how to handle Hague Convention cases.

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Italy – Italie :

[No answer]

Latvia – Lettonie :

We do not have additional comments.

Lithuania – Lituanie :

None.

Malta – Malte :

No.

Mexico – México :

[Sin respuesta]

Monaco – Monaco :

Selon le médiateur familial, il semble qu'il est du devoir de chaque Etat, dans le souci du respect des différentes conventions internationales, de promouvoir la médiation familiale internationale pour favoriser une solution adaptée à ce type de conflits extrêmement douloureux.

Une première mesure, applicable dès à présent, pourrait consister, pour chaque Etat, à « instituer une proposition systématique de médiation familiale internationale, d'abord au niveau des Autorités centrales, puis des juridictions, dès l'introduction d'un procédure fondée sur une violation de la convention de La Haye ».

Cette première tentative de reprise de dialogue devrait permettre d'éviter les poursuites pénales immédiates , tenter de comprendre la cause profonde du déplacement. Ces deux objectifs, une fois atteints pourraient être les fondements d'une solution à long terme et du respect, dans le futur, des droits de visite et d'hébergement.

La mise en place de ces médiations familiales internationales auraient pour objectif, à titre préventif, avant que l'autorité judiciaire n'intervienne, de renforcer une démarche « pacifique » visant à apaiser le climat familial. Cette solution serait d'autant plus adaptée dans les cas de déplacements transfrontières d'enfants ou de non respect des décisions des autorités judiciaires. Cette démarche irait dans le sens d'une meilleure application de la Convention de 1996.

La médiation, qui emporterait suspension de la procédure judiciaire, devrait avoir lieu dans un délai assez bref pour ne pas porter préjudice aux droits des parties.

Les accords qui seraient issus de la médiation, toujours dans l'intérêt supérieur de l'enfant, devrait prévoir des garanties quant au droit de visite. La sécurité de l'enfant et l'efficacité de type de procédure ne pourraient être assurées que si des décisions « d'homologation » sont rendues de manière quasi simultanée dans les deux Etats concernés ou dans des termes similaires par les deux juridictions en application d'ordonnances–miroirs, avec une nécessaire coopération judiciaire.

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Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

In New Zealand it is our practice to file the applications in the Court as a means of ensuring that any delay is minimised. Due to New Zealand's relative isolation trans border mediation may be problematic due to distance and time zones. There are issues that would need to be addressed such as perception, neutrality and cultural differences. However, as the majority of our cases are with Australia we welcome discussions in establishing trans border mediation with Australia.

Nicaragua – Nicaragua :

Se considera que la Mediación es un mecanismo efectivo, rápido y alternativo que permite obtener las finalidades del convenio.

Panama – Panama :

No tenemos más comentarios.

Paraguay – Paraguay :

La mediación debería de promoverse entre las Autoridades Centrales, pues, algunos dejan en su poder o del cuerpo de abogados para analizar los documentos que les son remitidos junto con el pedido de restitución. O sea, el Art. 7º inc. b) de la Convención no se cumple a cabalidad.

Poland – Pologne :

We have no further comments on that matter.

Portugal – Portugal :

On our point of view, this kind of measures should be reinforced considering its great advantages for both parties - for the national authorities in general involved on a conventional case and namely for the children.

Romania – Roumanie :

[No answer]

Slovakia – Slovaquie :

The Slovak Central Authority would like to underline the importance of the mediation, especially at the beginning of handling the case, where the stress from new living environment as well as the negative impacts of the judicial proceedings on the children may be avoided. This means mainly the special educating and training programmes for mediators, social workers, employees of the court as well as employees of the Central Authorities, and also dissemination of legal information through social workers, courts, Central Authorities and embassies.

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The accent should be also put on the voluntary preventive mediation, where the special mediation and legal advice for couples in cross-cultural relationships and in cases of problems of custody or access would be provided (Guide to Good Practice- Part III).

South Africa – Afrique du Sud :

Mediation provides a speedier remedy and creates an environment where the disputes can be resolved amicably. It can be particularly effective in article 21 applications for contact.

Spain – Espagne :

Tanto en la fase preventiva como en la fase de conflicto, es clave el papel de la mediación.

Sweden – Suède :

None.

Switzerland – Suisse :

L'autorité centrale relève que des solutions amiables ont été conclues grâce à une collaboration efficace et étroite avec son homologue de l'autre Etat concerné. Une sensibilisation de chaque parent par l'autorité centrale et ses aides, dans l'Etat où il se trouve, a permis de conjuguer les efforts et d'obtenir un « arrangement familial ». Il s'est toutefois avéré souvent que le parent ravisseur perçoive l'autorité centrale comme le « représentant » du parent demandeur. Avec certains Etats par ailleurs une telle collaboration est difficile, voire impossible.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

The Central Authority for Scotland is of the view that mediation prior to an attempted removal could lessen the likelihood of a return application being made.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

United States – Etats Unis :

The U.S. Central Authority believes that mediation may be a good tool for reducing litigation in Hague cases, as well as reducing the level of conflict between the parties. We are, however, concerned about the use of mediation without limits. We prefer strict time limits and careful screening of cases, so that cases not suitable for mediation are not referred.

Mediation may be effective in the preventive stage, as it should be a way to reduce the level of conflict and thus reduce the motivation to abduct.

Uruguay – Uruguay :

Ver respuesta 20.

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8. Training and education – Formation et éducation

Question 23	
Do you have any comments relating to how judicial (or other) seminars or conferences at the national, regional and international levels have supported the effective functioning of the Convention? In particular, how have the conclusions and recommendations of these seminars or conferences, (some of which are available on the website of the Hague Conference at: < www.hcch.net > → Child Abduction Section), had an impact on the functioning of the 1980 Convention?	**Pouvez-vous indiquer comment les séminaires et conférences judiciaires (et autres) aux niveau national, régional et international ont encouragé le fonctionnement efficace de la Convention ? Notamment, dans quelle mesure les Conclusions et Recommandations de ces séminaires et conférences ont influencé le fonctionnement de la Convention de 1980 (certaines d'entre elles étant disponibles sur le site Internet de la Conférence de La Haye à l'adresse suivante : < www.hcch.net > → Espace enlèvement d'enfants) ?**

Argentina – Argentine :

Los seminarios y talleres de difusión y capacitación ofrecen la posibilidad de dar a conocer los procedimientos previstos en La Haya, tanto a operadores de la justicia como a organismos privados, particulares, abogados, etc, a la vez que facilita la correcta aplicación del Convenio. En especial, se estiman de gran utilidad los seminarios organizados a nivel de la Conferencia de La Haya y regionales en el ámbito de America Latina, para favorecer el intercambio de experiencias entre los países que aplican el Convenio, y buscar alternativas para la solución de los obstáculos que se observan en la práctica.

Australia – Australie :

The geographic isolation of Australia limits its opportunity to participate in seminars or conferences at the international level. Where the Australian Central Authority has participated in international forums, such as the Special Commission Meeting concerning Civil Aspects of International Child Abduction, it has found them useful to facilitate the exchange of information on the operation of the Convention.

The Biennial Conference held in Australia provides an opportunity for domestic and New Zealand Central Authorities to explore issues relating to the operation of the Hague Convention in domestic, international and trans-Tasman issues. The 6th conference is being held on 5-6 October 2006 in Canberra.

The Australia Central Authority also participates in regional seminars to discuss and promote the Hague Conventions to other countries in the region. In August 2005 representatives from the Australian Central Authority attended the "Seminar on Fostering the Rule of Law in Cross-Border/Transnational Civil and Commercial Relations in the Asia Pacific". This included a presentation and discussion on the Hague Convention on Child Abduction.

Austria – Autriche :

Even when a reliable evaluation could not be presented, the effect of seminars and conferences cannot be overestimated. International conferences especially have a great effect of "personalisation" of the partners in the other countries. Files are no longer dead papers undersigned by some names, but request from well known colleagues, even friends.

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Canada – Canada :

Continuing legal education sessions for lawyers and mediators are important means of raising awareness of The Hague Abduction Convention and the international body of case law interpreting same.

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Des séances de formation juridique permanente pour les avocats et les médiateurs constituent des moyens importants de les sensibiliser à la Convention de La Haye sur l'enlèvement et au corpus jurisprudentiel international qui l'interprète.

Chile – Chili :

Los talleres, sumarios, charlas y cursos son fundamentales para dar a conocer la correcta aplicación de la Convención, tanto a Jueces, abogados y en general a las personas que están relacionadas con la aplicación Convención y que trabajan en Instituciones ligadas a impartir justicia y a niños. Es muy importante el difundir la Convención, pero también es de gran importancia el poder compartir experiencias entre las distintas Autoridades Centrales y entre los Jueces de distintos países, para conocer distintas realidades y mejores formas de aplicar la Convención.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We have no comments but we believe judicial seminars and conferences will support the effective functionning of Convention.

China (SAR Macao) – Chine (RAS Macao) :

No available data.

Colombia – Colombie :

Tanto los seminarios o conferencias de orden nacional o internacional, han contribuido a unificar criterios de interpretación, a clarificar el sentido de términos o procedimientos que utilizan otros Estados para la ejecución del Convenio. Igualmente los documentos doctrinales sobre la materia, nos han servido de referente para orientar la actuación de los Defensores de Familia y Jueces competentes y como insumo para elaboración de un Manual de ejecución sobre el Convenio. Si lo considera procedente la oficina permanente, nos gustaría dar traslado del mismo.

Costa Rica – Costa Rica :

Esta Autoridad Central ha aprovechado al máximo los seminarios y conferencias dados a nivel nacional e internacional (los regionales no nos constan invitaciones). Respecto del efecto de las conclusiones y recomendaciones de estos seminarios y conferencias, se obtiene que a lo sumo los mismos han servido únicamente como dato doctrinal no vinculante. El problema quizás se deba a que en Costa Rica existe una muy arraigada cultura de independencia de criterio técnico-jurídico por parte de los operadores jurídicos. Además, en el contexto de los seminarios internacionales se ha percibido que los capacitadores invitados tienden a homogenizar la interpretación del Convenio conforme al sistema anglosajón "COMMON LAW", el cual puede ser muy práctico y ágil, pero a propósito de esta materia suele arrojar enfoques simplistas y hasta adulto-céntricos a la hora de considerar más allá de los hechos del caso concreto los diversos factores jurídicos y meta-jurídicos que también están presentes en el asunto por resolver (p. ej. la perspectiva de género, la violencia doméstica y el enfoque de derechos de la persona menor de edad a la luz de la Convención de la ONU sobre los Derechos del Niño). Sobre el particular, cabe mencionar otro problema derivado: el "COMMON LAW" ve el Convenio como un instrumento útil para proteger los "derechos de custodia del padre

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desposeído", no obstante, para el ordenamiento jurídico costarricense esos derechos del progenitor conceptualmente no existen, pues aquí más bien se habla de la figura de la "patria potestad" o "autoridad parental", pero vista como un poder-deber ó función a cargo de papá y mamá, mas nunca como un "derecho" de los padres sobre sus hijos, porque finalmente en Costa Rica quienes tienen derechos referidos a la materia de comentario son los niños, no los padres. Y mientras los capacitadores oficiales de la Oficina Permanente de la Haya no entiendan las diferencias de fondo que hay entre el sistema "COMMON LAW" y el sistema "CIVIL LAW", difícilmente podrán entender la postura jurídica de Costa Rica e incluso la del resto de América Latina. Y es que si bien es cierto que el Derecho de Familia y el Derecho de Niñez son dos ramas complementarias, también es verdad que ambas son autónomas la una respecto de la otra, al punto que la última no se puede concebir sin considerar la Convención de la ONU sobre los Derechos del Niño, instrumento internacional que por cierto no ha sido ratificado por uno que otro país cuyo sistema jurídico es el "COMMON LAW".

Cyprus – Chypres :

I have affirmative comments.

Czech Republic – République tchèque :

We would appreciate more seminars at international or regional level giving opportunity to share experiences among representatives of the Central Authorities and judges.

Denmark – Danemark :

No comment.

Ecuador – Equateur :

El personal de la Autoridad Central del Ecuador ha participado en muy pocos seminarios y conferencias internacionales referentes a la aplicación del Convenio de La Haya de 1980.

Ha impulsado la realización en el Ecuador de seminarios que permitan que los diversos actores del proceso, entre ellos, jueces, secretarios de juzgado, abogados, etc., cuenten con la información necesaria para la aplicación del Convenio.

Este proceso ha permitido progresos importantes, sin embargo se considera necesario promover la organización de este tipo de eventos de forma permanente, pues esto permite que, a través del intercambio de experiencias y la retroalimentación, los procedimientos referentes a restitución internacional se desarrollen cada vez de manera más expedita.

El Salvador – El Salvador :

La Escuela de Capacitación Judicial, ha incluido dentro de sus principales temáticas un taller sobre la aplicación del convenio, dicho taller se imparte a personal de las autoridades centrales (la Procuraduría General de la República PGR Y EL Instituto Nacional para el Desarrollo Integral de la Niñez y Adolescencia ISNA) y de los juzgados encargados de aplicarlo.

En cuanto a conferencias internacionales el encuentro de Autoridades Centrales en Sustracción Internacional de Menores que se llevó a cabo en Cartagena, Colombia en el año 2005, fue un encuentro de mucha utilidad pues nos permitió retomar las experiencias de otros países con más tiempo de aplicación del convenio.

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Finland – Finlande :

Training of national authorities and judges is extremely important in terms of effective functioning of the Convention. The Finnish Central Authority trains for example social workers, lawyers, enforcement authorities and judges in Finland. Moreover, Finnish judges who have participated international seminars and conferences on matters of child abduction have been satisfied and found such international events very useful and motivating. We welcome warmly the idea to organise more international training for different actors of the field of child abduction.

France – France :

les membres de l'autorité centrale française dispensent des interventions régulières devant les magistrats afin de les sensibiliser à l'application de la convention de La Haye, tant au moment de leur formation initiale à l'Ecole Nationale de la Magistrature, que lors de cycles de formation continue, ou par des interventions plus ponctuelles devant certaines juridictions spécialisées dans le traitement des déplacements illicites de mineurs (une juridiction compétente par ressort de cour d'appel).

Par ailleurs, ils sont également amenés à présenter la convention de La Haye, et les mécanismes de coopération judiciaire internationale civile, lors de séminaires de formation destinés aux avocats, ou aux travailleurs sociaux appelés à être confrontés à ce type de litige.

La tenue de telles formations, la spécialisation des juridictions et la création d'un site internet du Ministère de la Justice consacré aux déplacements internationaux d'enfants ont contribué à la diffusion de la connaissance de la convention de la Haye, de sa finalité et de ses mécanismes, auprès de toutes les personnes ayant à connaître de ces situations (magistrats, avocats, intervenants sociaux, associations).

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Greece – Grèce :

[No answer]

Guatemala – Guatemala :

En Guatemala es necesaria la capacitación y profesionalización de las personas involucradas en esta temática, ya que es desconocido por la mayoria de la población la aplicación de esta convención.

Iceland – Islande :

No.

Ireland – Irlande :

No.

Israel – Israël :

Because Israel is such a small country, internal seminars are done on a national not regional level, with participants from all over the country. Seminars for professionals involved in the area of child abduction (attorneys, social welfare personnel, police, etc.) have helped to create a better awareness and understanding of the operation of the Convention and promoted mutual cooperation between the relevant players. Further seminars of this sort are being planned to further increase this awareness and understanding and to secure a uniform approach to the execution of the Convention's goals. An Israel-United States Judicial seminar held earlier this year proved to be a valuable tool for exchange of information concerning the operation of the Central

Authorities of the two countries, the court structures, the role of the police, and judicial approaches.

Italy – Italie :

Tous séminaires ou colloques, ainsi que tous échanges d'informations entre Autorités Centrales, s'avèrent utiles dans la mesure où ils facilitent l'application de la Convention et améliorent la compréhension des actes accomplis par les Autorités Centrales et Judiciaires de différents États Membres. Ceci permet à chaque Autorité Centrale de donner davantage d'informations ponctuelles à ses propres ressortissants relativement aux procédures suivies dans les autres pays.

En outre, l'on estime essentiel le fait que tous séminaires ou colloques permettent la connaissance directe et personnelle des fonctionnaires des Autorités Centrales en en améliorant la coopération ; à cette fin, les rencontres informelles, telles que celle ayant eu lieu entre l'Italie et la Suisse au mois de novembre 2005, sont si possible encore plus importants.

Latvia – Lettonie :

If we take into consideration that up to now judges haven't attended both regional nor international seminars and conferences, we do not have comments on this matter.

Lithuania – Lituanie :

None.

Malta – Malte :

In view of the small caseload, Maltese people involved in cases of international child abduction are limited in the way they can learn and develop through their own experience. Thus, attending conferences and seminars, enables them to learn from the experiences of other countries and to try and incorporate their knowledge into Maltese cases, without repeating the same mistakes.

Mexico – Méxique :

La realización de seminarios en nuestro país ha permitido que la Convención de La Haya se difunda entre las diversas autoridades encargadas de su aplicación y sobre todo que la información llegue a los jueces encargados se resolver este tipo de problemas.

Basta señalar el seminario que organizó El Lic. Dionisio Nuñez Verdin, Juez Primero de lo Familiar de Guadalajara, Jalisco, donde se tuvo la asistencia de 60 jueces del Estado, de 65 que por cuestión de territorio pueden conocer de este tipo de casos y, a partir del cual los jueces llegaron a un acuerdo modelo en la forma de aplicar y resolver los casos de La Haya.

Monaco – Monaco :

La participation de magistrats aux diverses réunions internationales ne peut que sensibiliser les juridictions aux problèmes liés à l'enlèvement international d'enfants.

Netherlands – Pays-Bas :

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

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New Zealand – Nouvelle Zélande :

[No answer]

Nicaragua – Nicaragua :

La Autoridad Central de Nicaragua, fue invitada a un Seminario, en la ciudad de Monterrey, Nuevo León México, en Diciembre del 2004, en el cual tuvo la oportunidad de conocer experiencias sobre la aplicación del Convenio de la Haya, cabe señalar que es único Seminario, en que se ha participado, se considera que fue una buena experiencia de intercambio de acciones y estrategias, tendientes precisamente a mejorar la aplicación del Convenio en los Estados Partes.

Panama – Panama :

A nivel nacional, los seminarios o reuniones como lo internacional han ayudado a que los operadores de justicia, las instituciones que participan o guardan relación en el trámite de Restitución Internacionales (Mides, Ministerio Público, Defensoría de Oficio. Migración, etc) conozcan y comprender a cabalidad la finalidad real del Convenio, evitando que sea visto como un proceso común ordinario, ya que debe dársele un trámite expedito. Esto no indica que se ha logrado este fin a totalidad ya que debe promoverse un intercambio permanente de experiencia y de estudio en esta materia para mejorar cada día sobre la búsqueda de las soluciones judiciales acorde a los términos del Convenio de Restitución Internacional de la Haya de 1980, respetando siempre la independencia Judicial.

Paraguay – Paraguay :

Sí, esta A.C. luego del Seminario llevado a cabo los días 06 y 07 de marzo del cte. año en Asunción, con la participación de Jueces, Fiscales y Defensores de la jurisdicción de Niñez y Adolescencia, han mejorado los procedimientos pues se ha logrado una mejor comprensión de la aplicación del Convenio, lo cual ha beneficiado a los niños víctimas de la sustracción a tal punto que desde la fecha se ha logrado restituir a una veintena de niños desde Paraguay hacia otros países especialmente Argentina.

Poland – Pologne :

It is the Presiding Judges of the Regional and Appellate Courts with the assistance of the Ministry of Justice as the Central Authority who organize the conferences on the effective functioning of the provisions of the Hague Convention in Poland. It is also possible for the Ministry of Justice to organize such conferences as a part of its professional training activity. Judging from the experience, the conferences have unarguably positive impact on broadening the knowledge of the judges who enter judgments in cases under the Hague Convention. Moreover, seminars are also organized for this purpose on regional and international level.

Portugal – Portugal :

The conclusions and recommendations of these kinds of seminars and conferences are very important because they are the support information which allows that the Central Authorities can apply better the Convention.

Romania – Roumanie :

Until now, only one training seminar on the 1980 Hague Convention was organized at a national level in 2005. Other seminars organized in Romania focused on the European legislation in this field (Regulation no. 2201/2003).

Romania has not taken part in seminars and judicial conferences in this field organized abroad.

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Slovakia – Slovaquie :

The Centre has no comments relating to this questions except of the fact that more frequent judicial conferences on all levels would be appreciated; mainly due to the fact, that there is no special court to hear the cases under the Hague convention in Slovakia and all district courts are competent to hear them. The exchange and the dissemination of information is then more demanded.

South Africa – Afrique du Sud :

The Reunite seminar of 2001 has been helpful in the practical application of the Convention.

Spain – Espagne :

Es clave la formación continua de las personas encargadas de la concreta aplicación del Convenio. Al respecto en España la labor que se lleva a cabo en tal sentido está claramente institucionalizada. La oferta de Cursos, Seminarios, Jornadas, y Reuniones de trabajo es en la actualidad muy amplia, tanto en relación con las Instituciones organizadoras, como en su duración, contenido, y publico al que van dirigidos. Unos son presénciales y otros virtuales por Internet. Existen Cursos y Seminarios para Jueces y Magistrados, a nivel nacional e internacional y para Secretarios Judiciales, Fiscales, Abogados, Policía y Personal colaborador: Psicólogos y Trabajadores Sociales. Los Cursos y Seminarios de los Jueces y Magistrados son organizados por el Consejo General del Poder Judicial, todos los años, en tres ámbitos importantes:

a) Curso de Formación inicial en la Escuela Judicial.
b) Cursos de Formación Permanente.
c) Cursos especiales y concretos, por la importancia de la materia.

Estas actividades se desarrollan tanto en el ámbito nacional dirigidos únicamente a Jueces nacionales, como en Seminarios conjuntos con otros Jueces de la Unión Europea, y como en Jornadas de Trabajo y Reuniones Internacionales, ya sean bilaterales o de todos los países de Hispanoamérica. Los Cursos de carácter nacional por la importancia de la materia se están realizando todos los años. Los diversos Colegios de Abogados de España también están organizando Cursos sobre esta materia, con carácter regular, en los de ciudades más pequeñas en menor medida que en las de gran población, concreto el Colegio de Madrid los organiza desde hace 10 años, en la actualidad de una media de 10 cursos anuales, para Abogados y también Policía. Existen también Cursos organizados por el Consejo General del Poder Judicial, Universidad y Colegios de Abogados, para todos los profesionales que trabajan estos temas, así en el año 2005 se han realizado en Madrid y Barcelona y en 2006 se celebró en Madrid uno bilateral entre España y Estados Unidos. Destacar también la labor de formación y apoyo que desarrolla la REJUÉ.

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Sweden – Suède :

The Swedish Central Authority has participated in several conferences concerning the Hague Convention:

- The Swedish Central Authority has taken part in several international conferences organized by Reunite, a well-reputed British NGO. At these conferences participants exchanged experience of every aspect of child abduction. The Swedish Central Authority has also initiated cooperation with Reunite concerning mediation in cases under the Convention where children have been abducted from Sweden to the UK. Sweden hosted a small group of countries, aiming at improving the international co-operation regarding child abductions and related issues in non-convention cases.

- In November 4, 2005 a minister meeting named "Incompatibility of norms as a source of conflict- child abductions and related issues" was held in Stockholm.

- The Swedish Central authority has initiated a joint Nordic initiative regarding the Hague Convention. In November 25 2005, the first conference was held in Stockholm and the second conference was held recently, in September 22, 2006 in Oslo. The main purposes of these Nordic meetings are to exchange experiences and views on different issues and problems connected with child abduction cases.

- The Swedish Central Authority participated in the conference "Sharia and International Private Law- Case studies of family law" in Alexandria during 2-3 of May 2006.

- Personnel from the Central Authority participate as lectures in a number of national and international seminars, inter alia seminars arranged by the Swedish Bar Association and the Universities.

- Training of national authorities and judges is extremely important in terms of effective functioning of the Convention. The Swedish Central Authority trains for example social workers, lawyers, enforcement authorities and judges in Sweden. A number of informal meetings have also been arranged by the Central Authority with different groups of professionals, inter alia the police officers from Interpol.

- The Ministry of Foreign affairs provides training and education in the 1980 Hague Convention for diplomatic and consular embassy personnel on a regular basis. This is particularly important in respect of personnel shortly to be stationed at Swedish missions abroad.

The Swedish Central Authority considers cooperation of the above-mentioned kind to be very valuable and of crucial importance to be able to comply with the Convention. It is of strategic importance for the processing of child abduction cases that networks are continuously developed and extended.

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Switzerland – Suisse :

L'autorité centrale a participé à des journées de formation des juges ou avocats en Suisse et à l'étranger (France voisine/Stuttgart), ainsi qu'à un symposium universitaire de large audience (magistrats de l'ordre judiciaire; avocats, représentants d'autorités policières, tutélaires, étudiants etc.) permettant d'apporter une information utile au sujet de la convention.

Malgré l'écho de ces rencontres par la presse, par la publication et la diffusion ultérieure des conférences, le fonctionnement de la Convention ne peut être considéré comme étant optimal: Il s'avère difficile de sensibiliser les juridictions et les praticiens à cette documentation. Aucune mention n'en est faite, par exemple, dans la jurisprudence. Cela peut s'expliquer, en partie, par l'absence de réponses suffisamment précises sur des questions au combien importantes pour les magistrats telle l'application des articles 12 et 13.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

Please see the response from England & Wales to this question.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

Judicial conferences at the National, Regional and International levels have proved especially fruitful in supporting the function of the Convention. At a national level judicial

conferences are occasionally arranged for the specialist family judges in the three separate jurisdictions of the United Kingdom (England/Wales, Scotland and Northern Ireland).

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

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

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

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

United States – Etats Unis :

The U.S. Central Authority (USCA) believes that training judges at all levels on issues related to the Convention is very helpful and very important to the successful implementation of the Convention. The USCA has presented and participated in numerous conferences, seminars, and trainings on the topic of the Hague Convention, its implementation, and the role of Central Authorities in relation to the Convention. In the last few years, we have participated in trainings and seminars, for example, in Chile, Colombia, Costa Rica, El Salvador, Mexico, and Paraguay. The first US-Israeli Joint Seminar was held in Tel Aviv in March 2006, it was very successful (see above, question 5). We have also participated in several judicial conferences within the United States. At these conferences we have discussed implementation of the Hague Convention in general, as well as how to set up specific regulatory systems and procedures to expedite the processing of Hague cases. In addition, the National Center for Missing and Exploited Children has presented at and participated in numerous judicial training efforts on the topic of International Parental Abduction, ranging from local Judicial Colleges to bi-national Judicial Seminars with Mexico and a multi-national conference sponsored by the Inter-American Bar Association. Particularly useful were the working group break-away sessions where bi-national teams tackled hypothetical cases. Equally valuable, the networking functions of these events have allowed us to establish stronger professional relationships with our counterparts, enhanced mutual understanding, and facilitated judicial communications. By understanding the legal framework within which each signatory functions, we are able to work more effectively with our counterparts.

Uruguay – Uruguay :

Creemos que seminarios y talleres para la mejor capacitación de los operadores de la Convención (Autoridades Centrales y Jueces), resultan de suma utilidad para lograr el cumplimiento de su espíritu.

En tal sentido ha sido especialmente útil las jornadas llevadas a cabo el paso año en Montevideo con la activa participación del Oficial de enlace de la Conferencia Dr. Ignacio Goicochea y la presencia de Jueces de Familia de todo el Uruguay.

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Question 24	
Can you give details of any training sessions / conferences organised in your country, and the influence that such sessions have had?	**Veuillez préciser s'il existe des sessions ou des séminaires de formation dans votre pays et, le cas échéant, en indiquer l'impact ?**

Argentina – Argentine :

En el transcurso del año 2005 y el año en curso, se han dictado seminarios tanto en Universidades, como en Colegios de Abogados y la Policía Federal, tanto en Buenos Aires como en el resto de las Provincias. Cabe destacar por su trascendencia los Seminarios dictados en la Provincia de Corrientes y de Misiones a fines del año 2005, en los cuales participaron funcionarios de esta Autoridad Central y de Interpol, con el financiamiento de Unicef Argentina. Ello ha traído aparejado una mayor concientización en la población y en los agentes vinculados con temas de menores, a la vez que ha generado una demanda por mayores cursos de capacitación.

Australia – Australie :

The Australian Central Authority hosts the Biennial Conference of Australian Commonwealth and State Central Authorities. Representatives from New Zealand Central Authorities, judiciary, court services and the Australian Federal Police also attend the conference. The Conference explores emerging issues in the operation of the Hague Convention and builds and promotes relationships with other agencies in dealing with issues relating to child abduction. The Conference produces a number of papers that explore current issues that can be disseminated and used for reference.

The Commonwealth Central Authority will also be hosting The Regional Hague Conference in Australia June 2007. It is intended that this conference will provide an opportunity to discuss regional abduction issues and encourage greater participation in the Asia-Pacific region.

Austria – Autriche :

In Innsbruck a seminary took place in spring 2006, attended by Austrian, Czech and other judges. The former head of our CA, *Werner Schütz*, some distinguished judges from Austria, the UK and Germany, law professors, members of The EC-Council and members of the Permanent Bureau (*William Duncan, Andrea Schulz*) were among the speakers.

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Canada – Canada :

Federal Central Authority

The Our Missing Children Program in Canada is a cooperative arrangement within Canada involving various government departments and agencies working together to effectively and efficiently locate and return children to their parents/legal guardians. The program provides an umbrella framework for agencies and departments who have a role to play in the case of a missing or abducted child.

This cooperation developed over time as various government departments, working together on missing children's files, acquired a closer appreciation of each other's mandates and determined that it would be beneficial to join forces so that contacts, resources and ideas could be exchanged on a timely basis, thus enhancing the protection of children.

The program commenced in 1985 and has evolved over the years as new departments and agencies, working in the area of missing and abducted children, partner and affiliate with the program. To learn more about the program, go to the website at

http://www.ourmissingchildren.ca. A toll free number in North America is available 24 hours a day 1-877-318-3576.

The Central Authorities under the Hague Convention on the Civil Aspects of International Child Abduction work closely with the employees of the departments and agencies to prevent child abduction and to locate children who are being held illegally or have been taken abroad illegally.

Ontario
The Ontario Central Authority has made presentations on the Hague Convention to the Ontario Bar Association and the Ontario Court of Justice. Presentations have also been made to private lawyers interested in taking Pro Bono cases.

Saskatchewan
The RCMP Our Missing Children annual conferences provide valuable information about best practices as well as opportunities to network with others, so that sharing of information can be continual. Ensuring the safe return of children where issues such as domestic violence and abuse are raised.

Quebec
Once a year, a conference is organized by the Our Missing Children program for all coordinators in Canada and their guests.

Training is given three or four times a year to new detective-sergeants with the Montreal Police so that they have a full understanding of the operation of the Hague Convention and the role of the Quebec Central Authority, with cooperation from the missing Children's Network Canada and the Royal Canadian Mounted Police coordinator in Quebec.

A mini-symposium organized by the continuing education section of the Quebec Bar Association addressed the issue of the role of the Attorney General of Quebec in child abduction cases and mechanisms for preventing child abduction.

The Our Missing Children program held a regional conference in June 2005 for customs and immigration officers in Quebec, all coordinators and the Quebec Central Authority.
Training on the operation of the Hague Convention for accredited Quebec mediators in June 2003 and on prevention mechanisms for family law counsel in Quebec in January 2005.

Manitoba
The Manitoba Bar Association and the Law Society of Manitoba have offered information sessions regarding enforcement of family law orders and decisions, including Hague return orders, on a number of occasions. The Family Law portion of the Bar Admissions course materials (Law Society of Manitoba) includes information on Hague Convention proceedings and each year the Central Authority gives a lecture to the Intensive Family Law and the Conflicts of Laws classes at the Faculty of Law, University of Manitoba. Family Conciliation Services, the social services' arm of Manitoba's Unified Family Court, has been provided with information sessions on parental child abductions generally, including Hague Convention cases, as have various law enforcement agencies in Manitoba. Judicial information sessions have also been provided to the judges of Manitoba's superior courts. (There having been a number of high-profile Hague Convention cases in Manitoba (heard by our Court of Appeal and one by the Supreme Court), the Justices of the Family Division are very familiar with the existence of the Convention and its provisions.)

In July 2004 the National Judicial Institute held a judicial information session at La Malbaie, Quebec focusing on the Hague Convention, with an international panel of experts. The Canadian Federation of Law Societies'/Canadian Bar Association's National Family Law Program in July 2004 (again at La Malbaie, Quebec) included a continuing legal information session respecting the Convention.

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The Director of the Family Law Branch has written a number of articles for the legal profession, the judiciary and the general public with respect to parental child abductions generally, and in particular, cases falling under the Hague Convention. Her article "Responses to Inter-jurisdictional Custody and Access Breaches" appeared in Volume 23 of the Canadian Family Law Quarterly (2005).

Alberta
A few years ago the Alberta Central Authority conducted 2 seminars on the Convention. Police, lawyers, local customs and immigration offices and child welfare authorities were invited. This heightened awareness of the Convention and supported the network. Hopefully we will provide another seminar within the next year.

Nova Scotia
We provide training sessions to lawyers once in a while to raise their awareness of the Abduction Convention and to advise them of the Central Authorities' role. We believe that such sessions highlight the need for lawyers to be mindful of the Convention when drafting separation agreements or court orders in order to ensure that their clients do not fall afoul of the Convention and take the appropriate steps when they wish to remove their child from the jurisdiction.

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Autorité centrale fédérale
Le programme « Nos enfants disparus » est un accord de collaboration sur le territoire canadien entre divers ministères et organismes qui travaillent ensemble pour retrouver les enfants disparus et les ramener à leur parents/tuteurs de manière efficace et efficiente. Le programme fournit un cadre commun aux organismes et ministères qui ont un rôle à jouer dans les cas de disparition ou d'enlèvement d'enfants.

Cette coopération s'est développée au fil des ans à mesure que divers ministères, travaillant ensemble sur des cas d'enfants disparus, ont acquis une meilleure compréhension de leurs mandats respectifs et ont conclu qu'il serait avantageux d'unir leurs forces afin de mettre en commun leurs contacts, leurs ressources et leurs idées en temps opportun, améliorant ainsi la protection des enfants.

Le programme a démarré en 1985 et a évolué au fil des ans à mesure que de nouveaux ministères et organismes, travaillant dans le domaine des enfants disparus et enlevés, se sont joints au programme. Pour en savoir davantage sur ce programme, on peut consulter son site Web à l'adresse http://www.ourmissingchildren.ca. Une ligne téléphonique sans frais en Amérique du Nord est en service 24 heures sur 24 (1-877-318-3576).

Les Autorités centrales constituées en vertu de la *Convention de La Haye sur les aspects civils de l'enlèvement international* travaillent en étroite collaboration avec les employés des ministères et organismes pour prévenir les enlèvements d'enfants et pour retrouver les enfants qui sont retenus illégalement ou qui ont été emmenés à l'étranger illégalement.

Ontario
L'Autorité centrale de l'Ontario a fait des présentations sur la Convention de La Haye auprès de l'Association du Barreau de l'Ontario et de la Cour de justice de l'Ontario. Des présentations ont également été faites à des avocats du secteur privé intéressés à accepter des mandats à titre bénévole.

Saskatchewan
Les conférences annuelles de la Gendarmerie royale du Canada sur le programme « Nos enfants disparus » fournissent de précieux renseignements sur les pratiques exemplaires ainsi que des occasions d'établir des contacts professionnels utiles, de sorte que le

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partage de renseignements se fasse sur une base régulière. Assurer le retour des enfants en toute sécurité lorsqu'il existe des préoccupations liées à des questions de violence familiale et de mauvais traitements.

Québec

Une fois par année, une conférence est organisé par le Programme «Nos enfants disparus» pour tous les coordonnateurs du Canada ainsi que leurs invités.

Des formations sont données 3 à 4 fois par année aux nouveaux sergents-détectives de la Police de la Ville de Montréal afin de bien comprendre le fonctionnement de la Convention de La Haye et le rôle de l'Autorité centrale du Québec avec la collaboration du Réseau Enfants Retour Canada et de la Coordonnatrice au Québec de la Gendarmerie Royale du Canada.

Lors d'un mini-colloque organisé par la Formation permanente du Barreau du Québec, il a été question du Rôle du Procureur général du Québec dans les dossiers d'enlèvement d'enfants ainsi que des mécanismes de prévention pour faire échec à l'enlèvement d'enfants.

Conférence régionale du Programme «Nos enfants disparus» pour les agents de douanes et d'immigration du Québec avec tous les coordonnateurs et l'Autorité centrale du Québec en juin 2005.

Formation en juin 2003 à des médiateurs accrédités au Québec sur le fonctionnement de la Convention de La Haye et sur les moyens de prévention ainsi qu'en janvier 2005 pour des avocats et avocates en droit familial au Québec.

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Manitoba

L'Association du Barreau du Manitoba et la Société du Barreau du Manitoba ont offert des séances d'information concernant l'exécution des ordonnances en droit de la famille, notamment les ordonnances de retour relevant de la Convention de La Haye, à plusieurs occasions. Le module « Droit de la famille » du matériel didactique des cours préparatoires à l'admission au Barreau (Société du Barreau du Manitoba) comprend de l'information sur les procédures prévues à la Convention de La Haye et chaque année l'Autorité centrale présente un exposé dans le cadre des cours Droit de la famille intensif et Droit international privé à la faculté de droit de l'Université du Manitoba. Des séances d'information générale sur les enlèvements d'enfant par un parent, y compris les cas visés par la Convention de La Haye, ont été données au Service de conciliation familiale, l'organe de services sociaux du Tribunal unifié de la famille du Manitoba, de même qu'à différents organismes d'application de la loi au Manitoba. Des séances d'information judiciaire ont également été données aux juges des cours supérieures du Manitoba. (Il y a eu plusieurs affaires hautement médiatisées relevant de la Convention de La Haye au Manitoba (entendues par notre Cour d'appel, et une, par la Cour suprême), les juges de la Division de la famille sont bien au fait de l'existence de la Convention et de ses dispositions.)

En juillet 2004, l'Institut national de la magistrature a tenu une séance d'information judiciaire à La Malbaie, au Québec, sur la Convention de La Haye, avec un groupe d'experts internationaux. Le Programme national du droit de la famille offert conjointement en juillet 2004 par la Fédération canadienne des professions juridiques et l'Association du Barreau canadien (toujours à La Malbaie, au Québec) comportait une séance de formation juridique permanente sur la Convention de La Haye.

La Directrice de la Division du droit de la famille a écrit plusieurs articles destinés aux membres de la profession juridique, à la magistrature et au grand public concernant, de manière générale, les enlèvements d'enfants par un parent, et en particulier les cas relevant de la Convention de La Haye. Son article intitulé « Responses to Inter-jurisdictional Custody and Access Breaches » a paru dans le volume 23 de la revue *Canadian Family Law Quarterly* (2005).

Alberta
Il y a quelques années, l'Autorité centrale de l'Alberta a dirigé deux séminaires sur la Convention. Y ont été invités : les policiers, les avocats, les bureaux locaux des douanes et de l'immigration et les organismes de protection de l'enfance. Cela a permis de mieux faire connaître la Convention et de renforcer le réseau. Nous espérons diriger un autre séminaire dans le courant de l'année à venir.

Nouvelle-Écosse
Nous donnons des séances de formation aux avocats de temps à autre pour les sensibiliser à la Convention de La Haye et pour les informer au sujet du rôle de l'Autorité centrale. Nous estimons que ces séances ont fait ressortir la nécessité pour les avocats de tenir compte de la Convention lorsqu'ils rédigent des ententes de séparation ou des projets d'ordonnance judiciaire afin de s'assurer que leurs clients ne commettent pas d'actes répréhensibles au regard de la Convention et prennent les mesures idoines lorsqu'ils souhaitent emmener leur enfant en-dehors du ressort.

Chile – Chili :

En Chile, especialmente dado los recién creados Tribunales de Familia y por lo tanto el nombramiento de muchos nuevos jueces, fue muy importante el Seminario para Jueces efectuado en Enero de 2006 y que contó con el apoyo de la Autoridad Central de los Estados Unidos. Por otra parte internamente se han realizado y se van a continuar realizar durante el año 2006, distintas charlas para funcionarios de organismos públicos y privados relacionados con la atención a niños, así como a abogados de la Corporación de Asistencia Judicial (encargados de tramitar las causas de la Convención de la Haya en Tribunales que no sean de Santiago).

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China (SAR Hong Kong) – Chine (RAS Hongkong) :

Seminars are provided by the Central Authority to the relevant authorities within the government, such as the Social Welfare Department. Bodies responsible for continuing legal eduction would organise training sessions / seminars on this subject from time to time and a judge responsible for handling Hague cases would normally be invited to be the speaker. These training sessions are well received by the attendees.

China (SAR Macao) – Chine (RAS Macao) :

Despite efforts to organize more specific training within the context of the Convention (targeting all legal professions), it was only possible to arrange seminars on children issues for lawyers of the Public Administration and general training sessions for the MSAR Central Authority related personnel on subjects such as child protection and awareness on children welfare. The referred actions are part of a program of systematic trainsing for civil servants and it is not yet possible to evaluate their influence.

Colombia – Colombie :

Esta Autoridad Central ha realizado en los dos últimos años 7 talleres en los que se ha brindado capacitación al 80% de los Defensores de Familia del ICBF. Igualmente se realizó un conversatorio con 15 funcionarios judiciales de los 22 Juzgados de Familia de Bogotá con la entrada en vigencia de la Ley 1008 de 2006. Con este proceso se ha posicionado el tema, se han unificado criterios de interpretación y definido los mecanismos rápidos de operación del Convenio.

Costa Rica – Costa Rica :

El criterio anterior fue públicamente expuesto por esta Autoridad Central en las siguientes tres conferencias de capacitación organizadas en Costa Rica:

- Seminario Judicial concerniente al Convenio de la Haya sobre los Aspectos Civiles de la Sustracción Internacional de Menores, organizado por la Embajada de EEUU en Costa Rica, en San José, el día 26 de abril de 2005.

- Mesa Redonda denominada: "La sustracción de menores a la luz de los convenios internacionales ratificados por Costa Rica", organizada por la Escuela Judicial y la Sala Segunda de la Corte Suprema de Justicia del Poder Judicial, en San José, el día 26 de agosto de 2005.

- Foro Jurídico denominado: "Derecho de Niñez y Adolescencia", organizado por el Colegio de Abogados, en San José, el día 27 de abril de 2006.

Cyprus – Chypres :

No.

Czech Republic – République tchèque :

There have not been any training sessions or conferences devoted only to the processing abduction cases. These matters were subject to the seminars organized by the Regional courts, by the Justice Academy, by the Ministry of Labour and Social Affairs, Ministry of Justice or in the framework of meetings of members of the Internal Judicial Network.

Denmark – Danemark :

In spring 2006 The Danish Court Administration had a seminar for judges from the Civil Courts, where part of the agenda was child abduction. The seminar was planned in co-operation with the Danish liaison judge.

Ecuador – Equateur :

Con el apoyo de la Conferencia de Derecho Internacional Privado de La Haya, con fecha 23 y 24 de marzo de 2006 se llevó a cabo el seminario internacional "Aplicación del Convenio de La Haya de 1980 sobre los Aspectos Civiles de la Sustracción Internacional de menores de edad", organizado conjuntamente por el Consejo Nacional de la Niñez y Adolescencia y el Consejo Nacional de la Judicatura, con la participación como expositor del Dr. Ignacio Goicochea, Oficial Letrado de Enlace para América Latina de la Conferencia de La Haya; y, con la asistencia de todos los jueces de niñez y adolescencia del país; secretarios de los juzgados; y, funcionarios de la Autoridad Central. Este evento indiscutiblemente fue muy positivo, y dio como resultado, además de la capacitación en el tema, la posibilidad de establecer mecanismos de coordinación entre los jueces y los funcionarios de Autoridad Central del Ecuador.

El Salvador – El Salvador :

Durante la Conferencia de la Federación Interamericana de Abogados en nuestro país, se incluyó el tema de la Sustracción Internacional de Menores, lo cual permitió compartir experiencias con personal de la Oficina de los Asuntos de Menores del Departamento de Estado y con personal del Centro Nacional para Menores Desaparecidos y Explotados de los Estados Unidos de América, lo cual permitió enriquecernos de la experiencia de dicho país.

Finland – Finlande :

[No answer]

France – France :

Voir question 23.

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Greece – Grèce :

For the last three years many initiatives have been realized. Lectures and training seminars have been held in the National School of Judges (regional level).

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

No.

Ireland – Irlande :

No such training sessions or conferences have been organised in this country.

Israel – Israël :

The Central Authority has organized seminars/training sessions involving various groups, including judges, religious court leaders, legal aid attorneys, prosecutors, lawyers, etc. It has also participated in conferences arranged by other bodies, such as universities. Further seminars being planned will target judges, police personnel and welfare officers. The focus of such seminars/training sessions depends on the target group, and can include topics such as the role of the Central Authority, interpretation of key concepts in the Convention, the role of other professionals involved in the operation of the Convention, etc. Such seminars/training sessions have served to bring about greater awareness of the Convention, to cause the various bodies to understand the functions of each other and how they can benefit from mutual cooperation, etc. The Israel-United States Judicial seminar served to bring about fuller understanding of the functioning of the various bodies involved in the operation of the Convention, including how each of the Central Authorities operate, the court structures and how cases are handled by the courts, and the function of the police and welfare authorities in each of the countries in terms of the operation of the Convention. The exchange of such information revealed possibilities that could perhaps be implemented in either or both countries. For example, both countries agreed that a problem exists when an applicant parent cannot afford a private attorney, yet does not qualify for pro bono/legal aid assistance. The suggestion was raised that each country try to put together a list of attorneys who would be willing to take cases on a reduced fee basis, so that no applicant will be prevented from pursuing his case for financial reasons only.

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Italy – Italie :

Non.

Latvia – Lettonie :

On 2004 in collaboration with Deutsche Stiftung fur Internationale rechtliche Zusammenarbeit was organized seminar „Family rights. International aspects", where the issues of child abduction have also been discussed as well issues related to the protection of children, parental responsibility, adoption, custody, etc. In seminar 95 judges took a part.

Other seminars in 2004, 2005, 2006 regarding family rights were organized for judges from district/city Courts, for candidates of the place of judge, etc. Topics at these seminars usually are "Actual issues in the family rights, adoption, custody, annulment of a marriage, property relations between spouses, etc."

Lithuania – Lituanie :

While implementing the provisions of Article 93(1) of the Republic of Lithuania Law on Courts, the Ministry of Justice organises, on permanent basis, initial training for judges and mandatory skills improvement courses on the family law issues including the international treaties signed and the conventions ratified by the Republic of Lithuania (including the 1980 Hague Convention).

On 12-13 October 2005 a conference entitled "Protection of Children by Implementing the International Conventions on Custody and Adoption of Children" was held in Vilnius by the Ministry of Social Security and Labour and SCRPAS. For more details see Answer 5.

On 16-17 March 2006, the European Commission's DG Enlargement (TAIEX) held a seminar "Laws and International Conventions in the Area of Custody of Children and Related Issues". This seminar held in Vilnius was devoted to the discussion of the operation of and practical issues related to the Regulation No. 2201/2003 as well as its relationship with the 1980 Convention. Judges and representatives of the Ministry of Justice and the central authority participated in the seminar.

A seminar on the Acquis and International Conventions in the Area of Custody of Children and Related Issues was held by the European Commission's DG Enlargement (TAIEX) on 21-22 July 2005 in Brussels. The purpose of the seminar was to increase judges�much awareness of the Regulation 2201/2003 and the 1980 Convention. Lithuania sent to the seminar 4 judges, 1 representative of the Ministry of Justice and 1 representative of SCRPAS.

On 21 June 2006, the European Commission's DG Justice and Home Affairs organised the 17th meeting of contact persons of the European Judicial Network in Civil and Commercial Matters. The meeting was intended for the discussion of the role and experience of central authorities in the implementation of Regulation 2201/2003. The meeting was attended by the representatives of the Lithuanian Ministry of Justice and SCRPAS.

These seminars and the conference enabled judges and representatives of the central authority to deepen their knowledge on the operation of the Regulation 2201/2003 and the 1980 Convention.

Malta – Malte :

Malta was recently host to the "Second Malta Judicial Conference on Cross-Frontier Family Law Issues", where international child abduction was a very important issue. This conference was a follow-up of the First Malta Judicial Conference, and all the countries that attended, including the Islamic countries, endorsed the Declaration of the first conference, while adopting a new Declaration that will hopefully lead to better co-operation between countries.

Mexico – Méxique :

Se realizó una reunión de Trabajo de Sustracción Internacional de Menores bajo la perspectiva de la Convención de La Haya, el 26 de septiembre de 2005, en la Ciudad de Tijuana, Baja California, México.

El Lic. Dionisio Nuñez Verdin, Juez Primero de lo Familiar de Guadalajara, Jalisco, quien participó en el Seminario de Jueces que se celebró en La Haya, Países Bajos, organizó el "Seminario de Jueces del Estado de Jalisco, Convención de La Hay sobre los Aspectos Civiles de la Sustracción Internacional de Menores" el 24 y 25 de abril de 2006, en la Ciudad de Guadalajara, Jalisco, donde participaron todos los jueces del Estado y se llegó a un acuerdo de cómo solucionar los asuntos de La Haya.

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En 9 y 10 de junio de 2006, se realizó en la Ciudad de Ensenada, Baja California, México la V Conferencia Binacional sobre Sustracción de Menores, donde se contó con la participación de Jueces, oficinas de protección de menores de ambos países sólo por mencionar algunos.

Uno de los logros más importantes fue el obtener que las autoridades de uno de los Estados de la República, el Estado de Hidalgo, se entendiera el espíritu de la Convención, y a menos de un mes se resolviera un asunto de restitución de menores exitosamente.

Monaco – Monaco :

Il n'existe pas de séminaire de formation de ce type en Principauté. Néanmoins, chaque Département concerné est sensibilisé aux cas d'enlèvement d'enfant et a reçu des directives pour faire face à ce type d'affaire.

Netherlands – Pays-Bas :

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

Training sessions are also given to lawyers and police officers about the functioning of the Convention and as to what duties and capacities they have under the Convention. These trainings are given by staff members of the Dutch Central Authority. Furthermore regular training sessions are organised by the Training Institute for the Judiciary. Also a meeting of (children's) judges is organised once a year to discuss rulings under the Convention and developments in law concerning the Convention.

New Zealand – Nouvelle Zélande :

Legal Services conferences are held annually, and the Hague convention is usually covered. In May 2006 Colin Pidgeon and Emma Parsons presented a paper.

Nicaragua – Nicaragua :

A la fecha en Nicaragua, no se han realizado sesiones, conferencias, ni capacitaciones sobre la aplicabilidad del Convenio.

Panama – Panama :

Sobre las eventuales sesiones de capacitación que han sido organizada por la Autoridad Central en torno a esta materia, se ha contado con participación del Oficial Enlace para América Latina, experiencias de Jueces que han participado en eventos de fortalecimiento regional del Convenio de la Haya como del procedimiento aplicado dentro de la República de Panamá. Del resultado de este evento se evidencio que es una materia que nos es de conocimiento usual de los estudiosos de derecho. Por los casos que han surgido en la vida publica, se observa la necesidad de tener un mayor conocimiento sobre como resolver estas peticiones acorde al interés del niño. Se determino la necesidad, pero con talleres prácticos que permitan aplicar los criterios legales de retención o sustracción Ilegal de un menor de edad.

Paraguay – Paraguay :

Se encuentra respondido en la pregunta 23.

Poland – Pologne :

Please see answer to question 23.

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Portugal – Portugal :

The Portuguese Central Authority has participated only in two training sessions, at the Centro de Estudos Judiciários (Formation School for Prosecutors and Judges), one in 2003 and another in June, 2006.

Romania – Roumanie :

Please see answer to question 23.

Slovakia – Slovaquie :

So far the conferences on the national level are provided by The Judges´ Academy. However, the special seminar entitled to the Hague Convention has not taken place by now. The Judicial Seminar, focused on the "European and international conventions and directions concerning the field of care for children", mainly on The Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, and the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption* shall take place in Bratislava, September 7-8 2006 and the Slovak Central Authority is one of the co-organisers.

South Africa – Afrique du Sud :

The Office of the Chief Family advocate conducted a one and a half day workshop with other Family Advocates regarding the practical application, of Article 21.

Annual decentralized training for Family advocates takes place on an "in-service" training basis.

Justice College provides one training course per annum.

Spain – Espagne :

Creo que esta respuesta ya se contesta con la del punto anterior.

Sweden – Suède :

See above question 23.

Switzerland – Suisse :

Voir question précédente.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

The Central Authority for Scotland held a conference in 2002 for the police and for solicitors to raise awareness of the Convention. Although there is no substantive case evidence that this has influenced any outcomes since that date, there has been a significant increase in solicitors' general awareness that such an international mechanism exists for the purposes of seeking the return of a child, or securing access. The Central Authority for Scotland also held a number of training events in 2005 on the Brussels II a Regulation and its impact on the 1980 Convention.

The Judicial Studies Committee runs regular training course for all judges in Scotland and family law in general is one of the topics that the Committee plans to include in the programme for forthcoming courses.

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United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

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

United States – Etats Unis :

Judicial trainings have increased in the U.S., and with each new training session, new Judges have been motivated to organize subsequent events to carry their newly acquired knowledge to their fellow bench officers. These trainings have had a direct positive effect on proper application of the Convention. For example, two weeks after attending the 9-10 June 2006 U.S.–Mexico Bilateral Conference on Child Abduction in Ensenada, MX a Mexican judge expedited the hearing and ordered the return of a 10-month old child to his mother in the United States. In addition, a judge who attended the Hague judicial conference in Guadalajara in April ordered the return of 4 children in August.

Uruguay – Uruguay :

Ver respuesta 23.

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9. Ensuring the safe return of children where issues such as domestic violence and abuse are raised – Assurer la sécutité du retour des enfants lorsque des questions de violence familiale et autres types d'abus se posent

Question 25	
Is the issue of domestic violence or abuse often raised as an exception to return in child abduction cases? What is the general approach of your courts to such cases and, in particular, how far do they investigate the merits of a claim that such violence or abuse has occurred?	**La violence familiale ou les autres abus similaires sont-ils fréquemment invoqués comme exception au retour dans les cas d'enlèvements d'enfants ? Comment les tribunaux de votre Etat abordent-ils ces questions, plus précisément jusqu'où mènent-ils leur enquête sur le fond de la plainte qui allègue la violence ou l'abus ?**

Argentina – Argentine :

Los padres sustractores muchas veces alegan estos hechos para oponerse a la restitución. Sin duda el Juez no puede ignorar este tipo de acusaciones, y para ello podrá valerse de la asistencia de grupos interdisciplinarios, o solicitar al Estado requirente que proporcione un informe en los términos del artículo 13, a fin de conocer la situación social del menor anterior a su sustracción o retención ilícitas, pero no hay un parámetro sobre hasta donde se investigan estos hechos. En definitiva, el Juez utilizará todos los elementos con que cuente para determinar si prima facie existe una situación de violencia, teniendo presente que la mera alegación de un hecho de estas carácterísticas no bastará por si solo para rechazar el pedido de restitución.

Australia – Australie :

Yes. By way of experts' reports that can be filed by either party. Generally, however, unless there are exceptional cases, domestic violence in itself will not be a reason for an Australian Court to refuse return.

Austria – Autriche :

Domestic violence is raised surprisingly seldom. When raised with some substance, it has to be examined. No child will be returned to a parent, who is proven guilty of domestic violence against this child!

Canada – Canada :

Ontario
Domestic violence issues have been raised in Ontario cases as the basis of an Article 13(b) defence. The Ontario Courts consider all facts and evidence presented in court before making a decision. The party making the Article 13(b) defence must produce sufficient evidence in order for the courts to be satisfied that domestic violence or abuse has occurred. Psychological reports, home assessments and criminal reports have also been considered.

British Columbia
Allegations of abuse are routinely raised by abducting parents in British Columbia courts. The abducting parent has the duty to provide evidence to support the allegations. The court may request that it be provided with a psychological assessment of the left behind parent or of both parents. The Central Authority will assist in arranging such reports. The British Columbia government may assist in assessing the abducting parent in BC.

Saskatchewan
We have not had allegations of domestic violence or abuse raised in court proceedings in Saskatchewan. However, on a more information level, if we receive a Hague return application which suggests that the applicant may raise the issue of domestic violence or abuse, we would contact our child protection authorities to determine whether there are any child protection concerns. With respect to outgoing Hague applications, where the abducting parent alleges that the child was being abused or neglected while in the care of the custodial parent in Saskatchewan, we would also informally contact our child protection authorities to determine whether there may be merit to the allegations.

New Brunswick
This has not arisen due to the dearth of New Brunswick cases. If it becomes necessary to investigate the issue of domestic violence or abuse, the onus is on the party raising the issue to produce evidence of same. Thereafter, the police and child protection agencies are sometimes able to assist in investigation through international agreements and contacts.

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Quebec
Yes. Our statistics show that more than 75% of abducting parents are the mothers. Increasingly, domestic violence of which the mother claims to be a victim is cited as a grave risk to the child (Article 13(*b*) of the Convention). However, the courts usually apply that exception very narrowly and order the children returned unless the evidence shows that the children themselves have been the victims of domestic violence. This is a topical subject, difficult and very much a concern (see commentary by Chamberland J., "Violence conjugale et enlèvement international d'enfants : quelques pistes de réflexion" [on domestic violence and international child abduction], *Judges' Newsletter*, Volume X / Fall 2005, pp. 70-79).

Manitoba
The issue of domestic violence has been raised in child abduction cases in Manitoba. The Court has closely considered the nature of the alleged violence and relied on the use of undertakings and the Courts in the other jurisdiction to address any concerns it has about the well-being of the abducting parent or the child.

Nova Scotia
This issue is not often raised as an exception to return but has been raised in some cases. The general approach of the courts is to investigate the merits of such a claim and to look, where possible, for expert evidence (in the way of assessments, etc.).

**

Ontario
Des questions de violence familiale ont été soulevées dans des affaires ontariennes comme fondement à une défense en vertu de l'alinéa 13b). Les tribunaux ontariens examinent l'ensemble des faits et de la preuve présentés en cour avant de rendre une décision. La partie qui soulève une défense en vertu de l'alinéa 13b) doit produire une preuve suffisante pour convaincre le tribunal qu'il y a eu violence familiale ou abus. Des rapports psychologiques, des évaluations à domicile et des rapports criminels ont également été examinés.

Colombie-Britannique
Les parents ravisseurs formulent régulièrement des allégations d'abus devant les tribunaux de la Colombie-Britannique. Le parent ravisseur a le fardeau de produire des éléments de preuve au soutien de son allégation. Le tribunal peut demander qu'on lui fournisse une évaluation psychologique de l'autre parent ou des deux parents. L'Autorité centrale aidera à obtenir de tels rapports. Le gouvernement de la Colombie-Britannique peut aussi prêter son assistance aux fins de l'évaluation du parent ravisseur en Colombie-Britannique.

Saskatchewan
Il n'y a pas eu d'allégations de violence familiale ou d'abus dans des procédures judiciaires en Saskatchewan. Cependant, en pratique, si nous recevons une demande de retour en vertu de la Convention de La Haye qui indique que le requérant pourrait soulever une question de violence familiale ou d'abus, nous communiquerons avec les autorités responsables de la protection de l'enfance en Saskatchewan pour déterminer s'il existe des préoccupations au plan de la sécurité et du bien-être des enfants. Pour ce qui est des demandes de retour visées par la Convention de La Haye à destination de l'étranger, si le parent ravisseur allègue que l'enfant était maltraité ou négligé alors qu'il vivait avec le parent ayant la garde en Saskatchewan, nous communiquerons aussi à titre officieux avec les autorités responsables de la protection de l'enfance en Saskatchewan pour déterminer s'il pourrait y avoir quelque fondement à ces allégations.

Nouveau-Brunswick
Cela ne s'est pas présenté en raison de la rareté des cas au Nouveau-Brunswick. S'il devient nécessaire de faire enquête au sujet d'une question de violence familiale ou d'abus, il incombe à la partie qui l'allègue d'en faire la preuve. Par la suite, les corps policiers et les organismes de protection de l'enfance sont parfois capables de participer à l'enquête grâce à des accords et à des contacts internationaux.

Québec
Oui. Nos statistiques démontrent que plus de 75% des parents ravisseurs sont les mères. De plus en plus, la violence conjugale dont la mère se dit victime est invoquée comme danger grave à l'enfant (article 13b de la Convention). Toutefois, les tribunaux appliquent généralement cette exception de façon très restrictive et ordonnent le retour des enfants à moins que la preuve établisse que ces derniers sont eux-mêmes victimes de cette violence. Il s'agit d'un sujet d'actualité, difficile et très préoccupant (voir le commentaire du juge J. Chamberland, « Violence conjugale et enlèvement international d'enfants : quelques pistes de réflexion », La Lettre des juges, Tome X / Automne 2005, pp. 70-79).

Manitoba
La question de la violence familiale a été soulevée dans des cas d'enlèvement d'enfant au Manitoba. Le tribunal a examiné avec soin la nature de la violence alléguée et a eu

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recours à des engagements et aux tribunaux dans l'autre ressort pour éliminer les préoccupations qu'il avait quant au bien-être du parent ravisseur ou de l'enfant.

Nouvelle-Écosse
Cette question n'est pas soulevée souvent à titre d'exception au retour, mais elle l'a été dans certains cas. La démarche générale des tribunaux consiste à examiner le bien-fondé d'une telle prétention et à s'appuyer, si possible, sur une preuve d'expert (sous forme d'évaluations, etc.).

Chile – Chili :

En Chile, especialmente dado los recién creados Tribunales de Familia y por lo tanto el nombramiento de muchos nuevos jueces, fue muy importante el Seminario para Jueces efectuado en Enero de 2006 y que contó con el apoyo de la Autoridad Central de los Estados Unidos. Por otra parte internamente se han realizado y se van a continuar realizar durante el año 2006, distintas charlas para funcionarios de organismos públicos y privados relacionados con la atención a niños, así como a abogados de la Corporación de Asistencia Judicial (encargados de tramitar las causas de la Convención de la Haya en Tribunales que no sean de Santiago).

China (SAR Hong Kong) – Chine (RAS Hongkong) :

The issue of domestic violence or abuse was raised occasionally to the application for return. The court will always consider the evidence of the parents and request reports to be prepared for consideration. If the circumstances warrant, the court may ask for investigation reports to be provided by the requesting State to investigate into the matter. The court will consider such reports in determining the merits of the claim and will consider the suffiency and the enforceability of any conditions to be imposed for alleviating the risk concerned.

China (SAR Macao) – Chine (RAS Macao) :

There is so far no such case.

Colombia – Colombie :

La violencia doméstica en los procesos de restitución y regulación internacional de visitas, es un hecho que casi siempre se alega por la parte demandada para oponerse a la pretensión. Por excepción se interpone el abuso. Las Autoridades Administrativas como Judiciales en algunos casos decretan pruebas inconducentes o improcedentes para establecer los hechos, lo que ha generado la demora en los procesos de restitución o regulación de visitas.

En caso de estar probado un abuso sexual contra un menor de quien se reclara su restitución o se solicita la regulación internacional de visita, probada la excepción, esto sería suficiente motivo para obtener un fallo negativo.

Costa Rica – Costa Rica :

La respuesta es SÍ, por lo menos en el único caso que históricamente se ha tramitado a la luz del Convenio de la Haya (con sentencia de primera instancia pendiente de firmeza por estar apelada). Y de fijo seguirá invocándose mientras el vigente Derecho interno costarricense se mantenga incólume y fiel a sus valores y principios pro-madre e hijo menor de edad. Por lo mismo, la investigación sobre el fondo de una denuncia que alega ocurrencia de violencia doméstica o abuso infantil debe ser total e indeclinable, so pena de incurrir en falta administrativa de negligencia funcionarial o delito de incumplimiento de deberes de la función pública y/o prevaricato (ver respuesta a la pregunta N° 11).

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Cyprus – Chypres :

See question 9.

Czech Republic – République tchèque :

Yes it is. The Czech courts often investigate the merits of a claim that such violence or abuse has occurred.

Denmark – Danemark :

We do not recall cases, where the return has been refused because of domestic violence. The question on how a child shall be returned must be solved in accordance with Danish legislation's general provisions about enforcement. However the courts usually tries, maybe with the help from the lawyers involved in the case, to get the parties to accept what could be called "confidence-building arrangements". Arrangements like this will be entered in the Records of the Court, because the parties hereby feel more responsible to comply with the arrangements.

In Denmark we do not have any examples of safe harbour orders or mirror orders in Danish legal usages. Danish Courts of enforcement cannot make mirror orders, because they only have jurisdiction to make enforcement orders. However Denmark has signed 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 and it will therefore in the future be possible for the courts to make mirror orders when the 1996 Convention has entered into force in Denmark.

As we recall there has been no cases where Danish authorities has refused to make or enforce an order in respect of a young child on the basis that an abducting parent who is the child's primary carer, refuses or is otherwise not in a position to return with the child.

Ecuador – Equateur :

Si, la violencia doméstica o el abuso son a menudo planteadas como excepción para la restitución, casos en los cuales, tomando en cuenta el principio del interés superior del niño, el juez de la niñez y adolescencia tiene el deber de realizar las acciones e investigaciones que sean necesarias a través de la Policía Especializada de Niñez y Adolescencia o de las Oficinas Técnicas; dictar las medidas de protección pertinentes; y, ajustar sus decisiones al cumplimiento efectivo del conjunto de derechos del niño.

El Salvador – El Salvador :

En nuestro país, debido a que la aplicación del convenio es relativamente nueva, no hemos tenido casos en los que se alegue esta excepción.

Finland – Finlande :

Accusations of this type are quite frequently used arguments not to return the child. The general approach to such cases is strict, but the court certainly estimates the importance and credibility of the arguments in its decision.

Court in Finland has made only one non-return order in accordance with Article 13(b) since Finland became a member of the Convention. Central Authorities' cooperation is crucial in organising the safe return in cases where accusations of domestic violence and/or abuse have been made.

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France – France :

La violence familiale ou d'autres abus sont fréquemment invoqués par le parent qui a déplacé l'enfant, pour justifier son départ du pays de résidence habituelle de l'enfant, ou son refus de le restituer.

Généralement, de telles allégations sont énoncées par la personne retenant l'enfant lors de l'audition par la police, qui constitue une phase de recherche amiable de retour volontaire de l'enfant, préliminaire à la saisine de la juridiction ayant à statuer sur cette demande de retour. Ces éléments sont alors portés à la connaissance de l'autorité centrale ayant sollicité le retour, afin qu'elle puisse faire valoir les réactions et observations du parent requérant face à ces déclarations, avant la tenue de l'audience en retour. Ainsi, les arguments en réponse à ces allégations, et les pièces qui les soutiennent, peuvent-ils être portés à la connaissance de la juridiction saisie de la demande en retour.

Greece – Grèce :

Yes, in several cases, parents are accused for exercising physical or sexual abuse and often is raised as an exception to return in child abduction cases. The courts require plausible evidence.

Guatemala – Guatemala :

La violencia domestica o el abuso planteados, siempre debe de probarse y si esta ocurre y es notorio que perjudica al niño, pues en consecuencia no puede regresarse al menor de edad con el padre abusador. En Guatemala, si se llega a probar que estas tendencias de maltrato son excesivas o existe abandono o negligencia, puede el padre perder la patria potestad sobre su hijo.

Iceland – Islande :

The issues of domestic violence and/or abuse are often raised as an exception to return in Hague cases. The general approach to such claims is stern, and the burden of proof lies with the claimant. The courts will not investigate the merits of such claims, further than hearing the child itself and allowing the claimant to bring forth written or oral evidence to substantiate them.

Ireland – Irlande :

This defence has been used increasingly. Irish courts usually look for some evidence that abuse has actually taken place, such as police or hospital reports. The court may also make use of undertakings in an attempt to safeguard the abducting parent, but domestic violence by one parent against another has not been interpreted as necessarily presenting a "grave risk" to the child upon their return.

Israel – Israël :

Claims regarding domestic violence or abuse are often raised in order to argue that there is "grave risk" in returning the child- according to Article 13(b) of the Convention. These claims are looked into in depth, especially when the claim is that there is violence towards the child. As with other defenses in the Convention, the defense of "grave risk" is interpreted in a limited and cautious manner. Even when the court finds that there might be some risk to the child, the court will prefer to send the child back to the country of origin, while deciding to apply undertakings ensuring the safety of the child. (See below- answer to question 27). The courts will inquire as to whether complaints were filed in the state of habitual residence and will, if necessary, request, through the Central Authority, a welfare report from the requesting country, If the family was under the care of a social worker in the country of habitual residence, the welfare authorities can then

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make direct contact in order to secure the necessary information. Such reports are requested on an expedited basis, so as to not prolong the proceedings unnecessarily.

If there are allegations of abuse of the child, a psychological report will usually be ordered. If the abuse is alleged to have occurred against the abductor, the court will seek information regarding the protective agencies which exist in the state of habitual residence.

Italy – Italie :

La violence familiale comporte souvent l'application de l'art. 13 de la Convention. Généralement, les Tribunaux italiens exigent des preuves dont le rassemblement soit facile et rapide (preuves réunies lors d'autres procédures pour mauvais traitements, preuves par témoins, etc. …). Des expertises peuvent aussi être demandées, mais c'est rarement le cas.

Latvia – Lettonie :

In the exclusive case of the Latvia's Court in terms of the Convention, Court of First Instance refused return of a child on the basis of Article 13 b) of the Convention. As evidences there were statements from Orphan's Court and from qualified psychologist.

Lithuania – Lituanie :

We have no information on cases concerning return of children under the Hague Convention decided in the courts of the Republic of Lithuania.

Malta – Malte :

There is one court case, which is still being heard by the Family Court, in which the 'abducting parent' is alleging that her former spouse was at times violent towards her (which allegation was rebutted by the applicant). There has still been no outcome with regard to this accusation.

Mexico – Méxique :

No, no se ha argumentado la violencia domestica o el abuso para oponerse a una restitución en el marco del artículo 13 b.

En caso de un argumento sobre violencia, el juez que resuelve restituir a un menor, ordena se informe a la Autoridad Central requirente, a efecto de que a la llegada del menor restituido, se tomen todas las medidas tendientes a proteger al menor.

Monaco – Monaco :

Les allégations d'abus sexuels sont souvent invoquées. Dans ces cas, les juridictions pénales vont jusqu'au bout de la procédure. Toutefois, il arrive que les enquêtes se limitent à l'instruction sans que les tribunaux ne soient saisis faute d'élément suffisants. Compte tenu du nombre élevé de ce genre d'allégations par rapport au faible nombre de cas d'enlèvement, les tribunaux restent circonspects et restent vigilants.

Netherlands – Pays-Bas :

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

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New Zealand – Nouvelle Zélande :

Yes. Domestic violence is often raised as a defence in conjunction with the risk of psychological abuse if children are returned and witness violence. The general approach is to ensure protective steps are taken such as in H v C. In H v C it was considered that the defence was not established but the order was still adjourned so that protective steps could be taken in Australia such as interim court orders giving protection to the mother, custody in her favour, and supervised access to the father, and the appropriate supervision structure arranged.

Nicaragua – Nicaragua :

No es una causal planteada a menudo, sin embrago nuestra legislación sostiene que Ninguna niña, niño o adolescente, será objeto de cualquier forma de discriminación, explotación, traslado ilícito dentro o fuera del país, violencia, abuso o maltrato físico, psíquico y sexual, tratamiento inhumano, aterrorizador, humillante, opresivo, trato cruel, atentado o negligencia, por acción u omisión a sus derechos y libertades.

Es deber de toda persona velar por la dignidad de la niña, niño y adolescente, poniéndolo a salvo de cualquiera de las situaciones anteriormente señaladas.

La niña, niño y adolescente tiene derecho a la protección de la Ley contra esas injerencias o ataques y los que los realizaren incurrirán en responsabilidad penal y civil.

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Panama – Panama :

De nuestra experiencia la excepción de violencia doméstica o de abuso no suele invocarse con frecuencia. Por lo general cuando se invoca es vista esta circunstancia como de riesgo para el menor de edad y conforme a nuestro ordenamiento juridico (Ley 38/01) deben adoptarse medidas de protección y remitir a la autoridad competente la investigación sobre la violación de derecho en detrimento del niño, niña o adolescente, debiendo tomarse muy en cuenta la opinión de estos niños.

Lo que observo es que en la práctica se desconoce información sobre que protección pudiera recibir el niño en el país de su residencia habitual que permita a la autoridad del Estado requerido tener la suficientes confianza judicial, que al menor de edad victima se le brindara todos las garantías en aras de su protección en primera instancia con el señalado como victimario, quien en principio es quien reclama la restitución del menor de edad.

Paraguay – Paraguay :

Desde que ejercemos como Autoridad Central no tenemos conocimiento de ninguna resolución que haya utilizado la violencia o el abuso como excepción para la restitución. Lastimosamente no se investiga a fondo, pues son las causas que más alegan las madres sustractoras para justificar el hecho, y la violencia es contra ellas no contra el niño.

Poland – Pologne :

Only the party refusing to return the child may raise the issue of domestic violence. In practice, raising the issue of domestic violence as the reason for refusing the return of a child is a frequent occurrence. From Polish courts' jurisdiction it follows that the return of a child is frequently refused due to the proven domestic violence. It is the party raising the issue of domestic violence that has the responsibility of providing the evidence in support of the issue and it is the party's choice what kind of evidence to present.

Portugal – Portugal :

In general no, but occasionally it happens.

Romania – Roumanie :

Family violence and similar abusive behavior are frequently invoked by the accused parent with a view to persuade the court to refuse the return of the child in accordance to art. 13 b) of the Convention. The court administers evidence in order to be able to evaluate the allegations of the parties as to the family violence; the court corroborates the whole evidential documentation administered, and eventually rules, giving highest priority to the interest of the child.

Slovakia – Slovaquie :

The issue of domestic violence or abuse was raised almost in every case under this Convention that was brought before the court. However, only in one case was this issue the reason, why the court rejected to order the return of the child. The decision of the court was mistaken, because the court demanded the evidence of no risk of physical or psychological harm for the child from the applicant, not from the abductor. Since the applicant was not able to prove that such risk did not exist, the court refused to order the return of the child and the appellate court eventually affirmed this decision.

In spite of that, in other cases the courts always investigate the issue of domestic violence, when such claim is made, but they demand the proof from the abductor (e.g. document on reporting the domestic violence to police, police warrants, judicial decisions, testimonies, etc.)

South Africa – Afrique du Sud :

In the vast majority of return applications, yes. We request background reports from the relevant authority in the requesting country.

Spain – Espagne :

Cada día son más los casos en que las sustracciones internacionales de menores se producen en un entorno de violencia doméstica. En España el problema de la violencia de género se afronta de una forma global tras la vigencia de la Ley Orgánica 1/2004, de 28 de diciembre, de Medidas de Protección Integral contra la Violencia de Género. Existen juzgados especiales al efecto dedicados a dar una protección integral a la mujer objeto de tal violencia, tanto en el ámbito civil como penal. No obstante, se tiene clara conciencia en España de que la restitución o no del menor no debe ligarse al análisis de cuestiones de fondo. Existe en España la importante previsión que genera nuestra vigente Ley de Violencia de Género en el Artículo 44 sobre Competencia, adiciona un artículo 87 ter en la Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial, donde se fija la competencia de los Juzgados de Violencia sobre la Mujer en el orden civil y penal, y donde se señala en el ordinal cinco que en todos estos casos está vedada la mediación.

Respecto a las alegaciones de abuso de menores como excepción a la restitución de menores, cuando no media violencia doméstica, son frecuentes, si bien en la mayoría de los casos han resultado falsas, tras las investigaciones oportunas. En los casos que se ha demostrado el abuso se ha denegado la restitución o visitas y en los casos en que cabía la duda, las visitas se han concedido en puntos de encuentro vigilados.

Sweden – Suède :

Accusations of this type are quite frequently used arguments not to return the child. The general approach to such cases is strict, but the court certainly estimates the importance and credibility of the arguments in its decision. Swedish Courts look for some evidence that abuse has actually taken place, such as police or hospital reports.

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The Swedish Central Authority can recall two cases (“Pacay” case number 3532 from 1999 and “Mayzel” case number 6608 from 2000) where a non- return order was made in accordance with article 13 b.

Central Authorities’ cooperation is crucial in organizing the safe return in cases where accusations of domestic violence and/or abuse have been made. Since the burden of proof rests upon the party claiming that there is a risk of domestic violence and/ or abuse, the Swedish Central Authority finds that no further investigation by the courts has to be made.

Switzerland – Suisse :

Si des investigations ont été menées dans l'Etat de résidence, leurs résultats sont respectés en Suisse. S'il existe néanmoins des indices sérieux que les enfants susceptibles d'être rapatriés ont été l'objet de maltraitance de tout genre et si des craintes subsistent qu'ils ne seront pas suffisamment protégés contre de nouveaux mauvais traitements en cas de retour, le tribunal saisi de la procédure mène d'office les investigations nécessaires et en tient compte dans sa décision.

A différencier ici la violence conjugale de la violence ou autres abus envers les enfants!

- Une recrudescence des cas comportant un aspect lié à la violence conjugale est visible depuis quelques années: la situation de femmes pour la plupart étrangères et compagnes de partenaires étrangers devant se réfugier dans des foyers ou centres d’accueil pour femmes battues contraignent surtout les autorités à procéder de manière confidentielle; ainsi le lieu de refuge de la mère et de son enfant ne peuvent pas être divulgué, pour raison de sécurité, au parent demandeur.

- L’impact de la violence sur l’enfant est examinée comme un motif susceptible de créer un risque grave d’atteinte psychique ou physique selon l’article 13 b alinéa 1; toutefois le parent violent envers son conjoint mais pas du tout envers son enfant n’apparaît pas d’emblée comme non apte à exercer un droit de garde ou de visite; à la lumière des nouvelles tendances en Suisse et dans d’autres Etats contractants, il paraît que les tribunaux pourraient accorder une attention différente à la violence conjugale si elle empêche le parent défendeur d’exercer son droit de garde ou de visite de manière appropriée; par exemple la mère serait menacé en cas de retour avec l’enfant ce qui induirait une séparation ou la complication des contacts personnels avec son enfant contraire à l’intérêt du mineur. L’audition d’enfants a notamment mis à jour des maltraitances (violence verbale et physique) de la part du beau parent ou concubin du parent demandeur.

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United Kingdom (Scotland) – Royaume Uni (Écosse) :

There does seem to be a growing incidence of such allegations being made in connection with returns. In a decision taken in a previous Scottish case it was accepted that the test required for this must be robust if the central aims of the Convention are not to be defeated. The critical question here is whether it has been shown that the authorities in the requesting state could not deal appropriately with any of the points raised bearing upon risk of harm to which the child might be exposed or any situation in which they might be placed.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

Yes.

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

The court may indicate that a return order will not be made unless undertakings are in place to facilitate and safeguard the return of the child and returning parent and to ensure their welfare pending the courts of the requesting State being seized with the issues. Such undertakings are annexed to or recorded as recitals to the return order.

United States – Etats Unis :

Domestic violence/abuse is frequently raised as an affirmative defense to return under Article 13(b). While treatment of this defense varies between Courts and Circuits, typically 13b is narrowly construed and Courts do not consider a finding of domestic violence to constitute an absolute bar to return. In a few cases, a Post Traumatic Stress Disorder (PTSD) diagnosis (for the child) as the result of the domestic violence/abuse was determined to be a sufficient risk as to justify denial of return; these cases found that simply returning the child to the country where the violence/abuse occurred would trigger PTSD, regardless of any resources available in that State to protect the child from further abuse. In general, courts must investigate the merits of the claims of abuse if they are to use such claims to justify non-return under Article 13. See discussion in question 13(h).

Uruguay – Uruguay :

Cuando se plantean cuestiones de violencia doméstica en el ámbito de la residencia habitual del menor y en tanto esta incida directamente en el niño provocando situaciones de seria afectación física o síquica, los tribunales nacionales en conocimiento de los hechos a través de informes solicitados a los tribunales del Estado de origen del menor y apoyándose en el informe de sicólogos, tienden a negar el reintegro internacional.

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Question 26	
What procedures and measures are in place in your State to secure the safe return of the child (and the accompanying parent, where relevant) where issues of (alleged) domestic violence or abuse are raised?	**Quelles procédures et mesures votre Etat a-t-il mis en place pour garantir la sécurité du retour de l'enfant (et du parent qui l'accompagne, le cas échéant) lorsqu'une violence familiale ou un autre abus est allégué ?**

Argentina – Argentine :

En estas situaciones, se coordinará con el Juzgado para que la entrega se haga allí, a fin de evitar exponer al menor y al padre que lo reclama a un riesgo innecesario. Asimismo, y si la situación lo justificara, el Juzgado podrá disponer que el peticionante y el menor sean acompañados a tomar el vuelo o el transporte que fueran a utilizar por autoridades policiales o funcionarios de la justicia, los cuales levantarán un acta dejando constancia de la salida del país. En casos en que los menores son restituídos a nuestro país, muchas veces solicitamos también a los Consulados en el exterior que verifiquen la salida de los mismos, confirmando la llegada a nuestro país a traves de las autoridades policiales del aeropuerto al cual arriben.

Australia – Australie :

We ask for undertakings not to prosecute, the court will make conditional return orders to protect a returning parent and a child.

While criminal proceedings are pending against the abducting parent in the country of habitual residence the Australian courts may be reluctant to order the return of the child.

Where criminal charges exist, this is usually the subject of negotiations between the Australian Central Authority and the overseas Central Authority in order that the welfare

of the returning parent and child are not adversely affected by the existence of any such charges.

It is often a condition attached to a return order that the requesting parent agrees not to institute any criminal proceedings against the returning parent. However, whether or not the court will make such an order depends on the circumstances. For example, in *Director General, Department of Community Services v Attanasio* (unreported, Cohen J, 24/3/00, Sydney), the Judge was critical of many of the orders sought by the Central Authority and of the many conditions imposed by the mother for her return. The Judge refused to make the order requiring the father's undertaking not to institute criminal proceedings against the mother in Italy. He said such orders "tend to defeat the purpose of being a signatory to the Convention…It must also be recognised that, as under the criminal law of Australia, certain acts will result in legal consequences where the best interests of a child of the perpetrator are irrelevant." The child was ordered to return. *(Note: The mother subsequently appealed this decision. Before the Appeal Court had handed down its decision, the father withdrew the application. The Court then allowed the mother's appeal.)*

On the other hand, in the first instance Family Court of Australia decision by Lindenmayer J in *Director-General Department of Families, Youth and Hobbs (2000) FLC 93 -007*, the father, who had initiated the Convention proceedings in respect of his daughter, was permitted by his Honour to file an affidavit that contained a range of undertakings, including that the father not institute or support any criminal or civil charges against the mother associated with the removal. These orders were to be filed as mirror orders in the habitual residence country.

Austria – Autriche :

No such procedures and measures are in place in Austria. However, the judges may notify the courts particular concerns (even if Brussels IIbis is not applicable).

Canada – Canada :

Both the criminal justice and the civil justice system can be invoked in domestic violence cases.

Acts of domestic violence or stalking can be subject to criminal charges under the Criminal Code of Canada. Once someone has been arrested and charged with an abuse-related offence, the Court can impose conditions on his/her release (no contact or communication with the victim, etc.). Police, not the victim, are responsible for laying criminal charges in domestic violence cases. Charges will be laid when the police have reasonable and probable grounds to believe that a criminal offence has taken place.

<u>Ontario</u>
The Ontario Central Authority would work with the Ontario Children's Aid Society to ensure the safe return of the children. Additionally, Ontario would work with various Non-Governmental Organizations to provide assistance.

<u>British Columbia</u>
In cases where the abducting parent is suspected of abusing the child, or if the parent is considered to be flight risk, an ex-parte order may be obtained to take the child into care. The BC child protection authority, at times with the assistance of police, will apprehend the child and place it in foster care until the return application has been heard. If there are concerns about the suitability of the left behind parent, the child may be returned to the child protection authority in the state of habitual residence. The police and child protection services in that state would be alerted if there are concerns about the safety of parent and child upon return

<u>Saskatchewan</u>

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In these circumstances, we would liaise with child protection authorities and the local police to put appropriate measures in place to ensure their safety.

New Brunswick
It is highly likely that a New Brunswick judge would order transitional provisions to govern the return of the child in situations where domestic violence/abuse have been raised. This is done to ensure the security and development of the child.

Quebec
The Quebec Central Authority is always represented by an Attorney General litigator in proceedings related to application of the Hague Convention. Judges can request our assistance in enforcing the return order. A judge can also order us to coordinate the handing over of the child to social services in the State of habitual residence so that an evaluation can be done to determine whether the child can be released to the applicant parent. The judge can also order us to coordinate the assistance of police if necessary. We also ensure that the departure from Quebec goes smoothly with the cooperation of Canadian border services at airports.

If the foreign decision ordering return calls for us to be involved in putting protective measures in place when the child returns, we ensure the cooperation of the Director of Youth Protection, who enforces the *Youth Protection Act* (R.S.Q., c. P-34.1) in Quebec. Further, if the applicant parent asks for assistance from social services, we can make the arrangements to obtain the necessary help so that the child is returned safely. Caseworkers will be involved at the request of the Central Authority, which is responsible for ensuring that the return order is properly enforced. Their input will be determined with the designated stakeholders based on the specific circumstances of each case.

Manitoba
Manitoba has a comprehensive approach to domestic violence including a range of services to support victims and their children (specialized criminal courts to handle domestic violence cases, counselling and supportive services for victims and their children, safe shelters, etc.).

Information on Manitoba's Family Violence Prevention Branch and related services/resources is available via the Internet at:
http://www.gov.mb.ca/fs/childfam/family_violence_prevention.html (English)
http://www.gov.mb.ca/fs/childfam/family_violence_prevention.fr.html (French)

Manitoba Justice's website contains information on civil protective legislation and other domestic violence issues on the following pages:
http://www.gov.mb.ca/justice/domestic/index.html (English)
http://www.gov.mb.ca/justice/domestic/index.fr.html (French)
as well as in Chapter 10 of its Family Law in Manitoba, 2005 public information booklet (see links in response to question 3 above).

Manitoba also has civil legislation that can be used by victims of domestic violence and stalking. The Domestic Violence and Stalking Act, C.C.S.M. v. D93, came into force on September 30, 1999. It provides persons subjected to stalking and domestic violence with the ability to seek a wide range of civil remedies to address their individual needs. The Family Law in Manitoba, 2005 public information booklet contains information about this legislation. The Act and its Regulation can be accessed via the Internet at:
http://web2.gov.mb.ca/laws/statutes/ccsm/d093e.php (Act & link to Regulation – English)
http://web2.gov.mb.ca/laws/statutes/ccsm/d093f.php (Act & link to Regulation - French)

Alberta
The Alberta Central Authority has a working relationship with Alberta Children's Services. If there are issues of safety involved for returning children the Alberta Central Authority calls upon Children's Services to become involved.

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Nova Scotia
Where issues of "alleged" domestic violence or abuse are raised, a referral will often be made to the local child protection authorities and they will be expected to contact the child protection authorities in the other State to alert them to this family and their circumstances.

**

Le système de justice pénale et le système de justice civile peuvent tous deux être invoqués dans les cas de violence familiale.

Les actes de violence familiale ou de harcèlement criminel peuvent donner lieu à des accusations en vertu du *Code criminel* du Canada. Lorsqu'une personne est arrêtée et accusée d'une infraction liée à des abus, le tribunal peut poser des conditions à sa remise en liberté (ne pas communiquer avec la victime, etc.). Ce sont les policiers, et non la victime, qui sont responsables du dépôt d'accusation criminelles dans les affaires de violence familiale. Des accusations seront portées lorsque les policiers ont des motifs raisonnables de croire qu'une infraction criminelle a été commise.

Ontario
L'Autorité centrale de l'Ontario travaillerait avec la Société d'aide à l'enfance de l'Ontario pour assurer la sécurité du retour de l'enfant. En outre, l'Ontario travaillerait avec différentes organisations non gouvernementales pour fournir de l'aide.

Colombie-Britannique
Dans les cas où l'on soupçonne le parent ravisseur de maltraiter l'enfant, ou si l'on considère que le parent risque de fuir, une ordonnance ex parte peut être prononcée pour placer l'enfant en foyer d'accueil. L'agence de protection de l'enfance de la Colombie-Britannique, parfois avec l'aide de la police, appréhendera l'enfant et le placera dans un foyer d'accueil jusqu'à ce que la demande de retour ait été entendue. S'il existe des préoccupations quant aux aptitudes de l'autre parent, l'enfant peut être confié aux autorités responsables de la protection de l'enfance dans l'État de sa résidence habituelle. Les services de police et les services de protection de l'enfance dans cet État seront avisés s'il existe des préoccupations quant à la sécurité du parent et de l'enfant à leur retour.

Saskatchewan
Dans ces circonstances, nous communiquerons avec les autorités responsables de la protection de l'enfance et la police locale pour mettre en place des mesures appropriées pour assurer leur sécurité.

Nouveau-Brunswick
Un juge du Nouveau-Brunswick ordonnerait fort probablement des mesures transitoires pour encadrer le retour de l'enfant lorsqu'une violence familiale ou un autre abus est allégué, et ce, dans le but d'assurer la sécurité et le développement de l'enfant.

Québec
L'Autorité centrale du Québec est toujours représentée par un avocat-plaidant du Procureur général du Québec pendant les procédures concernant l'application de Convention de La Haye. Les juges peuvent demander notre aide afin de voir à l'exécution de la décision de retour. Le juge peut ainsi ordonner que nous coordonnions la remise de l'enfant auprès des services sociaux dans l'État de résidence habituelle afin qu'une évaluation soit faite pour déterminer si l'enfant peut être remis au parent requérant. Le juge peut également ordonner que nous coordonnions l'assistance des forces policières si cela s'avère nécessaire. Nous assurons également le départ du Québec sans problème avec la collaboration des services frontaliers Canada aux aéroports.

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Dans la mesure où la décision étrangère qui ordonne le retour demande notre intervention pour mettre en place des mesures de protection au retour de l'enfant, nous nous assurons la collaboration du Directeur de la protection de la jeunesse qui voit à l'application de la Loi sur la protection de la jeunesse (L.R.Q., c. P-34.1) au Québec. Également, si le parent requérant demande l'assistance des services sociaux, nous sommes en mesure de faire les démarches pour obtenir l'aide nécessaire afin que le retour de l'enfant se fasse sans danger. Les intervenants aux dossiers le seront à la demande de l'Autorité centrale qui doit s'assurer de la bonne exécution de la décision de retour. Leur implication sera déterminée avec les intervenants désignés selon les circonstances propres à chaque dossier.

Manitoba

Le Manitoba adopte une démarche globale à l'égard de la violence familiale qui comprend une gamme de services de soutien aux victimes et à leurs enfants (cours criminelles spécialisées pour traiter les cas de violence familiale, services de counselling et de soutien pour les victimes et leurs enfants, refuges, etc.).

Des renseignements sur la Division de la prévention de la violence familiale du Manitoba et les services et ressources connexes sont disponibles à l'adresse
http://www.gov.mb.ca/fs/childfam/family_violence_prevention.html (anglais)
http://www.gov.mb.ca/fs/childfam/family_violence_prevention.fr.html (français)

On trouvera des renseignements sur les lois civiles protectrices et d'autres questions liées à la violence familiale sur les pages suivantes du site Web de Justice Manitoba
http://www.gov.mb.ca/justice/domestic/index.html (anglais)
http://www.gov.mb.ca/justice/domestic/index.fr.html (français)
de même qu'au chapitre 10 de la brochure d'information publique *Droit de la famille au Manitoba 2005* (voir les liens à la réponse à la question 3).

Il existe au Manitoba une loi à laquelle peuvent recourir les victimes de violence familiale et de harcèlement criminel. La *Loi sur la violence familiale et le harcèlement criminel*, C.P.L.M. c. D93, est entrée en vigueur le 30 septembre 1999. Elle offre aux personnes faisant l'objet de harcèlement criminel et de violence familiale toute une gamme de recours civils pour répondre à leurs besoins individuels. La brochure d'information publique *Droit de la famille au Manitoba 2005* contient des renseignements à ce sujet. La Loi et son règlement d'application peuvent être consultés sur Internet à l'adresse

http://web2.gov.mb.ca/laws/statutes/ccsm/d093e.php (Loi et lien vers le Règlement – anglais)
http://web2.gov.mb.ca/laws/statutes/ccsm/d093f.php (Loi et lien vers le Règlement – français)

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Alberta

L'Autorité centrale de l'Alberta collabore avec les Services à l'enfance de l'Alberta. Si le retour d'un enfant soulève des questions de sécurité, l'Autorité centrale de l'Alberta mettra en cause les Services à l'enfance de l'Alberta.

Nouvelle-Écosse

Lorsqu'une violence familiale ou un autre abus sont allégués, le cas sera souvent signalé aux autorités locales responsables de la protection de l'enfance, et l'on s'attendra à ce que celles-ci communiquent avec les autorités responsables de la protection de l'enfance dans l'autre État pour leur signaler cette famille et sa situation.

Chile – Chili :

No hay procedimientos específicos en estos casos, sin embargo se puede recurrir ya sea al Tribunal para que decrete las medidas de protección para el niño que sean necesarias, o solicitar la colaboración a alguno de los organismos del estado que pueden prestar ayuda psicológica y/o social, realizar terapias familiares, etc.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

For cases where the abducting parent is to return the child to our jurisdiction, we will liaise with the police and the social welfare agencies to ensure that the child is well taken casre of on return. The social welfare agencies will also provide the necessary supervision or assistance to the parents.

For cases where the abducting parent is to return the child to the requesting jurisdiction, we will alert their Central Authority of the issue of domestic violence or abuse and liaise with their Central AUthoritu to ensure safe return of the child and provide necessary assistance to the parents, including, for example, imposition of a condition to ensire that there are legal proceedings on foot in the requesting State concerning the welfare of the children before they are returned.

China (SAR Macao) – Chine (RAS Macao) :

Although there is no specific measure or mechanism, ther MSAR Central Authority can make arrangem,ents, on a case-by-case basis, withother MSAR authorities in order to ensure that teh child received appropriate protection. As referred, one of its aims is to protect families and / or people at risk, who, whenever necessary, can request for any kind of help, including that of police protection. It may also request the relevant Central Authority of State of return for information of the alledged abuses.

Moreover, as previously mentioned,the court is free to onvestigate on its own initiative the facts and refuse any evidence requested by the applicant or the defendant and decide upon them, according to its prudent belief, always taking into account the best interest of the child.

Colombia – Colombie :

Hemos tenido conocimiento de que algunas Autoridades solicitan una investigación sociofamiliar al hogar del aplicante para establecer sus condiciones y se exige de las Autoridades Centrales requirentes el compromiso de realizar el seguimiento a los casos, a efectos de prevenir nuevos peligros a los niños. Si la oposición de un regreso del niño a su país de residencia habitual se funda en un abuso, esta es una grave situación que podría ser el fundamento para negar la restitución de un niño o niña.

También se le orienta a la parte demandada que tiene la obligación de regresar al menor al país requirente, acudir ante las autoridades competentes para que sea ante las Autoridades del país de residencia habitual donde se debatan y pronuncien respecto del derecho de custodia o de visitas.

Costa Rica – Costa Rica :

Difícilmente un Juez de la República de Costa Rica se atrevería a resolver una restitución del menor existiendo indicios razonables de riesgo de abuso infantil o violencia doméstica que comprometan la idoneidad del solicitante cual padre de familia. En todo caso, el mismo Patronato Nacional de la Infancia haría uso de todas sus potestades de imperio para evitar la ejecución de tan abominable resolución judicial, porque más allá de su rol de Autoridad Central, debe prevalecer su rol estatal de entidad rectora en materia de minoridad e interés superior del niño. Como se verá después, ése es uno de los problemas de hacer recaer el rol de Autoridad Central en una institución autónoma que por mandato constitucional preferencialmente debe concentrarse en proteger el interés superior de las personas menores de edad que habitan la República de Costa Rica (quizás lo ideal hubiera sido que la Autoridad Central recayera en el Ministerio de Relaciones Exteriores).

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Cyprus – Chypres :

There is coordination between the Central Authority and the Police or the Welfare Department.

Czech Republic – République tchèque :

No special procedures.

Denmark – Danemark :

Please see answer to question 25.

Ecuador – Equateur :

No conocemos de resoluciones sobre restitución de un niño en las que se haya comprobado que hay violencia doméstica o abuso por parte del solicitante. De haber una resolución en ese sentido se estaría violando de manera clara los derechos del niño.

Los Arts. 73 y 74 del Código de la Niñez y Adolescencia establecen el deber de todas las personas y del Estado, de intervenir en el acto para proteger a un niño, niña o adolescente en casos flagrantes de maltrato, abuso sexual, tráfico y explotación sexual, y otras violaciones a sus derechos, requiriendo para ello la intervención inmediata de la autoridad administrativa, comunitaria o judicial. El Estado debe adoptar las medidas legislativas, administrativas, sociales, educativas y de otra índole, que sean necesarias para proteger a los niños, niñas y adolescentes.

El Salvador – El Salvador :

A pesar que no hemos tenido casos, nuestro país cuenta con una Ley contra la Violencia Intrafamiliar, la cual incluye violencia Psicológica, física, sexual y patrimonial; asimismo, contempla medidas de protección.

Finland – Finlande :

Safe return is organised in cooperation with Central Authorities and social welfare officials. If necessary an interim custody order might be made and the child taken into social welfare officials' custody.

France – France :

Afin de prévenir que le retour en France d'un enfant illicitement déplacé ne l'expose à un danger physique ou psychique, ou de toute autre manière ne le place dans une situation intolérable, un signalement peut être effectué aux services du Procureur de la République territorialement compétent, lequel peut prendre en urgence des mesures (allant jusqu'à un placement provisoire si le retour de l'enfant intervient très rapidement et qu'une telle mesure s'impose), ou saisir les services sociaux du lieu de retour de l'enfant, afin que toute mesure appropriée d'accompagnement du retour de l'enfant soit prise.

En cas de situation de danger de l'enfant, le juge des enfants pourra être saisi, et il lui reviendra d'ordonner toute mesure justifiée pour assurer le suivi de cet enfant (ces mesures peuvent aller d'une mesure d'orientation psychologique jusqu'à un placement de l'enfant dans une structure spécialisée).

C'est l'autorité centrale qui prendra le cas échéant l'initiative de saisir les services du procureur afin de lui demander de prendre, "à titre préparatoire" au retour de l'enfant, toute mesure justifiée par la situation, et qui en justifiera auprès de l'autorité centrale de l'Etat dans lequel l'enfant aura été illicitement déplacé.

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Greece – Grèce :

Protective custody.

Guatemala – Guatemala :

Debe de concluir el procedimiento de investigación especifico determinando que no existe esta violencia o abuso, o que el padre no tenga tendencias de abusador. En consecuencia si el tiene el derecho de guarda y custodia sobre el niño, se podrá solicitar que mientras se resuelve el procedimiento el niño sea entregado a este padre solicitando la sustitución de medida de protección en espera de la resolución final en la que ya el juzgado competente decida que en forma definitiva el niño deberá permanecer con este mientras no cambien las condiciones.

Iceland – Islande :

There are no comments on these questions [26 to 29], as there are no special procedures or measures available, enforceable by law, for the courts/authorities to take such steps as mentioned. However, during mediation courts/authorities will or at least should take such issues into account and try to reconcile the parties where possible to minimise the possible trauma awaiting the child on return.

Ireland – Irlande :

Irish courts have used undertakings in order to safeguard the interests of the child and accompanying parent on return. Information can be given to returning parents in relation to shelters and domestic legislation to protect the child and/ or the parent.

Israel – Israël :

In cases where there is a concern of domestic violence/abuse, the Central Authority will notify the welfare authorities who can then, if necessary, arrange for the returning parent and child to be placed in a shelter. Depending on the circumstances, the parent can be referred for psychological treatment or counseling, parental guidance, medical treatment, financial assistance, etc. A child could also be referred to a counselor at his school.

If the parent is indigent and cannot afford the services of a private attorney, he/she will be referred to the Legal Aid Office for a lawyer to be assigned to the case. The lawyer will then apply to a court and secure any necessary orders to ensure protection, including restraining orders and support orders.

A court can further issue protective orders under the Prevention of Family Violence Law and can, upon request, issue a mirror order.

Italy – Italie :

Dans tous les cas de danger pour la sécurité de l’enfant ou du parent qui l’accompagne, les Tribunaux italiens ordonnent toujours des mesures de prévention, en se prévalant de l’assistance des Services Sociaux ou, le cas échéant, des forces de police.

Latvia – Lettonie :

In respect of this question Latvia needs to implement relevant legislation.

Lithuania – Lituanie :

No case of return of the child has occurred so far. Where a threat of domestic violence arises, general child protection measures are applied.

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Malta – Malte :

We have no experience of such cases as yet.

Mexico – Méxique :

Generalmente cuando un menor es restituido, el solicitante o algún representante de la Autoridad Central requirente o algún representante del Sistema DIF local, viajan para acompañar al menor has su lugar de residencia habitual, en ningún momento se expone al menor a realizar un viaje solo.
En caso de ser necesario, se solicita al Juez que ordene que la policía escolte al menor y a su acompañante hasta el aeropuerto.

Monaco – Monaco :

Dans un cas précis, se fondant sur les allégations d'abus de la part du père de l'enfant, la demande de retour de l'enfant s'est accompagnée d'une mesure de placement de l'enfant dans un établissement spécialisé.

Netherlands – Pays-Bas :

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

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

New Zealand – Nouvelle Zélande :

The Central Authority generally does not offer protection or assistance upon return, primarily because most of those being returned are New Zealand nationals and accordingly have the support of their families. There have been a number of cases between Australia and New Zealand where issues of protection have arisen. If there are concerns for the safety of the child or returning parent, these can be dealt with by ensuring the child is surrendered directly to the State Authorities and or the appropriate agencies are notified.

New Zealand law would only contemplate disclosure of information to child welfare protection bodies in circumstances where an imminent threat to safety was established and it was necessary to disclose the information to minimise the risk. If the returning parent raised such concerns the Central Authority would provide contact information for the appropriate bodies but would not take an active role.

The provision of information fits comfortably with the Central Authorities facilitative and administrative role. Once the matter is before the Court, the Court can deal with any specific allegations or concerns and the returning parent can involve agencies such as the police at any time.

Nicaragua – Nicaragua :

A la fecha, no se ha presentado ningún caso con estas características, sin embargo la Autoridad Administrativa; tiene la facultad de brindar atención y seguimiento a estos casos.

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Panama – Panama :

Entre las medida aplicar en garantía de restituir al niño sin peligro a un documento habitual se puede .

a) Coordinar con la autoridad central de Panamá y la del Estado requirente si se puede obtener un oficial de custodia de dichas entidades para acompañar el niño cuando no pueda ser entregado al progenitor que promovió la restitución del menor de edad, hasta ser entregado a la autoridad Judicial competente del Estado requirente para su protección quien deberá determinar con quien deberá permanecer el niño hasta que se concluya las investigaciones del caso denunciado. Para ir desarrollando ese espíritu de cooperación y confianza entre los Estados ratificantes del Convenio, deben existir la reciprocidad de conocer por parte del Estado requerido el destino del niño restituido y las medidas que fueron adoptadas en su favor.

b) Se puede solicitar a la Policía de Niñez y Adolescencia de Panamá. apoyo de custodia de seguridad durante el niño permanezca en Panamá hasta su traslado.

c) Interpol puede brindar apoyo de seguridad durante los interconexiones que deban realizarse en el viaje del niño, de tal forma que se garantice su destino final. de su retorno a su Estado de Residencia Habitual.

d) De ser necesario y deba permanecer el niño en un domicilio distinto al que permanecía en Panamá, debiendo la autoridad judicial, decretar un Hogar Sustituto que deberá proporcionar el MIDES a través de sus direcciones en atención de la edad del niño, niña o adolescente , tal como lo prevee el Código de la Familia y la Ley 42 de 2001.

e) Las Agencias Diplomáticas o Consulares del país de residencia habitual también pudieran brindar apoyo del traslado del niño, coordinando con otras instituciones Estatales para el traslado oportuno e inmediato del niño, niña o adolescente (Migración etc,).

Paraguay – Paraguay :

Hemos solicitado la colaboración de los Consulados Paraguayos en los países adonde los niños son restituidos a fin de realizar un asesoramiento y acompañamiento al padre que vuelve con su hijo. El procedimiento de esta A.C. es la de solicitar al país requirente un informe socioambiental en el domicilio del padre sustractor a fin de verificar las condiciones actuales de los menores.

Esta A.C. también lo realiza, garantizando de esa manera el Principio Constitucional enunciado en el Art.54 de la C.N.

Poland – Pologne :

According to the provisions of the Polish law (Article 109 of the Polish Family and Guardianship Code) and at the request of the party to the proceedings or ex officio the Guardianship Court may secure the return of a child despite the proven charge of domestic violence under the given circumstances. The Court may approve any measure, which it deems the safest to the child’s interest. The ordered measure cannot, however, infringe on the applicant’s parental custody.

Portugal – Portugal :

For the moment, these procedures are not being practised.

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Romania – Roumanie :

Romanian courts, while trying the case, request the competent authorities from the child's usual country of residence to carry out a social investigation at the domicile of the parent who demands that the child be returned. This serves as a guarantee for the safety of the child's return.

Slovakia – Slovaquie :

There are no special procedures in place for these situations in Slovak Republic.

South Africa – Afrique du Sud :

A protection order under the domestic Violence Act may be obtained. Our civil procedure also makes provision for a High Court interdict. If so requested, the Family Advocate can arrange for the provision of a background professional report.

Spain – Espagne :

No existe en España a nivel de procedimiento un proceso específico de restitución cuando media violencia de género. Fuera de la previsión general de prohibición de la mediación, el procedimiento en estos casos es el mismo que en cualquier otro de sustracción internacional de menores sin el componente de la violencia de género.

Sweden – Suède :

Safe return is organized in cooperation with Central Authorities and social welfare officials. If necessary an interim custody order might be made and the child will be taken into social welfare officials' custody (For more information see section 3i above).

Switzerland – Suisse :

Toutes les mesures envisageables sont examinées, p.ex.:

- le parent « en danger » est orienté précisément sur ses moyens de défense voire aidé à trouver un avocat
- un logement en lieu neutre est cas échéant organisé, avec la prise des mesures de protection nécessaires
- procédures pénales contre le parent violent
- procédures civiles indiquées pour obtenir des mesures de protection du parent victime de violence et de l'enfant qui resterait avec lui ou qu'il devrait voir régulièrement
- parent violent non suisse peut, sur condamnation, être expulsé – chaque parent est dûment renseigné au sujet de ses droits et devoirs familiaux et sociaux.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

The Central Authority for Scotland has limited experience of this. The experience that we do have is that the court will look to the requesting Central Authority to ensure that there are adequate safeguards in place. The requested Central Authority will help co-ordinate the return.

This jurisdiction would anticipate that the court making the return order is wise to see to it that appropriate undertakings such as those regarding accommodation and support are given.

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United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

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

United States – Etats Unis :

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Information about legal aid, financial assistance, protection in cases of alleged abuse or domestic violence, and other resources is made available by the U.S. Central Authority to returning parents upon request. Legal aid, financial assistance such as income support, and mental health and other social services (sometimes including shelter) are operated at the local level in most communities in the United States. The specific level of assistance and service available varies due to variations in state law and local resources.

In cases where the returning parent indicates a need for shelter and protection from abuse, a referral can be made by the Central Authority to community-based services for victims of domestic violence. These programs assist victims of violence with a variety of services including shelter for the abuse victim and her children, legal assistance or referral in obtaining orders of protection, counseling, assistance in obtaining longer-term housing, advocacy and accompaniment in court proceedings related to the abuse.

Uruguay – Uruguay :

Ver respuesta 25.

Question 27	
To what extent are your courts entitled and prepared to employ "undertakings" (*i.e.* promises offered by, or required of the applicant) as a means of overcoming obstacles to the safe return of the child? Please describe the subject matter of undertakings required / requested.	**Dans quelle mesure vos tribunaux sont-ils habilités et disposés à recourir aux « engagements » (c'est-à-dire, des promesses faites par le requérant, spontanément ou sur requête) afin de surmonter les obstacles à la sécurité du retour de l'enfant ? Veuillez décrire le contenu des engagements requis ou sollicités.**

Argentina – Argentine :

Si bien los Tribunales Argentinos no suelen disponer este tipo de medidas como condición para otorgar una restitución, cuando la medida es solicitada por un Tribunal extranjero, tanto los Juzgados como otras instituciones de protección al menor (Consejos de los Derechos de Niños), se encuentran en condiciones de ofrecer servicios sociales, tales como contención psicológica, apoyo y asesoramiento legal a las víctimas y seguimiento de casos.

Australia – Australie :

Regulation 15(1) of Australia's Hague Convention Regulations provides that, in making an order in relation to the return of a child from Australia, the court may include in its order a condition that the court considers appropriate to give effect to the Convention. This provision reverses the effect of the 1993 decision in *Police Commissioner of SA v Temple* (1993) FLC 92-424 that conditions cannot be placed on the return of a child.

It is now accepted in Australia that the Court has a discretion to impose conditions or undertakings. However, if it does so, the conditions or undertakings must be purposefully related to the Convention's objects of facilitating the return of the child. A finding of 'grave risk' by the Australian court ordering return is not necessary.

Undertakings are regularly sought by the Australian Central Authority when an abducting parent claims that the child faces a grave risk of harm if returned. Where the court, the Central Authority or the parents are concerned that the returning parent may be homeless, destitute, or at risk of violence, undertakings may also be sought to address the welfare of the returning parent. In recent cases, undertakings have been given by the left behind parent that:

- the parent will not enforce a temporary or interim or ex parte custody order until the matter is brought back before the courts of the habitual residence country

- pending such hearing before the court, the parent will not attempt to remove the child from the mother except for periods of visitation as agreed between the parties or as ordered by the court

- the parent will provide maintenance and accommodation to the mother and child until any further order of the court in the requesting country

- the parent will provide one way air tickets for the respondent and child to return to the requesting country; and

- the parent will not institute or support any criminal or civil charges associated that the removal.

In a 2004 matter, the Central Authority make such arrangements as necessary to ensure the return of the child to the USA subject to a number of significant conditions. As the abducting parent's application for permanent residency in the USA had been denied, the Central Authority was ordered to apply for and secure a visa enabling the abducting parent to travel to the USA and remain there for the duration of the domestic parenting proceedings. In addition to the left behind parent paying for air travel and accommodation, transport and living expenses until a further order of the court in the requesting country, the court ordered that the left behind parent pay a particular sum to enable the abducting parent to retain an attorney for the proceedings in the requesting country (as the abducting parent would not be able to work or apply for benefits in the USA).

In a 2006 matter, the Court imposed several conditions on a return order that could not be met or were immeasurable. Some of the conditions ordered that the government of the requesting country provide certain welfare provisions. Others were simply unenforceable as they impinged on the rights of the applicant parent in the requesting country. The Australian Central Authority has liaised with the Central Authority in the requesting country and with the applicant parent to meet more achievable and enforceable orders.

Austria – Autriche :

No specific rules exist.

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Canada – Canada :

Ontario
Ontario courts are able to employ undertakings; however this technique is not commonly utilized. It is more common for the Ontario Courts to make an Order detailing the specifics of the proposed return.

British Columbia
British Columbia courts will make orders that contain undertakings or conditions to lessen the trauma on the children. For example, an abducting parent has been permitted to return the child upon given certain undertakings. The undertakings listed by Manitoba may be suggested to the parties to overcome obstacles to return.

Saskatchewan
Our courts have used undertakings to ensure the safe return of the child. The nature of the undertakings depends on the circumstances of the case. For example, in one case the judge ordered the return of the child on the terms that both parties file signed undertakings with the court within 10 days. The abducting parent was required to undertake to return the child by a certain date, attend the court house and surrender the child's passport, and allow certain access visits. The left-behind parent had to undertake to pay travel costs, to not take custody the child (i.e. leave the child in the custody of the abducting parent), make arrangements to schedule further court proceedings, vacate the family home and allow the abducting parent and child to reside there if they so chose, and to pay child and spousal support (at least until a court of the habitual residence made a further order). If these undertakings were not received or not complied with, the judge directed that he be contacted by the court registrar for further disposition.

The court specifically noted the direction give in the Thomson case regarding the use of undertakings.

New Brunswick
The New Brunswick courts can use undertakings, but prefer a court order as a means to overcoming obstacles to the safe return of the child. Such transitional orders can deal with residency, access and support, etc.

Quebec
Our courts are willing and able to use "undertakings" to overcome obstacles to the safe return of the child and, sometimes, the abducting parent. The use of "undertakings" brings into play the discretion of the judge hearing the return application and depends directly on the willingness of the applicant parent to make the undertakings.

Examples of undertakings:

- Make arrangements for withdrawal of the criminal charge or arrest warrant;
- Do not file a complaint for abduction once the child returns;
- Do not enforce an interim change-of-custody order obtained *ex parte*; withdraw from any *ex parte* judgment;
- Pay for airline tickets for the child (and sometimes even the abducting parent);
- Begin custody proceedings as quickly as possible when the child returns;
- Do not hamper the return of the abdicating parent to the State of habitual residence (for example, by notifying immigration authorities or otherwise);
- Pay interim child support until custody is settled;
- Temporarily transfer use of the family home to the abducting parent and the child when they return to the State of habitual residence;

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- Give his/her firearm to a third party; refrain from purchasing a firearm; refrain from being in possession of a firearm.

D.T. *v.* H.D., November 14, 2002, SOQUIJ AZ-50151250 (S.C.)

"[TRANSLATION] REMINDS the parties of the offer made by the applicant to transfer use of the family home in Miami to the respondent for such time as it takes to determine custody and access in respect of S... and V... T... D..., subject to the order made by the appropriate authority in the children's place of residence;

ORDERS the applicant, , D... T..., to pay the cost of airline tickets to MIAMI for the two children, S... and V... T... D....

REMINDS the applicant of his undertaking to hand his revolver over to his Miami lawyer as soon as he arrives in Miami so that the weapon can be placed in a bank vault in the name of the lawyer's firm until a ruling is made on the application for divorce and ORDERS him to comply with that undertaking.

REMINDS the applicant of his undertaking not to purchase or be in possession of a firearm and ORDERS him to comply with that undertaking."

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C.E.S. *v.* E.V., October 1, 2002, SOQUIJ AZ-50146740 (S.C.)

"I shall pay for the travelling expenses of J. C. and M. A.;

I shall pay for the travelling expenses of respondent, E. V., if she chooses to go back to Raleigh with the children;

I shall not file, nor cause, directly or indirectly, to be filed any criminal proceedings against respondent, E. V., in connection with the removal of J. C. and M. A. to Canada on July 10, 2002;

I shall not act in any fashion so as to prevent, or impede, E. V. entry to the United States and, on the contrary, I shall cooperate and assist her in obtaining whatever status is available to her;

I shall forthwith file a renunciation from the judgment rendered on July 11, 2002 by the General Court of Justice, District Court Division, Wake County (#02CV009213); the renunciation shall be such that the custody issue, and all related matters, shall be decided anew;

Pending the custody issue, I shall provide lodging for respondent, E. V. and the children in the apartment I rent in Raleigh. Should this situation be unacceptable to E. V., I shall reside somewhere else or pay the cost related to the children and E. V. lodging in Raleigh, North Carolina;

I shall also provide for the entire expenses of the two children and supplement E. V.s' social welfare benefits to the extent of $200.00 US per month during the period necessary for the custody issue to be determined by the Court of competent jurisdiction in North Carolina unless otherwise directed by such court;

I shall consent to a custody hearing at the earliest date, and shall extend my best efforts in that regard; until that date, I consent to the granting of the custody to respondent with access rights in my favour as such:

- every week end from Friday 18:00 to Sunday 18:00 unless otherwise decided by the Court of competent jurisdiction in North Carolina;

I shall take care of the baby sitting services for J C. and M. A. during the custody hearing;

I shall cover all necessary medical expenses for the children as well as respondent while in Raleigh for the custody hearing;

I consent to travel back to Raleigh with E.V. and the children, to the extent that she agrees to do so."

R.F. *v.* M.G., August 23, 2002, SOQUIJ AZ-50141919 (C.A.)

"I shall pay for the expenses of the voyage of L... La... to Hawaii, if any;

I shall endeavour to fix the date of my return to Hawaii, with L... La..., between now and September 30, 2002 in order to make it possible for M... G..., should she so decide, to accompany us back to Hawaii;

I shall not file, nor cause, directly or indirectly, to be filed any criminal proceedings against M... G... in connection with the removal of L... La... from Hawaii to Canada on October 7, 2001;

I shall not act in any fashion so as to prevent, or impede, M... G...'s entry to the United States and, on the contrary, I shall cooperate and assist her in obtaining whatever status is available to her, and to obtain extensions thereof, in order for her to continue to reside in the United States;

I shall forthwith file a renunciation from the judgment rendered on July 19, 2002 by William J. Nagle III J., other than the conclusion regarding my paternity of L... La..., which conclusion shall remain valid; the renunciation shall be such that the custody issue, and all related matters, shall be decided anew;

I shall provide lodging for M... G... and L... La... (and C...), in the residence I own in Hawaii or, alternatively, should this situation be unacceptable to M... G..., I shall pay for the latter's reasonable accommodations, and that of the children, up to $75.00 U.S. per day which, I warrant, is sufficient to provide suitable and proper lodging for them in Hawaii;

I shall also provide for the entire expenses of L... La... (and C...) and supplement M... G...'s social welfare benefits to the extent of $200.00 U.S. per month during the period necessary for the custody issue to be determined by the Court of competent jurisdiction in Hawaii, unless otherwise directed by such court;

I shall consent to a custody hearing at the earliest date, and extend my best efforts in that regard; until that date, I consent to having the joint custody of L... La... with M... G... and to sharing the physical custody of L... La... on a 3 day / 3 day basis, unless otherwise decided by the Court of competent jurisdiction in Hawaii;

I shall take care of the baby sitting services for L... La... (and C...) during the custody hearing;

I shall cover all necessary medical expenses for L... La... (and C...) while in Hawaii for the custody hearing;

I shall forthwith file a discontinuance of my motion for the return of the child L... La..., Court File No. 02-01-6546, before the Family Court of the First Circuit of the State of Hawaii which is scheduled to be heard on September 25, 2002;

I shall not pursue any legal action regarding C... until the judgment regarding the custody of L... La... is rendered;

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I consent to travel back to Hawaii, together with M... G... and L... La..., to the extent that it is possible to do so by September 30, 2002;

In order for M... G... to be able to travel back to Hawaii with both children, should she so desire, I consent to sign all papers needed in order for a passport to be issued for C... and I shall cover all expenses related thereto, including the fees for the birth certificate and the passport."

Manitoba

Manitoba's Courts have used undertakings to overcome obstacles to the return of a child. As part of the initial preparation process, Manitoba's Central Authority may ask the left-behind parent to consider offering to make certain undertakings to the Court, including, for example:

SCHEDULE OF POSSIBLE UNDERTAKINGS

- The other party will have the care of the child until a court in the left-behind parent's jurisdiction can determine the arrangements for the child's care that meets the child's best interests.
- The other party and the child may return to reside in the marital home and the left-behind parent will reside elsewhere.
- The left-behind parent will provide financial assistance to the other party and the child or, if unable to do so, he/she will assist the other party in obtaining any state social assistance benefits that might be available to that party or the child.
- The left-behind parent will exercise only reasonable access/visitation to the child upon the child's return to his/her country, subject to any custody/access order respecting the child pronounced by a court in that country after proper notice to the other party and an opportunity to be heard.
- The left-behind parent will co-operate with and participate in counselling with the other party to improve their relationship as parents and will co-operate with and participate in any assessment respecting custody and/or access agreed to by the parties or ordered by their court.
- In the event the other party returns to the marital home, the left-behind parent will not attend at that home for any purpose other than picking up and delivering the child for access periods, without the express consent of the other party.
- The left-behind parent will co-operate with arrangements to ensure that the court in his/her jurisdiction decides the issues of custody and access without delay, unless the parties are able to resolve all the issues by mutual agreement.

Nova Scotia

Our courts rarely employ "undertakings". However, in one case, a judge did order that a child be provided with a therapist in order to ease the transition back from the custody of mom to dad.

**

Ontario

Les tribunaux ontariens peuvent recourir à des engagements, mais cette technique n'est pas d'usage courant. Il est plus courant pour les tribunaux ontariens de rendre une ordonnance dans laquelle ils préciseront les modalités du retour envisagé.

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Colombie-Britannique

Les tribunaux de la Colombie-Britannique rendront des ordonnances assorties d'engagements ou de conditions pour atténuer le traumatisme pour les enfants. Par exemple, on a permis à un parent ravisseur de ramener l'enfant moyennant certains engagements. Les engagements énumérés par le Manitoba peuvent être proposés aux parties pour surmonter les obstacles au retour.

Saskatchewan

Nos tribunaux ont eu recours à des engagements pour assurer la sécurité du retour de l'enfant. La nature des engagements dépend des circonstances de l'espèce. Par exemple, dans une affaire le juge a ordonné le retour de l'enfant à la condition que les deux parties déposent des engagements signés au tribunal dans les 10 jours. Le parent ravisseur devait s'engager à ramener l'enfant dans un certain délai, à se présenter au palais de justice et à rendre le passeport de l'enfant, et à permettre certaines visites au titre du droit d'accès. L'autre parent devait s'engager à payer les frais de déplacement, à ne pas s'emparer de l'enfant (c'est-à-dire à le laisser sous la garde du parent ravisseur), à prendre des dispositions pour fixer des dates aux fins d'autres procédures judiciaires, à quitter la résidence familiale et à permettre au parent ravisseur et à l'enfant d'y résider s'ils le souhaitaient, et à payer une pension alimentaire pour l'enfant et pour le conjoint (au moins jusqu'à ce qu'un tribunal du lieu de la résidence habituelle en décide autrement). Dans l'hypothèse où ces engagements ne seraient pas remis ou respectés, le juge a ordonné que le greffier de la cour l'en avise afin qu'il prenne d'autres mesures.

La cour a mentionné expressément les instructions formulées dans l'affaire *Thompson* concernant le recours aux engagements.

Nouveau-Brunswick

Les tribunaux du Nouveau-Brunswick peuvent recourir à des engagements, mais ils préfèrent une ordonnance judiciaire comme moyen de surmonter les obstacles à la sécurité du retour de l'enfant. Ces ordonnances transitoires peuvent porter sur la résidence, le droit de visite et les aliments, etc.

Québec

Nos tribunaux sont habilités et disposés à recourir aux «engagements» pour surmonter les obstacles au retour sécuritaire de l'enfant et, parfois, du parent ravisseur. Le recours à ces « engagements » fait appel à la discrétion du juge saisi de la demande de retour et dépend directement de la volonté du parent requérant de souscrire à de tels engagements.

Exemples d'engagements :

- Faire les démarches nécessaires en vue du retrait de la plainte au criminel ou du mandat d'arrestation;
- Ne pas porter plainte pour enlèvement lors du retour de l'enfant;
- Ne pas exécuter une décision provisoire en changement de garde obtenue ex parte; se désister d'un tel jugement prononcé ex parte;
- Payer les billets d'avion, pour l'enfant et (parfois même) pour le parent ravisseur;
- Entreprendre les procédures de garde le plus rapidement possible lors du retour de l'enfant;
- Ne pas nuire au retour du parent ravisseur dans l'État de la résidence habituelle (par exemple, en avisant les autorités de l'immigration ou autrement);
- Payer une pension alimentaire provisoire en attendant que les procédures de garde soient tranchées;
- Céder temporairement l'usage de la résidence familiale au parent ravisseur et à l'enfant à leur retour dans l'État de la résidence habituelle;

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- Remettre son arme à feu à un tiers; ne pas acheter une arme à feu; ne pas être en possession d'une arme à feu;
- Etc.

D.T. c. H.D., 14 novembre 2002, SOQUIJ AZ-50151250 (C.S.)

«DONNE ACTE aux parties de l'offre faite par le requérant de céder l'usage de la résidence familiale de Miami à l'intimée pour le temps nécessaire à la détermination du droit de garde et d'accès concernant S... et V... T... D..., sujet à l'ordonnance qui sera rendue par l'instance appropriée au lieu de résidence des enfants;

ORDONNE au requérant, D... T..., de payer le coût des billets d'avion des deux enfants S... et V... T... D... vers MIAMI.

DONNE ACTE au requérant de son engagement de remettre, dès son arrivée à Miami, son revolver à son procureur de Miami afin que l'arme soit déposée dans un coffre de sûreté à la Banque, au nom de la firme d'avocats de son procureur, jusqu'à ce que jugement soit prononcé sur la requête en divorce et lui ORDONNE de se conformer à cet engagement.

DONNE ACTE au requérant de son engagement de ne pas acheter ou être en possession d'une arme à feu et lui ORDONNE de se conformer à cet engagement.»

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C.E.S. c. E.V., 1er octobre 2002, SOQUIJ AZ-50146740 (C.S.)

[TRADUCTION] « Je paierai les frais de déplacement de J. C. et M. A.;

Je paierai les frais de déplacement de l'intimée, E. V., si elle choisit de retourner à Raleigh avec les enfants;

Je ne déposerai pas ni ne ferai déposer, directement ou indirectement, de poursuites pénales contre l'intimée, E. V., en rapport avec le déplacement de J. C. et M. A. au Canada le 10 juillet 2002;

Je n'agirai d'aucune manière de façon à prévenir ou à empêcher l'entrée de E.V. aux États-Unis et, au contraire, je collaborerai et je l'aiderai à obtenir tout statut auquel elle pourrait avoir droit;

Je déposerai sans délai une renonciation au jugement rendu le 11 juillet 2002 par la General Court of Justice, District Court Division, Wake County (#02CV009213); la renonciation aura pour effet de faire en sorte que l'on doive statuer à nouveau sur la question de la garde et sur toutes les questions connexes;

En attendant qu'il soit statué sur la garde, j'hébergerai E.V. et les enfants dans l'appartement que je loue à Raleigh. Si cette situation ne convient pas à E.V., je résiderai ailleurs ou je paierai les coûts liés à l'hébergement de E.V. à Raleigh, en Caroline du Nord;

J'assumerai également toutes les dépenses des enfants et je compléterai les prestations d'aide sociale de E.V. à hauteur de 200 $ US par mois en attendant qu'un tribunal compétent en Caroline du Nord statue sur la garde, à moins que ce tribunal en ordonne autrement;

Je consentirai à une audience relative à la garde le plus rapidement possible, et je ne ménagerai aucun effort en ce sens; entre-temps, je consens à accorder la garde à l'intimée, sous réserve des droits de visite suivants pour moi-même :

- chaque fin de semaine du vendredi, 18 h 00, au dimanche, 18 h 00, à moins que le tribunal compétent de la Caroline du Nord en décide autrement;

Je verrai à obtenir des services de garde d'enfants pour J C. et M. A. pendant l'audience relative à la garde;

J'assumerai toutes les dépenses médicales nécessaires pour les enfants ainsi que pour l'intimée pendant leur séjour à Raleigh pour l'audience relative à la garde;

Je consens à faire le voyage de retour à Raleigh avec E.V. et les enfants, dans la mesure où elle est d'accord. »

R.F. c. M.G., 23 août 2002, SOQUIJ AZ-50141919 (C.A.)

[TRADUCTION] « Je paierai les frais de déplacement de L... La... à Hawaii, le cas échéant;

Je m'efforcerai de fixer la date de mon retour à Hawaii, avec L... La..., entre maintenant et le 30 septembre 2002 afin de permettre à M... G... de nous y raccompagner si elle en décide ainsi;

Je ne déposerai pas ni ne ferai déposer, directement ou indirectement, de poursuites pénales contre M… G…, en rapport avec le déplacement de L… La… au Canada le 7 octobre 2001;

Je n'agirai d'aucune manière de façon à prévenir ou à empêcher l'entrée de M… G… aux États-Unis et, au contraire, je collaborerai et je l'aiderai à obtenir tout statut auquel elle pourrait avoir droit, de même qu'à obtenir le renouvellement de tout statut semblable, afin qu'elle puisse continuer de vivre aux États-Unis;

Je déposerai sans délai une renonciation au jugement rendu le 19 juillet 2002 par le juge William J. Nagle III, sauf en ce qui a trait à la conclusion relative à ma paternité de L... La..., laquelle conclusion demeurera valide; la renonciation aura pour effet de faire en sorte que l'on doive statuer à nouveau sur la question de la garde et sur toutes les questions connexes;

J'hébergerai M... G... et L... La... (et C...), dans la résidence que je possède à Hawaii ou, si cette situation ne convient pas à M... G..., je paierai ses frais d'hébergement raisonnables, ainsi que ceux des enfants, jusqu'à concurrence de 75 $ par jour, montant dont je garantis qu'il est suffisant pour obtenir un logement convenable et adéquat pour eux à Hawaii;

J'assumerai également toutes les dépenses de L… La… (et de C…) et je compléterai les prestations d'aide sociale de M… G… à hauteur de 200 $ US par mois en attendant qu'un tribunal compétent en Caroline du Nord statue sur la garde, à moins que ce tribunal en ordonne autrement;

Je consentirai à une audience relative à la garde le plus rapidement possible, et je ne ménagerai aucun effort en ce sens; entre-temps, je consens à avoir la garde conjointe de L… La… avec M… G… et à partager la garde physique de L… La… selon la formule 3 jours / 3 jours, à moins que le tribunal compétent à Hawaii en ordonne autrement;

Je verrai à obtenir des services de garde d'enfants pour L… La… pendant l'audience relative à la garde;

J'assumerai toutes les dépenses médicales nécessaires pour L… La… (et C…) pendant leur séjour à Raleigh pour l'audience relative à la garde;

Je me désisterai sans délai de ma requête en vue du retour de l'enfant L… La…, dossier n° 02-01-6546 du greffe de la Family Court of the First Circuit de l'état de Hawaii dont l'audition est prévue pour le 25 septembre 2002;

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Je n'exercerai aucun recours en justice concernant C… jusqu'à ce que le jugement relatif à la garde de L… La… soit rendu;

Je consens à effectuer le voyage de retour à Hawaii, avec M... G... et L... La..., dans la mesure du possible d'ici le 30 septembre 2002;

Afin que M... G... puisse effectuer le voyage de retour à Hawaii avec les deux enfants, si elle le désire, je consens à signer tous les documents nécessaires à l'émission d'un passeport au nom de C… et j'assumerai tous les frais connexes, y compris les droits relatifs au certificat de naissance et au passeport. »

Manitoba

Les tribunaux manitobains ont eu recours à des engagements pour surmonter les obstacles au retour d'un enfant. Dans le cadre du processus de préparation initiale, l'Autorité centrale du Manitoba peut demander au parent qui demande le retour de proposer de prendre certains engagements envers le tribunal, notamment les engagements suivants :

LISTE D'ENGAGEMENTS ENVISAGEABLES

- L'autre partie aura la garde de l'enfant jusqu'à ce qu'un tribunal dans le ressort du parent qui demande le retour puisse statuer sur des modalités relatives à la garde de l'enfant qui sont conformes à l'intérêt supérieur de l'enfant.

- L'autre partie et l'enfant pourront revenir vivre dans le foyer conjugal et le parent qui demande le retour résidera ailleurs.

- Le parent qui demande le retour fournira une aide financière à l'autre partie et à l'enfant ou, s'il n'est pas en mesure de le faire, il aidera l'autre partie à obtenir toute aide sociale publique à laquelle cette partie et l'enfant pourraient avoir droit.

- Le parent qui demande le retour exercera seulement des droits d'accès / de visite raisonnables suite au retour de l'enfant dans son pays, sous réserve de toute ordonnance de garde / d'accès relative à l'enfant prononcée par un tribunal de ce pays après que l'autre partie aura été dûment avisée et aura eu l'occasion de faire valoir son point de vue.

- Le parent qui demande le retour collaborera et participera à des séances de counselling avec l'autre partie pour améliorer leur relation en tant que parents, et il collaborera et participera à toute évaluation relative à la garde et/ou à l'accès convenue par les parties ou ordonnée par le tribunal.

- Si l'autre partie retourne dans le foyer conjugal, le parent qui demande le retour ne s'y présentera pas à d'autres fins que pour prendre et ramener l'enfant dans le cadre de l'exercice de ses droits de visite sans le consentement exprès de l'autre partie.

- Le parent qui demande le retour collaborera aux fins de s'assurer que le tribunal dans son ressort statue sans délai sur les questions relatives à la garde et à l'accès, à moins que les parties parviennent à régler toutes les questions d'un commun accord.

Nouvelle-Écosse

Nos tribunaux ont rarement recours à des « engagements ». Cependant, dans une affaire, un juge a ordonné qu'un enfant bénéficie des services d'un thérapeute pour faciliter la transition entre la vie chez sa mère et la vie chez son père.

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Chile – Chili :

En general no es una práctica utilizada, no se han dado casos en los Tribunales Chilenos. En cuanto al empleo de estas medidas cuando son solicitadas por otros Tribunales, si bien tampoco es una práctica común, si existe la manera de solicitar su cumplimiento a través de los Tribunales de Familia y de ser necesario a los organismos competentes.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

Our courts would always be prepared to employ "undertakings" in appropriate circumstances. For example, in our first contested Hague case, cross-undertakings and mirror undertakings were given by both parents pending further adjudication by the court of the requesting State in respect of the child. The subject matters of the undertakings include further medical assessment of the child, the living condition of the child, the undertaking noit to institute contempst or criminal proceedings against the abducting parent, condition to prevent harmful effect to the child's health etc.

China (SAR Macao) – Chine (RAS Macao) :

The subject matter of undertakings can be of any kind, provided that the interest of the child is guaranteed. The undertakings employed by the courts are limited to the scope of the protection of the child and are only used as a tool to facilitate arrangements for his / her return on a case-by-case basis.

The parties are allowed to submit to the court any proposal agreed upon as a means of overcoming obstacles to the prompt return of the child. The undertakings may be raised at any stage of the proceedings but, when a hearing for discussion and trial takes place, the judge must, specifically, look for conciliation. When looking for conciliation, the judge is free to suggest any undertakings that might help overcome obstacles as to the prompt return of the child. For the same purpose, undertakings may be required of the applicant.

In order to ensure that undertakings attached to a return order (homologated by the court) are restricted, the MSAR Central Authority can follow up the case.

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Colombia – Colombie :

Dentro de los procesos que se adelanten en ejecución del Convenio, tanto las Autoridades Administrativas o Judiciales, están facultadas para aceptar o requerir compromisos a los padres para hacer efectivo el traslado de un niño en la medida que dichas promesas se hagan de conformidad con la ley y no vayan en contravía de los derechos de los niños. Tales pueden ser:

- Cesar todo acto de violencia.
- Garantizar que el niño no será sometido a situaciones de riesgo o peligro.
- Garantizar el cumplimiento del régimen de visitas para el otro padre.
- Permitir el contacto por cualquier medio con el otro padre.
- Otras que aun cuando no son impuestas por la Autoridad son aprobadas en los acuerdos que realizan las partes dentro del proceso y que tienen que ver con el levantamiento de denuncias civiles o penales.

Costa Rica – Costa Rica :

Por motivos obvios de separación de poderes, esta pregunta no compete ser respondida por esta Autoridad Central. Es decir, la información pertinente debe ser solicitada al Poder Judicial de la República de Costa Rica.

Cyprus – Chypres :

They are prepared to employ undertakings.

Czech Republic – République tchèque :

We have not experienced such cases yet.

Denmark – Danemark :

Please see answer to question 25.

Ecuador – Equateur :

No se dispone de parámetros para garantizar el cumplimiento de los acuerdos entre las partes o de los requerimientos exigidos a uno de ellos; sin embargo la aplicación del Art. 11 del Código de la Niñez y Adolescencia constituye una puerta abierta para la interpretación y aplicación de cualquier medida que pretenda proteger a un niño, niña o adolescente; disposición legal que se encuentra como uno de los postulados de la Constitución Política de la República del Ecuador, el interés superior del niño.

El Salvador – El Salvador :

No hemos tenido este tipo de casos.

Finland – Finlande :

[No answer]

France – France :

Les "engagements" pris par la partie requérante au retour afin de surmonter les obstacles liés à la sécurité du retour de l'enfant, ne correspondent pas à la pratique judiciaire française.
Toutefois, la juridiction française saisie d'une demande de retour prend en considération les déclarations des parties lors de l'audience, et les éléments qui sont produits aux débats. De même, la juridiction essaie de rapprocher les parties lors de l'audience, dans le but de parvenir à un accord entre elles. Si des engagements sont ainsi pris au cours de l'audience de retour, ils sont très généralement consignés dans la décision.

Greece – Grèce :

Not prepared to employ such undertakings

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

See question 26.

Ireland – Irlande :

Irish Courts have wide discretion to employ undertakings when considering the return of a child. The question of undertakings may be raised by either party or the High Court itself. And when the evidence in the affidavits and any social reports in being taken into account by the Judge it would be a matter for consideration as to whether in all the circumstances there were reasonable grounds for holding that the situation could be met by undertakings and that undertakings were applicable (TMM and MD, Supreme Court [1999]). The Irish Supreme Court has held *(P. v B.* [1995] ILRM 201) that undertakings may be given by a party to a proceeding under the Child Abduction and Enforcement of

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Custody Orders Act, 1991 (which gives effect in Irish law to the Hague and Luxembourg Conventions) and accepted by the court.

The Supreme Court held that such undertakings were entirely consistent with the 1991 Act and the Hague Convention. The Supreme Court saw such undertakings as, in particular, being for the welfare of the child during the transition from one jurisdiction to another but also protecting a parent in his or her role under the Irish Constitution. The Supreme Court also held that undertakings when sought and given must be clear and certain, and that it is essential that the matters be clearly and specifically determined by the court for the parties.

An example of undertakings given arose in a case before the High Court in 1997 where the plaintiff (the father) sought return to Italy of the child who had been brought to Ireland by her mother. An Order was made for the return of the child to Italy in light of certain undertakings given by the father and the mother.

On behalf of the father these were:

The mother and the child were to be provided with accommodation at an apartment at a given address until the matter of the family and the accommodation of the parties was decided by the Italian Court.

The father was not to attend at or enter or otherwise watch or beset the apartment in which Mrs P was residing and he was not to approach the mother or interfere with her in any way.

The father was to pay the mother for herself and her child in a sum equivalent to £400 per month, the first payment to be made in advance to the mother's Solicitor on a specified date.

The father was to pay the airfares from Ireland to Italy to enable the mother and the child to return to Italy on a specified date.

The father was to permit his wife to collect her personal effects and those of the child from the family home by appointment on a specified date.

On behalf of the mother these were:

The mother was to hand in the child's passport to the Italian Court for the period of transition until the Italian Court took up the case.

The father was to have access to the child on three evening each week and also at the weekends at times which were specified in the undertaking. The access was to take place in the presence of, and under the supervision of either or both of the mother's parents at their home.

Both parties also undertook to cooperate in ensuring the prompt disposal of the proceedings in the Italian Courts.

In addition, at the request of the Judge as to the admissibility of the purported Affidavit evidence, the husband undertook to arrange for the notarisation of the un-notarised Affidavits which had been filed in the proceedings.

However, it appears that on return the father failed to honour the undertakings and a motion was served by the mother in the Irish High Court seeking enforcement of the husband's undertakings.

The High Court found that it could make no order in this case. The judgment considered the difficulties arising in recognition of a common law concept of undertakings in non-

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common law jurisdictions, and quoted with approval authorities which proposed that Central Authorities may have a role in explaining approaches by their courts to particular cases under the Convention.

In a recent case, the abducting mother told the court she was prepared to return to Australia, on condition that the father paid for her and the children's travel, and that the father undertook not to cooperate with criminal proceedings that may be pending against the mother for the abduction. Such undertakings were incorporated into the return order.

The father then appeared to revoke his undertaking to pay for the mother's airfare, and refused to give an undertaking in relation to the criminal proceedings. It was a possibility that the court would now not return the children, given that the father appeared to be breaching the order. However, the father eventually complied, and the return was agreed upon.

Israel – Israël :

The Court takes different measures to ensure the safe return of the child in different cases- depending on the specific circumstances. Often, the court will rule that the plaintiff deposit a sum of money that will ensure the child and the abductor a place to live and maintenance, for a reasonable period of time, until the court in the country of origin rules on the custody matter. Sometimes the court will issue restraining orders, ensuring that the plaintiff does not enter the house of the child, or does not come in contact with the child. The court might demand a guarantor to make certain that the undertakings are fulfilled. In addition, the court may ensure that the court orders are valid in the country to which the child will be returned (mirror order). While taking these precautions, the court is careful not to infringe upon the authority of the local court in the country of origin, and therefore usually the court's decisions will be phrased in such a way that the local court will have no problem changing them in the future.

Italy – Italie :

Le recours à ce genre d'engagement n'est pas prévu par la loi italienne. L'on envisag,e par contre, des accords entre les parties concernées, pouvant être entérinés en une ordonnance du Tribunal pour Enfant.

Latvia – Lettonie :

We do not have such experience.

Lithuania – Lituanie :

We have no information on the influence of "undertakings" presented to the Lithuanian courts in judicial proceedings instituted under the Hague Convention.

Malta – Malte :

We have no experience of such cases as yet.

Mexico – Méxique :

Al ser difícil obligar al solicitante a cumplir promesas realizadas, la autoridad judicial no resuelve bajo las mismas, todas las resoluciones tomadas y las medidas ordenadas para el cumplimiento de dichas resoluciones se institucionalizan.

En caso de que las partes lleguen a un acuerdo ante la autoridad judicial, dicho acuerdo se ratifica ante la misma autoridad judicial y éste se eleva su rango a cosa Juzgada.

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Monaco – Monaco :

Sans objet.

Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

The Courts often use undertakings where a defence has been successfully established and appropriate undertaking can relieve the situation which gave rise to the defence. In *LJG v RTP* Judge O'Dwyer stated:

"[77] The defence of grave risk has rarely succeeded. Often risk to the child can be alleviated by undertakings given by the applicant parent; returning the child or children with the abducting parent; relying on protective mechanisms in the country of habitual residence."

In *Secretary for Justice v MF Te N* [2006] NZFLR 306, Judge von Dadelszen held that undertakings cannot be imposed prior to the establishment of a defence. However if a justifiable defence is found to exist, the Court can then impose conditions and consider undertakings when exercising the discretion to return. If conditions or undertakings can alleviate the risk, then the child should be returned, in line with the presumption of return in the Convention. Conditions and undertakings must be "guaranteed" to ensure the safety of the child, having regard to the reliability of the person or organisation giving the undertaking, and the reputation of the Country involved regarding enforcement.

This case involved the Australian State welfare agency not acting to protect the child in a situation where they would generally be expected to do so. The Judge ordered the return of the child, but suspended the order until Australian authorities undertook to:

- Monitor the mothers care and control of the child;
- Ensure the mother undertook monthly drug tests;
- Ensure the child attends school; and
- Supply the respondent with a brief monthly report on the above and any further information requested.

It was also ordered that a copy of the judgment be supplied to the Department of Community Services, and another lodged in the Family Court of Australia. With these steps taken the Judge was satisfied that the child would be protected from harm upon return to Australia. It was noted that this would reflect as a criticism of the Australian authorities, which should be avoided, but here the child had not been protected as one would ordinarily expect.

Nicaragua – Nicaragua :

No se tienen experiencia en lo relativo a este tema.

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Panama – Panama :

De conformidad a nuestro ordenamiento al recibir medidas Espejos o promesas ofrecidas por el requirente, debe el Juzgador conforme a nuestro procedimiento establecer el Acto oral para determinar si procede acogerlas como acuerdo de las partes ventiladas ante la autoridad judicial del Estado requirente y que deben ser examinados y acogidas por la autoridad del Estado requerido para garantizar la efectividad de las medidas en favor del menor de edad. Cabe resaltar que el art. 326 Código de la Familia faculta a las partes establecer acuerdos entre sí, de no mediar acuerdo y de ser contrario a los interés del niño, será decidida la cuestión por la autoridad competente, que se guiará para resolver, lo que más beneficie al menor de edad (art.327 del Código de la Familia).

Dentro del acto oral el Juez procurara que las partes concilien siempre de encontrarse presente, en el acto oral, de tal forma que se pueda lograr un compromiso de cada una de las partes en cumplir y acatar las medidas a establecerse en aras de la Protección Integral del niño o niña sujeto del Proceso.

Paraguay – Paraguay :

Por lo general los tribunales que firmaron una sentencia de restitución no utilizan "undertakings".

Poland – Pologne :

It seems that in the future the "undertakings" that an applicant is able to offer or his promise to carry out certain "undertakings" may be insufficient for the Polish Guardianship Court which hears cases for the return of the child under the Hague Convention in the future. However, a specific action or actions undertaken by an applicant in order to overcome obstacles to a safe return of a child may be of great importance to the court issuing a judgment in the case.

Portugal – Portugal :

The Courts do not implement this kind of *undertakings*.

Romania – Roumanie :

The Romanian legislation does not provide for the institution of "commitment"; thus any allegation of the parties has to be proved, according to our domestic law.

Slovakia – Slovaquie :

The "undertakings" have not been applied in Slovakia by now as there are no provisions for such orders in the legal framework of the Slovak republic.

South Africa – Afrique du Sud :

The courts are agreeable to undertakings. They would normally include protective measures in cases of domestic violence, pending criminal proceedings, as well as interim financial support. Other matters included interim access arrangements, Visa requirements and travel arrangements.

Spain – Espagne :

En España no existe, a nivel legal ni de uso, la figura de los undertakings, ni por ello cabe su previsión de aplicación. Tal figura, mas propia del mundo anglosajón, puede sin embargo llegar a tomar carta de naturaleza en España por la vía de la aplicación del Art. 11.4 del Reglamento 2.201/2003, que impide denegar la restitución en casos del Art.

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13.b) del convenio de 1980 si se demuestra que se han adoptado medidas adecuadas para garantizar la protección del menor tras su restitución.

Sweden – Suède :

"Undertakings" is a legal concept unfamiliar in Swedish law. There is, though, a possibility for the Swedish courts to pay regard to an already accomplished undertaking in the state of habitual residence when considering the grave risk situation according to Article 13 in the Hague Convention.

Switzerland – Suisse :

Peu d'expeérience dans ce domaine.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

Scottish courts make less use of undertakings than some other jurisdictions. In the Court of Session a restrictive approach is taken to the application of Article 13b of the Convention. There are few cases in which a grave risk of harm has been established. Either the harm is not considered to be grave, in which case return will be ordered or (exceptionally) potential harm is so grave that undertakings would not be effective.

Experience shows that undertakings are most often given in cases where a voluntary return is agreed and these undertakings have related to maintenance or housing in the short term. The Central Authority for Scotland has experience of undertakings not being adhered to and also has experience of not being able to enforce the undertakings given.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

See the reply to question 25.

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

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

United States – Etats Unis :

[No answer]

Uruguay – Uruguay :

No se han planteado situaciones del tipo descripto.

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Question 28	
Will your courts / authorities enforce or assist in implementing such undertakings in respect of a child returned to your jurisdiction? Is a differentiation made between undertakings by agreement between the parties and those made at the request of the court?	**Vos tribunaux ou autorités sont-ils disposés à exécuter ou à aider à la mise en œuvre de tels engagements en vue du retour de l'enfant dans votre juridiction ? Votre Etat fait-il une différence entre les engagements pris d'un commun accord par les parties et ceux pris sur demande du tribunal ?**

Argentina – Argentine :

Los Tribunales argentinos y aún la Autoridad Central, se encuentran en condiciones de ejecutar y asistir en la implementación de los undertakings, sin perjuicio de que los undertakings sean acordados por las partes o realizados a pedido de la Justicia.

Australia – Australie :

Experience with undertakings required by overseas courts to facilitate the return of a child to Australia is that generally these undertakings are not entered into lightly and compliance is reasonably good. Unfortunately there have been a number of cases where the requesting parent has reneged on his or her undertakings.

As is well known, the undertakings given by a left behind parent to a foreign court are not enforceable in the requesting country. This is also the case in Australia. The power of the court to assist in this situation would depend on the Central Authority seeking orders to protect the welfare of the returning child, under Regulation 5 of the Convention Regulations. The Central Authority could not enforce the foreign undertakings by this mechanism, but orders under Regulation 5 may be sought in similar terms to any undertakings related to the welfare of the returning child.

If a parent was to breach an undertaking, whether that was an undertaking required of them by the overseas court or the result of an agreement with the other parent, it would be open for the Family Court, in further proceedings relating to the child to take that breach of undertaking into account in determining where and with whom the child should live.

Furthermore, amendments to the Family Law Act in 2000 provide that an order made under the Convention is an 'overseas child order'. This means a Convention order made in a 'prescribed overseas jurisdiction' can be registered in Australia. Similarly, an Australian Convention order can be registered in a 'prescribed overseas jurisdiction'. The effect of these two provisions is that orders with conditions, or undertakings, can now be registered and enforced in 'prescribed overseas jurisdictions'. At present these are limited to New Zealand, Switzerland, Papua New Guinea and most states of USA.

Austria – Autriche :

In Austria there are measures helping the parents in regard of education. These measures are taken by the Youth Welfare Authorities, mostly with the consent of the parent(s), in particular cases without their consent but with a court's order. Undertakings ordered or decreed in the State of origin may be executed if they are similar to the measures taken in Austria.

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Canada – Canada :

<u>Ontario</u>
Ontario Courts will enforce or assist in implementing undertakings in respect of a child returned to Ontario. As long as the undertakings were properly executed, there would be no differentiation.

<u>British Columbia</u>
The court would probably assist in implementing conditions or undertakings if they were brought to the attention of the BC court. The BC court has made a mirror order of a South African order that was made before a child was returned to BC. The court subsequently dealt with applications to enforce the particulars of that order. The particulars related to custody access and support.

<u>New Brunswick</u>
The New Brunswick courts will enforce or assist in implementing undertakings contained in court orders. New Brunswick has not yet been called upon to deal with undertakings by agreement between the parties. The judicial response would likely be the same if the undertakings were in writing, signed by the parties and filed with the court.

<u>Quebec</u>
Yes, Quebec authorities are willing to enforce or assist in implementing undertakings made by parents, but the undertakings will have to be approved through the process for recognizing and enforcing foreign decisions prescribed in the *Civil Code* and the *Code of Civil Procedure*.

We do not differentiate between the undertakings made by mutual consent and those made at the request of the court provided both are approved by the judge and declared to be binding.

The Central Authority is also willing to help parents and children implement such undertakings.

<u>Manitoba</u>
Manitoba's Central Authority could advise the Manitoba Court of any undertakings made by the left-behind Manitoba parent in relation to a request for return to ensure the Court was aware of same. In any subsequent custody/access proceeding in Manitoba, the Court would consider evidence with respect to that parent's compliance with undertakings. The Central Authority would not take steps to implement undertakings. If they were to be included in a Manitoba Court order prior to the child's return, then the Manitoba parent's private counsel would do so.

<u>Alberta</u>
This would be the responsibility of the parties.

<u>Nova Scotia</u>
If a court has directed somebody to do something under a court order, it will enforce it and the procedures to be undertaken are the same as with the enforcement of any court order.

**

<u>Ontario</u>
Les tribunaux ontariens exécuteront ou aideront à la mise en œuvre d'engagements en vue du retour de l'enfant en Ontario. En autant que les engagements sont exécutés convenablement, on ne fera pas de différence.

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Colombie-Britannique
Le tribunal aiderait probablement à la mise en œuvre des conditions ou engagements s'ils étaient portés à l'attention du tribunal de la Colombie-Britannique. Le tribunal de la Colombie-Britannique a rendu une ordonnance « miroir » d'une ordonnance sud-africaine qui avait été rendue avant le retour de l'enfant en Colombie-Britannique. Le tribunal a ensuite statué sur des requêtes visant à exécuter les modalités de cette ordonnance. Les modalités concernaient la garde, le droit de visite et les aliments.

Nouveau-Brunswick
Les tribunaux du Nouveau-Brunswick exécuteront ou aideront à la mise en œuvre d'engagements contenus dans les ordonnances judiciaires. Le Nouveau-Brunswick n'a pas encore eu affaire à des engagements convenus entre les parties. La démarche des tribunaux serait probablement la même si les engagements étaient consignés par écrit, signés par les parties et déposés au tribunal.

Québec
Oui, les autorités québécoises sont disposées à exécuter ou à aider à la mise en œuvre des « engagements » pris par les parents mais il sera nécessaire de procéder à leur homologation via le processus de reconnaissance et d'exécution des décisions étrangères prévu au Code civil et au Code de procédure civile.

Nous ne faisons aucune différence entre les engagements pris d'un commun accord ou ceux pris sur demande du tribunal dans la mesure où les uns et les autres sont entérinés par le juge et déclarés exécutoires.

L'Autorité centrale est également disposée à aider les parents et les enfants dans la mise en œuvre de tels engagements.

Manitoba
L'Autorité centrale du Manitoba pourrait aviser le tribunal du Manitoba de tout engagement pris par le parent qui demande le retour au Manitoba en rapport avec une demande de retour pour s'assurer que le tribunal est au courant de ces engagements. Dans toute procédure subséquente relative à la garde ou au droit de visite au Manitoba, le tribunal examinerait la preuve relative au respect de ses engagements par le parent concerné. L'Autorité centrale ne prendrait pas de mesures pour mettre en œuvre les engagements. S'ils devaient être inclus dans une ordonnance du tribunal du Manitoba avant le retour de l'enfant, le procureur du parent du Manitoba y verrait.

Alberta
Cela relèverait de la responsabilité des parties.

Nouvelle-Écosse
Lorsqu'un tribunal a ordonné à quelqu'un de faire quelque chose aux termes d'une ordonnance judiciaire, il verra à son exécution, et la procédure est la même que pour l'exécution de toute ordonnance judiciaire.

Chile – Chili :

Como se señaló anteriormente no es una práctica común, sin embargo, de ocurrir existen los medios para implementarlos. La Autoridad Central puede solicitarlos al Tribunal de Familia de Chile.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

Our courts / authorities would respect the undertakings made to the court of the requested country in respect of a child returned to our jurisdiction. We would as far as possible and subject to resources assist in implementing such undertakings.

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Provided that the undertaking is made to the court or is embodied as part of the court order, there should not be a difference in its effect between an undertaking made by agreement or made at the request of the court.

China (SAR Macao) – Chine (RAS Macao) :

Undertakings incorporated in a foreign judicial return order cannot be enforced as such, since, as foreign judicial decisions, they require recognition. For the same reason, the MSAR courts cannot assit in the implementation of such undertakings.

Internally, there is no distinction between undertakings by agreement between the parties and those made at the request of the court, since undertakings by agreement between parties are subject to judicial homologation. Both have the same legal force of judicial decision.

Colombia – Colombie :

Las Autoridades Administrativas o Judiciales dentro de los procesos en la fase de acuerdo o arreglo voluntario pueden ser mediadores para que las partes se comprometan a garantizar el retorno o cumplimiento de un régimen de visitas de forma pacífica y sin obstáculos. Si no hay acuerdo las autoridades judiciales pueden disponer en las sentencias que las Autoridades de Protección del país requirente hagan un seguimiento al caso o tomen a favor del niño o niña que regresa una medida de protección.

En caso de sentencias proferidas en el exterior que ordenen el regreso de un niño o niña a Colombia en las que se solicite al ICBF asistir a las partes para el cumplimiento de una promesa o acuerdo entre las partes, se hace la intervención y se asesoran jurídica y psicosocialmente para tal efecto.

Costa Rica – Costa Rica :

Pese a que no se han dado casos concretos sobre el particular, la regla que provee el ordenamiento es que la Autoridad Central puede acudir al método de mediar en la conciliación de los intereses en principio contrapuestos entre el padre solicitante y la madre sustractora, siendo que lo que se acuerde en sede administrativa, ulteriormente se puede hacer valer ante el juez respectivo, siempre que no se vulneren derechos del niño y se trate de derechos disponibles entre las partes con las garantías procesales de defensa, audiencia y asistencia técnica para estas personas.

Cyprus – Chypres :

Yes.

Czech Republic – République tchèque :

They would assist them.

Denmark – Danemark :

Please see answer to question 25.

Ecuador –Equateur :

No se conocen casos.

El Salvador – El Salvador :

No hemos tenido este tipo de casos.

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Finland – Finlande :

[No answer]

France – France :

Dans l'hypothèse où devraient être reconnus en France des engagements pris devant un tribunal étranger, il reviendra à la partie la plus diligente de saisir la juridiction française aux fins de voir reconnaître cette décision, ou que ces dispositions soient reprises dans une autre décision française. Cependant, l'avis de l'autre sera à nouveau sollicité.

Greece – Grèce :

The implementation is insufficient

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

See question 26.

Ireland – Irlande :

Such undertakings, whether by agreement or at the request of the court, while not binding on the Irish Court would be fully respected.

Israel – Israël :

An application can be made to the court in Israel to enforce the undertakings. The court may make such orders as are required on an interim basis, until there can be a full hearing on the merits of the case. There should be no differentiation between undertakings by agreement between the parties and those made at the request of the court. Undertakings do not limit the discretion of the court in Israel regarding the questions of custody and visitation arrangements.

Italy – Italie :

Cf. question 28..

Latvia – Lettonie :

We do not have such practice and experience.

Lithuania – Lituanie :

For the time being there have been no cases involving such problems.

Malta – Malte :

We have no experience of such cases as yet.

Mexico – Méxique :

No existe distinción entre los undertakigns acordados por las partes y aquellos realizados a petición del tribunal, siempre y cuando los undertakings sean ratificados ante la autoridad judicial.

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Monaco – Monaco :

1ère question : sans objet.

2ème question : aucune différence n'est faite entre les types de demande.

Netherlands – Pays-Bas :

No cases are known in which the Dutch courts or authorities were asked to enforce undertakings made before a foreign court. Most measures taken by courts or authorities to ensure a child's safety, such as an investigation by the authorities responsible for the child's welfare, can only be implemented in the country which ordered the measure.

If after the return of a child to the Netherlands a case concerning the child is brought before the Dutch Family Court, the undertakings made in a foreign country during return proceedings may play a role in the Dutch proceedings, provided the content is clear.

In principle, parties remain obliged by their previous undertakings and agreements, unless the new situation gives rise for a new amicable agreement or an overruling court order.

New Zealand – Nouvelle Zélande :

Yes there is a differentiation. Undertakings by agreement are not enforceable whereas undertakings that form part of a Court order are.

Nicaragua – Nicaragua :

[Sin respuesta]

Panama – Panama :

En caso práctico que hemos ventilado en este despacho hemos implementado las medidas acordada por las partes y a su vez han sido medidas decretadas por un Tribunal, sin ningún problema entre los interesados con la colaboración permanente de las autoridad Central requerida . Lo que, si es cierto que la experiencia no se ha dado en el caso de restituir un niño, sino en la reclamación de derecho de visita, tanto en el Estado requirente como el Estado requerido, donde se le garantizo el derecho pleno de dos menores de edad de relacionarse con sus progenitores sin que surgiera ningún tipo de inconveniente o dificultad del regreso de uno de los niños a su residencia Habitual.

Pienso que esta formula sería conveniente para lograr la efectividad de la Restitución como del Derecho de Visita. La garantía de esta formula de ordenes espejos, es que ambos autoridades las dictaminan con la presencia de las partes, los mecanismos legales que se emplearan para reconocer y respetar el derecho de los menores de edad, ejerciendo obligatoriedad y compromiso de ambas partes, evitando que se den deslealtades procesales y mala fe en lo posible e imperando el principio de economía procesal en aras del interés de los menores de edad.

Paraguay – Paraguay :

Se hace mención si el mismo es acordado o fue de oficio por el tribunal.

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Poland – Pologne :

Polish courts have no possibility to supervise implementing and applying the measures "offered" by the applicant before the court in another country. If such measures result from the judgment to return the child to Poland, implementing depends on the prior recognition of the enforceability of the judgment within the territory of Poland.

Portugal – Portugal :

No.

Romania – Roumanie :

No.

Slovakia – Slovaquie :

The Centre has not had any such experience by now. Supposingly, if the undertakings are in accordance with the legal framework in Slovakia, they would assist them.

South Africa – Afrique du Sud :

The undertakings have to be reduced to an order of our local High Court to render them enforceable. No differentiation is made, but all such agreements need to be incorporated into a court order to become enforceable.

Spain – Espagne :

Esta pregunta queda contestada con la respuesta a la anterior.

Sweden – Suède :

Generally speaking, Swedish Courts cannot enforce or assist in implementing a foreign undertaking in respect of a child returned to the Swedish jurisdiction because there is no support in Swedish law for this.

Switzerland – Suisse :

Peu d'expérience encore dans ce domaine; toutefois, en matière de protection des droits de visite, afin de garantir un exercice paisible et le retour d'enfants, les autorités judiciaires, voire tutélaires ont retenu (homologué) les modèles d'engagements proposés par l'autorité centrale.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

There is very limited experience of trying to enforce agreements and undertakings in Scotland.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

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United States – Etats Unis :

The enforceability of undertakings in the United States becomes a matter of local law. Some courts have complied with conditions on return, by either issuing mirror orders or otherwise accommodating the requirements of the foreign court. However, such cooperation is not legally required and is normally handled as a matter of comity. On the other hand, under UCCJEA, orders of foreign courts may be registered and directly enforced in the U.S. We do not have enough experience to know whether Hague orders that include undertakings have been registered and enforced in the United States.

Uruguay – Uruguay :

No se han planteado situaciones del tipo descripto.

Question 29	
To what extent are your courts entitled or prepared to seek or require, or as the case may be to grant, safe harbour orders or mirror orders (advance protective orders made in the country to which the child is to be returned)?	**Dans quelle mesure vos tribunaux sont-ils habilités et disposés à solliciter ou à exiger, selon les cas, des « *safe harbour orders* » (ordonnance de sauf-conduit) ou des ordonnances « miroir » (ordonnances prévoyant une protection accrue, rendues dans l'Etat où l'enfant doit être retourné) ?**

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Argentina – Argentine :

No es práctica habitual, pero de todas formas los Jueces tienen amplias facultades para velar por los intereses de los menores.

Australia – Australie :

The Full Court of the Family Court of Australia has required undertakings to be lodged in the jurisdiction to which a child was being returned. The first instance Family Court of Australia decision by Lindenmayer J in *Director-General Department of Families, Youth and Hobbs* (2000) FLC 93-007 remains the only reported illustration of the use of mirror orders by an Australian court in ordering the return of a child under the Convention.

The father consented to those undertakings being incorporated into 'mirror orders' to be granted by both the Family Court of Australia and the High Court of South Africa. Lindenmayer J made orders for the return of the child which would become operative '*conditional upon*' the father first filing the undertakings in the South African court and then filing in the Family Court of Australia an affidavit attesting to his having done so.

The amendments to the Family Law Act in 2000 referred to in question 28 will facilitate the use of mirror orders for Australia. Where an overseas child order is registered in an Australian court, it is enforceable until registration is cancelled and 'has the same force and effect as if it where an order made by that court under this Part'.

Austria – Autriche :

No rule exists regarding such orders. Maintaining the best interest of the child such orders may be established or even recognised by Austrian courts.

Canada – Canada :

There have not been any cases involving safe harbour or mirror orders in most jurisdictions.

Manitoba
Where there was a proceeding pending or commenced, the Manitoba Courts could pronounce such mirror orders as the presiding Judge felt were in the best interests of the child and within the Court's jurisdiction under Manitoba's legislation.

Ontario
Ontario Courts are entitled to make such orders and would do so if they determine the order to be in the "best interests of the child".

British Columbia
The British Columbia court has made mirror orders upon the request of another court. There is no legislative authority expressly permitting such orders.

**

Il n'y a eu aucun cas de « safe harbour orders » ou d'ordonnances « miroir » dans la plupart des juridictions au Canada.

Manitoba
Lorsqu'une procédure est pendante ou a été amorcée, les tribunaux du Manitoba pourraient rendre des ordonnances « miroir » si le juge qui est en charge détermine que ces ordonnances sont dans le meilleur intérêt de l'enfant et demeurent dans le cadre de la compétence du tribunal dans le cadre des lois manitobaines en vigueur.

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Ontario
Les tribunaux de l'Ontario sont habilités à rendre de telles ordonnances, et ils le feront s'ils estiment qu'une telle ordonnance est dans « l'intérêt supérieur de l'enfant ».

Colombie-Britannique
Le tribunal de la Colombie-Britannique a rendu de telles ordonnances à la demande d'un autre tribunal. Il n'y a aucune habilitation législative expresse prévoyant de telles ordonnances.

Chile – Chili :

Tampoco es una práctica común, sin embargo, en caso necesario los Jueces están plenamente facultados para decretar todas las medidas necesarias para velar por el bienestar del niño.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

There has not been a need to seek or require these orders in the cases we have dealty with so far. We are not aware of any reason why our courts would not be entitled or prepared to seek or require these orders in appropriate circumstances. In a case decided in August 2004, our court held that it had the jurisdiction to make a mirror order at the request of the English Court and did make such an order.

China (SAR Macao) – Chine (RAS Macao) :

The MSAR courts may, without particular restraints, seek, require or grant safe harbour orders or minor orders to overcome obstacles to the prompt return of a child. However, in practice, the courts do not have the means to enforce the orders in the country to which the child is to be returned.

Colombia – Colombie :

Las Autoridades Administrativas o Judiciales de Colombia, en cumplimiento del Convenio y de la Convención de los Derechos del Niño están facultadas y tienen la obligación de

solicitar o demandar de las Autoridades Competentes, la toma de medidas de protección a favor de un menor que va a ser restituido.

Costa Rica – Costa Rica :

Por motivos obvios de separación de poderes, esta pregunta no compete ser respondida por esta Autoridad Central. Es decir, la información pertinente debe ser solicitada al Poder Judicial de la República de Costa Rica.

Cyprus – Chypres :

To a great extent.

Czech Republic – République tchèque :

We have not experienced such cases yet.

Denmark – Danemark :

Please see answer to question 25.

Ecuador – Equateur :

No se conocen casos.

El Salvador – El Salvador :

Esta información deberá ser proporcionada por el Órgano Judicial.

Finland – Finlande :

[No answer]

France – France :

La pratique des "safe harbour order" ou des "mirror order" n'existe pas en droit processuel français, de sorte que les juridictions françaises n'exigent pas de leurs homologues étrangers dans leurs décisions, sauf accord exprès en ce sens des parties, la reprise dans une décision étrangère des dispositions arrêtées dans leurs propres décisions.

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Greece – Grèce :

They are not prepared. Advance protective orders are rarely made

Guatemala – Guatemala :

Los juzgado siempre solicitaran que el padre que reside en otro pías demuestre su derecho sobre el niño, en consecuencia, solicitan estas medidas de protección anticipadas, o medidas de entrega del menor de edad, ya que son antecedente para resolver la situación con mayor premura a favor del niño.

Iceland – Islande :

See question 26.

Ireland – Irlande :

If the circumstances are appropriate the Court will grant, on request, mirror orders.

Israel – Israël :

The courts in Israel are prepared, in appropriate cases, to grant safe harbour orders, or require that an order be issued in the requesting country as a condition to the child's return. Mirror orders can, unfortunately, sometimes cause delays in a child's return, depending on how long it might take to obtain such orders. In such cases, it might be beneficial to enlist the services of a liaison judge, to expedite the process.

Italy – Italie :

Ces instituts ne figurent pas dans notre système juridique.

Latvia – Lettonie :

We do not have such experience.

Lithuania – Lituanie :

Decisions on granting "safe harbour" in the Republic of Lithuania do not fall within the scope of competence of the courts except for cases where appeals are filed to court against public authorities authorised to adopt decisions on granting of the asylum status (i. e., the Migration Department under the Ministry of the Interior of the Republic of Lithuania).

Malta – Malte :

We have no experience of such cases as yet.

Mexico – Méxique :

En caso de que se requiera para garantizar la restitución y en su caso la protección del menor, los jueces están facultados, es decir, están facultados para tomar todas las medidas tendientes a garantizar la protección de los menores.

Monaco – Monaco :

Les juridictions de Monaco ne peuvent solliciter des juridictions étrangères des ordonnances de ce type mais elle peuvent être conduites à apprécier différemment le dossier si elles ont connaissance de ces décisions prises par les juges étrangers.

Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

This is a matter that is determined by the Judge. If they believe that the level of risk is significant they may order or direct such undertakings be obtained from the relevant individuals or authorities in the requesting state to satisfy the concerns raised.

Nicaragua – Nicaragua :

No se tienen experiencia en lo relativo a este tema.

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Panama – Panama :

En cuanto a preparados a solicitar, estimamos que deberíamos ser orientados o formados para hacer uso de estas facultades, ya que no existen muchos casos prácticos en esta materia. Nuestro ordenamiento permite al Juez adoptar y ordenar las diligencias que considere conveniente con prudencia al Interés Superior en cualquier estado del proceso (Art. 764-766 C.F.) lo que indica que si contamos con facultades para adoptar las medidas necesarias en atención a la situación presentada.

Paraguay – Paraguay :

El Tribunal puede hacerlo, están facultados para solicitar órdenes de protección anticipadas. A veces la ejecución de esas medidas anticipadas hacen que habiendo tomado conocimiento el sustractor de la inminencia de una restitución, realice acciones tendientes a entorpecer la restitución propiamente dicha.

Poland – Pologne :

It seems that there are no legal obstacles for a Polish Guardianship Court to request another court to issue a mirror order or a safe harbor order prior to making a judgment on the return of a child. It is at the discretion of the court whether the judgment of the requesting country is accepted.

Portugal – Portugal :

The Portuguese Central Authority does not know if these kinds of requests have been made by the Courts.

Romania – Roumanie :

Romanian legislation does not provide for this kind of rulings.

Slovakia – Slovaquie :

The "safe harbour orders or mirror orders" are not applicable in Slovakia by now.

South Africa – Afrique du Sud :

Courts are always prepared to do so.

Spain – Espagne :

Esta pregunta queda contestada con la respuesta a las anteriores dada la falta de previsión o posible aplicación en España de este tipo de medidas con las salvedades antes dichas.

Sweden – Suède :

Safe harbor orders and mirror orders are legal concepts unknown in Swedish law. However, according to the Brussels II Regulation, which is applicable between the states within the European Union, Article 11 (4) states that a court cannot refuse to return a child on the basis of article 13b of the 1980 Hague Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return. This is a kind of protective order made in the country to which the child has to be returned.

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Switzerland – Suisse :

Pas d'expérience concrète : l'autorité centrale soutient le développement de cette pratique. Avec des Etats parties à la Convention de la Haye de 1961 sur la protection des mineurs des solutions dans ce sens ont pu être développées, s'agissant notamment de retour d'enfants « prétendus victimes d'abus sexuels » dans l'Etat requérant.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

There is very limited experience of seeking or requesting safe harbour orders or mirror orders but the principle is sound.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

United States – Etats Unis :

Generally, U.S. courts are authorized to - and will use - undertakings to facilitate the safe return of a child. The decision of a court to order such advance protective orders is based on the specific facts of a given case. The use of such procedures has been cited with approval in various federal cases. In the ninth circuit, for example, the court held that, before denying the return of a child because of a grave risk of harm, courts applying ICARA must consider alternative remedies that would allow both the return of the child to its home country and its protection from harm. *Gaudin v. Remis*, 415 F.3d 1038 (9th Cir. 2005). Common types of undertakings involve ordering one parent to pay the costs of return of the child and/or parent to the habitual residence and requiring a parent to obtain a mirror order to ensure any safeguards that were ordered with regard to the child or the taking parent.

However, the 1st Circuit in *Danaipour v. McLarey*, 286 F.3d 1 (1st Cir. 2002), held that the undertakings ordered by the lower court exceeded the authority of the court. The court held that the district court offended notions of international comity under the Convention by issuing orders with the expectation that the Swedish courts would simply copy and enforce them. In addition, several courts have followed the ruling of *Walsh v. Walsh*, 221 F.3d 204 (1st Cir. 2000) which concluded that a district court should not order undertakings to facilitate a return in the case of a child facing a grave risk of harm if the petitioner has demonstrated an unwillingness to comply with court orders. See *Didur v. Viger* at 1274; *Danaipour v. McLarey*, 286 F.3d 1 (1st Cir. 2002).

See also, the discussion in response to question # 13(h).

Uruguay – Uruguay :

No se han planteado situaciones del tipo descripto.

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Question 30	
Do you have any comments on the use of undertakings, mirror orders or safe harbour orders?	**Souhaitez-vous faire des commentaires sur le recours aux engagements, aux ordonnances de « sauf-conduit » et aux ordonnances « miroir » ?**

Argentina – Argentine :

No.

Australia – Australie :

Undertakings or safe harbour orders are a good idea in the right cases but in recent times implementing the conditional return orders has been very difficult.

Austria – Autriche :

Austria cannot relate to particular experiences. As those orders may differ from our system, which balances powers between Child Welfare Authorities at their own responsibility and court orders, it could be difficult to implement some of these undertakings.

Canada – Canada :

British Columbia
Mirror orders and undertakings can ensure that a child is returned with the least possible trauma.

Quebec
The judgment setting out the undertakings made by the parents is not binding in the country to which the child and parent return. There is therefore no legal guarantee that an applicant parent who makes such undertakings will honour them once the child has returned.

We discussed the possibility of an Attorney General of Quebec lawyer asking the Superior Court to approve a decision from a contracting State that includes in its findings undertakings for safe return of the child. The initial reaction was yes because the *Civil Code of Québec* contains fairly flexible rules for the recognition and enforcement of foreign decisions (articles 3155 *et seq.*).

A question to be asked, however, is how the Attorney General of Quebec could justify intervening in this type of proceeding when the Quebec Central Authority is not an applicant and is not seeking application of the Hague Convention outside Canada. Return proceedings are initiated in the foreign State, not Quebec, hence the question. Neither the Hague Convention nor the Act contains any provisions dealing with 1. the possibility of a return order including undertakings by the parents; 2. recognition and enforcement of such an order in the State of the child's habitual residence; and 3. the role of the Central Authority in such cases.

Some people felt that Quebec's procedure for recognizing foreign decisions should be used by the parties. It is important to realize, however, that that approach (that is, obtaining recognition of the foreign decision before the child returns) may at times conflict with the objective of the Convention to have the child returned as quickly as possible, since a recognition proceeding, even if it is not challenged, can take several weeks.

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The final position of the Attorney General of Quebec is to not request recognition and enforcement of foreign decisions; the onus is on the parties to do what has to be done, if necessary.

Manitoba
Undertakings, safe harbour orders and mirror orders can be useful tools to address the short-term interests of children (and safety of abducting parents) on their return and to address concerns of the Court hearing a request for return. The inability to obtain same should not, however, act as an impediment to the return of children unless other exceptions in the Convention are met. Implementation of the 1996 Children's Convention could provide a means of addressing many of a Court's concerns with respect to the short-term well-being of a child on his/her return home.

Alberta
Mirror orders are practically useful even if not required in law.

**

Colombie-Britannique
Les ordonnances « miroir » et les engagements peuvent contribuer à ce que le retour de l'enfant lui cause le moins de traumatisme possible.

Québec
Le jugement qui reprend les engagements pris par les parents n'est pas exécutoire dans le pays où l'enfant et le parent ravisseur retournent. Il n'y a donc aucune garantie judiciaire que le parent requérant, qui souscrit à de tels engagements, les respectera une fois l'enfant de retour.

Nous avons discuté de la possibilité pour un avocat du Procureur général du Québec de demander à la Cour supérieure l'homologation d'une décision d'un État contractant comprenant, dans ses conclusions, des engagements pour un retour sans danger de l'enfant. La première réaction a été de répondre par l'affirmative puisque le Code civil du Québec établit des règles assez souples en matière de reconnaissance et d'exécution des décisions étrangères (article 3155 et suivants).

Il faut se demander toutefois en vertu de quoi le PGQ pourrait justifier son intervention dans ce genre de procédure alors que l'Autorité centrale du Québec n'est pas requérante et ne demande pas l'application de la Convention de La Haye à l'étranger. Les procédures de retour sont introduites dans l'État étranger et non au Québec, d'où le questionnement. La Convention de La Haye et la Loi ne contiennent aucune disposition traitant 1) de la possibilité qu'une ordonnance de retour soit assortie d'engagements de la part des parents, 2) de la reconnaissance et de l'exécution d'une telle ordonnance dans l'État de la résidence habituelle de l'enfant et enfin, 3) du rôle de l'Autorité centrale dans un tel cas de figure.

Certaines personnes étaient d'avis que la procédure de reconnaissance du Québec de la décision étrangère devait être entreprise par les parties. Il faut réaliser toutefois que cette façon de faire (c'est-à-dire obtenir la reconnaissance de la décision étrangère avant le retour de l'enfant) risque parfois d'aller à l'encontre de l'objectif de la Convention d'obtenir le retour le plus rapidement possible puisqu'une procédure en reconnaissance, même si elle n'est pas contestée, peut prendre quelques semaines.

La position finale du Procureur général du Québec est de ne pas demander la reconnaissance et l'exécution de la décision étrangère; il appartient aux parties de faire le nécessaire, le cas échéant, en ce sens.

Manitoba
Les engagements, les ordonnances de sauf-conduit et les ordonnances « miroir » peuvent s'avérer utiles pour protéger les intérêts de l'enfant (et la sécurité des parents

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ravisseurs) à court terme à leur retour et pour répondre aux préoccupations du tribunal qui entend une demande de retour. L'impossibilité d'obtenir de telles mesures ne devrait pas cependant avoir pour effet d'empêcher le retour de l'enfant à moins que d'autres exceptions prévues à la Convention s'appliquent. La mise en œuvre de la Convention de 1996 sur la protection internationale des enfants pourrait offrir des moyens de répondre à bon nombre des préoccupations du tribunal concernant le bien-être de l'enfant à court terme lors de son retour.

Alberta
Les ordonnances « miroir » sont utiles dans la pratique même si la loi ne les exige pas.

Chile – Chili :

No.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We do not have any comments.

China (SAR Macao) – Chine (RAS Macao) :

No.

Colombia – Colombie :

Sería importante que tanto las decisiones de las Autoridades Administrativas como Judiciales en sus decisiones estipulen compromisos para las partes y además soliciten el seguimiento y acompañamiento a las Instituciones Tutelares de Protección después de que el niño (a) regrese a su país de residencia habitual.

Costa Rica – Costa Rica :

Ello es parte de las obligaciones que el Convenio le impone tanto a las autoridades centrales coma a las autoridades competentes involucradas, por ejemplo el intervenir en la búsqueda de soluciones amigables, amén de adoptar o hacer que se adopten medidas cautelares tendientes a asegurar la reciprocidad y la eficacia del proceso de que se trate.

Cyprus – Chypres :

No.

Czech Republic – République tchèque :

No.

Denmark – Danemark :

Please see answer to question 25.

Ecuador – Equateur :

No se conocen casos.

El Salvador – El Salvador :

Ninguno.

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Finland – Finlande :

The Finnish legal system does not know the concepts of undertakings, mirror orders or afe harbour orders. The Finnish Central Authority does not have experience of cases where such would have occurred.

France – France :

Il conviendrait que les autorités centrales des Etats dans lesquels la pratique de ce type de décisions est répandue informent leurs juridictions nationales de l'importance de s'assurer préalablement, que de telles décisions sont également pratiquées dans l'autre Etat dans lequel elles doivent s'appliquer.

Greece – Grèce :

Many left behind parents raise such issues for the use of undertakings

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

Undertakings, mirror orders and safe harbour orders can be a useful means of securing the interests of the child.

Ireland – Irlande :

No comment

Israel – Israël :

The court must always consider the main goal of the Convention, which is the immediate return of the child to the country from which he was abducted. Consequently, undertakings should not be used on a regular basis but only in special cases in which they are required. The court must make sure that the undertakings are reasonable, and that the return of the child will not be halted because of them. Undertakings should only be used where it is absolutely necessary to provide some arrangements or safeguards to protect the child's well-being pending proceedings in the court of habitual residence. They should only be made for a short-term period, on the assumption that proceedings should be able to be instituted in the courts of the country of habitual residence very shortly after the child's return, if not prior to then.

It has been observed that in some cases undertakings have been used to cover a period of six months after the child's return. In the opinion of the Israeli Central Authority, such a period is excessive and impinges upon the jurisdiction of the courts of the country of habitual residence. Courts should further avoid requiring the depositing of very large sums of money by the non-abducting parent as a condition for return, as this can be very onerous for that parent. Only such a sum as is necessary for the initial return should be required, and the courts in the country of habitual residence can then make any necessary orders thereafter. Cases have also been seen where the non-abducting parent has been required to provide a car for the abducting parent which clearly is not necessary to protect the child in the short term until there is a hearing in the court of the country of habitual residence. The abducting parent should not, as a result of the undertakings, be placed in a better position than s/he was prior to the abduction, so that that s/he profits from the abduction. This could serve to even encourage abduction.

A private attorney in Israel is of the view that safe harbor orders are the proper way to guard against situations where domestic violence is a serious problem. He states that

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undertakings are not provided for in the Convenion, have no basis for enforcement and often provide an incentive for abductions. In his view, undertakings can place the abductor in a position superior to his/her position had h/she not abducted the child. Safe harbor orders should only be issued where there is a record of domestic violence in the state of habitual residence.

Italy – Italie :

Aucune observation.

Latvia – Lettonie :

We do not have additional comments.

Lithuania – Lituanie :

None.

Malta – Malte :

No.

Mexico – Méxique :

No.

Monaco – Monaco :

Voir la réponse à la question 22.

Netherlands – Pays-Bas :

No comment.

New Zealand – Nouvelle Zélande :

[No answer]

Nicaragua – Nicaragua :

No se tienen experiencia en lo relativo a este tema.

Panama – Panama :

Estimamos que nuestra experiencia en las medidas espejos en relación a régimen de visita, ha sido muy positiva, ya que resultarían menos contenciosa y en donde las partes mostraran su interés en salvaguardar los interés de sus hijos, dejando de lado un poco sus interés personales, lo que permite lograr los objetivos propuesto. Además la autoridad requirente luego que conoció nuestra forma de actuación, demostró más confianza judicial en la autoridad competente del Estado requerido, en este caso fue Panamá. Reafirmo que en la medida que la autoridad requeriente conozca el procedimiento, estructura de las autoridades judiciales requerida y viceversa, será la garantía de lograr los fines del Convenio de la Haya sobre Niñez y Protección Transfronteriza de todo menor de edad.

Paraguay – Paraguay :

No.

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Poland – Pologne :

We have no comments on the issues.

Portugal – Portugal :

No.

Romania – Roumanie :

No.

Slovakia – Slovaquie :

No comments.

South Africa – Afrique du Sud :

The use of undertakings, etc goes a long way to allay the fears of the abducting parent, and also provide leverage for the Central Authority during mediation of voluntary return or removal of obstacles in article 21 cases.

Spain – Espagne :

Ninguno fuera de los ya realizados.

Sweden – Suède :

None.

Switzerland – Suisse :

Ces pratiques doivent être retenues et développées en raison de leur utilité au service du bien des enfants. Les engagements marquent une recherche de conciliation entre les parents et les ordonnances miroirs peuvent être un instrument efficace pour le respect réciproque des droits et devoirs parentaux, par ces derniers comme par les Etats visés. Les ordonnances de sauf-conduit exigent un examen ponctuel de la situation et devrait revêtir un caractère subsidiaire (si une autre solution n'est pas envisageable). Le recours à des ordonnances miroirs est recommandé aussi lorsque le grave litige entre les parents a conduit à une disparition de l'enfant avec le parent ravisseur condamné à le rendre à l'autre parent. Le prononcé de décisions identiques dans les Etats requis et requérant, aménageant équitablement les relations personnelles de l'enfant avec ses deux parents, pourrait sans doute favoriser une solution ultime et durable dans l'intérêt supérieur de l'enfant.

Un projet de loi fédérale tend à encourager une telle pratique.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

In certain cases, undertakings have not been adhered to by parties and are generally not enforceable in other jurisdictions.

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United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

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

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

United States – Etats Unis :

We believe that the use of undertakings has become excessive and, in some cases, actually stands in the way of implementing a swift return to the place of habitual residence for resolution of the case on the merits. In order for the Convention to be effective, undertakings should be rare. Courts in the U.S. and elsewhere have noted that undertakings help promote returns where a respondent parent has demonstrated some risk of harm to the child in the return hearings. The U.S. Central Authority supports the limited use of undertakings where they: (1) are appropriate in scope; (2) facilitate the Article 12 objective of return of the child "forthwith;" (3) help to minimize the issuance of non-return orders based on Article 13; and (4) respect the jurisdictional nature of the Convention by not encroaching on substantive issues relating to custody and maintenance properly left to the court of the habitual residence.

Recently, we have noticed that courts are often issuing undertakings that are excessively broad in scope and are in fact pre-conditions on return. Such conditions necessarily cause significant delays in return of children and considerable hardship for all involved. The U.S. Central Authority has seen a disturbing trend towards onerous pre-conditions of return that have included: provision of a car for the abductor, prepayment of long-term financial support for a returning abductor who had remarried in the U.S. and for whom the applicant no longer had any financial obligation; dismissal of temporary *ex parte* custody orders, and withdrawal of criminal charges against the abductor. Of particular concern is the imposition by foreign courts of conditions that effectively usurp the function of the court of the habitual residence. Extensive financial conditions, particularly of spousal support, exceed what is contemplated by the Convention and contradict the understood purpose to restore the pre-abduction legal *status quo ante*. Such matters are properly addressed by the courts of the habitual residence, which are naturally better situated to determine appropriate support and custody arrangements. Extensive conditions on return also undermine cooperation amount international courts and authorities by implying a lack of trust in a treaty partner's judicial and social welfare systems.

Uruguay – Uruguay :

No se han planteado situaciones del tipo descripto.

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Question 31	
Do you have any other comments relating to domestic violence or abuse in the context of the 1980 Convention?	**Souhaitez-vous ajouter des commentaires relatif à la violence familiale et aux abus commis dans le cadre de la Convention de 1980 ?**

Argentina – Argentine :

Entendemos que la violencia doméstica o el abuso no justifican la sustracción o retención de un menor, ya que las instituciones del país de residencia del menor, serían idóneas para tratar este tipo de cuestiones, que son práctica común en los Tribunales de Familia de todo el mundo. Por otro lado, estas acusaciónes deberían ser analizadas restrictivamente a la hora de resolver una restitución, caso contrario no hacen más que dilatar el proceso o amparar la conducta ilícita que el Tratado busca reparar.

Australia – Australie :

No.

Austria – Autriche :

Austria has no wide experiences in returning children to violent parents. A return order seems difficult in cases where the applicant is proven guilty of domestic violence. If the abducting parent and the child are not obliged to live together with the applicant any more, the use of the return order may be doubtful.

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Canada – Canada :

No.

**

Non.

Chile – Chili :

Lamentablemente, especialmente las madres sustractoras se aprovechan de la violencia doméstica para intentar evitar la restitución o para dilatar el juicio innecesariamente. Asimismo, lamentablemente la mayoría de los jueces toman excesivamente en cuenta estas alegaciones aunque no se presenten pruebas y se base sólo en dichos, al sembrar la duda y utilizarla como causal para denegar la restitución de un niño. Esto vulnera el espíritu de la Convención y dilata excesivamente los juicios.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We do not have any comments.

China (SAR Macao) – Chine (RAS Macao) :

No.

Colombia – Colombie :

Aunque el hecho de la sustracción internacional generalmente comporta la violencia al niño, no necesariamente de carácter físico, la alienación parental y la manipulación a la que son sometidos los niños por el padre sustractor o retenedor por no ser tan visibles no tienen un tratamiento adecuado en todos los Estados Parte, por cuanto no todos toman medidas provisionales tendientes a restablecer los derechos del niño o no se interviene a

la familia mientras se define el proceso de restitución o de regulación de visitas, produciendo daños en el niño.

Costa Rica – Costa Rica :

Sí: el dato curioso arrojado por la estadística, acerca de que porcentualmente hablando son más los casos de madres sustractoras que de padres sustractores. Lo anterior podría estar sugiriendo que uno de los motivos de la sustracción internacional de menores es la violencia doméstica perpetrada por padres agresores en perjuicio de madres y niños, lo cual a su vez insinúa que los hechos de sustracción y retensión por parte de una madre podrían ser una estrategia de sobrevivencia consistente en huir definitivamente del agresor. Lo anterior también comporta la posibilidad de que los sistemas de protección estatal de las víctimas de violencia doméstica, podrían ser insuficientes o ineficaces, ó simplemente están fallando del todo en el Estado de residencia habitual del menor sustraído.

Cyprus – Chypres :

No.

Czech Republic – République tchèque :

It is often very hard for the abducting parent to bring evidence on the domestic violence in the requesting state.

Denmark – Danemark :

Please see answer to question 25.

Ecuador – Equateur :

La existencia de violencia doméstica o abuso, comprobada no solo alegada, en el trato con un niño, niña o adolescente, es sin lugar a dudas una excepción que deberá ser tomada en cuenta por el Juzgador para negar una Restitución.

El Salvador – El Salvador :

Ninguno.

Finland – Finlande :

[No answer]

France – France :

L'autorité centrale française n'a pas de commentaire particulier à faire relatif à la violence familiale et aux abus commis dans le cadre de la convention de 1980.

Greece – Grèce :

Domestic violence or abuse is often

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

No comment.

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Ireland – Irlande :

No comment

Israel – Israël :

There has been much debate on the issue of domestic violence in the context of the Convention. The exception in article 13(b) requires proof of damage to the child therefore some argue that violence towards a parent does not constitute damage to the child. However, depending on the circumstances and the age of the child, violence to a parent can in fact cause severe psychological damage to the child. Therefore, each case should be examined on an individual basis to determine the effect of the damage, if any, on the particular child, subject to the stringent requirements of article 13(b).

Italy – Italie :

Aucune observation.

Latvia – Lettonie :

We do not have additional comments.

Lithuania – Lituanie :

Domestic violence or abuse (of psychological nature in particular) is difficult to determine and prove as spouses or ex-spouses present different versions, evidence by witnesses is usually lacking etc. Therefore, in our opinion, competent authorities of different states should carefully examine complaints over such violence cases and prepare detailed information on relations between family members in order to avoid returning the child to an environment where violence takes place.

Malta – Malte :

No.

Mexico – Méxique :

No.

Monaco – Monaco :

Compte tenu du faible nombre d'affaires d'enlèvement que la Principauté de Monaco a connu, il y a une proportion non négligeable d'allégations d'abus sexuels.

Netherlands – Pays-Bas :

No.

New Zealand – Nouvelle Zélande :

That domestic violence be recognised as a risk factor sufficient to prevent the return of a child if a safe return cannot be negotiated.

Nicaragua – Nicaragua :

Ninguno

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Panama – Panama :

No tengemos comentario ante el respeto.

Paraguay – Paraguay :

No.

Poland – Pologne :

We have no comments on the issues.

Portugal – Portugal :

No.

Romania – Roumanie :

No.

Slovakia – Slovaquie :

So far, the Slovak CA does not have any comments, but this issue certainly deserves a lot of attention from the courts as well as the Central Authorities in the proceedings under this Convention.

South Africa – Afrique du Sud :

Applications needs to indicate upfront, the presence of domestic violence in the erstwhile relationship as well as indicators of the severity thereof. In R.S.A all article 13(b) litigation revolved around domestic violence and / or economic abuse.

Spain – Espagne :

Tan solo recalcar la preocupante escalada a nivel mundial que se observa en la creciente vinculación de los casos de sustracción internacional de menores con los de violencia de género.

Sweden – Suède :

None.

Switzerland – Suisse :

[Pas de réponse]

United Kingdom (Scotland) – Royaume Uni (Écosse) :

No.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

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United States – Etats Unis :

The U.S. Central Authority (USCA) supports the approach used by the 6th Circuit, in *Friedrich v. Friedrich*, 78 F.3d 1060 (U.S. Ct. App., 6th Cir. 1996), which has been adopted by several other federal circuits, to address concerns of domestic violence or abuse in the context of the 1980 Convention. The *Friedrich* court held that, when an Article 13(b) defense is raised, the court should only deny the return of a child when the taking parent has shown that the child is subject to a grave risk of harm upon return and that the state of habitual residence does not have mechanisms in place to adequately protect the child if he or she is returned. The USCA believes that it is consistent with the purpose of the Convention to have the merits of a custody case determined by the country of habitual residence as long as that country has institutions in place to keep all members of a family safe.

Uruguay – Uruguay :

No.

Question 32	
Are you aware of cases in which your authorities have refused to make or enforce an order in respect of a young child on the basis that an abducting parent who is the child's primary carer, refuses or is otherwise not in a position to return with the child?	**Avez-vous connaissance de cas dans lesquels vos autorités ont refusé de rendre ou exécuter une ordonnance concernant un jeune enfant au motif que le parent ravisseur titulaire de la garde de l'enfant, refuse ou n'est pas en mesure d'accompagner l'enfant ?**

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Argentina – Argentine :

No en casos entrantes, pero muchas veces en casos salientes hemos tenido pedidos de restitución rechazados, por considerar el Estado requerido que el padre sustractor que ejerce la tenencia sobre el niño, no comete un traslado o retención ilícito, ya que está habilitado para decidir la residencia del menor. Ello contraría las normas que sobre custodia establece la legislación argentina, para la cual ambos padres deben decidir de mutuo acuerdo la residencia del menor, sin perjuicio de quien ejerza la tenencia. De conformidad con los artículos 3 y 5 de la Convención, la sustracción o retención será ilícita cuando contraríe el derecho de custodia conferido a un progenitor de acuerdo con la legislación de la residencia habitual del niño, pero hemos visto que hay países que se guían por lo que establece su propia legislación en materia de custodia, a la hora de determinar si existe o no un traslado o una retención ilícitos.

Australia – Australie :

One issue related to the welfare of the returning child and parent is the ability of the abducting parent to take part effectively in custody proceedings in the jurisdiction of habitual residence. The Australian Central Authority and the Family Court take the view that it is a fundamental objective of the Convention to return abducted children so that issues of custody and other matters related to the child's best interests are decided in the country of habitual residence.

There have been some difficulties for non-citizen parents wishing to return with their children to the USA to contest custody. Usually the non-citizen parent's right to enter and remain in the USA is dependent on their status as spouse of a USA citizen. This issue arose in the matter of *State Central Authority v Ardito* (unreported decision of Joske J, 29 October 1997, Melbourne) and the so-called 'visa defence' was the basis for the non-return of the child because the parent could not get the required visa.

While criminal proceedings are pending against the abducting parent in the country of habitual residence the Australian courts may be reluctant to order the return of the child.

Where criminal charges exist, this is usually the subject of negotiations between the Australian Central Authority and the overseas Central Authority in order that the welfare of the returning parent and child are not adversely affected by the existence of any such charges.

It is often a condition attached to return order that the requesting parent agrees not to institute criminal proceedings against the returning parent. However, whether or not the court will make such an order depends on the circumstances. For example, in *Director General, Department of Community Services v Attanasio* (unreported, Cohen J, 24/3/00, Sydney), the Judge was critical of many of the orders sought by the Central Authority and of the many conditions imposed by the mother for her return. The Judge refused to make the order requiring the father's undertaking not to institute criminal proceedings against the mother in Italy. He said such orders 'tend to defeat the purpose of being a signatory to the Convention…It must also be recognised that, as under the criminal law of Australia, certain acts will result in legal consequences where the best interests of a child of the perpetrator are irrelevant.' The child was ordered to return. *(Note: The mother subsequently appealed this decision. Before the Appeal Court had handed down its decision, the father withdrew the application. The Court then allowed the mother's appeal.)*

On the other hand, in the first instance Family Court of Australia decision by Lindenmayer J in *Director General Department of Families, Youth and Hobbs* (2000) FLC 93-007, the father, who had initiated the Convention proceedings in respect of his daughter, was permitted by his Honour to file an affidavit that contained a range of undertakings, including that the father no institute or support any criminal or civil charges against the mother associated with the removal. These orders were to be filed as mirror orders in the habitual residence country.

Austria – Autriche :

No valid decisions in such cases.

Canada – Canada :

No.

**

Non.

Chile – Chili :

Si, se han dado casos en especial cuando es una madre de un niño pequeño, y se opone a regresar los Tribunales han denegado la restitución, considerado que alejar al niño de su madre es exponerlo a un grave riesgo o a una situación intolerable.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

Currently, wehave such a potential case in which the parents are now negotiating for settlement. Other than this potential case, we are not aware of any other such cases.

China (SAR Macao) – Chine (RAS Macao) :

No.

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Colombia – Colombie :

No conocemos algún caso en particular.

Costa Rica – Costa Rica :

No.

Cyprus – Chypres :

No.

Czech Republic – République tchèque :

Czech courts have never definitively expressed that the reason for the refusal was the above mentioned situation.

Denmark – Danemark :

Please see answer to question 25.

Ecuador – Equateur :

No se conocen casos.

El Salvador – El Salvador :

No hemos tenido este tipo de casos.

Finland – Finlande :

[No answer]

France – France :

Non. Il peut cependant être ajouté qu'une décision de retour d'enfant au lieu de sa résidence habituelle est plus aisée à ramener à exécution lorsque le parent qui a déplacé l'enfant le raccompagne, ou lorsque le parent sollicitant son retour se déplace pour aller le chercher, et repartir avec lui, et ce d'autant plus lorsque l'enfant déplacé est en bas âge.

Greece – Grèce :

No.

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

No. However, this issue has been raised in cases where the abducting parent is in jeopardy of being arrested and prosecuted for kidnapping if the parent itself is to return to the State of origin.

Ireland – Irlande :

Yes, in one particular instance. The father was the abducting parent, and would not return to the UK with his two young children. The Irish courts did not order the return of

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the child as the applicant mother was not in a position to care for them. If the children had been ordered to return to the UK it was likely that they would have to end up in State care. An order was however made for the mother to have liberal access to the children.

Israel – Israël :

The Central Authority is not aware of any cases where Israeli courts have refused the return of the child on such bases. However, countries such as Brazil do this, even where there has not been evidence to justify the parent's refusal, but rather on assumptions made by the courts. Such a case is currently under appeal in Brazil. The courts in Italy also refused to return children ages 9 and 7 to Israel based on the mother's threat that she would not return with the children if they were ordered to be returned. It is the position of the Central Authority for Israel that it is improper to consider where the abducting parent wishes to live, and that such an approach will lead to the destruction of the Convention, as every abducting parent will state that they don't want to return. In order for a parent's refusal to return to be the basis for a refusal to return the child, the parent's refusal must be based on acceptable reasoning and meet the strict requirements of Article 13(b).

Italy – Italie :

Ce cas de figure ne s'est jamais produit en Italie ; tout cas de rejet est pallié par d'autres modalités d'exécution.

Latvia – Lettonie :

Up to now cases like this never happened.

Lithuania – Lituanie :

SCRPAS has no information on cases involving such problems.

Malta – Malte :

No such cases have been encountered.

Mexico – Méxique :

Si, se negó en la Ciudad de México una restitución de una menor de 4 meses de edad (edad de lactancia), donde la parte sustractora no contaba con la documentación migratoria (visa) que le permitiera ingresar a los Estados Unidos de América a defender la custodia de la menor de que se trata, fue negada la restitución argumentándose el interés superior de la menor.

Monaco – Monaco :

Non.

Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

In RES v BJS the Judge made it clear that the mother could not prevent a return order by refusing to accompany the children home. The Judge stated:

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"[42] There is evidence from the psychological assessment and report on the children that their forced separation from their mother would at present pose a serious risk of psychological harm to the children. That raises the possibility that if an order were made for the return of the children, and the mother refused to accompany them, then it could be argued that their separation from her presented a grave risk of psychological harm.

[43] I need to be very clear that such an argument would not be accepted by the Court. If such a development were to occur then it would not be the children's "return" that exposed the children to such a risk but the mother's personal choice to allow them to return without her.

[44] My view is based squarely on the Court of Appeal decision in *A v A* (supra) and the subsequent cases decided in reliance on that decision all developing the clear principle that a respondent cannot create a situation of potential psychological harm and then rely on it to prevent the return of the children. To permit such an abuse would be to subvert the foundation of the Convention itself."

Nicaragua – Nicaragua :

No hemos tenido experiencia en este sentido.

Panama – Panama :

No tenemos conocimiento que e haya aplicado dicho criterio para negar la restitución.

Paraguay – Paraguay :

Existen casos en que los jueces han rechazado la restitución por la corta edad del niño.

Poland – Pologne :

The Ministry of Justice has no knowledge of such cases.

Portugal – Portugal :

No.

Romania – Roumanie :

We have not encountered refusals from authorities to rule for the return of a child or to carry out such an order, for this reason.

Slovakia – Slovaquie :

The Centre has not dealt with any such case by now.

South Africa – Afrique du Sud :

No.

Spain – Espagne :

No.

Sweden – Suède :

The Swedish Central Authority is not aware of any case in which a return order has not been enforced.

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Switzerland – Suisse :

Non.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

Yes, a decision on this was given in a case at first instance, but this decision was reversed on appeal on the basis that the judge should have considered whether it was possible to enable the mother to return by obtaining a visa for her from the Australian authorities, and provided that execution of the return order should be suspended pending the obtaining of the appropriate visa.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

Yes. The High Court refused a return order under Article 13(b) where there was evidence of a real risk of physical danger to the children, that the children were anxious for their own safety and their mother's safety, that they had heightened emotional problems as a result of past events and that the children's psychological welfare would be put at grave risk beyond the normal disruption of an enforced return to their habitual residence, if a return was ordered. The mother had been the victim of an apparently pre-meditated, targeted and serious fire arm assault in the country of habitual residence (Re D (Children) [2006] EWCA Civ 146, INCADAT HC/E/UKe 818).

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United States – Etats Unis :

The United States has generally moved away from analyzing custody cases using the primary caregiver doctrine because it has been found to be equivalent to gender bias. To the extent that this question is asking about the effect of the immigration status of the abducting parent on Hague proceedings, please see the responses to questions # 15 – 18 in the section on Immigration/asylum/refugee matters.

Uruguay – Uruguay :

No.

10. Standard questionnaire for newly acceding States – Questionnaire standard pour les nouveaux Etats adhérents

Question 33	
If your State has acceded to the Convention have you filled out the standard questionnaire for newly acceding States? If so, have you any comments about the ease or otherwise of filling out this questionnaire? If not, can you explain why?	**Si votre Etat a adhéré à la Convention, avez-vous complété le Questionnaire standard pour les nouveaux Etats adhérents ? Dans l'affirmative, pouvez-vous indiquer s'il a été facile de le remplir ? Dans la négative, veuillez en indiquer les raisons.**

Argentina – Argentine :

[Sin respuesta]

Australia – Australie :

The standard questionnaire for newly acceding States is not applicable to Australia. The Convention has been in operation in Australia since 1 January 1987.

Austria – Autriche :

No newly acceding State.

Canada – Canada :

Not applicable.

**

Sans objet.

Chile – Chili :

No se ha llenado el cuestionario.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

Not applicable.

China (SAR Macao) – Chine (RAS Macao) :

Not applicable.

Colombia – Colombie :

Colombia como Estado Parte no ha diligenciado el cuestionario estándar, pero si se ha pronunciado a favor de la adhesión de otros países al Convenio a través de notas enviadas por medio del Ministerio de Relaciones Exteriores.

Costa Rica – Costa Rica :

No.

Cyprus – Chypres :

[No answer]

Czech Republic – République tchèque :

[No answer]

Denmark – Danemark :

[No answer]

Ecuador – Equateur :

No.

El Salvador – El Salvador :

[Sin respuesta]

Finland – Finlande :

[No answer]

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France – France :

Non applicable.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

Guatemala, ya lleno el Cuestionario y no se tuvo dificultad para ello.

Iceland – Islande :

Icelandic authorities are currently deciding on how the process should be when it comes to accepting new accessions, i.a. what measures to take before deciding whether or not to accept a new accession.

Ireland – Irlande :

Not applicable.

Israel – Israël :

Not applicable.

Italy – Italie :

[Pas de réponse]

Latvia – Lettonie :

When Latvia has acceded to the Convention, we have fulfilled standard questionnaire for newly acceding States. Additional comments about it we do not have.

Lithuania – Lituanie :

No problems in relation to the filling out of the questionnaire arose.

Malta – Malte :

The questionnaire was not sent, however, its responses are consulted when deciding whether to accept a newly acceding State.

Mexico – México :

No, no ha sido llenado.

Monaco – Monaco :

La Principauté de Monaco a adhéré à la Convention de 1980 en 1996 et elle a été rendue exécutoire sur le territoire de la Principauté en 2002. Toutefois, elle n'a pas complété ledit questionnaire.

Netherlands – Pays-Bas :

Not applicable.

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New Zealand – Nouvelle Zélande :

Not applicable.

Nicaragua – Nicaragua :

Nicaragua ya remitió el Cuestionario estándar.

Panama – Panama :

Panamá ratificó el Convenio de la Haya en el año 1993 y en dicha fecha el cuestionario no había sido implementado.

Paraguay – Paraguay :

No tenemos conocimiento. Hemos recibido la consulta del Ministerio de Relaciones Exteriores, con que estado sería conveniente aceptar su adhesión.

Poland – Pologne :

Since Poland acceded to the Hague Convention in 1992, we have not filled out the standard questionnaire for any newly acceding States.

Portugal – Portugal :

Portugal is not an acceding State.

Romania – Roumanie :

[No answer]

Slovakia – Slovaquie :

Slovak Republic ratified the Convention on November 7, 2000 and it entered into force on February 1, 2001. We subsequently did not fill out the questionnaire for newly acceding States.

South Africa – Afrique du Sud :

No.

Spain – Espagne :

[Sin respuesta]

Sweden – Suède :
[No answer]

Switzerland – Suisse :

[Pas de réponse]

United Kingdom (Scotland) – Royaume Uni (Écosse) :

[No answer]

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United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

[No answer]

United States – Etats Unis :

Not applicable.

Uruguay – Uruguay :

[Sin respuesta]

Question 34	
Has your State found the responses to the standard questionnaire for newly acceding States (available on the website of the Hague Conference at: < www.hcch.net > → Child Abduction Section → Standard questionnaire for newly acceding States) useful when considering whether or not to accept the accession of an acceding State? What additional information would be useful?	**Votre Etat s'est-il appuyé sur les réponses au Questionnaire standard pour les nouveaux Etats adhérents (disponible sur le site Internet de la Conférence de La Haye à l'adresse suivante : < www.hcch.net > → Espace enlèvement d'enfants → Questionnaire standard pour les nouveaux Etats adhérents) lorsqu'il a envisagé d'accepter ou non l'adhésion d'un Etat adhérent ? Quels renseignements pertinents pourraient-ils y être ajoutés ?**

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Argentina – Argentine :

[Sin respuesta]

Australia – Australie :

Not applicable.

Austria – Autriche :

No newly acceding State.

Canada – Canada :

The standard questionnaire asks useful questions that can lead to the provision of useful information. The problem is that the Standard Questionnaire is not completed in all cases and we try to find other way to get that important information that would allow us to make a decision on the acceptance of those acceding States. More guidance/follow up with newly acceding States unfamiliar with the Convention may be critical to ensure that relevant information is provided.

**

Le questionnaire pose des questions utiles qui peuvent produire des renseignements utiles. Malheureusement, le problème est que le Questionnaire n'est pas complété dans tous les cas et nous cherchons comment obtenir cette importante information qui nous permettrait de prendre une décision quant à l'acceptation de ces États adhérents. Un meilleur encadrement/suivi des nouveaux États adhérents qui ne sont pas bien au fait de la Convention pourrait sûrement contribuer à faire en sorte qu'ils fournissent des renseignements pertinents.

Chile – Chili :

Las aceptaciones a nuevos Estados adherentes se efectúan por el Ministerio de Relaciones Exteriores, previa consulta a la Autoridad Central, sin embargo los últimos Estados aceptados por Chile no había respuesta al cuestionario.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We found the responses very useful in our consideration of whether or not to accept the accession. We consider that the following addional information may also be useful:

- legal aid position and pro bono representation; and
- how legal costs are charged generally.

China (SAR Macao) – Chine (RAS Macao) :

Not applicable.

Colombia – Colombie :

Sería útil que se incluyera la legislación del país cuya adhesión se pretende, para ser conocida previamente.

Costa Rica – Costa Rica :

No.

Cyprus – Chypres :

[No answer]

Czech Republic – République tchèque :

[No answer]

Denmark – Danemark :

[No answer]

Equador – Equateur :

No aplica.

El Salvador – El Salvador :

Esta información debe ser proporcionada por el Ministerio de Relaciones Exteriores.

Finland – Finlande :

[No answer]

France – France :

Non applicable.

Greece – Grèce :

[No answer]

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Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

See question 33.

Ireland – Irlande :

No comment.

Israel – Israël :

The policy of Israel is to accept all accessions of newly acceding states, regardless of the questionnaire. The responses are, however, very useful and informative in understanding the systems in the new states, and how the Convention is to be applied.

Italy – Italie :

[Pas de réponse]

Latvia – Lettonie :

We consider that standard questionnaire for newly acceding States is significant aspect what to take into account when member states approve this accession.

Lithuania – Lituanie :

We have no proposals on this issue.

Malta – Malte :

Please see question 33.

Mexico – México :

Ver respuesta 33.

Monaco – Monaco :

La Principauté peut être amenée à consulter les réponses apportées au questionnaire standard.

Netherlands – Pays-Bas :

Not applicable.

New Zealand – Nouvelle Zélande :

Not applicable.

Nicaragua – Nicaragua :

[Sin respuesta]

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Panama – Panama :

La política que ha sido utilizada por Panamá para aceptar la adhesión de otros Estados, radica en que mientras mayor cantidad de Estados son aceptados, mayor es la cooperación que podría tenerse en un futuro en virtud de algún caso que pueda suscitarse, es por ello que el cuestionario señalado, no se utiliza como base para considera o no la aceptación de un Estado.

Paraguay – Paraguay :

[Sin respuesta]

Poland – Pologne :

The question of accession did not give rise to any doubt or difficulties in Poland. Currently, the Polish Ministry of Foreign Affairs proceeds with accepting the declarations of newly acceding States. The final decision on accepting the declarations shall be made by the Council of Ministers of the Republic of Poland, about which the Secretariat of the Hague Convention on Private International Law shall be notified.

Portugal – Portugal :

The Portuguese Central Authority does not promote directly the answer to this kind of questionnaire.

However, when questioned in relation to a new accession, the Portuguese Central Authority reports its statement trough the Ministry of Foreign Affaires or the Office for the International, European and of Cooperation Affairs (GRIEC-Gabinete Para as Relações Internacionais, Europeias e de Cooperação).

Romania – Roumanie :

[No answer]

Slovakia – Slovaquie :

Slovak Republic finds the responses useful but not decisive for accepting the accession of a new state.

South Africa – Afrique du Sud :

No.

Spain – Espagne :

[Sin respuesta]

Sweden – Suède :

The Swedish Central Authority has taken inspiration from "the questionnaire for newly acceding states" in the checklist that is used when considering whether or not to accept the accession of an acceding state. The Swedish Central Authority gets information about the country from the Swedish Embassy in that country, which reports to the Swedish Central Authority that later makes an assessment whether the country will be accepted or not. Continual reports from the Embassies are made to follow up the legal development in countries that are party with Sweden.

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Switzerland – Suisse :

[Pas de réponse]

United Kingdom (Scotland) – Royaume Uni (Écosse) :

[No answer]

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

[No answer]

United States – Etats Unis :

The USCA uses these answers in addition to its own standard questions.

Uruguay – Uruguay :

[Sin respuesta]

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Question 35	
What measures, if any, do your authorities take, before deciding whether or not to accept a new accession (under Article 38), to satisfy themselves that the newly acceding State is in a position to comply with Convention obligations, and how do you ensure that this process does not result in undue delays?	**Quelles mesures vos autorités prennent-elles, le cas échéant, avant de décider d'accepter ou non une nouvelle adhésion (conformément à l'article 38) pour s'assurer que le nouvel Etat adhérent pourra respecter les obligations imposées par la Convention ? Comment votre Etat s'assure-t-il que ces démarches ne retardent pas inutilement la procédure ?**

Argentina – Argentine :

La aceptación a la adhesión de un nuevo Estado a la Convención de La Haya es analizada por el Ministerio de Relaciones Exteriores, Comercio Internacional y Culto de nuestro país, el cual como criterio general mira de manera favorable las nuevas incorporaciones, toda vez que considera a la Convención de La Haya de 1980 como un instrumento de gran utilidad para la protección internacional de niños contra los supuestos de sustracción. El Estado Argentino no ha tenido reservas a la incorporación de nuevos Estados, y ofrece su apoyo y experiencia a aquellas Autoridades Centrales recientemente encargadas de la aplicación del Convenio.

Australia – Australie :

Not applicable.

Austria – Autriche :

No newly acceding State.

Canada – Canada :

The Department of Foreign Affairs of Canada has the responsibility of the process leading to a decision as to whether an acceding State can be accepted. This process involves a consultation with provinces and territories. One of the questions is to know how the Convention is or may be implemented in the acceding State.

**

Le ministère des Affaires étrangères du Canada dirige le processus qui mène à la décision quant à savoir si le Canada peut accepter ou non l'adhésion d'un État donné. Ce processus fait appel à la consultation des provinces et territoires. Une des questions qui se pose est celle de savoir comment la Convention est mise en œuvre dans l'État adhérent ou pourra l'être.

Chile – Chili :

Lo más importante al momento de aceptar a un nuevo Estado, es saber si cuenta ya con una Autoridad Central en funcionamiento, ya que lamentablemente la aplicación de la Convención sólo se puede conocer en la práctica. Sin embargo, considero muy importante el cuestionario para conocer de antemano los principales aspectos del Estado adherente.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We have so far based our decision on the prevailing state of acceptance by the international community. We would also consider the questionnaire copleted bt the acceding State if available before deciding to accept a new accession. It should be noted that under the Basic Law of the HKSAR, the accession to any international Convention and acceptance of new acceding States are matters to be decided by the Central People's Governement of the People's Republic of China.

China (SAR Macao) – Chine (RAS Macao) :

Not applicable.

Colombia – Colombie :

Colombia aceptaría la adhesión de un Estado, que garantice los derechos humanos y por ende los derechos de los niños.

Costa Rica – Costa Rica :

Por motivos obvios de separación de poderes, esta pregunta no compete ser respondida por esta Autoridad Central. Es decir, la información pertinente debe ser solicitada al Ministerio de Relaciones Exteriores de la República de Costa Rica.

Cyprus – Chypres :

[No answer]

Czech Republic – République tchèque :

[No answer]

Denmark – Danemark :

[No answer]

Ecuador –Equateur :

Es una pregunta que deberá responderla el Ministerio de Relaciones Exteriores del Ecuador.

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El Salvador – El Salvador :

[Sin respuesta]

France – France :

Non applicable.

Finland – Finlande :

[No answer]

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

See question 33.

Ireland – Irlande :

Our Department of Foreign Affairs decides, in consultation with the Central Authority, whether to accept a newly acceding State.

Israel – Israël :

See answer to question 34 above.

Italy – Italie :

[Pas de réponse]

Latvia – Lettonie :

In Latvia there are no special measures in order to decide about accession of the new member states to the Convention. Up to now Latvia has approved accession of all member states.

Lithuania – Lituanie :

[No answer]

Malta – Malte :

Please see question 33.

Mexico – Méxique :

Ver respuesta 33.

Monaco – Monaco :

Sans objet.

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Netherlands – Pays-Bas :

Not applicable.

New Zealand – Nouvelle Zélande :

Not applicable.

Nicaragua – Nicaragua :

Ninguna

Panama – Panama :

Panamá no toma ninguna medida para garantizar que con la aceptación de un Estado se obtenga un cumplimiento de las obligaciones del Convenio, toda vez que no se puede negar que hay países incluyendo a Panamá que aún tienen dificultades en la correcta aplicación del convenio, por lo que consideramos, que en vez de tomar medidas de garantía, los Estados busquen de manera regional reunirse cada año, a fin de actualizarse en la aplicación del Convenio y buscar entre todos medidas de cooperación, que se hagan más expedita la aplicación del Convenio y ante todo que exista una confianza en las autoridades de los otros Estados.

Paraguay – Paraguay :

La Cancillería, encargada de impulsar las adhesiones realiza un sondeo a fin de conocer la opinión de los actores encargados de la aplicación del Convenio.

Poland – Pologne :

Please see answer to question 34.

Portugal – Portugal :

When demanded, the Portuguese Central Authority makes a statement about the acceding State in question.

Romania – Roumanie :

[No answer]

Slovakia – Slovaquie :

It is in the interest of the Slovak Republic to accept an accession of the largest number of states to the Convention therefore our authorities do not take any special measures before considering whether or not to accept the accession.

South Africa – Afrique du Sud :

Not applicable.

Spain – Espagne :

[Sin respuesta]

Sweden – Suède :

See question 34.

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Switzerland – Suisse :

[Pas de réponse]

United Kingdom (Scotland) – Royaume Uni (Écosse) :

[No answer]

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

[No answer]

United States – Etats Unis :

The USCA works with posts abroad to analyze the conditions in the acceding country. In considering acceptance of a newly acceding state, we look at:

- Whether a country has adopted appropriate implementing legislation or regulations
- Whether or not a country's domestic law may inhibit or prevent proper application of the Convention
- Whether a country's courts or administrative bodies are prepared to handle cases according to the Convention and in an expeditious manner
- Whether enforcement measures are available for return and access orders.
- Whether the country's Central Authority is appropriately staffed and resourced
- Whether or not a country's domestic law permits differential treatment between men and women in custody matters
- Whether a country has sufficient mechanisms and resources to locate and/or protect children.
- Whether a country provides information and training to ensure proper application of the Convention
- Whether there may be any roadblocks to proper implementation of the Convention.

Uruguay – Uruguay :

[Sin respuesta]

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11. The Guide to Good Practice – Le Guide de bonnes pratiques

Question 36	
In what ways have you used the Guide to Good Practice – Part I on Central Authority Practice, Part II on Implementing Measures and Part III on Preventive Measures to assist in implementing for the first time, or improving the implementation or operation of, the Convention in your State?	**Comment votre Etat a-t-il utilisé les première, deuxième et troisième parties du Guide de bonnes pratiques (respectivement sur la pratique des Autorités centrales, la mise en œuvre et les mesures préventives) dans les premiers temps de la mise en œuvre ou pour améliorer la mise en œuvre de la Convention dans votre Etat ?**

Argentina – Argentine :

Ha servido de guía al momento de explicar a las Autoridades Judiciales encargadas de resolver estas situaciones, la manera en que deben ser interpretadas las normas del Convenio y la importancia del factor tiempo.

Australia – Australie :

Australia was heavily involved in the development of the Guide to Good Practice. As such, Australian practice in relation to abduction matters closely reflects that detailed in the Guide. Central Authorities in each Australian state and territory were consulted on drafts of the Guide.

Austria – Autriche :

See previous questionnaires.

Canada – Canada :

Some jurisdictions refer the Guide to Good Practice, Part III, to counsel. All parts of the Guide are useful orientation tools, especially for new acceding States and in some cases, dialogue openers between Central Authorities. Also, the Guide is useful for new officials assuming responsibility for the Central authority role.

British Columbia
The Good Guide is helpful for anyone who is new to the Convention. This includes parents, new Central Authorities, and lawyers in private practice with clients affected by the Convention.

**

Certains ressorts portent le Guide de bonnes pratiques, troisième partie, à l'attention des procureurs. Toutes les parties du Guide constituent de bons outils d'orientation, en particulier pour les nouveaux États adhérents, et dans certains cas, elles servent de point de départ pour entamer le dialogue entre Autorités centrales. De plus, le Guide est utile pour les nouveaux fonctionnaires qui assument le rôle de l'Autorité centrale.

Chile – Chili :

Se han utilizado enormemente especialmente para las charlas, talleres, seminarios y en general para la capacitación respecto a la Convención. Asimismo, se ha utilizado para la elaboración de un manual de procedimiento para capacitar a abogados en la tramitación de las causas de restitución y visitas.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We have used the Guide to Good Practice as reference in improving the implementation and operation of the Convention and as the basis for the preparation of an Offcie Manual. The Guide provided useful practical guidance to the relevant authorities.

China (SAR Macao) – Chine (RAS Macao) :

The Guide to Good Practice – Part I on Central Authority Practice, Part II on Implementing Measures and Part II on Preventive Measures is a useful tool, reference and learning aids as regards the implementation of the Convention.

Colombia – Colombie :

Ha sido de gran utilidad la guía en todas sus versiones, para la implementación y la ejecución del Convenio. De hecho se han incluido en el Manual, que está próximo a editarse, las recomendaciones que hace y se ha acudido a ella para brindar capacitación a los servidores públicos encargados de ejecutar el Convenio.

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Costa Rica – Costa Rica :

Aquí no ha sido necesario utilizar dicho documento por cuanto casi todas sus normas y principios de por sí se derivan del ordenamiento jurídico interno de la República de Costa Rica. El problema, ya lo dijimos al inicio, se da en el seno de ciertas autoridades centrales requeridas, las cuales ni siquiera se han tomado la molestia de contestar oportunamente un simple correo electrónico.

Cyprus – Chypres :

[No answer]

Czech Republic – République tchèque :

At the present time the Guide serves mainly to the Czech Central Authority. It is intended to have it translated into Czech and disseminated among judges and social workers.

Denmark – Danemark :

The Danish Central Authority has used and uses the Guide to Good Practice, Part I, Part II and Part III to improve the implementation an operation of the Convention.

We also refer to our answer from 2004.

Ecuador – Equateur :

Las guías han sido utilizadas, como su nombre lo dice, como guía e instrumento de consulta para la implementación del convenio, y ha servido de insumo, en el caso de la Autoridad Central, para el establecimiento de procesos administrativos internos.

El Salvador – El Salvador :

MEDIDAS DE ACCIÓN Y DE REACCIÓN:

En lo que respecta a la prevención y de reacción ante la sustracción internacional, a través del condicionamiento al desplazamiento de los menores, se han logrado importantes avances para proteger a los menores, no solo de la sustracción por parte de sus progenitores, sino también para prevenir la explotación sexual comercial de niños, niñas y adolescentes, entre estos avances podemos citar:

- Se exige que los menores salvadoreños que salen del territorio porten pasaporte vigente
- Los permisos autorizaciones concedidas por uno de los progenitores, son objeto de estrictas revisiones por parte de la Dirección General de Migración
- En los casos en los que no se conoce el domicilio del padre o madre que debe dar el consentimiento a un menor para que pueda salir del país, los Procuradores Auxiliares, por delegación del Procurador General de la República deben emitir opinión para la emisión del pasaporte y para que el menor pueda salir del país; en estos casos, nuestra institución lleva un estricto control y se realizan las investigaciones sociales pertinentes, oponiéndose cuando existe un riesgo creíble de sustracción
- La Escuela de Capacitación Judicial, capacita sobre la aplicación del convenio a personal de las autoridades centrales (la Procuraduría General de la República PGR Y EL Instituto Nacional para el Desarrollo Integral de la Niñez y Adolescencia ISNA) y de los juzgados de Familia.
- La Procuraduría General de la República como Autoridad Central tiene debe capacitar al Equipo multidisciplinario que aplicará el convenio.

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Finland – Finlande :

[No answer]

France – France :

Le guide des bonnes pratiques a constitué un outil complémentaire intéressant qui a contribué à l'unification des pratiques, par les autorités centrales, de la convention de La Haye.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

A la presente fecha a implementado la guia sin embargo son muy pocos casos los que se han presentado y por esa razón es difícil contestar de conformidad con la experiencia.

Iceland – Islande :

The Guide to Good Practice is a valuable tool for improving the operation of the Convention and the Central Authority uses it in its practises and does encourage attorneys who handle abduction cases to familiarise them selves with it. No changes have been made in the legislation after the implementation of the Convention but the Guide can have a significant role if and when changes are made.

Ireland – Irlande :

The practices of this Central Authority are in compliance with those recommended in the Guide to Good Practice.

Israel – Israël :

The practices of the Israeli Central Authority and other relevant authorities are consistent with the contents and spirit of the respective Guides. At times where new issues or questions arise, reference is made to the appropriate guide for assistance.

Italy – Italie :

Les Bonnes Pratiques sont toujours prises en considération par tous les praticiens chargés des procédures.

Latvia – Lettonie :

Three parts of The Guide to Good Practice are as significant material or source of information what helps to understand different questions related to the Convention both regarding practice of the Central Authorities and regarding implementation and prevention measures. In conditions when in Latvia legislation regarding Convention gradually develops as significant source of information are II and III part of Guide to Good Practice about implementation and preventive measures.

Lithuania – Lituanie :

[No answer]

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Malta – Malte :

All the Guides, especially Part I on Central Authority Practice, have been consulted in order to deal with cases in the most efficient and adequate manner.

Mexico – Méxique :

[Sin respuesta]

Monaco – Monaco :

Compte tenu du faible nombre d'affaires effectivement fondées sur la Convention de 1980, le Guide des bonnes pratiques est surtout utilisé, au cas par cas, sur des problèmes particuliers. Il n'a donc pas eu à mettre en place des pratiques générales.

Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

[No answer]

Nicaragua – Nicaragua :

En el proceso de remisión y elaboración de comunicaciones, y en los instrumentos de ingreso de los casos se han tomado en cuanta esta Guía.

Panama – Panama :

Dicha guía se utilizó como base para un seminario que fue dictado por la autoridad central panameña para las instituciones competentes de la aplicación en el país. Dicha guía sirvió como base para considerar como autoridades de apoyo, tales como las oficinas de pasaporte, registro civil, aerolíneas y otros.

Paraguay – Paraguay :

La guía de buenas prácticas ha sido utilizada por esta A.C como principal material de consulta, en la mayoría de los casos fue de mucha ayuda para la resolución de algunos temas dudosos.

Poland – Pologne :

The Guide to Good Practice has not exerted any influence on functioning of the Polish law. It is the common view that Polish law is effective in handling the issue of international child abduction.

Portugal – Portugal :

The first and second parts of the Good Practice Guide are duly accomplished. However, our Central Authority is not implementing the third part of that Guide yet.

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Romania – Roumanie :

Currently, judges have access to the Internet and they can consult the Guide of good practice. The Ministry of Justice as Central Authority takes the necessary steps so that the Guide of good practice be taken into consideration by the trial courts when trying the cases based on the Hague Convention.

Slovakia – Slovaquie :

So far, the Guide to Good Practice is being used mainly by the Slovak Central Authority. Though, in some cases was the Guide to Good Practice used as a necessary rule of interpretation, together with The Eliza Pérez-Vera Explanatory Report on the 1980 Hague Child Abduction Convention, by the court as well as by the legal attorneys.

South Africa – Afrique du Sud :

The different parts of the Guide helped the Central Authority to compile and later "fine-tune" our local practice manual, as well as reference during training sessions.

Spain – Espagne :

La Autoridad Central española ha incorporado nuevo personal cualificado para la gestión de las solicitudes, se ha dotado de nuevos medios tecnológicos y ha perfeccionado su base de datos. Ha mantenido encuentros con otras Autoridades Centrales así como con el Servicio Jurídico del Estado a fin de analizar las dificultades que surgen en la aplicación del Convenio.

Sweden – Suède :

The Swedish Central Authority and other authorities concerned with child abduction cases take general guidance from the Guide to Good Practice. However, the Swedish Central Authority has no sole commentary regarding the use of the Guide in particular cases.

Switzerland – Suisse :

Pas utilisé (entrée en vigueur de la convention en 1984 pour la Suisse).

United Kingdom (Scotland) – Royaume Uni (Écosse) :

The guide has not been used to date.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

United States – Etats Unis :

These three guides, all drafted long after the Convention came into force in the U.S., do provide a basis by which we are able to continually review the implementation and operation of the convention. In addition, the Guides to Good Practice are a useful evaluative tool when considering the acceptance of a prospective partner. They provide for an orderly approach.

Uruguay – Uruguay :

La guía de buenas Prácticas ha sido de utilidad para el accionar de la Autoridad Central.

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Question 37	
How has the Guide to Good Practice assisted your State in making policy or practical decisions relating to the implementation or operation of the Convention?	**Comment le Guide de bonnes pratiques a-t-il accompagné les décisions de votre Etat portant sur la politique et les pratiques relatives à la mise en œuvre et au fonctionnement de la Convention ?**

Argentina – Argentine :

Ha sido de gran ayuda para agilizar las comunicaciones, con otras Autoridades Centrales, Organismos e incluso con los particulares. Asimismo, ha resultado un material muy provechoso para dictar cursos y seminarios.

Australia – Australie :

As discussed in question 36, Australian practices and procedures are similar to those detailed in the Guide to Good Practice. The Guide has been useful for Central Authorities as a useful reference and in consolidating knowledge regarding processes.

Austria – Autriche :

No specific remarks.

Canada – Canada :

British Columbia
The guide is used as a reference when we are dealing with issues that are new to BC.

New Brunswick
It has not affected the policy and practical decisions in New Brunswick to date.

Quebec
No.

Manitoba
The Guide identifies measures that might improve our handling of Hague Convention cases.

Alberta
It is a good resource.

Nova Scotia
We would like to see the Preventive Measures part of the Guide to Good Practice well publicized so that we can make efforts to prevent an abduction from occurring in the first place. This would mean that all authorities normally involved in such situations, for example, border services, police, custom officials, etc., would need to be trained and attuned to the issues.

**

Colombie-Britannique
Le Guide est utilisé comme référence lorsque nous avons affaire à des situations qui sont sans précédent en Colombie-Britannique.

Nouveau-Brunswick
Il n'a pas influé sur nos décisions portant sur la politique et les pratiques jusqu'à présent.

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Québec
Non.

Manitoba
Le Guide décrit des mesures qui sont susceptibles d'améliorer notre traitement des cas relevant de la Convention de La Haye.

Alberta
Il s'agit d'une bonne ressource.

Nouvelle-Écosse
Nous aimerions que la partie relative aux mesures préventives du Guide de bonnes pratiques reçoive une bonne publicité de sorte que nous puissions déployer des efforts en vue de prévenir les enlèvements en premier lieu. En ce sens, il faudrait que toutes les autorités habituellement mises en cause dans les situations de ce genre, par exemple, les services frontaliers, la police, les agents des douanes, etc., soient formées et sensibilisées à ces questions.

Chile – Chili :

Han sido muy importantes para mejorar el funcionamiento de la Autoridad Central, en general en cuanto a la comunicación con otras Autoridades, a la urgencia con que se debe actuar en las causas como Autoridades.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

The Guide to Good Practice serves as a reference in our making of the policy and practical decisions relating to the implementation and operation of the Convention.

China (SAR Macao) – Chine (RAS Macao) :

The MSAR Government is now in the process of reviewing child protection laws for amendments; therefore, the Guide to Good Practice is indeed a valuable resource and reference.

Colombia – Colombie :

La Guía ha sido de apoyo para el ICBF en tanto que fue tenida en cuenta para prestar soporte técnico en la elaboración de la Ley 1008 de 2006 que definió el tema de las competencias y sobre la rigurosa observancia del principio de celeridad al disponer que el trámite se surta con un procedimiento corto, como es el Verbal Sumario.

Costa Rica – Costa Rica :

En el caso de esta Autoridad Central, se tiene que dicha guía funciona como un excelente insumo doctrinal de referencia y consulta ante la mínima duda.

Cyprus – Chypres :

[No answer]

Czech Republic – République tchèque :

Please see answer to question 36.

Denmark – Danemark :

Please see answer to question 36.

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Ecuador – Equateur :

Ver respuesta anterior.

El Salvador – El Salvador :

Debido a que en El Salvador, la aplicación del convenio es relativamente nueva, se ha retomado la guía de buenas prácticas para que en la medida que más casos se conozcan, la implementación sea eficaz; en ese sentido, ha servido como base para la elaboración de un manual de procedimiento.

Finland – Finlande :

[No answer]

France – France :

Compte-tenu de l'expérience acquise par l'autorité centrale française dans l'application de la convention de La Haye, ce guide a permis de conforter ses règles de mise en oeuvre de ladite convention.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

La guía a sido de gran ayuda.

Iceland – Islande :

See question 36.

Ireland – Irlande :

No comment.

Israel – Israël :

If new policy or practical questions arise, the Israeli Central Authority will turn to the Guide for assistance.

Italy – Italie :

Les décisions concernant des demandes présentées aux termes de la Convention de La Haye de 1980 relèvent du ressort exclusif des Autorités Judiciaires qui ne sont pas tenues de prendre en considération des indications non contraignantes telles que les Bonnes Pratiques.

Latvia – Lettonie :

Please, see answer to the previous question.

Lithuania – Lituanie :

Part I and Part II (Central Authority Practice and Implementing Measures, respectively) of the Guide to Good Practice were translated into Lithuanian in 2004. The Ministry of Social Security and Labour commissioned the publication of the translation of Part I (500 copies) and disseminated it among libraries, courts, ministries and municipal child rights

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protection services. SCRPAS has used this publication as well as other parts of the Guide to Good Practice in settling applications under the 1980 Convention and in seeking ways to implement the Convention in Lithuania. The Guide was also used in preparing information on the 1980 Convention for SCRPAS's website.

Malta – Malte :

So far, we have not had enough experience to enable us to make policy decisions in order to change the way that cases are handled.

Mexico – Méxique :

[Sin respuesta]

Monaco – Monaco :

Le Guide des bonnes pratiques permet de donner des éclaircissements sur l'interprétation de la convention qui peuvent être utiles aux magistrats et à l'Autorité Centrale.

Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

[No answer]

Nicaragua – Nicaragua :

Ha servido como una herramienta de apoyo en la aplicabilidad del Convenio.

Panama – Panama :

La guía ha servido como documento de consulta a fin de buscar alguna solución practica en casos, sin embargo, habría que analizar antes de poner en practica la medida, que es legal su aplicación en nuestro ordenamiento jurídico, es decir, que la autoridad central tiene capacidad para aplicar la medida.

Paraguay – Paraguay :

Una copia de esta guía fue entregada a todos los participantes del Seminario sobre Sustracción Internacional de Menores, que contó con la participación de los actores que aplican el Convenio. Por lo menos 15 jueces, disponen de la guía de buenas prácticas, la parte pertinente a Jueces y Autoridades Centrales, no así la tercera parte.

Poland – Pologne :

The Guide of Good Practice has not exerted any direct influence on making the policy of implementing the Convention in Poland. However, we consider the advice on the issue of professional training of the judges in the area of implementing the Convention very useful, in particular in the area of taking measures to prevent child abduction. It should be noted that preventing child abduction is much more effective than restoring the situation from before the abduction of a child according to the provisions of the Hague Convention.

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Portugal – Portugal :

The Portuguese Central Authority is now improving its activity, being restructured and has been taking the Good Practice Guide has reference in the process.

Romania – Roumanie :

Please see answer to question 36.

Slovakia – Slovaquie :

See answer to the question 36.

South Africa – Afrique du Sud :

Please refer to 36 above.

Spain – Espagne :

La Guía de Buenas Prácticas ha supuesto una mayor toma de conciencia en la adopción de medidas cautelares y a la necesidad de actuar con la mayor urgencia posible en la resolución de los casos.

Sweden – Suède :

See question 36.

Switzerland – Suisse :

Pas d'influence directe connue de l'AC.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

[No answer]

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

See response to 36 above.

United States – Etats Unis :

Whenever suggestions are made, or issues are raised, regarding the operation of the Convention, the Guide is one of the tools to which we turn in considering a response. The Guide serves as a reference point in our decision making process.

More importantly, the Guide is an excellent reference tool when participating in seminars that include states parties, or potential states parties. The Guide is a uniform platform from which to discuss with, and evaluate partners, as well as potential partners. While it is not the only reference to which we turn, it does provide to all contracting states a general basis from which to work. It is also useful to turn to the Guide when engaging a state on issues of compliance with the convention.

Uruguay – Uruguay :

Ver respuesta 36.

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Question 38	
How have you ensured that relevant authorities in your State have been made aware of, and have had access to, the Guide to Good Practice?	**Comment vous êtes-vous assuré que les autorités compétentes de votre Etat ont été informées de l'existence du Guide de bonnes pratiques et qu'elles peuvent y avoir accès ?**

Argentina – Argentine :

Se garantiza a través de la publicidad y de la difusión de la página www.hcch.net

Australia – Australie :

As discussed in question 36, Australian state and territory Central Authorities were consulted on drafts of the Guide to Good Practice. Central Authorities are aware of, and regularly refer to, the documents available from the Hague website.

Austria – Autriche :

See previous questionnaires.

Canada – Canada :

Ontario
The guide is only relevant internally within the Ontario Central Authority.

British Columbia
The Guides are kept in the office of the CA.

New Brunswick
I distributed the Guide to Good Practice to all pertinent personnel. It is also on the intranet of the Office of the Attorney General for easy access.

Quebec
The Quebec Central Authority has done nothing to disseminate that information. However, a direct link to the guide could be created on the Department of Justice Internet site.

Manitoba
Because of the broad role of Manitoba's Central Authority, it is most relevant to our internal work.

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Ontario
Le Guide est seulement pertinent à l'interne au sein de l'Autorité centrale.

Colombie-Britannique
Les Guides sont conservés au bureau de l'Autorité centrale.

Nouveau-Brunswick
J'ai remis des exemplaires du Guide à tous les membres du personnel concernés. Il figure aussi sur l'Intranet du Bureau du procureur-général, ce qui le rend facilement accessible.

Québec
Rien n'a été fait pour diffuser cette information par l'Autorité centrale du Québec. Toutefois, un lien direct à ce guide sur le site internet du ministère de la justice pourrait être fait.

Manitoba
En raison du vaste rôle de l'Autorité centrale du Manitoba, le Guide est surtout pertinent pour notre travail interne.

Chile – Chili :

En seminarios, charlas y talleres.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

The relevant authorities in our jurisdiction are all aware ofr and have had access to the Guide to Good Practice posted in HCCH's website.

China (SAR Macao) – Chine (RAS Macao) :

The relevant MSAR authorities such as the Procuratorate, the Court and, naturally, the MSAR Central Authority are aware of such Guide.

Moreover, the MSAR Central Authority is widely disseminating the Guide by consulting relevant authorities during the process of reviewing the law and by setting up special cross-department committees to carry out the necessary work.

On the other hand, as mentioned before, the MSAR Central Authority website is going to be improved in order to include information on child abduction, such as the Guide to Good Practice.

Colombia – Colombie :

En el proceso de capacitación se ha dado a conocer la Guía de Buenas Prácticas y en el Manual que está próximo a editarse se han incluido sus recomendaciones. Copia de este manual será enviado a los Magistrados, Jueces y Defensores de Familia, así como a las entidades de control, Defensoría del Pueblo y Procuraduría General de la Nación.

Costa Rica – Costa Rica :

Eso sucedió en el Seminario Judicial concerniente al Convenio de la Haya sobre los Aspectos Civiles de la Sustracción Internacional de Menores, organizado por la Embajada de EEUU en Costa Rica, en San José, el día 26 de abril de 2005.

Cyprus – Chypres :

[No answer]

Czech Republic – République tchèque :

Please see answer to question 36.

Denmark – Danemark :

Please see answer to question 36.

Ecuador – Equateur :

Muy pocas autoridades tienen acceso a esta documentación. La Oficina de Autoridad Central ha dado pasos para lograr su difusión pero no ha sido suficiente.

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El Salvador – El Salvador :

Para la Procuraduría General de la República, como Autoridad Central, la guía es un importante insumo de referencia doctrinal.

Finland – Finlande :

[No answer]

France – France :

Les autorités compétentes ont bénéficié de formations assurées régulièrement par les membres du ministère de la Justice français, ce qui leur a permis d'être renseigné sur l'existence du guide des bonnes pratiques.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

See question 36.

Ireland – Irlande :

No comment.

Israel – Israël :

Actual copies of the Guide have not been provided to other authorities. The Israeli Central Authority's practices are consistent with the guide. It works closely with the other authorities, guiding them in accordance with the principles of the guide. It has developed and continues to develop guidelines with the various authorities in order to ensure that each authority is able to carry out its responsibilities in accordance with the Guide and the goals of the Convention. Further, seminars are being planned with the relevant authorities to update work practices, taking into account the relevant portions of the Guide.

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Italy – Italie :

[Pas de réponse]

Latvia – Lettonie :

In collaboration with the Centre of the Translation and Terminology, up to now in Latvian there are translated I and II part of the Guide to Good Practice. In the nearest future there is planned to translate III part as well. Both these translations are available at the website of the Centre of the Translation and Terminology:
http://www.ttc.lv/index.php?&id=10&l=LV&seid=down&itid=15528;
http://www.ttc.lv/index.php?&id=10&l=LV&seid=down&itid=15529.

Within limits we have informed relevant institutions about the Guide to Good Practice, *e.g.*, we have sent informative letter to the Administration of the Courts which coordinates work of Courts in Latvia with request to distribute information to Courts both about mentioned and available parts of the Guide as well as about other questions regarding implementation of the Convention.

Lithuania – Lituanie :

Parts I and II of the Guide to Good Practice were translated into Lithuanian and distributed free of charge to municipal child rights protection services and courts as methodical guidance.

Malta – Malte :

The persons involved in cases of international child abduction (with other Hague Countries) are aware of the Guides to Good Practice.

Mexico – México :

[Sin respuesta]

Monaco – Monaco :

Le Guide des bonnes pratiques devrait être transmis aux magistrats est services concernés par les affaires d'enlèvement.

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Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

New Zealand has one Central Authority. The judiciary and counsel are encouraged to refer to the GGP.

Nicaragua – Nicaragua :

Se intercambian interpretaciones con los funcionarios de las Autoridad Administrativa

Panama – Panama :

A través de seminarios realizados por la autoridad central.

Paraguay – Paraguay :

Ver la respuesta 37.

Poland – Pologne :

The provisions of the Guide to Good Practice is discussed during the conferences organized by the Ministry of Justice or the Presiding Judges of Regional and Appellate Courts for the judges adjudicating in cases concerning family matters. Discussion on the provisions of Part II of the Guide to Good Practice by the judges, prosecutors and probation officers may lead to propagating implementation of the Convention on a much larger scale. Moreover, the Guide to Good Practice is available on the official website of the Ministry of Justice.

Portugal – Portugal :

The Portuguese Central Authority is now implementing its website, in which will be a link to the *Hague Conference on Private International Law* allowing the access to that Guide.

Romania – Roumanie :

Please see answer to question 36.

Slovakia – Slovaquie :

The Slovak Central Authority has not used any special measures so far, except of the information provided on the website together with hypertext links on the website of the Hague Conference.

South Africa – Afrique du Sud :

The Central Authority for R.S.A has conducted a national workshop with provincial heads and will continue to have annual " think tanks" through Justice College, which will involve all relevant role players in child abduction matters.

Spain – Espagne :

En todos los Cursos y Seminarios que se han celebrado, se ha dado la mayor difusión a las tres Guías Prácticas.

Sweden – Suède :

See question 36.

Switzerland – Suisse :

Une information relative au Guide de bonnes pratiques est fournie à l'occasion de chaque conférence, exposé et publication de l'autorité centrale : le renvoi au site de la Conférence de La Haye et l'invitation à s'y rendre aux avocats, praticiens et autres personnes intéressées en contact avec l'AC, constituent également un moyen de publicité.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

The Central Authority for Scotland has access to copies of the guide.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

See response to 36 above.

United States – Etats Unis :

At each training opportunity, and as appropriate in other situations, mention is made of the Guide to Good Practice. Given the fact that the USCA works with federal, state, and local jurisdictions across the fifty states, it is an ongoing education process.

Uruguay – Uruguay :

Ver respuesta 36.

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Question 39	
Do you have any comments concerning the Guide to Good Practice – Part III on Preventive Measures including how best to publicise this Part of the Guide?	**Avez-vous des observations à formuler sur la troisième partie du Guide de bonnes pratiques sur les mesures préventives, notamment quant à la meilleure façon de la diffuser ?**

Argentina – Argentine :

Ha resultado muy útil para asesorar a quienes temen sufrir una situación de este tipo, sobre como tomar todo tipo de precauciones para evitarlo.

Australia – Australie :

No.

Austria – Autriche :

No comments.

Canada – Canada :

Quebec
A direct link to the preventive measures page of the guide could be created on the Department of Justice Internet site.

Manitoba and British Columbia
State parties could work to include references to this Part of the Guide in domestic information materials about the Convention. Perhaps it could be given greater prominence on the Child Abduction portion of the Permanent Bureau's website.

**

Québec
Un lien direct à ce guide sur le site internet du ministère de la justice pourrait être fait à la page sur les moyens de prévention.

Manitoba et Colombie-Britannique
Les États parties pourraient travailler à inclure des références à cette partie du Guide dans les documents d'information sur la Convention publiés dans leur pays. L'on pourrait peut-être lui faire une place plus proéminente dans l'Espace « Enlèvement d'enfants » du site Web du Bureau permanent.

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Chile – Chili :

No.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We have no comments on the Guide to Good Practice – Part III on Preventive Measures.

China (SAR Macao) – Chine (RAS Macao) :

Disseminations of the Guide to Good Practice – Part III on Preventive Measures will be more effective if it is uploaded on the web in more languages, such as Chinese, and if it is disseminated in those languages in the form of brochures.

Colombia – Colombie :

Nuestro interés es incluir sus recomendaciones, dentro del soporte técnico que se brinda en las jornadas de capacitación a las diferentes autoridades.

Costa Rica – Costa Rica :

Se sugiere que den a conocer dicho documento a las autoridades centrales de México y Nicaragua, y que la Oficina Permanente organice un especio de facilitación e intermediación entre esas dos autoridades centrales y la de Costa Rica, a efecto de que todas juntas razonemos una salida útil que ulteriormente solucione nuestros problemas de comunicación.

Cyprus – Chypres :

[No answer]

Czech Republic – République tchèque :

Please see answer to question 36.

Denmark – Danemark :

Please see answer to question 36.

Ecuador – Equateur :

No.

El Salvador – El Salvador :

Ninguno.

Finland – Finlande :

[No answer]

France – France :

Compte-tenu du caractère accessible du guide de bonnes pratiques, l'autorité centrale française n'a pas d'observation à formuler.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

See question 36.

Ireland – Irlande :

No comment.

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Israel – Israël :

The Israeli Central Authority will be producing a pamphlet on preventive measures, with plans to distribute it through various government ministries who work with "target" populations, including: the Ministry of Absorption (for new immigrants); the Ministry of the Interior (which issues passports and other travel documents); the Ministry of Social Welfare, and the Israel Police. There are further plans for distribution to lawyers through the Israel Bar Association, to foreign embassies/consulates, and to Jewish Agency offices overseas who assist families wishing to immigrate to Israel.

Italy – Italie :

Aucune remarque.

Latvia – Lettonie :

We do not have additional comments.

Lithuania – Lituanie :

For the time being Part III of the Guide to Good Practice (Preventive Measures) has not been translated into Lithuanian and published or otherwise distributed.

Malta – Malte :

The best type of publicity depends on the kind of society, and thus it would probably be up to the country involved to determine how best to use publicity.

Mexico – Méxique :

Excelente trabajo que vale la pena hacerlo del conocimiento del público en general así como organizaciones civiles y gobierno involucrados con el tema.

Monaco – Monaco :

Non.

Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

No.

Nicaragua – Nicaragua :

Lo idóneo sería que cada Autoridad Central, pudiera publicar esta publicación y poderla compartir y capacitar a funcionarios involucradas en el tema de Restitución Internacional de personas menores de edad.

Panama – Panama :

Se utiliza como material de consulta y si es viable su aplicación se requiera a la autoridad que tendría que ponerlo práctica.

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Paraguay – Paraguay :

La tercera parte "Medidas de Prevención" debe ser mejor conocida y publicitada.

Poland – Pologne :

Please see answer to question 38.

Portugal – Portugal :

Yes, the Portuguese Central Authority would like to tell that the information campaigns could be done using *posters* distributed to the police authorities and NGO's.

Romania – Roumanie :

No.

Slovakia – Slovaquie :

No comments.

South Africa – Afrique du Sud :

We are considering public awareness campaigns through the Department's communications section.

Spain – Espagne :

[Sin respuesta]

Sweden – Suède :

See question 36.

Switzerland – Suisse :

Il paraît important d'établir un aide-mémoire à l'attention des parents intéressés, qui puisse être consulté sur le site de la Conférence de La Haye et auprès des Etats contractants.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

No.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

No.

United States – Etats Unis :

The United States Central Authority (USCA) believes this Guide is very useful. In particular, we believe the point made in section 1.1.1.2 must be underscored – that Central Authorities should be provided with sufficient human and material resources. The U.S. Department of State notes that, since our office of Children's Issues has been operating as the USCA, our staff has grown from 3 to almost 50. We have created a separate Prevention Unit within the USCA. One significant part of what the Prevention Unit does to prevent international child abduction is managing our Children's Passport Issuance Alert Program. We now enter about 3,000 requests per year into the program.

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The USCA believes the suggestions for travel documentation included in section 1.2.1 are very important. The USCA includes specific training for our staff on our law requiring consent of both parents for the issuance of a child's passport as well as on how we use the issuance of visas to prevent international abduction in issuing visas. We believe these training courses are a good way to publicize the suggestions in this guide. Another way that the USCA disseminates important information about abduction prevention is through our website. Currently, we have a prevention packet called Prevention Tools that is available on our internet site. This is one way we address the suggestions made in the guide in section 4, Provision and Dissemination of Information.

With regard to section 5 of the Guide, Training and Co-Operation, the USCA notes that we do many team presentations and trainings with our NCMEC colleagues. In addition to judicial presentations, we provide trainings to our State Department personnel. We routinely work with other federal agencies as well, including FBI, Interpol, Department of Justice, and the Bureau of Indian Affairs.

Finally, please note that while international parental child abduction is a crime in the United States, it is not noted in section 1.3, footnote 77.

Uruguay – Uruguay :

Ver respuesta 36.

Question 40	
Please describe any developments in legislation, case law or practice relating to enforcement measures and transfrontier access / contact. If your country has responded to the Questionnaire on Enforcement Measures distributed in July 2004 or the Consultation Paper on Transfrontier Access / Contact distributed in January 2002 please describe any developments in legislation, case law or practice since your response was made. (The Questionnaire and Consultation Paper are available on the website of the Hague Conference at: < www.hcch.net > → Child Abduction Section → Questionnaire & Responses).	**Veuillez décrire toute modification législative, jurisprudentielle ou pratique relative aux mesures d'exécution ou au droit de visite / droit d'entretenir un contact. Si votre pays a répondu au Questionnaire sur l'exécution des décisions diffusé en juillet 2004, ou au document de consultation sur le droit de visite et le droit d'entretenir un contact transfrontière de janvier 2002, veuillez décrire les évolutions législatives, jurisprudentielles ou pratiques intervenues depuis (le Questionnaire et le document de consultation sont disponibles sur le site Internet de la Conférence de La Haye à l'adresse suivante : < www.hcch.net > → Espace enlèvement d'enfants → Questionnaires & réponses).**

Argentina – Argentine :

No se ha producido en nuestro país ningún desarrollo en la legislación, jurisprudencia o práctica desde que se respondió el cuestionario sobre medidas de ejecución del año 2004.

Australia – Australie :

Not applicable.

Austria – Autriche :

See reply 6.

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Canada – Canada :

Alberta
The Alberta Central Authority responded to the previous questionnaire on access. The only change is that now all family law legislation, in Alberta, including access enforcement, is housed in the Family Law Act which was came into effect on Oct 1, 2005.

**

Alberta
L'Autorité centrale de l'Alberta a répondu au questionnaire précédent sur le droit de visite. Le seul changement à signaler est que maintenant, toutes les dispositions législatives relatives au droit de la famille en Alberta, y compris en matière d'exécution du droit de visite, sont regroupées dans le Family Law Act qui est entré en vigueur le 1er octobre 2005.

Chile – Chili :

No ha habido ningún cambio respecto a las respuestas entregadas en el cuestionario del año 2004.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

There are no developments worth mentioning in this respect since our response to Questionnaire on Enfocement Measures in 2004.

China (SAR Macao) – Chine (RAS Macao) :

No development to point out.

Colombia – Colombie :

No tenemos antecedentes de este cuestionario.

Costa Rica – Costa Rica :

Hasta el momento no se tienen datos sobre el particular.

Cyprus – Chypres :

[No answer]

Czech Republic – République tchèque :

No developments.

Denmark – Danemark :

Please see answer to question 36.

Ecuador – Equateur :

Legislación:

El Código de la Niñez y Adolescencia señala que el padre, la madre o cualquier persona que retenga indebidamente al hijo o hija cuya patria potestad, tenencia o tutela han sido encargadas a otro, o que obstaculice el régimen de visitas, podrá ser requerido

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judicialmente para que lo entregue de inmediato a la persona que deba tenerlo y quedará obligado a indemnizar los daños ocasionados por la retención indebida, incluidos los gastos causados por el requerimiento y la restitución.

Si el requerido no cumple con lo ordenado, el Juez decretará apremio personal en su contra, sin perjuicio de ordenar, sin necesidad de resolución previa, el allanamiento del inmueble en que se encuentra o se supone que se encuentra el hijo o hija, para lograr su recuperación.

El Salvador – El Salvador :

No se cuenta con datos al respecto.

Finland – Finlande :

[No answer]

France – France :

Aucune modification législative ou jurisprudentielle relative aux mesures d'exécution ou au droit de visite / droit d'entretenir un contact n'est intervenue en France depuis le guide des bonnes pratiques, de juillet 2004.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

No comment.

Ireland – Irlande :

This office has not responded to this questionnaire.

Israel – Israël :

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In Family Application 89790/00, the family had lived in the United States, where the parents subsequently divorced. The motion of the mother for relocation was granted, while determining the visitation rights of the father. Four months after the relocation, the father commenced proceedings according to the Convention, claiming that the mother was violating his visitation rights. The Tel Aviv Family Court ruled that this was the correct procedure in this case, according to Article 21. However, since the Convention has no operative relief in the case of violation of visitation rights, the effect of the Convention is mostly procedural. In cases according to Article 21, the best interest of the child must be examined and taken into consideration, while honoring to the utmost any decisions of foreign Courts.

In Family Application 014990/04, a mother in Argentina filed a Hague Convention application requesting that her two children, who live in Israel, be allowed to visit her in Argentina. There was no existing order for visitation. The Ashdod Family court, cited a case from 1997 which noted that Article 21 refers to an application being made to the administrative authority, not judicial authority, so that the administrative authorities will, to the best of their abilities, ensure the carrying out of the visitation granted by an authorized court. However, this does not mean determining visitation arrangements as

an initial determination under the Convention. Such a determination must be done in accordance with the internal law of each country."

Therefore, at this time the Israeli courts are taking the view that if there is no pre-existing order for access, then an initial application to determine visitation rights must be done under the internal Israeli law, not the Convention.

Italy – Italie :

Aucun développement législatif à signaler pour l'Italie.

Latvia – Lettonie :

There were no improvements since questionnaire 2004.

Lithuania – Lituanie :

The Ministry of Justice informs that communication rights established by court decision and including interstate meetings/communications are implemented in accordance with the procedure set out in Chapter LVII "Specific Features of Implementation of Decision of Non-Pecuniary Nature" of the Code of Civil Procedure of the Republic of Lithuania that came into effect on 6 April 2002. In case of failure to execute a court decision obligating the debtor to take or to stop certain actions not related to the transfer of property or funds, a bailiff issues a report in the set form. If a decision obligating the debtor to take/stop certain actions that may only be taken/stopped by the debtor himself is not executed within the time limit set by the court, the bailiff must submit the report to a local court the jurisdiction of which includes the place of execution. The issue of non-execution of the decision is heard in court. The claimant and the debtor are informed about the time and place of the court hearing, however, failure to appear in court by the claimant or the debtor does not prevent the court from considering the issue of non-execution. If the court establishes that the debtor has failed to execute the decision, it may impose a fine of up to LTL 1,000 for the benefit of the claimant and set a new time limit for the execution of the decision. Should the debtor fail to comply with the time limits for the second time or more times, the court repeatedly imposes sanctions provided for in p. 5 of this article. Payment of the fine does not release the debtor from the liability to take/stop actions set out in the court decision. In case if a legal person has failed to execute a court decision obligating the debtor to take or to stop certain actions not related to the transfer of property or funds, the court may impose sanctions upon the head or another responsible person of the enterprise.

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Malta – Malte :

Not applicable, in view of the small caseload.

Mexico – México :

Ninguno.

Monaco – Monaco :

La loi 1.278 du 29 décembre 2003 a modifié le code civil en accordant aux ascendants le droit de maintenir les liens avec l'enfant. L' article 300 alinéa 4 dispose : « Il ne peut, sans motifs graves, être fait obstacle aux relations personnelles de l'enfant avec ses ascendants. En cas de difficulté, les modalités de ces relation sont réglées par le juge tutélaire. Le juge tutélaire peut, dans l'intérêt de l'enfant, accorder également de correspondance ou de visite à d'autres personnes. »

Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

An application made under the Convention for assistance from the Central Authority to secure contact with a child will be dealt with under the Care of Children Act 2004 in the same way as domestic applications, and a resulting order can be enforced under the general provisions relating to enforcement of domestic orders. In New Zealand the governing legislation allows for the use of Article 21 procedure to establish access rights de novo (start afresh)

No further developments to add to response to July 2004 consultation paper.

Nicaragua – Nicaragua :

Nicaragua como Estado miembro, no ha sido requerido en cuanto al Cuestionario sobre medidas de ejecución que fue distribuido en julio de 2004 o el *Consultation Paper on Transfrontier Access / Contact* [Documento de Consulta sobre derecho de visita transfronterizo]

Panama – Panama :

Se mantiene la misma legislación, sin embargo, ha existido un aumento en los casos donde los padres requieren derechos de visita en vez de restitución internacional, toda vez que se les explica la diferencia entre cada uno. En muchos casos los padres requieren que el estado requerido sea el que fije las visitas.

Paraguay – Paraguay :

Desde que asumimos el Rol de A.C no tenemos ningún conocimiento de casos de derecho de visitas transfronterizos.

Poland – Pologne :

A legally binding judgment of a Polish court regulating the applicant's access rights is subject to a compulsory execution under the Article 1050 et seq. of the Polish Code of Civil Procedure (k.p.c.). In case of a failure to execute the judgment the court shall set a deadline on an application of the creditor (the authorized person) for the debtor (the obliged person) to execute the judgment under the penalty of a fine. After the expiration of the deadline the court shall levy a fine on the debtor and set a new deadline under the penalty of a higher fine. At the same time the court shall order the fine to change into detention in case of the debtor's failure to pay the fine. Within one judgment the court may levy a fine on the debtor not higher than 1000 zlotys unless three successive fines do not bring any effect. The total amount of the fines levied on the debtor cannot exceed 100 000 zlotys.

Portugal – Portugal :

There were not developments on this matter until now.

Romania – Roumanie :

Law no. 369/2004 provides for civil fines against the parent who does not of his/her own accord fulfill the obligation to return the child, as ordered by the judge. As far as the right of visiting is concerned, we noticed that, up to now, the court has been reticent to

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compel the parent enjoying the trusteeship right to pay a fine in case he/she does not observe the visiting program established by the court.

Slovakia – Slovaquie :

No developments, the specific legislation concerning the enforcement of the return orders is still missing. The enforcement of such orders is regulated only through the general provisions of the The Civil Procedure Act No. 99/1963 Z.z.

South Africa – Afrique du Sud :

Developments that are in pipeline– the Childen's Bill, which will become law soon, makes provision for the appointment of separate legal representation for the abducted child should the judicial officer be of the view that such appointment will be in the child's best interests.

Spain – Espagne :

Se deben reproducir literalmente las respuestas que España dio al cuestionario sobre la ejecución de las decisiones de retorno de menores en aplicación del Convenio de La Haya de 1980 y las decisiones sobre derecho de visitas, sin que desde el año 2004 hayan existido en España cambios relevantes relacionados con la ejecución de medidas en casos de derecho de visita transfronterizo. Evidentemente, la vigencia del Reglamento comunitario 2.201/2003 es clave en la materia al suprimir incluso el exequátur en esta área en su Art. 41 y concordantes permitiendo el Art. 48 del mismo la existencia de modalidades prácticas del ejercicio del derecho de visita.

Sweden – Suède :

See question 36.

Switzerland – Suisse :

[Pas de réponse]

United Kingdom (Scotland) – Royaume Uni (Écosse) :

[No answer]

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

Orders made in the UK are automatically enforceable.

United States – Etats Unis :

As of June 2006, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) has been adopted by 44 of 50 U.S. states and the U.S. Virgin Islands. See http://www.law.upenn.edu/bll/ulc/uccjea/final1997act.htm. The UCCJEA permits direct enforcement of Hague orders across state lines (Sec. 302). In addition, state and local law enforcement are empowered to assist in location and recovery of abducted children (Sec. 315). Foreign custody orders are directly enforceable in the U.S. under section Sec. 105 of the UCCJEA. The UCCJEA (sec. 308-301) also contains provisions allowing for the immediate recovery of a child as well as warrants to take physical custody of a child (these warrants are known as "pickup" orders) in order to protect a child or prevent an abduction.

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Uruguay – Uruguay :

Ver respuesta 36.

Question 41	
Are there any particular matters which you would like to see included in a Guide to Good Practice on Transfrontier Access / Contact? (See "Transfrontier Access / Contact and the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction – Final Report" drawn up by William Duncan, Deputy Secretary General, Preliminary Document No 5 of July 2002 available at: < www.hcch.net > → Conventions → Convention 28 → Practical Operation Documents.)	**Existe-t-il des questions particulières que vous souhaiteriez voir figurer dans un Guide de bonnes pratiques sur le droit de visite / droit d'entretenir un contact transfrontière ? (voir « Le droit de visite / droit d'entretenir un contact transfrontière et la Convention de La Haye du 25 octobre 1980 sur les aspects civils de l'enlèvement international d'enfants – rapport final », établi par William Duncan, Secrétaire général adjoint, Document préliminaire No 5 de juillet 2002, disponible à l'adresse < www.hcch.net > → Conventions → Convention 28 → Documents relatifs au suivi pratique).**

Argentina – Argentine :

En efecto sería muy importante que se reglamentara en detalle el tema de las visitas transnacionales, toda vez que los artículos contenidos en la Convención de La Haya de 1980 no resultan suficientes para dar una solución a esta problemática. Lo escueto de estas disposiciones lleva a que cada Autoridad Central las interprete de manera absolutamente diferente, algunas con parámetros más abarcativos que otras. A modo de ejemplo, se puede citar que algunos países sólo dan curso a aquellas peticiones de visitas que han tenido como antecedente una sustracción o una retención ilícitas. Esta Autoridad Central entiende que el criterio debe ser más amplio, para cubrir todo tipo de situaciones en que un padre no tiene contacto con su hijo. Sería también importante que la Guía de Buenas Prácticas determinara quienes son las personas con legitimación activa para solicitar las visitas.

Australia – Australie :

Not applicable.

Austria – Autriche :

No specific remarks.

Canada – Canada :

<u>Saskatchewan</u>
It would be helpful if the Guide discussed immigration and visa issues, and solutions to access difficulties in these circumstances. It would also be helpful if it addressed the enforceability of mediated agreements.

<u>Manitoba</u>
Because incoming requests to assist in enforcement of a foreign access order would fall under our provincial/territorial child custody enforcement legislation in Canada, information about that legislation (or similar legislation in other States) would be useful.

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Provincial/territorial child custody enforcement legislation provides a mechanism by which parties can seek to have an extra-provincial or a foreign custody or access order recognized and enforced in Canada. This legislation does not apply to recognition of agreements or of foreign orders to enforce a custody or access order nor does it address recognition of rights of custody and access that may arise by operation of law. In addition, it does not apply to agreements except where those agreements have the same force and effect as a court order by virtue of the legislative provisions in the province in question.

Any Guide should discuss the possible role of international mediation and of the 1996 Children's Convention.

Any Guide would need to recognize that unlike a request for return or even a request for access enforcement, an access establishment application involves acting as an advocate for a parent. While the Central Authority may be able to act as a friend of the Court with respect to the former types of applications, the latter go further. Access applications involve acting as counsel for a parent and can lead to other family law issues that would not directly involve a Central Authority proper (e.g. child or spousal support, property claims, claims for protective relief, etc.). They can also lead to liability issues.

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Saskatchewan

Il serait utile que le Guide aborde des questions touchant l'immigration et les visas, et qu'il propose des solutions aux difficultés qui se présentent au plan du droit de visite en pareilles circonstances. Il serait également utile qu'il traite de la force exécutoire des ententes découlant d'une médiation.

Manitoba

Étant donné que les demandes d'assistance provenant de l'étranger relativement à l'exécution d'une ordonnance étrangère attributive de droit de visite relèveraient de nos lois provinciales/territoriales sur l'exécution des ordonnances de garde au Canada, il serait utile de fournir des renseignements sur ces lois (ou sur les lois similaires dans d'autres États).

Les lois provinciales/territoriales sur l'exécution des ordonnances de garde prévoient un mécanisme qui permet aux parties d'obtenir la reconnaissance et l'exécution d'une ordonnance attributive de garde ou de droit de visite extraprovinciale ou étrangère. Ces lois ne s'appliquent pas à la reconnaissance d'ententes ou d'ordonnances étrangères portant sur l'exécution d'une ordonnance attributive de garde ou de droit de visite, non plus qu'à la reconnaissance de droits de garde ou de visite de plein droit. En outre, elles ne s'appliquent pas aux ententes sauf lorsque ces ententes ont valeur d'ordonnance judiciaire en vertu des lois de la province en question.

Le Guide devrait aborder les thèmes de la médiation internationale et de la Convention de 1996 sur la protection internationale des enfants.

Le Guide devrait reconnaître qu'à la différence d'une demande de retour ou même d'une demande d'exécution de droit de visite, une demande visant à obtenir un droit de visite oblige à prendre parti en faveur d'un parent. Tandis que l'Autorité centrale peut agir dans certains cas à titre d'ami de la cour dans le contexte de la première catégorie de demandes, la seconde va plus loin. Les demandes d'attribution de droit de visite obligent à agir comme procureur d'un parent et peuvent mener à d'autres questions de droit de la famille qui ne concernent pas directement l'Autorité centrale (p. ex., pension alimentaire pour l'enfant ou pour le conjoint, revendication de biens, demandes de mesures protectrices, etc.). Elles peuvent aussi soulever des questions de responsabilité civile.

Chile – Chili :

Nos parece bien el reporte final y agradecemos el esfuerzo por regular este tema que no está tan tratado en la Convención.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We have no particular matters which we would like to include in the Guide.

China (SAR Macao) – Chine (RAS Macao) :

At present, there is no particular matter to point out.

Colombia – Colombie :

La recomendación a las Autoridades Judiciales o Administrativas de los Estados Parte para que en sus decisiones que fijen un régimen de visitas se pida el apoyo de las Autoridades Competentes donde estas deban cumplirse con el fin de que se efectúe un acompañamiento al caso a objeto de prevenir una nueva sustracción.

El ICBF ha efectuado acompañamiento a muchos casos, logrando con éxito que los niños vuelvan al país donde reside.

Que los Estados parte gestionen con las Autoridades Migratorias y Diplomáticas permisos especiales o visas que permitan a los padres ingresar al país de residencia habitual a ejercer su derecho de visitas, estableciendo las restricciones necesarias a efectos de impedir que el padre visitante sustraiga al niño o niña o que éste aproveche la oportunidad para permanecer de forma ilegal en ese país.

Costa Rica – Costa Rica :

Sí, el detalle sobre casos de la vida real que sirvan de ejemplo.

Cyprus – Chypres :

More information on access rights and interpretation of article 21.

Czech Republic – République tchèque :

No.

Denmark – Danemark :

Please see answer to question 36.

Ecuador – Equateur :

No.

El Salvador – El Salvador :

Ninguna.

Finland – Finlande :

[No answer]

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France – France :

Non.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

No comment.

Ireland – Irlande :

No comment.

Israel – Israël :

No comments at this time.

Italy – Italie :

Aucune indication à donner.

Latvia – Lettonie :

We do not have additional comments.

Lithuania – Lituanie :

In the opinion of SCRPAS, these publications should contain a detailed discussion of issues of execution of court decisions on communication rights and return of the child: how execution of such decisions should be ensured; how a decision is to be executed if the person refuses to execute it voluntarily; who bears execution costs (including costs of travel, services by bailiffs, psychologists etc.); which persons may/should participate in the execution of court decisions adopted under the 1980 Convention etc.

Malta – Malte :

A particular problem that was encountered, was with regard to the application of the Convention in a circumstance where the left-behind parent did not have legal access rights. It would be useful to see how the Hague Conference interprets the question of jurisdiction in such a case. Furthermore, it would also be useful to have a guide on how to deal with return orders when the child (especially an older child) does not want to go back to the country of origin.

Mexico – Méxique :

[Sin respuesta]

Monaco – Monaco :

Non.

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Netherlands – Pays-Bas :

No.

New Zealand – Nouvelle Zélande :

Not applicable.

Nicaragua – Nicaragua :

[Sin respuesta]

Panama – Panama :

Que en el evento que se niegue una restitución internacional por razones que no sean peligro inminente para el menor, el juez dicte en dicha resolución derechos de visita para el otro padre y fije las medidas preventivas que el estado debe tomar para que al momento de darse las visitas no haya retención ilícita.

Paraguay – Paraguay :

[Sin respuesta]

Poland – Pologne :

The Ministry of Justice finds it very useful to follow the provisions of the Guide to Good Practice on Transfrontier Access/Contact on a daily basis. The issue of Transfrontier Access/Contact is presented in the Guide in a very comprehensive way, thus, in our view, it requires no supplementing.

Portugal – Portugal :

Yes, the Portuguese Central Authority would like to suggest that the Hague Conference introduces the child access right to relatives, namely to the grandparents of a child.

Romania – Roumanie :

[No answer]

Slovakia – Slovaquie :

No comment.

South Africa – Afrique du Sud :

No.

Spain – Espagne :

Cualquier guía práctica que se elaborara sería conveniente que tuviera en cuenta las especificidades de las sustracciones en el ámbito intra comunitario.

Sweden – Suède :

See question 36.

Switzerland – Suisse :

[Pas de réponse]

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United Kingdom (Scotland) – Royaume Uni (Écosse) :

Please see the response from England and Wales to this question.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

See response to 43 below.

United States – Etats Unis :

The Guide should emphasize the recognition of the obligation on the part of all contracting states that they must acknowledge the rights of both parents to have a meaningful relationship with their child, absent a court order terminating parental rights. Further, this obligation implies that the parties will work, within the laws and regulations of their respective states, to ensure the exercise of that right.

Uruguay – Uruguay :

Ver respuesta 36.

Question 42	
Are there any other topics that you would like to see form the basis of future parts of the Guide to Good Practice in addition to those which are already published or are under consideration (these are: Part I on Central Authority Practice; Part II on Implementing Measures; Part III on Preventive Measures as well as enforcement measures and access / contact)?	**Quelle autre matière pourrait, d'après vous, alimenter de futures parties du Guide de bonnes pratiques, outre celles déjà publiées ou en cours de discussion (c'est-à-dire la première partie sur la pratique des Autorités centrales ; la deuxième partie sur la mise en œuvre ; la troisième partie sur les mesures préventives ; ainsi que l'exécution et le droit de visite / droit d'entretenir un contact) ?**

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Argentina – Argentine :

No.

Australia – Australie :

No.

Austria – Autriche :

No specific remarks.

Canada – Canada :

<u>British Columbia</u>
It would be helpful to have information about international mediation organizations as well as information about how to connect with those organizations. International mediation could play an important role in return cases but could be particularly useful in access cases.

<u>Manitoba</u>
Rather than new Parts (other than one re access), updates to portions of existing Parts could be useful.

Alberta
The how to's of International mediation.

**

Colombie-Britannique
Il serait utile de disposer de renseignements sur les organisations de médiation internationale et sur la façon d'entrer en contact avec elles. La médiation internationale pourrait jouer un rôle important dans les cas de retour, mais elle pourrait être particulièrement utile dans les cas d'accès.

Manitoba
Plutôt que d'ajouter de nouvelles parties (hormis une sur l'accès), il pourrait être utile de mettre à jour certaines portions des parties actuelles.

Alberta
Le « pratico-pratique » de la médiation internationale.

Chile – Chili :

Podría ser importante contar con una guía de Buenas prácticas respecto a las Visitas internacionales.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We have no other topics that we woull like to ass to the Guide.

China (SAR Macao) – Chine (RAS Macao) :

At present, there is no particular matter to point out.

Colombia – Colombie :

Es importante que se incluya la legislación de los Estados en cuanto a los Derechos de Custodia y de Visitas, que permita tener un conocimiento directo de estos temas a los demás Estados parte o que la parte pertinente de esa legislación sea incluida en la página de la Conferencia Internacional.

Se incluyan además los datos de las Autoridades Tutelares de protección de los derechos de los niños de los Estados parte, toda vez que algunas Autoridades Centrales no son a su vez autoridades de protección de derechos de la niñez.

Costa Rica – Costa Rica :

Por ejemplo que se elabore un apartado sobre cómo quejarse ante la Oficina Permanente cuando una autoridad central requerida ni siquiera rinde cuentas sobre sus atrasos, o cuando simplemente incumple el Convenio.

Cyprus – Chypres :

[No answer]

Czech Republic – République tchèque :

No.

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Denmark – Danemark :

Please see answer to question 36.

Ecuador – Equateur :

No.

El Salvador – El Salvador :

Por el momento no hay propuestas.

Finland – Finlande :

[No answer]

France – France :

Compte-tenu de la richesse du travail précédemment effectué, l'autorité centrale française n'a pas de demande particulière sur ce point.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

No comment.

Ireland – Irlande :

No comment.

Israel – Israël :

No comments at this time.

Italy – Italie :

Aucune indication à donner.

Latvia – Lettonie :

In order to develop principled concept of the Guide to Good Practice as support in development of the comprehension, there would be useful to work out Guides which discuss methodologically atypical exceptions related to the Convention. For example, implementation of the Convention in respect of occasions when there are involved diplomatic persons or their families.

Lithuania – Lituanie :

We have no proposals.

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Malta – Malte :

From the experience that we have gathered so far, we cannot determine any other topic for a Practice guide.

Mexico – Méxique :

[Sin respuesta]

Monaco – Monaco :

Non.

Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

[No answer]

Nicaragua – Nicaragua :

[Sin respuesta]

Panama – Panama :

No.

Paraguay – Paraguay :

[Sin respuesta]

Poland – Pologne :

The Ministry of Justice has no comments or suggestions on the issues to be included in the Guide to Good Practice.

Portugal – Portugal :

Yes, the Portuguese Central Authority would like to propose the grandparent's access right. This kind of right was introduced in the Portuguese Civil Code (section 1887-A), by the modifying Law nº 84/95, of August, 31.

Romania – Roumanie :

[No answer]

Slovakia – Slovaquie :

The Slovak Central Authority finds the content of The Guide to Good Practice extensive enough in respect to the content of The Hague Convention.

South Africa – Afrique du Sud :

No.

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Spain – Espagne :

No se plantean menciones especiales fuera de lo ya indicado.

Sweden – Suède :

See question 36.

Switzerland – Suisse :

[Pas de réponse]

United Kingdom (Scotland) – Royaume Uni (Écosse) :

Please see the response from England and Wales to this question.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

See response to 43 below.

United States – Etats Unis :

We recommend the following to topics as additions to the Guide: a) Mediation as a complement to, not substitute for, the Hague Convention; b) Working with Shari'a Law as an inducement to countries that operate exclusively, or in part, under such a legal system.

Uruguay – Uruguay :

Ver respuesta 36.

Question 43	
Do you have any other comments about any Part of the Guide to Good Practice?	**Souhaitez-vous ajouter des commentaires relatifs à l'une ou l'autre des parties du Guide de bonnes pratiques ?**

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Argentina – Argentine :

Nos remitimos a las respuestas brindadas a las preguntas 36 a 39.

Australia – Australie :

No.

Austria – Autriche :

No specific remarks.

Canada – Canada :

No.

**

Non.

Chile – Chili :

No, salvo recalcar la gran utilidad que han significado las guías hasta este momento.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We have no other comments on the Guide.

China (SAR Macao) – Chine (RAS Macao) :

No. The MSAR has no considerable experience in the field.

Colombia – Colombie :

Ha sido un instrumento de consulta con un método pedagógico que permite una mejor comprensión y aplicación del Convenio.

Costa Rica – Costa Rica :

No. Está muy claro y mejor redactado.

Cyprus – Chypres :

[No answer]

Czech Republic – République tchèque :

No.

Denmark – Danemark :

Please see answer to question 36.

Ecuador – Equateur :

Son documentos sumamente claros y útiles para el desarrollo de las actividades inherentes al proceso de restitución, por lo que no hay comentarios.

El Salvador – El Salvador :

Solamente comentarios positivos, ya que la guía es muy clara.

Finland – Finlande :

[No answer]

France – France :

Non.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

[Sin respuesta]

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Iceland – Islande :

No comment.

Ireland – Irlande :

No comment.

Israel – Israël :

No other comments.

Italy – Italie :

Aucune remarque.

Latvia – Lettonie :

We do not have additional comments.

Lithuania – Lituanie :

None.

Malta – Malte :

No.

Mexico – México :

Son excelentes trabajos.

Monaco – Monaco :

Non.

Netherlands – Pays-Bas :

No comments.

New Zealand – Nouvelle Zélande :

No.

Nicaragua – Nicaragua :

Sería apropiado establecer un mecanismo, para poder homologar los procedimientos al menos a nivel Regional.

Panama – Panama :

No.

Paraguay – Paraguay :

[Sin respuesta]

Poland – Pologne :

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Please see answer to question 42.

Portugal – Portugal :

No, the Portuguese Central Authority has not.

Romania – Roumanie :

[No answer]

Slovakia – Slovaquie :

No comment.

South Africa – Afrique du Sud :

No.

Spain – Espagne :

Solo comentarios de elogio al esfuerzo desplegado por la Conferencia en éste área.

Sweden – Suède :

See question 36.

Switzerland – Suisse :

[Pas de réponse]

United Kingdom (Scotland) – Royaume Uni (Écosse) :

Please see the response from England and Wales to this question.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

United States – Etats Unis :

No.

Uruguay – Uruguay :

Ver respuesta 36.

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Question 44	
Can you list any examples of good practice not included in the Guides?	**Pouvez-vous citer des exemples de bonnes pratiques qui ne figurent pas dans les parties existantes du Guide ?**

Argentina – Argentine :

No.

Australia – Australie :

No.

Austria – Autriche :

No specific remarks.

Canada – Canada :

Not applicable.

**

Sans objet.

Chile – Chili :

No.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We have no examples to list.

China (SAR Macao) – Chine (RAS Macao) :

No. Please refer to the previous response.

Colombia – Colombie :

Teniendo en cuenta que no todos los Estados parte del Convenio adoptan medidas provisionales en los casos de sustracción internacional, es importante que se incluya en la Guía de Buenas Prácticas que las Autoridades Centrales brinden el apoyo psicosocial o gestionen este servicio con sus autoridades o instituciones, para que se le de la oportunidad a la parejas de obtener una solución pacífica del conflicto y en especial apoyo en este sentido al niño o niña víctima de este hecho.

Costa Rica – Costa Rica :

El deber ético de la reciprocidad en la rendición de cuentas.

Cyprus – Chypres :

[No answer]

Czech Republic – République tchèque :

No.

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Denmark – Danemark :

Please see answer to question 36.

Ecuador – Equateur :

No.

El Salvador – El Salvador :

[Sin respuesta]

Finland – Finlande :

[No answer]

France – France :

Non.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

No comment.

Ireland – Irlande :

No comment.

Israel – Israël :

No comments at this time.

Italy – Italie :

Aucun exemple à citer.

Latvia – Lettonie :

We do not have additional comments.

Lithuania – Lituanie :

We have no proposals, as Lithuania's practical experience in this area is not extensive.

Malta – Malte :

No.

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Mexico – México :

[Sin respuesta]

Monaco – Monaco :

Non.

Netherlands – Pays-Bas :

No comments.

New Zealand – Nouvelle Zélande :

No.

Nicaragua – Nicaragua :

[Sin respuesta]

Panama – Panama :

Formulario estándar para el consentimiento.

Paraguay – Paraguay :

[Sin respuesta]

Poland – Pologne :

Please see answer to question 42.

Portugal – Portugal :

No.

Romania – Roumanie :

[No answer]

Slovakia – Slovaquie :

The Slovak Central Authority would appreciate more examples about how the return of the abductor influences his position at the custodial proceedings, especially in those countries where the abduction under this Convention is criminalized under the provisions in domestic law.

It is needed to underline, that Hague proceedings are absolutely different from the custodial proceedings. Despite the fact, that it is generally suggested that the position of the abductor shall not be deteriorated in the custodial proceedings in the country of origin. Thus, in some cases the court takes into account the fact that the abductor had broken the rights of the other parent or even the law, and entrusts the child into the custody of the applicant, although there is no other reason for that. This way arise the negative publicity as well as negative attitude to the Central Authorities and the Hague proceedings, because they are understood as the proceedings, where the parents lose their children. Subsequently, the abductors are then even less willing to agree with the voluntary return or they try to avoid the enforcement of such order. Unfortunately, the party who suffers in these instances most is the child.

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South Africa – Afrique du Sud :

No.

Spain – Espagne :

Solo mencionar la existencia de la guía práctica elaborada por la Comisión europea sobre el Reglamento 2.201/2003.

Sweden – Suède :

See question 36.

Switzerland – Suisse :

Le Guide de bonnes pratiques revêt une valeur certaine pour les autorités centrales, mais pour les tribunaux et les praticiens il serait judicieux de développer des modèles « d'utilisation plus aisée ». Parmi les critères d'élaboration: accès simple, version courte et claire, éventuellement sous forme d'aides mémoire publiés sur le site de la Conférence de La Haye.

Exemples: aide-mémoire sur le thème « mesures préventives; mesures protectrices entourant le retour; protection des droits de visite transfrontières; médiation ».

United Kingdom (Scotland) – Royaume Uni (Écosse) :

No.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

[No answer]

United States – Etats Unis :

There has been a positive trend in the U.S. whereby judicial authorities permit "tolling provisions" (i.e. provisions that temporarily suspend deadlines). Authorities use these tolling provisions so that taking parents are not rewarded for evading identification and applicant parents are not penalized for the other parent's successful concealment.

Uruguay – Uruguay :

Ver respuesta 36.

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12. Standardised consent form - Formulaire standard pour les consentements

Question 45	
The Permanent Bureau is consulting with States and relevant authorities with regard to developing a standardised or harmonised form for obtaining consent from holders of parental responsibility when a child leaves a State (see the Guide to Good Practice – Part III on Preventive Measures). Do you have any comments about the development of such a form? Or any suggestions as to what information such a form should / should not include?	**Le Bureau Permanent consulte actuellement les Etats et les autorités pertinentes sur l'élaboration d'un formulaire standard ou uniforme pour l'obtention des consentements des détenteurs de l'autorité parentale lorsque l'enfant quitte un Etat (voir la troisième partie du Guide de bonnes pratiques sur les mesures préventives). Souhaitez-vous faire des commentaires quant à l'élaboration d'un tel formulaire ? Souhaitez-vous suggérer ce que le formulaire devrait / ne devrait pas inclure ?**

Argentina – Argentine :

Consideramos que sería positivo siempre y cuando se puedan compatibilizar los requisitos del formulario, con las legislaciones migratorias de cada país. La entrada y salida de los menores en le República Argentina se rige por la Resolución n° 2895/85 y y la reforma contenida en la Disposición 31100/2005 de la Dirección General de Migraciones.

Australia – Australie :

The Australian Central Authority sees value in developing a standardised form of obtaining consent in principle. Concerns arise however with respect to the practical implementation and imposition of such a form of consent on all States. A principal consideration may be whether a form of consent would operate as supporting evidentiary issues or consideration of the extent to which a form of consent would be legally binding on the receiving State, and the extent to which such consent is conclusive, manner of reception in each State.

It must be very clear that this consent is provided within specific frameworks, for specific conditions rather then an acquiescence to permanent removal.

The imposition of a form of consent may also need to give due consideration to:

- Particulars of the party providing the consent, ie. Description of nature of parental responsibilities/ current access arrangements. Further consideration will need to be given to the relationship between the provision of consent and the concurrent and persisting right to the exercise of parental responsibilities. Ie. How the form of consent will not impact on current access arrangements etc;
- The means by which consent is obtained from the party and processes that will prevent duress and undue influence. Mechanisms by which to ensure checks and balances of these processes, including the opportunity to allow for/ provision of independent legal advice, witnessing by third party, copies of consent made between parties and to independent third person;
- Timeframes by which consent to be sought prior to intended dates of travel;
- Clear and specific terms to which the consent is provided ie. terms of the agreed relocation, specific dates of travel, nature of the undertaking, persons accompanying child/ addresses that the child will reside at.

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- Circumstances that may impact, qualify or lead to a revocation of the consent ie. Unforeseen circumstances and the manner of recourse that may be taken by the left behind parent in such instances.
- The provision of information outlining the consent-giver's rights and mechanisms whereby further information could be obtained via legal advice.

Austria – Autriche :

A standardised or harmonised form for obtaining consent from holders of parental responsibility when a child leaves a State may be useful, but it could never exclude other forms of consent and could not be made irrevocable. According to our system of taking evidence, such a form by itself could not provide absolute proof against abduction any more than its absence could provide substantial (and irrefutable) evidence for it. So the value of a standard form should not be overestimated.

Canada – Canada :

For most jurisdictions, model forms are useful. Foreign Affairs Canada's website contains the following model letter that may be amended to meet the specific situation and requirements of the applicant:

To Whom It May Concern

I (We), _________________ (full name(s) of custodial and/or non-custodial parent(s)/legal guardian(s)), am (are) the_____________________ (lawful custodial parent and/or non-custodial parent(s) or legal guardian(s)) of

Child's full name: _______________________________________
Date of birth (DD/MM/YY): ______________________________
Place of birth: ____
Canadian passport number:_______________________________
Date of issuance of Canadian passport (DD/MM/YY): _________
Place of issuance of Canadian passport: ____________________________________
(child's full name), has my (our) consent to travel with

Full name of accompanying person: _________________________
Canadian or foreign passport number: _______________________
Date of issuance of passport (DD/MM/YY):__________________
Place of issuance of passport: _____________________________

to visit _______________ (name of foreign country) during the period of
___________________ (dates of travel: departure and return). During that period,
_________________ (child's full name) will be residing with _________________ (name of person where child will be residing in foreign country) at the following address:

Number/street address and apartment number: _______________
City, province/state, country: _______________________________
Telephone and fax numbers (work and residence): _________________________

Any questions regarding this consent letter can be directed to the undersigned at:

Number/street address and apartment number: _______________
City, province/state, country: _______________________________
Telephone and fax numbers (work and residence): _________________________

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Signature(s):_______________________________________ Date:_________________
(Full name(s) and signature(s) of custodial parent, and/or non-custodial parent(s) or legal guardian(s))

Signed before me, ________________ (name of witness), this _________________ (date) at ________ ______ (name of location).

Signature: ________________ (name of witness)

Saskatchewan
A standardized form would be very helpful. Parents often have very vague written consents, and often don't remember to specify a return date in the consent.

Quebec
Contrary to popular belief, a person cannot be prevented from leaving Canada and no statute requires a parent to get permission from the other parent to leave alone with his or her child. Unless a person is traveling to the United States, there are no controls when exiting Canada. The safest way to prevent abduction is therefore to control the issuance of passports. However, to help prevent child abduction, many airlines have adopted an internal directive that requires parents traveling alone with a child to provide a signed and dated letter of consent from the other parent authorizing the travel. Some companies even required that the letter of consent be notarized.
Manitoba
Recommendation 1.2.2 of Part III of the Guide to Good Practice relates to the development of a standard travel consent form. We assume that this form relates to consent for a parent to travel with the child, not consent for a parent to move with the child. Any consent form must be clear on its face as to the extent/nature of the consent so as not to give rise to arguments that a parent consented to the permanent removal/retention of a child.

The form should clearly identify the nature of the parties parental responsibilities/custody arrangements, the child's particulars and the duration/extent of the consent (e.g. for a three week vacation).

Nova Scotia
If a parent were to sign such a form, it would be important for that parent to have independent legal advice as to what they are signing. Therefore, any consent form would have to indicate that the parent had an opportunity to consult a lawyer.

**

Pour la plupart des juridictions, les formulaires standards sont utiles. Le site Internet du ministère des Affaires étrangères réfère au modèle de lettre suivant, qui peut être modifié en fonction des besoins de la situation des demandeurs:

À qui de droit

Je (Nous), soussigné(s), ____________________ (nom au complet du ou des parents ayant la garde ou non de l'enfant/du ou des tuteurs), _______________ (parent ayant la garde /parent(s) n'ayant pas la garde ou tuteur légal/tuteurs légaux) de

Nom de l'enfant au complet : ___________________________
Date de naissance (jj/mm/aa) : _________________________
Lieu de naissance : __________________________________
Numéro du passeport canadien : _______________________
Date de délivrance du passeport (jj/mm/aa) : ______________
Lieu de délivrance du passeport : _______________________

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autorise (autorisons) mon (notre) enfant/pupille, ___________________ (nom de l'enfant au complet) à voyager avec

Nom au complet de l'adulte accompagnateur : _____________
Numéro du passeport canadien ou étranger : ______________
Date de délivrance du passeport (jj/mm/aa) : ______________
Lieu de délivrance du passeport : ________________________

afin de se rendre à/en/au/aux _____________________ (nom du pays) du _________ au ___________ (dates du voyage : départ et retour). Pendant cette période, _____________________ (nom de l'enfant au complet) résidera chez ___________________ (nom de l'hôte de l'enfant dans le pays étranger) à l'adresse suivante :

Numéro, nom de la rue, numéro de l'appartement : __________
Ville, province/État, pays : ______________
Numéros de téléphone et de télécopieur (bureau et résidence) ___________

Toute question concernant la présente autorisation peut m'être (nous être) adressée à l'adresse suivante :

Numéro, nom de la rue, numéro de l'appartement : ____________
Ville, province/État, pays : ______________
Numéros de téléphone et de télécopieur (bureau et résidence) : ______________

Signature(s) : _____________________ Date : _____________
(Nom au complet et signature du ou des parents ayant la garde ou non de l'enfant/du ou des tuteurs)

Signé devant moi, _______________ (nom du témoin), ce _____________ (date) à _________________ (lieu).

Signature : _______________ (nom du témoin)

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Saskatchewan
Un formulaire standard serait très utile. Les parents donnent souvent des consentements rédigés en des termes très vagues, et ils oublient souvent d'y préciser une date de retour.

Québec
Contrairement à la croyance générale, on ne peut empêcher une personne de quitter le Canada et aucune loi n'exige une autorisation de l'autre parent pour quitter seul avec son enfant. À moins de voyager aux États-Unis, il n'y a aucun contrôle à la sortie du Canada. La façon la plus sécuritaire de prévenir l'enlèvement est donc de contrôler l'émission des passeports. Toutefois, pour aider à prévenir l'enlèvement des enfants, plusieurs compagnies aériennes ont adopté une directive interne qui exige du parent qui voyage seul avec un enfant de fournir une lettre de consentement de l'autre parent, signée et datée, qui autorise le voyage. Cette lettre de consentement pourrait même devoir être notariée selon les compagnies.

Manitoba
La recommandation 1.2.2 de la troisième partie du Guide concerne l'élaboration d'un formulaire standard de consentement au voyage. Nous présumons que ce formulaire concerne le consentement à ce qu'un parent voyage avec un enfant, et non le consentement à ce qu'un parent déménage avec l'enfant. Tout formulaire de consentement doit indiquer clairement l'objet du consentement de manière à éviter toute équivoque quant à la possibilité qu'un parent ait consenti au déplacement permanent d'un enfant.

Le formulaire devrait identifier clairement la nature des responsabilités parentales des parents en ce qui a trait à la garde, l'enfant en cause et l'objet du consentement (p. ex., un voyage d'une durée de trois semaines).

Nouvelle-Écosse
Si un parent devait signer un tel formulaire, il importerait qu'il obtienne des conseils juridiques quant à la teneur du document qu'il signe. Il faudrait donc que le formulaire de consentement indique que le parent a eu l'occasion de consulter un avocat.

Chile – Chili :

Creo positivo, siempre que pueda ser de alguna manera adaptado a la legislación interna de cada país. Actualmente en Chile es obligatorio contar con una autorización notarial del padre que no viaja con el niño o de ambos padres si el niño viaja sólo.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

The development of such a form for proof of consent is recommended. We would suggest that the form should contain the following information:

- parents details;
- child details;
- identify the relevant custody or access order;
- reason for the child to leave the State;
- period of leave;
- where the child will stay during the period of leave with contact details;
- the exact agreed date of return; and
- undertaking to return the child to the State.

China (SAR Macao) – Chine (RAS Macao) :

The development of standardised / harmonised non-mandatory form for obtaining consent from holders of parental responsibility when a child leaves a State would be a useful tool to protect the child who is unlawfully removed from the State without consent and would also allow the competent authorities to centralise all the relevant information as regards the child and the guardian.

No comment on the content of the form at this moment. However, as, in the MSAR, decisions on the exercise of parental power are object of compulsive registry, if the content of the form would concur with the registry information, it would be possible / easier for the MSAR Central Authority to work with and verify the necessary data.

Colombia – Colombie :

Es importante que este formulario estándar incluya además del consentimiento de salida del país de un niño por los padres, el consentimiento de si este traslado conlleva el cambio de residencia.

Si el permiso se otorga temporalmente debe otorgarse cerrado, es decir que se estipule una fecha de regreso del niño.

El formulario debe contener la razón o motivo de viaje del niño o niña.

El parentesco del niño con la persona que sale del país (Determinar si es restitución o Tráfico de Niños).

Costa Rica – Costa Rica :

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Sí, tenemos la siguiente sugerencia: Que los técnicos encargados de elaborar el documento, al menos tengan la mínima noción de lo que implica la figura de la autoridad parental en el sistema jurídico del CIVIL LAW, en caso de que los redactores resulten ser profesionales formados en el sistema anglosajón del COMMON LAW. Es la única forma de prevenir malentendidos técnico-jurídicos.

Cyprus – Chypres :

[No answer]

Czech Republic – République tchèque :

No.

Denmark – Danemark :

No comment.

Ecuador – Equateur :

Sería pertinente contar con un borrador a fin de que, de ser necesario, se realicen las observaciones pertinentes.

El Salvador – El Salvador :

Para que dicho formulario sea realmente útil y aplicable en todos los Estados, es necesario que se tenga en cuenta que no es una cuestión meramente de forma, sino que podría implicar reformas a las leyes internas de cada uno de los países en cuanto a los requisitos exigidos para el otorgamiento de dicho consentimiento; además, debe valorarse lo relativo a los términos jurídicos a utilizar.

Finland – Finlande :

In Finland it is not necessary to obtain consent from the holder of parental responsibility when a child leaves the country. However, we are of the opinion that in some cases a standardised form might be helpful.

France – France :

L'autorité centrale française rappelle l'importance de l'office du juge sur les questions relatives aux conditions de vie, et au changement du lieu de résidence de l'enfant.

En France, le juge aux affaires familiales, compétent pour modifier les dispositions relatives aux conditions d'exercice de l'autorité parentale (ce qui comprend notamment la garde de l'enfant, la modification de son lieu de résidence...), peut être saisi par chacun des deux parents, au moyen d'une procédure simple, rapide et gratuite.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

[Sin respuesta]

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Iceland – Islande :

There are no comment at this time.

Ireland – Irlande :

This office agrees in principle with this idea. It should state whether the child is allowed to leave a State for a set period of time, or indefinitely, so as to clarify allegations of acquiescence.

Israel – Israël :

In theory, such a form is a good idea. The form must not conflict with the internal law requirements of each country. In Israel, it must be ensured that such a form does not contradict a previously issued "stop" order, ie. an order preventing the removal of a child from Israel, and that if it does, the parties will apply to court to suspend the application of the stop order pending the agreed-upon period of travel. The form should be signed in front of a witness. It should clearly set out the exact dates of travel, as well as the flight/travel itinerary. It should contain a mechanism for how consent is to be obtained in the case where a travel period is to be extended. There should further be a mechanism in case of non-compliance, specifying sanctions, as well as reference to the Hague Convention, stating that a non-return will constitute an abduction, and that the parent in breach will be responsible for any costs incurred in having the child returned.

A private attorney expressed concern that parents may not use a consent form to resolve their affairs in most situations, and that this could create a presumption that if the parent does not have such a form, there is no consent. Another private attorney expressed concern that such a form could be used as a method for extortion.

Italy – Italie :

Aucune remarque ou suggestion : les formulaires existants nous paraissent satisfaisants.

Latvia – Lettonie :

Such a standardized consent forma would be significant aspect with what questions regarding implementation of the Convention could be preferential. However we would like to notice that in development of it there is important to draw special attention with taking into consideration opinion of the all member states – about comprehensive and detailed principles and adjustments which to include in this form.

Lithuania – Lituanie :

The Procedure for the Child's Temporary Leaving for Foreign Countries was approved by resolution of the Government of the Republic of Lithuania No. 302 of 28 February 2002. The Procedure governs the temporary leaving abroad by children of citizens of the Republic of Lithuania and of foreign nationals. A copy of the Procedure is appended (Annex 3).

We would like to note that problems often arise in the course of implementation of this Procedure as people's migration is becoming more active and the number of illegitimate children is increasing. In our opinion, development of a general standard form of a permit for a child to leave abroad would be useful both in terms of prevention of child abduction and of increasing awareness of parents changing their place of residence and being obligated to comply with the requirements of different foreign states. The term of validity of the permit should also be specified in the form.

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Malta – Malte :

The Maltese Central Authority agrees that a standard consent form should be developed and adopted, with a view to ensuring certainty and consistency.

Mexico – Méxique :

[Sin respuesta]

Monaco – Monaco :

Compte tenu du nombre relative faible d'affaires dont est saisie la DSJ, il est difficile de donner une appréciation sur l'amélioration possible du contenu du formulaire.

Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

While a standardised form is a very positive development the issue seems to be that the terms of the agreed relocation or undertakings given are not adhered to, thereby the left behind parent seeks a return to secure their rights of custody and access.

Nicaragua – Nicaragua :

El desarrollo de este formulario, constituirá una herramienta de apoyo para la aplicabilidad del Convenio.

Panama – Panama :

Sería conveniente que la Conferencia elaborara el formulario y lo remitiera a los estados para observaciones, y de ser posible que se apruebe su aplicación a través de notas diplomáticas dirigidas por los estados a la Conferencia.

Paraguay – Paraguay :

[Sin respuesta]

Poland – Pologne :

The Polish Central Authority is in favor of developing such a form. In such a case, though, it would be advisable to discuss the legal basis for such a form.

Portugal – Portugal :

The Portuguese Central Authority considers that there are all the advantages to have a standard form to be used when a child travels abroad. In Portugal, the Portuguese Service for Foreigners and Borders (*Serviço de Estrangeiros e Fronteiras*) offers through its website two standard forms (one for Portuguese children and other for foreigner children – *vd.* www.sef.pt) to be fulfilled by the child guardian when a child travel abroad.

Romania – Roumanie :

[No answer]

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Slovakia – Slovaquie :

The standardised, easily accessible and obligatory notorised form for obtaining consent would be worthful mainly if there have occurred any doubts about whether such consent had been really given and if the child was not removed unlawfully. Moreover, the parents would not have to express their consent before the court; just before e.g. the notary public.

However, this preventive measure may become ineffective if the border controls in the country are not duly carried out. Therefore, the Slovak Central Authority has no comments about developments of such form, although the efficiency of such form may be limited.

South Africa – Afrique du Sud :

The following could be considered for inclusion in the form:

- Name of the holder of parental rights
- Nationality
- Passport details
- The origin of the parental right, whether acquired ex lege or conferred by court order
- In either case (above), details must be provided
- The nature and of the consent must be clearly set out.

Spain – Espagne :

[Sin respuesta]

Sweden – Suède :

In Sweden it is not necessary to obtain consent from the holder of parental responsibility when a child leaves the country. However, the Swedish Central Authority is of the opinion that in some cases a standardized form might be helpful. Some consideration has to be given to, inter alia, the form of consent being witnessed, as to the circumstances in which the consent can be revoked and whether such revocation would also have to be in writing and whether the form of consent would give rise to an evidential presumption rather than being binding on the court of the receiving state.

Switzerland – Suisse :

L'AC suisse soutient l'élaboration d'un formulaire standard.

L'AC propose, de longue date, aux parents de signer voire co-signer une déclaration (engagement/undertaking) en vue de faciliter l'exercice des relations personnelles transfrontières; différents modèles sont disponibles auprès de notre service. Leur application s'est toujours révélée positive.

Ce genre de documents est utilisé parfois même aussi pour faciliter l'exercice d'un droit de visite dans un Etat non partie de la convention, copie de ce document avec signature authentifiée par une autorité compétente au domicile de l'enfant étant envoyée à l'Ambassade en Suisse de l'Etat où s'exercera le droit de visite ainsi qu'à la représentation diplomatique sur place.

Ce genre de déclaration (sous serment moral en quelque sorte) se base sur la confiance respective entre les parents et l'esprit de réciprocité entre les Etats, s'agissant de protéger les relations personnelles d'un enfant avec ses deux parents, indépendamment des frontières (Art. 9/10/11 : Convention de l'ONU relative aux droits de l'enfant de 1989)

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United Kingdom (Scotland) – Royaume Uni (Écosse) :

Please see the response from England & Wales to this question.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

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

The UK Central Authorities would suggest consideration be given to:

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

United States – Etats Unis :

While such a form may serve as a model in the United States, given our multi-state family law system, it is unlikely that it will be widely adopted here.

Uruguay – Uruguay :

Creemos que puede resultar sumamente útil para documentar el consentimiento de los guardadores del menor en casos de traslados internacionales.

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13. Statistics and case mangement – Statistiques et gestion de dossiers

Question 46	
Does your Central Authority maintain accurate statistics concerning the cases it deals with under the Convention, and does it submit annual returns of statistics to the Permanent Bureau in accordance with the forms established by the Permanent Bureau in consultation with Central Authorities? If not, please explain why.	**Votre Autorité centrale conserve-t-elle des statistiques précises sur les dossiers fondés sur la Convention et dont elle assure la gestion ? Communique-t-elle sur une base annuelle des données statistiques au Bureau Permanent à l'aide des formulaires qu'il a élaborés en consultation avec les Autorités centrales ? Dans la négative, veuillez en donner les raisons.**

Argentina – Argentine :

Si.

Australia – Australie :

Yes.

The Australian Central Authority maintains accurate statistical data in relation to the cases it deals with under the Convention. These statistics are submitted annually to the Permanent Bureau on the prescribed forms. In addition the Australian Central Authority records statistical data for reporting purposes.

Austria – Autriche :

Unfortunately, the last statistics transmitted to the Permanent Bureau (according to INCADAT) dated from 2003.

Canada – Canada :

Most of Canadian jurisdictions submit statistics when requested. However, some concerns are raised regarding the length of the forms and the timing of requests.

**

La plupart des juridictions canadiennes soumettent des statistiques lorsque cela est requis. Cependant, des préoccupations existent quant la longueur des formulaires et au moment des demandes.

Chile – Chili :

Si bien se mantienen estadísticas anuales de todas las causas, lamentablemente no ha sido posible completar los formularios de la Oficina Permanente tanto como deberíamos, debido a la falta de personal de la Autoridad Central Chilena, las últimas estadísticas enviadas fueron las correspondientes al año 2004.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We maintain accurate statistics of our cases, both incomming and outgoing cases under the Convention, and the Permanent Bureau has received from time to time such statistics in the established form.

China (SAR Macao) – Chine (RAS Macao) :

The MSAR maintains up-to-date statistics. However, due to the insignificant number of cases – only 4 since 1999 – the MSAR did not submit any statistics. Nevertheless, it is possible to provide them to the Permanent Bureau in the future.

Colombia – Colombie :

Si tenemos estadísticas precisas en relación con los casos que se tramitan y anualmente se envían a la Oficina Permanente.

Costa Rica – Costa Rica :

De acuerdo a la Ley costarricense, todos los casos están debidamente registrados y almacenados en formato de expediente administrativo, sin embargo, no se ha contado con el tiempo suficiente para sistematizar las estadísticas precisas conforme a los deseos de la Oficina Permanente.

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Cyprus – Chypres :

[No answer]

Czech Republic – République tchèque :

Yes, it does.

Denmark – Danemark :

The Danish Central Authority maintains statistics concerning all return and access case under this Convention and the 1980 European Convention. The statistic have not yet been sent to the Permanent Bureau but will be.

Ecuador – Equateur :

No, porque esta Autoridad Central fue designada hace un año y medio.

El Salvador – El Salvador :

El primer caso de sustracción internacional de menores se dio el año 2005, para el presente año, no se ha aplicado el convenio, debido a que en un caso que solicitaron asistencia legal, el menor había sido sustraído a los Estados Unidos de América, país que todavía no ha aceptado la adhesión de El Salvador.

Finland – Finlande :

The Central Authority of Finland does maintain and submit the standard form statistics to the Permanent Bureau.

France – France :

L'autorité centrale française dispose de statistiques informatiques reflétant l'activité intégrale du bureau, dans ses principaux domaines de compétence que sont : les notifications internationales d'actes, l'obtention des preuves, l'aide juridictionnelle internationale et les déplacements internationaux d'enfants.

Si ces données ne sont pas envoyées au Bureau Permanent, l'autorité centrale française répond à toutes ses sollicitations. C'est ainsi qu'elle a accueilli et répondu aux demandes du chargé d'étude de l'Université de Cardiff, envoyé par le Bureau Permanent à la fin de l'année 2005.

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Greece – Grèce :

The Greek C.A. does not maintain very accurate statistics concerning the cases they deal with under the Convention. It submits annual returns of statistics to the Permanent Bureau. Our human resources are extremely limited

Guatemala – Guatemala :

Se mantienen estadísticas de solicitudes generadas y recibidas sin embargo han sido muy pocos los casos recibidos.

Iceland – Islande :

We try to maintain accurate statistics and to send it to the Permanent Bureau but delays are due to lack of time and resources.

Ireland – Irlande :

Yes, we do. An annual press release with statistics is also released each year.

Israel – Israël :

The Israeli Central Authority maintains annual statistics. There is sometimes a delay in providing them to the Permanent Bureau due to manpower and time constraints.

Italy – Italie :

L'Autorité Centrale italienne fournit chaque année ses statistiques au Bureau Permanent, moyennant les formulaires existants.

Latvia – Lettonie :

In accordance with forms developed by Permanent Bureau, Central Authority of Latvia provides annual statistical reports regarding Convention.

Lithuania – Lituanie :

Since 24-03-2006 the State Child Rights Protection and Adoption Service has been authorised to perform functions assigned to a central authority under the 1980 Convention. As part of performance of these functions, SCRPAS has started collecting statistics on applications examined under the 1980 Convention. This information will also be submitted to the Permanent Bureau on an annual basis.

Malta – Malte :

The Maltese Central Authority, which handles a very limited number of abduction cases, maintains accurate statistics. Until now no statistics have been forwarded to the Permanent Bureau. In 2003 the statistics were forwarded to Professor Nigel Lowe from the Cardiff Law School,who had undertaken a statistical survey for that particular year. The Central Authority will be forwarding the relevant statistics as soon as possible.

Mexico – México :

Si se cuenta con estadísticas de los casos de restitución de menores que se resuelven en nuestro país.

Monaco – Monaco :

Cette gestion n'a pas été réalisée jusqu'à ce jour notamment en raison du nombre relativement faible de saisines. Par ailleurs, la saisine de l'Autorité Centrale n'est pas toujours faite en application stricte de la convention et a pu déboucher sur des arrangements intervenus d'eux-mêmes.

Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

Yes. We have a very good case management computer system used by the local Courts that the CA has access to. The CA also keeps statistical data for reporting purposes.

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Nicaragua – Nicaragua :

La Autoridad Central de Nicaragua, sí cuenta con un Registro detallado de los casos relativos al Convenio, al momento no hemos recibido ningún requerimiento de parte de la Oficina Permanente.

Panama – Panama :

Si se cuenta con las estadísticas anuales, sin embargo, no se han remitido las mismas a la Conferencia de la Haya, toda vez que no hemos recibido el formulario correspondiente y las fechas en que debe ser presentado.

Paraguay – Paraguay :

[Sin respuesta]

Poland – Pologne :

We do not maintain any statistics due to the fact that cases under the Hague Convention may be heard in any Guardianship Court in Poland and there is no formal requirement for the Ministry of Justice to be an intermediary in the transmission of the applications to Polish courts. It is a common practice that the applications are submitted directly to Polish courts. This refers also to applications submitted to institutions abroad without participation of the Polish Ministry of Justice. Therefore, maintaining such statistics is not possible. There are no legal grounds which would oblige courts to notify us about receiving such applications or the course of the proceedings resulting from them.

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Portugal – Portugal :

Yes, the Portuguese Central Authority when requested presents its statistics to the Hague Convention.

Romania – Roumanie :

First question, yes.

Second question, no.

Slovakia – Slovaquie :

The Slovak Central Authority has not maintained accurate statistics in accordance with the established form by year 2005. Therefore the Slovak CA was not submitting any annual returns of statistics to the Permanent Bureau.

The statistics of all the cases under the Convention since 2001 was carried out in March 2006. This statistics together with the annual statistics will be sent to Permanent Bureau and the accurate statistics for the year 2006 will be submitted in the year 2007.

South Africa – Afrique du Sud :

Yes.

Spain – Espagne :

Sí se disponen de estadísticas. La última estadística remitida, conforme a los formularios establecidos fue la correspondiente al año 2003

Sweden – Suède :

The Swedish Central Authority does maintain and submit the standard form statistics to the Permanent Bureau. Recently the Central Authority got a new data system, which will make it easier to comply with the request from the Permanent Bureau concerning statistics. Concerning the year 2005 the statistics has been sent to the Permanent Bureau.

Switzerland – Suisse :

Oui.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

Yes.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

Yes.

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

United States – Etats Unis :

While there is currently no mechanism for automatic compilation and reporting of Convention statistical data, the U.S. Central Authority database makes reporting upon request fairly easy. Planned updates to our database will make it possible to collect and report on the specific information tracked by the Permanent Bureau.

Uruguay – Uruguay :

Se ha comenzado a llevar estadísticas en relación al trema y se piensa informarlas semestralmente a la Conferencia.

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Question 47	
Does your Central Authority use any special software for case management / statistical purposes? Would your Central Authority be interested in using the new iChild software which is currently being piloted in seven Central Authorities in six Contracting States?	**Votre Autorité centrale utilise-t-elle un logiciel spécial pour la gestion des dossiers ou à des fins statistiques ? Votre Autorité centrale souhaiterait-elle utiliser le nouveau logiciel iChild qui est actuellement testé dans sept Autorités centrales et six Etats contractants ?**

Argentina – Argentine :

Contamos con un sistema propio de estadísticas y además estamos participando en el proyecto de iChild.

Australia – Australie :

At present, the Australian Central Authority does not use any special software for case management/statistical purposes. However, the Australian Central authority is one of the seven Central Authorities piloting the new iChild software.

Austria – Autriche :

We would be interested in this software.

Canada – Canada :

Ontario
The only software used by the Ontario Central Authority for case management/statistical purposes is the iChild software since October, 2005. The iChild software serves as an efficient case management tool.

Saskatchewan
We do not use specialized software. Given our small volume of cases (4-6 per year), it has not been necessary.

New Brunswick
No.

Quebec
There is software in the Administrative Law Directorate, to which is attached the Quebec Central Authority. However, it is not effective in gathering statistics. Since October 2005, the Quebec Central Authority has been testing iChild.

Manitoba
Manitoba uses our internal file management tracking system to track/identify Hague Abduction Convention cases.

Nova Scotia
We do not use any special software for case management/statistical purposes. We do not have sufficient cases to warrant becoming involved with the iChild software program.

**

Ontario
Le seul logiciel que l'Autorité centrale de l'Ontario utilise pour la gestion des dossiers et à des fins statistiques est le logiciel iChild, et ce, depuis octobre 2005. Le logiciel iChild est un outil efficace de gestion des dossiers.

Saskatchewan
Nous n'utilisons pas de logiciel spécialisé. Étant donné notre faible volume de dossiers (4-6 par an), cela n'a pas été nécessaire.

Nouveau-Brunswick
Non.

Québec
Un logiciel existe au sein de la Direction du droit administratif de laquelle relève l'Autorité centrale du Québec. Toutefois, il n'est pas performant pour l'obtention de statistiques. Depuis octobre 2005, l'Autorité centrale du Québec utilise le logiciel iChild afin de le tester.

Manitoba
Nous utilisons notre système interne de suivi et de gestion des dossiers pour assurer la gestion des dossiers fondés sur la Convention de La Haye.

Nouvelle-Écosse
Nous n'utilisons aucun logiciel spécialisé pour la gestion des dossiers et à des fins statistiques. Nous n'avons pas assez de dossiers pour justifier notre participation au programme relatif au logiciel iChild.

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Chile – Chili :

No, actualmente no contamos con ningún programa informático. Sí considero que sería muy provechoso utilizar el programa iChild.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We do not use any special software for case management / statistical purposes. We are interested in using the new iChild software if we consider it suitable for our purposes.

China (SAR Macao) – Chine (RAS Macao) :

Taking into account of the preceeding answer, it does not seem justifiable the use of such software at present. However it is something to be considered in the future.

Colombia – Colombie :

Se está implementando un sistema de información en el que se pretende incluir el tema, de tal manera que nos permita consultarlo para diligenciar de manera rápida los formatos estadísticos y brindar información a las diferentes autoridades nacionales, extranjeras y personas naturales o jurídicas

Estamos interesados en el nuevo programa Informático "Child". Nos sería de gran utilidad conocerlo para establecer la compatibilidad con nuestro nuevo sistema de información. En tal sentido nos gustaría conocer las condiciones para utilizar ese programa y si tiene alguna restricción.

Costa Rica – Costa Rica :

A los expedientes administrativos de sustracción internacional se les da el mismo tratamiento informático que reciben los demás casos internos o domésticos en la oficina del PANI denominada: Unidad de Información y Archivo. Y sobre el programa iChild la respuesta es sí.

Cyprus – Chypres :

[No answer]

Czech Republic – République tchèque :

Yes it does but it is not very appropriate. That is why it would be very interested in using the iChild software.

Denmark – Danemark :

We do not use any special software for case management/statistical purposes other than our normal case management. For the moment we do not find it necessary to invest in special software for case management/statistical purposes since we have only got a limited number of cases per year.

Ecuador – Equateur :

Mantenemos un sistema para ingreso de casos y actualización de los mismos, sin embargo estaríamos dispuestos a utilizar el programa informático IChild a fin de unificar criterios.

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El Salvador – El Salvador :

En el caso de nuestra institución, debido a que los casos iniciarán en las Unidades de Defensa de la Familia y el Menor, será la Coordinación Nacional de Familia, la encargada de consolidar los datos estadísticos, como se hace hasta ahora con todas las demás asistencias legales y psicosociales que brindamos.

Nuestra institución estaría interesada en adquirir el programa.

Finland – Finlande :

We do not use any special software for case management or statistical purposes. The amount of the cases annually is rather low in Finland and we have managed well by using the most common applications.

France – France :

L'autorité centrale française utilise des outils de gestion statistique de l'ensemble des dossiers dont elle assure le suivi.

En l'état de l'examen de ses besoins, elle n'a cependant pas envisagé d'adopter le logiciel iChild.

Greece – Grèce :

There is no special software for case management/statistical purposes available. An "iChild" software would be extremely helpful.

Guatemala – Guatemala :

Si.

Iceland – Islande :

Cases are few in Iceland and no special software is used for statistical purposes. We don't think there is need for that for time being.

Ireland – Irlande :

No special software is in use.

Israel – Israël :

At the present time the Central Authority does not have any special software for case management, although a special program is in the process of being designed. The Central Authority is very interested in using the iChild software. There would be great benefit in the member countries using a standardized system, which would ensure consistency in practice.

Italy – Italie :

L'Autorité Centrale italienne utilise un système interne de gestion des fichiers, dénommé GIAC, qui s'est avéré très efficace. Néanmoins, elle serait prête à tester ce nouveau logiciel iChild.

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Latvia – Lettonie :

Presently Central Authority of Latvia doesn't uses specific software for statistics and case management. In relation to the program iChild the Central Authority of Latvia is interested in it – to get acquainted with it and to reflect on possibility to use this program in its work.

Lithuania – Lituanie :

SCRPAS uses *Microsoft Excel* for the collection and processing of statistics. However, we are interested in the implementation of the new *iChild* already used by 6 Contracting States.

Malta – Malte :

In view of the small caseload, the Maltese Central Authority does not use special software for case management or statistical purposes. However, it fully supports the initiative that resulted in the pilot project, and would be interested to use the iChild software should the need arise.

Mexico – México :

No contamos con un sistema informático especifico, las estadísticas se realizan en Excel, y si estamos interesados en el nuevo programa informático Child, por lo que nos gustaría recibir información al respecto.

Monaco – Monaco :

Non, la DSJ n'utilise pas ce type de logiciel et n'en ressent pas la nécessité.

Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

The New Zealand CA is very fortunate to have access to the national courts case management computer system. The system is very detailed and contains specific case information. It is unlikely that New Zealand would consider using an alternative or a dual computer based system.

Nicaragua – Nicaragua :

No, en la actualidad no contamos con un programa informático para la gestión de casos, en cuanto a programa informático, Child, estaríamos, efectivamente interesados en conocerlo.

Panama – Panama :

Se está utilizando iChild.

Paraguay – Paraguay :

[Sin respuesta]

Poland – Pologne :

Please see answer 46.

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Portugal – Portugal :

The Portuguese Central Authority has no software now to manage the cases. However, new software is being studied by our Informatics Service.

We are interested to know how the iChild program works.

Romania – Roumanie :

First question, no.

Second question, yes.

Slovakia – Slovaquie :

The Slovak Central Authority does not use any special software for case management or statistics. Due to this fact, the CA is very interested in using the iChild Software. The intention of establishing a new software for all cases handled by the Slovak CA was expressed also in The Terms of Reference of The Human Capital Technical Assistance Project of the World Bank, focused on the needs of the Slovak Central Authority.

South Africa – Afrique du Sud :

No special software is available. Yes we would like to utilize iChild.

Spain – Espagne :

Sí se utiliza un programa informático para la gestión de casos y para fines estadísticos.

Podríamos estar interesados en la utilización del nuevo programa

Sweden – Suède :

The Swedish Central Authority uses a programme named Child Net for case management, which is also used for statistical purposes.

Switzerland – Suisse :

L'AC suisse utilise un logiciel à des fins statistiques. Pour l'instant, elle ne souhaite pas utiliser iChild, mais cela reste à l'étude.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

No, special casework software is not currently used although there are plans to develop a database for the accurate recording of case statistics in the near future. The Central Authority for Scotland is unable to use the iChild software due to IT security restrictions.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

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

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United States – Etats Unis :

The U.S. Department of State's database is currently being updated. We will study the use of iChild software when it is made available, but we are not likely to be able to implement it for privacy and security reasons.

The National Center for Missing & Exploited Children (NCMEC) uses a Microsoft Access database and has invested substantial time and resources to updating and improving that database in 2006. NCMEC's International Division database is only one part of a larger database that tracks all of NCMEC's domestic and international missing child cases. It is therefore not feasible for NCMEC to introduce iChild software as a separate database at this time.

Uruguay – Uruguay :

El programa ofrecido sería de real utilidad.

14. Publicity / debate concerning the Convention – Publicité et débas relatifs à la Convention

Question 48	
Has the Convention given rise to (a) any publicity (positive or negative) in your country, or (b) any debate or discussion in your national Parliament or its equivalent?	**La Convention a-t-elle fait l'objet (a) d'une publicité (positive ou négative) dans votre Etat ou (b) de débats ou de discussions au sein de votre parlement national ou de l'organe équivalent ?**

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Argentina – Argentine :

El Convenio ha generado publicidad positiva al aparecer en los medios de comunicación masiva, ya sea por la participación de esta Autoridad Central en entrevistas periodísticas o televisivas en las cuales se ha explicado el funcionamiento del Convenio y la manera de acceder al mismo; asi como también por la repercusión que algunos casos han alcanzado.

Australia – Australie :

The Australian Central Authority has enabled provision in its enacting legislation that restricts the publication of court proceedings, and the identification of persons on account of such proceedings, within a public context, including, print and, radio broadcast, television or other electronic means. Negative publicity has been noted to arise when, in the absence of similar restrictions in other Convention States, reports are made from abducting parents dissatisfied with return orders make public declarations denouncing the operation of the Convention.

A recent matter that caused widespread publicity followed an application made by a father in the U.S. for the return of his child from Australia. The child had been in the U.S. for some three months prior to the child's removal to Australia. The mother lodged an appeal on the basis that there was an absence of intention to settle within the U.S. given her intention to see if the relationship with the residence of the country would "work out." It was noted in by the judiciary that whilst a decision to allow the appeal would be said to "deny the child the benefit of the Convention" it was the view that "the interests of children…could well be adversely affected" whereby a parent's attempts at reconciliation in a foreign country could result in a determination being made that such was the habitual residence of a child. Public reaction conceded with the outcome of appeal, supporting the determination of the child's habitual residence.

A further recent matter involved an order made by a State Australian jurisdiction ordering the return of two children back to their mother in Switzerland. This matter gained negative publicity due to the manner at which the children were abducted, which involved the use of fraudulent passports and the restricted conditions of the father's access with the children, enabling only for supervised access to be enjoyed. This matter has been raised within WA parliament and also flagged within federal parliament in Australia.

Austria – Autriche :

Unfortunately there is bad publicity in nearly all abduction cases. Public opinion never shows itself able to understand the basic concept of the Convention. Enforcing an order to return makes the press (usually informed by the abducting parent or this parent's lawyer) rotate, no matter if the child has to be returned to his or her mother in Sweden or to her or his father in Turkey. "Common sense" in Austria takes it as a violation of the Austrian part to let the child move to a "foreign country".

Canada – Canada :

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Ontario
There have been a number of Hague Convention cases which have given rise to media attention in Ontario over the past year. This has spawned greater interest in the workings of the Hague Convention by the government generally.

British Columbia
No debate in the legislature as far as I am aware. A current case (Grant) involving France has received much attention in the press. Both positive and negative opinions have been expressed.

New Brunswick
No.

Quebec
No.

Manitoba
Because most (although not all) parents abducting children to Manitoba are returning "home" they usually have family connections in the province. Relatives, neighbours, community organizations and advocates may have difficulty understanding why the government of Manitoba, though the Central Authority, is seeking to have children whom they perceive to be "Manitobans" returned to a foreign country. These concerns have led to questions about the Convention in the Legislature of Manitoba. The Justice Department has responded by providing information about the nature of Hague Convention proceedings (for both incoming and outgoing requests) and the role of the Central Authority.

**

Ontario
Il y a eu plusieurs affaires fondées sur la Convention de La Haye qui ont retenu l'attention des médias au cours de la dernière année. Cela a attisé l'intérêt du gouvernement en général relativement au fonctionnement de la Convention de La Haye.

Colombie-Britannique
Aucun débat à l'assemblée législative à ma connaissance. Une affaire en instance (*Grant*) mettant en cause la France a reçu beaucoup d'attention médiatique. Des opinions tant positives que négatives ont été exprimées.

Nouveau-Brunswick
Non.

Québec
Non.

Manitoba
Étant donné que la plupart des parents qui emmènent illicitement des enfants au Manitoba (mais pas tous) reviennent « chez eux », ils ont habituellement des attaches familiales dans la province. Les parents, les voisins, les organismes communautaires et les groupes de pression peuvent avoir de la difficulté à comprendre pourquoi le gouvernement du Manitoba, par l'entremise de l'Autorité centrale, cherche à renvoyer dans un pays étranger des enfants qu'ils perçoivent comme « Manitobains ». Ces préoccupations ont suscité des questions à l'assemblée législative du Manitoba. Le ministère de la Justice a répondu en fournissant des renseignements sur la nature des procédures prévues à la Convention de La Haye (tant pour les demandes entrantes que sortantes) et sur le rôle de l'Autorité centrale.

Chile – Chili :

Si.
a) Hay publicidad en general positiva, a través de las publicaciones en revistas, diarios, televisión y radio. Sin embargo, cuando el sustractor debe restituir al niño, muchas veces recurre a programas de televisión argumentando que "el Estado Chilenos le quiere quitar a sus hijos", son en general los programas de televisión de ayuda social que no se interesan por conocer la correcta aplicación de la Convención, y generan repercusiones negativas al respecto.
b) Esta Autoridad Central está intentando promover la modificación a la legislación correspondiente, de manera de adecuarla a la Convención, para esto se está recurriendo al Ministerio de Justicia.

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China (SAR Hong Kong) – Chine (RAS Hongkong) :

Not that we are aware of.

China (SAR Macao) – Chine (RAS Macao) :

The MSAR Legislative Assembly (LA) has been dedicating its attention to many issues concerning the rights of the child under several aspects, namely on a political approach and with a legislative stance. Resolution 13/98/M of the LA, approved on 7 August 1998, expressed formally its favourable opinion to the extension to Macao of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. Prior to the approval of the above mentioned resolution, a specialised committee of the LA also approved its favourable opinion and stressed that Macao was in a condition to provide good examples in the subject matter at the legislative, judicial and political level. The issues raised by the Convention were thus debated both at the committee and plenary level.

It is relevant to remind that the LA is continuously dedicating efforts to the publicity and popularisation of fundamental rights, including obviously the rights of the child, as can be seen by the publication of several volumes on fundamental rights that include the laws, bills, plenary debates, legal opinions issued by specialised committee as well as other relevant elements. Included in those publications is, just to mention one example, the volume concerning the Law on Basic Principles on Family Policies where several general norms on the rights of child are included.

Colombia – Colombie :

a) El tema no ha tenido publicidad positiva o negativa en nuestro país.

b) El principal debate que se presentó fue el relativo a la fijación de la competencia para tramitar y resolver los asuntos que son materia de éste, lo que ocasionó durante el trámite de dos procesos de restitución que llegaron a la Corte Constitucional por vía tutela, que este organismo exhortara a las autoridades colombianas, al Gobierno Nacional y al Consejo Superior de la Judicatura para el impulso de un proyecto de ley orientado a regular la aplicación del Convenio.

De igual manera una queja que formuló el Gobierno Americano a través de una nota diplomática, en la que se señalaba a Colombia como país que no cumplía con el Convenio la cual originó la celebración de un Seminario sobre el tema, en el que se llevó a cabo la intervención del Departamento de Estado de los Estados Unidos, El Instituto Colombiano de Bienestar Familiar y como asistentes, Defensores de Familia, algunos Magistrados y Jueces; hechos éstos que motivaron la expedición de la Ley 1008 de 2006 por parte del Congreso de la República de Colombia.

Costa Rica – Costa Rica :

En el Parlamento no. Y la más reciente publicidad neutral y debate jurídico en torno al tema, se dio con ocasión de la Mesa Redonda denominada: "La sustracción de menores a la luz de los convenios internacionales ratificados por Costa Rica", organizada por la Escuela Judicial y la Sala Segunda de la Corte Suprema de Justicia del Poder Judicial, en San José, el día 26 de agosto de 2005.

Por cierto, la impresión general en el auditorio fue muy parecida a lo que percibe esta Autoridad Central: que el Convenio de la Haya aplicado a la luz del informe Pérez Vera puede ser omiso en cuanto a visualizar aspectos relevantes de violencia doméstica y perspectiva de género, amén de que el referido instrumento internacional parece más inclinado a proteger "derechos" del padre varón adulto.

Cyprus – Chypres :

[No answer]

Czech Republic – République tchèque :

Yes, it has given rise to a very negative publicity in media. A proposal has recently been raised in the Parliament (unsuccessfully) for reconsidering the membership of the Czech Republic to the Hague Abduction Convention.

Denmark – Danemark :

The Convention itself has not raised any publicity or debate. But specific return cases once in a while raise publicity and debate.

Ecuador – Equateur :

En un medio de comunicación se realizó una investigación respecto a la salida del país de niños sin autorización de sus progenitores, en ese contexto se realizó una entrevista a funcionarios de Autoridad Central del Ecuador quienes a través de esa vía, dieron a conocer el procedimiento para la aplicación del Convenio de La Haya 1980.

El Salvador – El Salvador :

En el caso del Parlamento (para nuestro país, Asamblea Legislativa), no ha existido discusión alguna.

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Sin embargo, en el más reciente foro de la federación Interamericana de Abogados, se contó con la ponencia de representantes de los Estados Unidos de América, lográndose concertar una reunión que dejó en evidencia, la necesidad que dicho país acepte la adhesión de El Salvador; dicho encuentro favoreció la aclaración de procedimientos alternos al convenio.

Finland – Finlande :

a) Some difficult cases has been given lot of publicity especially in tabloids, but also in more respected newspapers and national TV. The Central Authority has not actively taken part to the media in individual cases, but commented the principles of the Convention and the handling of cases in the Central Authority.

   The reservations some member states have made concerning access to legal aid have been seen problematic and unfair compared to the availability of free legal aid in Finland regardless of applicants financial status.

b) [No answer]

France – France :

Le ministère de la justice français est très fréquemment amené à répondre à des interrogations émanant des institutions nationales, y compris du parlement, sur le fonctionnement de la convention de La Haye, en particulier sous forme de questions écrites ou de questions parlementaires.

Greece – Grèce :

There is only limited and only regular publicity.

Guatemala – Guatemala :

No.

Iceland – Islande :

The Convention has not given rise to publicity or debate - apart from publicity in relation to individual cases.

Ireland – Irlande :

Publicity in one recent case was both positive and negative. It involved Irish grandparents who falsified a child's passport in order to remove him from the US and the care of his mother. There were discussions in the US Senate in relation to the matter. This office liaised with the US Department of State and the Citizens Service of the American Embassy in Dublin in the matter. It is the policy of this office not to comment on individual cases. American media coverage was picked up by Irish media.

Israel – Israël :

From time to time newspaper articles have been published on the subject of child abduction, with reference to specific cases (presented anonymously), including one particular case that reached the European Court of Human Rights. The publicity has had a positive effect overall, in that it raises awareness of the Convention and can serve to prevent or deter future abductions.

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Italy – Italie :

L'enlèvement d'enfants fait souvent l'objet d'émissions télévisées et assez rarement de débats au sein du Parlement, car la législation italienne en la matière est tout à fait efficace et appropriée à l'application correcte de la Convention.

Latvia – Lettonie :

Up to now in our experience a publicity related to the Convention was not so big. However, about Convention and facilities what it provides there was particular subject at the broadcast of the Latvian National Radio regarding issues of family. At the national parliament (Saeima) there was not particular debate.

Lithuania – Lituanie :

No debates on this issue have taken place in the Seimas (Parliament) of the Republic of Lithuania.

Malta – Malte :

The Convention has not particularly given rise to publicity, however, it did give rise to debate and discussion when Parliament was in the process of enacting the Child Abduction and Custody Act, in view of Malta's accession to the Convention.

Mexico – Méxique :

No.

Monaco – Monaco :

Non.

Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

There is both positive and negative publicity through media stories and representations.

Nicaragua – Nicaragua :

Al momento no ha sido debatido en la Asamblea Nacional, lo relativo a la aplicabiliadad del Convenio.

Panama – Panama :

Hubo una situación en que estuvo involucrada la nieta de una Diputada de la Asamblea Nacional, y la Comisión de Derechos Humanos de dicho órgano solicito informes a la autoridad central sobre las actuaciones realizadas.

En los medios de comunicación escrita y televisiva se han dado publicidad a ciertos casos por propia solicitud de alguno de los padres.

Paraguay – Paraguay :

[Sin respuesta]

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Poland – Pologne :

We have no knowledge of any case, where the Convention gave rise to any discussion in the Polish media. Neither has the Polish Parliament discussed the provisions of the Convention recently.

Portugal – Portugal :

Unfortunately no.

Romania – Roumanie :

No.

Slovakia – Slovaquie :

Yes, the Convention has given rise to (neutral) publicity in Slovakia mainly; it was presented by the representatives of the Slovak CA in mass medias (on TV, radio, journals and magazines) and also through the Internet (web-site of the Slovak CA). The higher interest of public is probably caused also by higher amount of the mixed-nationals marriages, which is connected with the involvement of the Slovak republic in international structures, especially in European Union.

South Africa – Afrique du Sud :

Generally, most of our convention cases have attracted negative publicity especially in the print media. Some cases have been "reported" to the office of the Presidency, one left behind parent has "reported" our Central Authority to his Congressman.

Spain – Espagne :

Se han formulado preguntas parlamentarias acerca del número de casos registrados en España y se han emitido algunos programas en las televisiones sobre la sustracción de menores.

Sweden – Suède :

a) Some difficult cases have been given lot of publicity in newspapers and national TV. The Central Authority has not actively taken part in the media in individual cases, but commented the principles of the Convention and the handling of cases in the Central Authority. A case involving a party, which is not party to the 1980 Hague Convention, has been highlighted in the media. Hague Convention cases have also been in the media. Article 13 *b)* about protecting domestic violence and the six weeks time limit has been debated.

b) None.

Switzerland – Suisse :

Oui; la mobilisation de l'opinion publique, y compris l'appel à des parlementaires par quelques parents invoquant de graves menaces liées au retour pour leurs enfants et pour eux-mêmes a conduit à une nouvelle réflexion sur le bien-être de l'enfant surtout post retour et à une tendance au renforcement des droits de l'enfant dans les procédures suivant un enlèvement (audition/représentation). L'attente de voir l'application de la Convention s'améliorer en tenant mieux compte de l'intérêt supérieur de l'enfant a donné lieu également à un mouvement en faveur d'une application de la Convention mieux orientée sur la personne de l'enfant, tout en permettant que les décisions soient prises moyennant une procédure simple et rapide Différentes propositions devraient être soumises au parlement fédéral en 2007. Les récents développements de la jurisprudence

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de cours suprêmes étrangères (Italie, France) auront sans doute leur influence dans les débats à venir.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

No.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

Yes.

There is also a Child Abduction Parliamentary Working Group.

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

United States – Etats Unis :

Individual Convention cases occasionally generate some publicity. Parents occasionally petition their representatives in the U.S. Congress or the Senate to get involved in their individual cases. There have been complaints by some fathers' rights groups about not being able to use the Convention to enforce access rights. Finally, advocates for domestic violence victims have prompted some debate, mostly in academic circles, about the use of Article 13(b) in protecting domestic violence victims. However, there has not been any major publicity surrounding the implementation of the Convention in general, nor has the Convention prompted any action from the U.S. Congress in the last five years.

Uruguay – Uruguay :

Los debates parlamentarios se plantearon al momento de la aprobación del Convenio, siendo altamente favorables a la adhesión uruguaya.

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Question 49	
Is the Convention having any negative effects which are causing concern?	**La Convention engendre-t-elle des effets négatifs sources de problèmes ?**

Argentina – Argentine :

Muchas veces la parte que se ha visto obligada a restituir a un menor, se ha sentido perjudicado y ha cuestionado el accionar de la Autoridad Central o de la Justicia, muchas veces con apoyo de la prensa, lo cual obedece a una falta de información que en muchos casos se ha intentado suplir a fin de evitar valoraciones erróneas sobre el Convenio.

Australia – Australie :

There is some concern that the Convention is now being used by abusive (usually male) parents to seek the return of children and primary carers back to the country of habitual residence and that the Convention is moving away from what it was meant to deter.

There is concern that the Convention is now being used by abusive (usually male) parents to seek the return of children and primary carers back to the country of habitual residence and that the Convention is moving away from what it was meant to deter. Recent statistics demonstrate that the majority of abducting parents are women, often those fleeing situation of abuse and domestic violence. There is also growing concerns regarding the correlation between incidents of child abduction and the presence of

domestic violence and that the Convention does not give due consideration and sufficient weight to such mitigating circumstances in the context of 'grave risk' arguments.

Further concern has been noted in respect to States achieving the objects of the convention, including the prevention of further harm to the child and the exchange between States of information relating to the social background of the child. While it is accepted that the return of the child under the Convention does allow for the child to be returned to the appropriate forum to make decisions with respect to the child's residence, custody and welfare, there are concerns that matters such as abusive relationships are seen not to be properly addressed by the relevant State of the child's habitual residence. These concerns are further compounded when migration and visa issues may impact on the level and nature of financial and social support afforded to parents and their children by the State.

Austria – Autriche :

No.

Canada – Canada :

Some parents and courts, when allowing children to go to another State, rely on the Convention in case the child is abducted. However, because of this expectation, there is frustration from parents when the Convention is not applied properly.

**

Certains parents et tribunaux, lorsqu'ils permettent à un enfant d'aller dans un autre État, prennent en compte la Convention au cas où l'enfant serait enlevé. Cependant, à cause de ces attentes à propos de la Convention, certains parents sont frustrés lorsque la Convention n'est pas appliquée correctement.

Chile – Chili :

Tal como se señaló anteriormente, algunos programas de televisión o diarios han seguido algunos casos, especialmente cuando el sustractor lo solicita, alegando frente a los medios que "el Estado Chileno le quiere quitar a sus hijos", el problema se torna más grave cuando van acompañados de algunos personajes públicos como por ejemplo Diputados de la República. Esto genera publicidad negativa y una mala información respecto a la real importancia y aplicación de la Convención de la Haya.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

Not that we are aware of.

China (SAR Macao) – Chine (RAS Macao) :

No.

Colombia – Colombie :

Aún preocupa la demora en la resolución de los casos en muchos países, incluido Colombia. Se espera mejorar teniendo en cuenta la expedición de la Ley 1008 de 2003 que asigna la competencia a los Jueces de Familia. Consideramos que la Oficina Permanente, podría sugerir al Consejo Superior de la Judicatura (Órgano superior de los Jueces en Colombia) la necesidad de imprimir la celeridad que el Convenio impone en todas las actuaciones judiciales dentro de los procesos de restitución o regulación internacional de visitas.

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Costa Rica – Costa Rica :

Teóricamente preocupa lo de que el Convenio de la Haya aplicado a la luz del informe Pérez Vera puede ser omiso en cuanto a visualizar aspectos relevantes de violencia doméstica y perspectiva de género, amén de que el referido instrumento internacional parece más inclinado a proteger "derechos" del padre varón adulto. Y en la práctica es preocupante lo mencionado supra (respuesta a las preguntas N° 01 y 02), acerca de la pobrísima cultura de rendición de cuentas de algunas autoridades centrales requeridas.

Cyprus – Chypres :

[No answer]

Czech Republic – République tchèque :

No.

Denmark – Danemark :

We do not believe that the Convention has any negative effects which are causing concern.

Ecuador – Equateur :

No.

El Salvador – El Salvador :

No hemos tenido conocimiento de opinión desfavorable o efecto negativo.

Finland – Finlande :

No. The Convention is seen as rather well functioning method for solving return cases.

France – France :

Certaines affaires, relatives à l'application de la convention de La Haye, ont fait l'objet d'une couverture médiatique importante, et ont donné lieu à des interrogations parfois vives sur la mise en oeuvre de la convention de La Haye dans l'opinion publique.

Greece – Grèce :

No.

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

No.

Ireland – Irlande :

None that we are aware of.

Israel – Israël :

No.

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Italy – Italie :

Non.

Latvia – Lettonie :

Up to now we do not observed such influence.

Lithuania – Lituanie :

The Ministry of Justice and other stakeholders do not have any information on potential negative impact of the Hague Convention.

Malta – Malte :

There have been no negative effects as yet.

Mexico – México :

No.

Monaco – Monaco :

Il a pu y avoir des requêtes de ressortissants de pays non signataires de la Convention qui s'en prévalent à tort.

Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

There is a public perception of a lack of consideration of domestic violence issues in Hague Convention proceedings. Several high profile cases have focussed on the grave risk situation.

Nicaragua – Nicaragua :

Ninguno

Panama – Panama :

Sólo se ha cuestionado la actuación de la autoridad central.

Paraguay – Paraguay :

[Sin respuesta]

Poland – Pologne :

We have no knowledge of such cases.

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Portugal – Portugal :

We think so. The Portuguese Central Authority is concerned about the practical application of the Convention on the different kinds of decisions that have been pronounced.

Romania – Roumanie :

No.

Slovakia – Slovaquie :

Yes, the concern is causing mainly the incorrect understanding of the Hague proceedings by public, legal attorneys and some courts since these proceedings are understood as custodial proceedings in most cases.

Other than that, the concern is also about the deteriorated position of the abductor in custodial proceedings in the country of the habitual residence. See also Question No.44.

South Africa – Afrique du Sud :

Comments and criticism have been leveled at the Central Authority that they are heartless and / or do not at in the child's best interests. This is primarily borne out of ignorance of the terms of the Convention and a lack of understanding of its objectives and implementation.

Spain – Espagne :

No consta la existencia de ningún efecto negativo.

Sweden – Suède :

No, the Convention is seen as rather well functioning methods for solving cases.

Switzerland – Suisse :

Se référer à la réponse précédente.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

No.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

No.

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

United States – Etats Unis :

The U.S. Central Authority is concerned that interpretation of the Article 13(b) exception to return might be becoming much broader than it was originally intended to be. Also, see response to question # 30 regarding the U.S. Central Authority's concern about excessive use of undertakings that exceed the scope of the Convention.

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Uruguay – Uruguay :

No, al contrario, el convenio ha tenido efectos positivos para lograr el retorno de niños ilícitamente trasladados o retenidos en el extranjero.

Question 50	
By what methods do you disseminate information about the Convention?	**Quels sont les mécanismes utilisés pour diffuser les informations relatives à la Convention ?**

Argentina – Argentine :

Seminarios, cursos, talleres, página de internet, notas en diario y televisión.

Australia – Australie :

The Australian Central Authority:

- Maintains its own pages on the official Attorney-General's Department website; includes sections on Information for Parents; Contains links to relevant Commonwealth Legislation; Contains links to the International Child Abduction News (newsletter of the Commonwealth Central Authority - Attorney-General's Department), other publications on international child abduction, and statistics on child abduction in Australia; Contains links to booklets providing further information on international child abduction produced by the Commonwealth Central Authority - Attorney-General's Department; Contains links to available social services and support networks (including the Australian Central Authority funded telephone service, International social Service assisting families affected by international child abduction) further information on international parental child abduction, missing children services, courts and legal services, state and territory legal aid offices, and overseas central authorities; Provides links to courts and other legal services
- Includes on the website hyperlink to other relevant government departments, such as the Commonwealth Financial Assistance, Department of Foreign Affairs and Trade, the Australian Federal Police Family Law Unit; this also includes links to non-government departments such as the International Social Services (ISS).
- Hosts a biennial conference of Australian Commonwealth and State Central Authorities for the Convention addressing the operational issues facing Central Authorities and specific legal issues.
- Maintains a Child Abduction Hotline – providing information and referrals to parents, organisations and government departments on information pertaining to international child abductions policies and procedures.
- Gives presentations to Department of Foreign Affairs and Trade Consular courses.

Austria – Autriche :

The members of the CA of Austria:

- maintain the (part of the) website concerning child abduction,
- give answers to lawyers, judges and Youth Welfare Authorities (mostly via phone),
- try to give answer to parents and send application forms (via phone, e-mail),
- publish new developments in the specific law gazettes (e.g. Richterzeitung, Zeitschrift für Familienrecht et al),
- organise and/or take part in workshops, seminars etc
- keep close contact with the specific Criminal Bureau.

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Canada – Canada :

Ontario
The Ontario Central Authority has made presentations on the Hague Convention to the Ontario Bar Association and the Ontario Court of Justice. Presentations have also been made to private lawyers interested in taking Pro Bono cases. Ontario also provides information to family law lawyers and the pubic through enquiries over the telephone.

British Columbia
Pamphlets are made available is all court houses. The Convention is referenced on the AG Family Law website. CLE seminars have been given to the private family bar.

Saskatchewan
Primarily by the internet, and pamphlets available in court houses and government offices. We have also provided information (both written and oral) to family law lawyers at Canadian Bar Association meetings.

Quebec
In 2000, the Quebec Central Authority added to the Department of Justice website a section devoted entirely to the Hague Convention and the role of the Quebec Central Authority:
http://www.justice.gouv.qc.ca/francais/programmes/eie/eie.htm (French) and
http://www.justice.gouv.qc.ca/english/programmes/eie/eie-a.htm (English).

In addition, the Quebec Central Authority published in English and French a pamphlet entitled "International Child Abduction – Hague Convention on the Civil Aspects of International Child Abduction". More than 5,000 copies of the pamphlet were distributed in Quebec. They were distributed to officers with the Sûreté du Québec, the Montreal Police and the Royal Canadian Mounted Police. They were also distributed to youth protection directors, youth centre, women's shelters, foreign consulates and embassies in Quebec, Attorney General prosecutors, lawyer members of the Family Law Association, legal aid offices in Quebec, etc.
http://www.justice.gouv.qc.ca/francais/publications/generale/enlevement.htm (French)
http://www.justice.gouv.qc.ca/english/publications/generale/enlevement-a.htm (English)

Manitoba
The Manitoba Bar Association and the Law Society of Manitoba have offered information sessions regarding enforcement of family law orders and decisions, including Hague return orders, on a number of occasions. The Family Law portion of the Bar Admissions course materials (Law Society of Manitoba) includes information on Hague Convention proceedings and each year the Central Authority gives a lecture to the Intensive Family Law and the Conflicts of Laws classes at the Faculty of Law, University of Manitoba. Family Conciliation Services, the social services' arm of Manitoba's Unified Family Court, has been provided with information sessions on parental child abductions generally, including Hague Convention cases, as have various law enforcement agencies in Manitoba. Judicial information sessions have also been provided to the judges of Manitoba's superior courts. (There having been a number of high-profile Hague Convention cases in Manitoba (heard by our Court of Appeal and one by the Supreme Court), the Justices of the Family Division are very familiar with the existence of the Convention and its provisions.)

In July 2004 the National Judicial Institute held a judicial information session at La Malbaie, Quebec focusing on the Hague Convention, with an international panel of experts. The Canadian Federation of Law Societies'/Canadian Bar Association's National Family Law Program in July 2004 (again at La Malbaie, Quebec) included a continuing legal information session respecting the Convention.

The Director of the Family Law Branch has written a number of articles for the legal profession, the judiciary and the general public with respect to parental child abductions generally, and in particular, cases falling under the Hague Convention. Her article

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"Responses to Inter-jurisdictional Custody and Access Breaches" appeared in Volume 23 of the Canadian Family Law Quarterly (2005).

Alberta

We have conducted lectures and presentations as well as providing handouts. Our most useful communication resource is word of mouth.

**

Ontario

L'Autorité centrale de l'Ontario a fait des présentations sur la Convention de La Haye auprès de l'Association du Barreau de l'Ontario et de la Cour de justice de l'Ontario. Des présentations ont également été faites à des avocats du secteur privé intéressés à accepter des mandats à titre bénévole. L'Ontario donne aussi des renseignements aux avocats spécialisés en droit de la famille et au public en réponse aux demandes de renseignement téléphoniques.

Colombie-Britannique

Des dépliants sont distribués dans tous les palais de justice. On trouve la Convention sur le site Web du procureur-général sur le droit de la famille. Des séminaires de formation juridique permanente ont été donnés aux avocats du secteur privé spécialisés en droit de la famille.

Saskatchewan

Principalement au moyen d'Internet et de dépliants distribués dans les palais de justice et les bureaux gouvernementaux. Nous avons également fourni des renseignements (par écrit et verbalement) à des avocats spécialisés en droit de la famille lors de réunions de l'Association du Barreau canadien.

Québec

L'Autorité centrale du Québec a mis disponible en 2000 sur le site internet du ministère de la Justice une section complètement spécialisée sur la Convention de La Haye et le rôle de l'Autorité centrale du Québec que l'on peut retrouver aux adresses suivantes :
http://www.justice.gouv.qc.ca/francais/programmes/eie/eie.htm (site en français) et
http://www.justice.gouv.qc.ca/english/programmes/eie/eie-a.htm (site en anglais)

De plus, l'Autorité centrale du Québec a publié en français et en anglais un dépliant d'information intitulé «Enlèvement international d'enfants – La Convention de La Haye sur les aspects civils de l'enlèvement international d'enfants». Ce dépliant a été distribué au Québec en plus de 5000 exemplaires. Ils ont été distribués auprès des policiers de la Sûreté du Québec, de la Police de la Ville de Montréal et de la Gendarmerie Royale du Canada. De plus, ils ont été distribués aux Directeurs de la protection de la jeunesse, aux Centres jeunesses, aux Maisons d'hébergement pour femmes en difficultés, aux consulats et Ambassades étrangers au Québec, aux Substituts du Procureur général du Québec, aux avocats membres de l'Association de droit familial, aux bureaux d'aide juridique du Québec, etc.
http://www.justice.gouv.qc.ca/francais/publications/generale/enlevement.htm
(dépliant en français) et
http://www.justice.gouv.qc.ca/english/publications/generale/enlevement-a.htm
(dépliant en anglais)

Manitoba

L'Association du Barreau du Manitoba et la Société du Barreau du Manitoba ont offert des séances d'information concernant l'exécution des ordonnances en droit de la famille, notamment les ordonnances de retour relevant de la Convention de La Haye, à plusieurs occasions. Le module « Droit de la famille » du matériel didactique des cours préparatoires à l'admission au Barreau (Société du Barreau du Manitoba) comprend de l'information sur les procédures prévues à la Convention de La Haye et chaque année l'Autorité centrale présente un exposé dans le cadre des cours Droit de la famille intensif

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et Droit international privé à la faculté de droit de l'Université du Manitoba. Des séances d'information générale sur les enlèvements d'enfant par un parent, y compris les cas visés par la Convention de La Haye, ont été données au Service de conciliation familiale, l'organe de services sociaux du Tribunal unifié de la famille du Manitoba, de même qu'à différents organismes d'application de la loi au Manitoba. Des séances d'information judiciaire ont également été données aux juges des cours supérieures du Manitoba. (Il y a eu plusieurs affaires hautement médiatisées relevant de la Convention de La Haye au Manitoba (entendues par notre Cour d'appel, et une, par la Cour suprême), les juges de la Division de la famille sont bien au fait de l'existence de la Convention et de ses dispositions.)

En juillet 2004, l'Institut national de la magistrature a tenu une séance d'information judiciaire à La Malbaie, au Québec, sur la Convention de La Haye, avec un groupe d'experts internationaux. Le Programme national du droit de la famille offert conjointement en juillet 2004 par la Fédération canadienne des professions juridiques et l'Association du Barreau canadien (toujours à La Malbaie, au Québec) comportait une séance de formation juridique permanente sur la Convention de La Haye.

La Directrice de la Division du droit de la famille a écrit plusieurs articles destinés aux membres de la profession juridique, à la magistrature et au grand public concernant de manière générale les enlèvements d'enfants par un parent, et en particulier les cas relevant de la Convention de La Haye. Son article intitulé « Responses to Inter-jurisdictional Custody and Access Breaches » a paru dans le volume 23 de la revue *Canadian Family Law Quarterly* (2005).

Alberta
Nous avons présenté des exposés, fait des présentations et distribué de la documentation. Notre instrument de communication le plus utile est le bouche à oreille.

Chile – Chili :

Televisión, Diarios, Programas Radiales, Sitio Web www.cajmetro.cl y en general a través de organismos relacionados con justicia y/o niños.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

The information about the Convention can be found in our website.

China (SAR Macao) – Chine (RAS Macao) :

Dissemination of information concerning the rights of the child has been widely promoted through several means, such as associations and the mass media. Notwithstanding the fact that these activities are not specifically aimed at the direct dissemination of information regarding the Hague Convention, they cover most of its contents, its scope, information on matters such as the legal provisions on parental responsibility, the exercise of parental responsibility after divorce, custody rights, visitation rights, as well as the provisions of the Child Educational and Social Protection Regime was divulgated through newspapers, television programs, pamphlets and brochures and the organisation of bazaars.

Colombia – Colombie :

Estamos en construcción de la Página Web en donde va a incluirse toda la información relativa.

A través de una publicación periódica del ICBF denominada "Diálogos" se ha dado a conocer el tema.

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Costa Rica – Costa Rica :

El servicio público se propaga a través de las 41 oficinas locales del PANI apostadas a lo largo y ancho de las comunidades más importantes del territorio nacional.

Cyprus – Chypres :

[No answer]

Czech Republic – République tchèque :

By informing judges and social workers.

Denmark – Danemark :

Mainly by our website www.boernebortforelse.dk and with seminars for the judges from the Civil Courts.

Ecuador – Equateur :

- Página web del Consejo Nacional de la Niñez y Adolescencia
- Seminarios y Talleres

El Salvador – El Salvador :

A través de capacitaciones dirigidas a las entidades encargadas de aplicar el convenio.

Finland – Finlande :

Information is available at the Central Authority's web page, and is given for example by phone, e-mail, and by sending articles for the interested ones. The Central Authority provides training for different authorities, lawyers and judges working with return issues.

France – France :

Les mécanismes utilisés pour diffuser les informations relatives à la convention sont les mêmes que ceux qui ont d'ores et déjà été listés à la question n°3.

Par ailleurs, le Ministère de la Justice a organisé une conférence de presse au début du mois de mars 2005, à l'occasion notamment de l'entrée en vigueur du règlement Bruxelles II bis, au cours de laquelle a été lancé un site internet consacré aux déplacements internationaux de mineurs et au droit de visite transfrontière.

Cette conférence de presse, dirigée par le Ministre de la Justice d'alors (Monsieur Dominique PERBEN) a reçu une couverture médiatique importante, comme a pu le révéler le nombre de connexions sur ce site dans les semaines qui ont suivi son lancement.

Greece – Grèce :

Only through the website maintained by the Ministry of Justice

Guatemala – Guatemala :

No se ha difundido información sobre el Convenio, ya que no se cuenta con fondos suficientes para ello.

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Iceland – Islande :

There is information on the Convention on our web-page. It needs updating.

Ireland – Irlande :

The Hague website has proven to be extremely useful in relation to acquiring information in relation to the Convention.

Israel – Israël :

Information about the Convention is disseminated through the website, through seminars, and conferences, through newspaper articles.

Italy – Italie :

Tous les moyens possibles de diffusion sont utilisés (brochures, site Internet, débats, séminaires, etc…).

Latvia – Lettonie :

Information related to the Convention is fit in the website of the Central Authority of Latvia as well as with information are provided relevant/involved parties of Convention's cases or just an interested persons from the lawyers. With informative letter we have informed also Courts as well as in the scope of concrete case we have informed Legal Aid Administration of the Ministry of Justice.

Lithuania – Lituanie :

The main method is placing the information on the Convention in websites of the Ministry of Social Security and Labour and SCRPAS. The information is public and freely accessible.

Malta – Malte :

Information about the Convention can be obtained from the above-mentioned website. The Maltese Central Authority is in the process of making presentations to the Chamber of Advocates in Malta and Gozo, in order to promote awareness within the legal profession. Information is also provided by the Central Authority to anyone who requests it.

Mexico – Méxique :

A través de los distintos seminarios de capacitación que se realizan en nuestro país en la materia, y vía telefónica con cada Juez cuando le es asignado un asunto de restitución de menores.

Monaco – Monaco :

Il n'existe pas de procédure particulière si ce n'est une consultation possible de la convention sur le site Internet du gouvernement monégasque.

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Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

The New Zealand Law Society provides education to practitioners and have included seminars in 1995 and 2003. The annual Family Law Conference organised by the Family Law Section of the Law Society usually includes sessions on the Hague Convention. Since the Central Authority appoints lawyers from a small select group, very experienced and expert counsel are used in Convention cases. Liaison and networking amongst counsel is strongly encouraged. A memorandum is circulated to all Hague counsel to raise awareness of particular issues.

Nicaragua – Nicaragua :

A través de las coordinaciones con la Dirección General Consular del Ministerio de Relaciones Exteriores.

Panama – Panama :

No se ha hecho una campaña de difusión, sin embargo, las autoridades a las cuales recurren los padres, remiten el caso a esta autoridad central.

Paraguay – Paraguay :

[Sin respuesta]

Poland – Pologne :

The Ministry of Justice has encouraged the media to disseminate information about the provisions of the Convention on many occasions. We have provided the media with all the necessary information concerning the interpretation of the specific provisions of the Convention. It should be noted that it is a well-known fact that such a Convention is in effect in Poland.

Portugal – Portugal :

None.

Romania – Roumanie :

The site of the Ministry of Justice, www.just.ro, in Romanian only.

Slovakia – Slovaquie :

See Question No. 48. Moreover, it is intended to issue a brochure by the Slovak CA, which would contain all useful information concerning the Hague convention and which would be disseminated between the social workers and on the courts and embassies.

The Slovak CA also presented The Annual Report for Year 2005 about its budgetary and personal conditions and its activities in public and in the presence of the press.

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South Africa – Afrique du Sud :

The legal fraternity has been informed through various conferences, seminars and academic material. A lot more needs to be done for the general public through public awareness campaigns.

Spain – Espagne :

A través de los Cursos y Conferencias que se han realizado, dirigidos a los diferentes agentes que intervienen en el Convenio: policía, jueces, abogados, fiscales y servicios sociales.

Sweden – Suède :

Information is available at the Central Authority's web page. Information is also given by phone, e-mail, and by sending articles for interesting ones. The Central Authority provides training for different authorities, lawyers and judges working with return issues. (For more information regarding the seminars and conferences held by the Swedish Central Authority see question 23 above).

Switzerland – Suisse :

Les médias (par ex. communiqué de presse annuel relatif aux statistiques), les publications (jurisprudence, doctrine), les conférences et autres séminaires, le site Internet avec aides mémoire et autres références.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

- Scottish Executive website.
- Booklets and information flyers are regularly sent to solicitors, parents, Citizens Advice bureaus, Courts.
- We have also recently made our child abduction flyer available in Scotland's main airport.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

The England/Wales Central Authority:

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

The Reunite advice line refers parents to the ICACU.

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

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United States – Etats Unis :

The Department of State maintains a regularly updated web site that explains the Convention and its implementation in the U.S. See www.travel.state.gov. We also have flyers and fact sheets that we send to parents who inquire. The USCA does trainings and/or speaks at conferences designed to reach out to bar associations, to judicial conferences, and to law enforcement.

Uruguay – Uruguay :

A través de cursos en las Facultades de Derecho para graduados; talleres para magistrados y notas periódicas de divulgación del Convenio. Se está organizando una página web informativa al respecto.

Question 51	
Could you provide a list (including contact details and web site addresses) of non-governmental organisations in your State which are involved in matters covered by the 1980 and / or 1996 Conventions?	**Pourriez-vous fournir une liste des organisations non gouvernementales de votre Etat (ainsi que leurs coordonnées et leurs sites Internet) qui jouent un rôle dans les domaines couverts par les Conventions de 1980 et / ou de 1996 ?**

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Argentina – Argentine :

Missing Children Argentina chicosperdidos@fc.ar

Australia – Australie :

International Social Service
International Parental Child Abduction Service
National Office
Level 2, 313-315 Flinders Lane
Melbourne VIC 3000
Australia
Telephone: +61 3 9614 8755
Toll free 1300 657 843
Fax: +61 3 9614 8766
Email: iss@iss.org.au
Website: www.iss.org.au

Austria – Autriche :

No NGOs are involved in child abduction cases in Austria.

Canada – Canada :

Ontario
Missing Children's Society of Canada
99 Bronte Road, Suite 814
Oakville, ON L6L 1G4
Tel: (905) 469-8826
Fax: (905) 469-8828

Child Find Ontario
440 A Britannia Road East
Mississauga, ON L4Z 1X9
Tel: (905) 712-3463
Fax: (905) 712-3462

British Columbia
Child Find BC
208-2722 Fifth Street
Victoria, BC
V8T 4B2
Tel: 250-382-7311
Fax: 250-382-0227
Email: childvicbc@shaw.ca
Web: www.childfindbc.com

Saskatchewan
Child Find Saskatchewan assists in locating children whose whereabouts are not known. Their address is:

Child Find Saskatchewan
202- 3502 Taylor Street E
Saskatoon, Sask., S7H 5H9
(306) 955-0070 or toll free, 1-800-513-3463
Fax: (306) 373-1311
childsask@aol.com
http://www.childfind.ca/provorgs/sask/home.htm

Quebec
In 1995, the federal government consolidated the existing programs to create the "Our Missing Children" program in partnership with the Royal Canadian Mounted Police, Canada Border Services (Customs and Immigration), Foreign Affairs Canada and the Department of Justice of Canada. Employees of those departments and agencies all work in cooperation with Central Authorities to prevent child abduction and locate children wrongfully removed from Canada or retained abroad. In Quebec, the Montreal Police and the Sûreté du Québec are also partners in the program.

Under the program, the coordinators all collaborate and exchange information in order to help left-behind parents find their children. In addition, we all collaborate in order to refer parents to the resources that can assist them.

"Our Missing Children" program – Quebec coordinators:
www.nosenfantsdisparus.ca/fr/index.html

RCMP – Constable Linda Brosseau
Telephone: (514) 939-8400, extension 2645

Border Services – Lyne Landry
Telephone: (514) 283-2488, extension 5603
Sûreté du Québec - Sergeant Sylvain Bessette
Telephone: (514) 390-8276

Montreal Police – Lieutenant-Detective Yves Malo
Telephone: (514) 280-8504

Jean-Marc Lesage, Anne Bourdeau and Nancy Coulombe
Foreign Affairs Canada
Telephone: 1-800-387-3124

Consular Affairs: http://www.voyage.gc.ca/consular_home-en.asp

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Manitoba
Child Find Manitoba has been involved with Hague Abduction Convention cases by providing support to left-behind parents. Their website is:

http://www.childfind.mb.ca/en/ (English)
http://www.childfind.mb.ca/fr/ (French)

A list of Child Find offices across Canada is accessible at:

http://www.childfind.ca/provorgs/provnums.hte

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Ontario
Missing Children's Society of Canada
99 Bronte Road, Suite 814
Oakville, ON L6L 1G4
Tél. : (905) 469-8826
Télec. : (905) 469-8828

Child Find Ontario
440 A Britannia Road East
Mississauga, ON L4Z 1X9
Tél. : (905) 712-3463
Télec. : (905) 712-3462

Colombie-Britannique
Child Find BC
208-2722 Fifth Street
Victoria, BC
V8T 4B2
Tél. : 250-382-7311
Télec. : 250-382-0227
Email: childvicbc@shaw.ca
Web: www.childfindbc.com

Saskatchewan
Child Find Saskatchewan aide à retrouver les enfants disparus. Voici leur adresse :

Child Find Saskatchewan
202- 3502 Taylor Street E
Saskatoon, Sask., S7H 5H9
(306) 955-0070 or toll free, 1-800-513-3463
Télec. : (306) 373-1311
childsask@aol.com
http://www.childfind.ca/provorgs/sask/home.htm

Québec
En 1995, le gouvernement fédéral réunissait les différents programmes déjà existants pour créer le Programme " Nos enfants disparus " avec comme partenaires la Gendarmerie Royale du Canada, les Services frontaliers Canada (douanes et Immigration), les Affaires étrangères Canada et le ministère de la Justice du Canada. Les employés de ces ministères et agence travaillent tous en concertation avec les Autorités centrales pour prévenir l'enlèvement d'enfants et pour retrouver les enfants retenus ou déplacés illicitement à l'étranger. Au Québec, le Service de Police de la Ville de Montréal ainsi que la Sûreté du Québec sont également partenaires de ce programme.

Dans le cadre de ce programme, tous les coordonnateurs collaborent et échanges de l'information pour aider un parent victime à retrouver son enfant. De plus, nous collaborons tous afin de référer les parents aux bonnes ressources pour leur venir en aide.

Programme «Nos enfants disparus» - Coordonnateurs du Québec :
www.nosenfantsdisparus.ca/fr/index.html

GRC – Gendarme Linda Brosseau
Téléphone : (514) 939-8400 poste 2645

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Services frontaliers – Madame Lyne Landry
Téléphone : (514) 283-2488 poste 5603
Sûreté du Québec - Sergent Sylvain Bessette
Téléphone : (514) 390-8276

Police de la Ville de Montréal – Lieutenant-détective Yves Malo
Téléphone : (514) 280-8504

Monsieur Jean-Marc Lesage, Mesdames Anne Bourdeau et Nancy Coulombe
Affaires étrangères Canada
Téléphone : 1-800-387-3124

Affaires consulaires au http://www.voyage.gc.ca/consular_home-fr.asp

Manitoba
Child Find Manitoba a travaillé dans des dossiers fondés sur la Convention de La Haye en offrant un soutien aux parents. Voici l'adresse de son site Web :

http://www.childfind.mb.ca/en/ (anglais)
http://www.childfind.mb.ca/fr/ (français)

Une liste des différents bureaux de Child Find au Canada est disponible à l'adresse suivante :

http://www.childfind.ca/provorgs/provnums.hte

Chile – Chili :

En general los organismos que participan en cuestiones relativas a la Convención son todos gubernamentales.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We are not aware of any non-governmental organization actively involved in suh matters in the HKSAR but the Consulate General of the United States (Hon Kong and Macao) also provided information about the 1980 Convention (website address: http://hongkong.usconsulate.gov/hkinfo/)

China (SAR Macao) – Chine (RAS Macao) :

Not at the moment. The MSAR Central Authority works in partnership with several associations related to family interests and institutions of social solidarity, but those institutions are not specifically involved in matters covered by the 1980 Convention.

Colombia – Colombie :

No existen en Colombia Organizaciones no gubernamentales que se dediquen específicamente a trabajar sobre el tema. Pero si hemos contado con el apoyo de la Organización Internacional de las Migraciones (OIM) para los casos en que se dificulta el retorno de un niño a su país de residencia habitual.

Existen instituciones que reciben bajo protección los niños que son sujetos de tal medida cuando hay una situación de peligro que vulnera sus derechos y no les permite estar con su familia. Estos niños son ubicados por el Defensor de Familia, quien fundamenta la medida en lo dispuesto en la Convención de los Derechos del Niño (ley 12 de 1.991) y en el Código del Menor (Decreto 2737 de 1.989). El pago de la manutención de los niños en estas instituciones corre por cuenta del ICBF.

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Las medidas de protección se aplican sin distinción alguna independientemente de la raza, el color, el sexo, el idioma, la religión la opinión política o de otra índole, origen nacional, étnico o social, discapacidad o cualquier otra condición del niño.

Cuando entre en vigor para Colombia el Convenio de La Haya de 1.996, en caso de tomar medidas a favor de un niño, las mismas se aplicarían con fundamento en este instrumento internacional y los demás que ha suscrito Colombia en materia de Derechos Humanos.

Costa Rica – Costa Rica :

El correo electrónico del Poder Judicial es el siguiente: www.poder-judicial@go.cr Tómese nota que de ese Poder dependen los juzgados penales, de familia y de niñez & adolescencia de la República, así como el Tribunal Superior de Familia (corte de apelaciones). También el Ministerio Público y el Organismo de Investigación Judicial (OIJ). Todos los anteriores pueden fungir en cualquier momento como autoridades competentes y/o autoridades colaboradoras según sea el caso, con respecto de la Autoridad Central PANI.

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Cyprus – Chypres :

[No answer]

Czech Republic – République tchèque :

No.

Denmark – Danemark :

The Danish Central Authority does not cooperate with any organisations working especially with subjects concerning the conventions.

Ecuador – Equateur :

No contamos con un listado de ONG.

El Salvador – El Salvador :

En nuestro país no existe una Organización no Gubernamental que trabaje en el tema específico de la sustracción internacional de menores.

Finland – Finlande :

- The Finnish Association for Mental Health (including the SOS Center)
Maistraatinportti 4 A
FI-00240 Helsinki
Finland
Tel: +358 9 615 516
Fax: +359 9 6155 1770
www.mielenterveysseura.fi

- SOS Center
Tel: +358 9 4135 0510
Fax: +358 9 4135 0570
www.sos-keskus.fi

The SOS Center helps foreigners and their family members living in Finland in different crisis of life.

- Kaapatut Lapset ry
Stenbäckinkatu 22 B 6
FI-00250 Helsinki
Finland
Tel: +358 9 587 4401
www.kaapatutlapset.fi

France – France :

Certaines associations et réseaux privés apportent un soutien spécifique aux parents dont les enfants ont été déplacés. D'un point de vue plus général, les conseils départementaux de l'accès au droit (CDAD), hébergés au sein du tribunal de grande instance du chef lieu de chaque département, jouent également un rôle essentiel d'information et de communication vis à vis des justiciables. Il en est de même des Maisons de la justice et du droit (MJD). La liste de l'ensemble des CDAD et des MJD peut être consultée à l'adresse électronique suivante:
http://www.justice.gouv.fr/region/mjdanten.htm.

Greece – Grèce :

None.

Guatemala – Guatemala :

UNICEF

Iceland – Islande :

[No answer]

Ireland – Irlande :

The Irish Centre for Parentally Abducted Children (ICPAC)
St. Annes Parish Centre
Molesworth Place
Dublin 2

Tel: +353 1 662 0667
Fax: +353 1 662 5132

The Garda Síochana (National Police) also have a website, www.missingkids.ie, which provides resources for parents whose children have disappeared, and links to other relevant websites.

Israel – Israël :

National Council for the Child
38 Pierre Koenig Street
JERUSALEM 93469
Tel: +972 2 678 0606
Fax: +972 2 679 0606

Italy – Italie :

Aucune organisation non gouvernementale italienne n'est habilitée de par la loi à s'occuper de l'application des Conventions.

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Latvia – Lettonie :

Presently, in Latvia there are no such NGOs.

Lithuania – Lituanie :

Lithuanian non-governmental organisations do not work in this field for the time being.

Malta – Malte :

Not applicable.

Mexico – México :

[Sin respuesta]

Monaco – Monaco :

Il n'existe pas d'organisation non gouvernementale de ce type en Principauté.

Netherlands – Pays-Bas :

Centrum Internationale Kinderontvoering
Postbus 2006
1200 CA Hilversum
The Netherlands
Phonenumber: +31 (0)88 800 9000
Faxnumber: +31 (0) 88 800 9090
E-mail: info@kinderontvoering.org
Website: www.kinderontvoering.org

Stichting Gestolen Kinderen
Postbus 43
1610 AA Bovenkarspel
The Netherlands
Phonenumber: +31 (0)13 456 0015
E-mail: info@gestolenkinderen.nl

Stichting Lawine
Postbus 51100
1007 EC Amsterdam
E-mail: st.lawine@worldonline.nl

International Social Services
Postbus 1019
5200 BA Den Bosch
Phonenumer: +31 (0)73 691 1450

Defence for Children International
Postbus 75297
1070 AG Amsterdam
Phonenumber: +31 (0)20 420 3771

New Zealand – Nouvelle Zélande :

Not applicable.

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Nicaragua – Nicaragua :

La Federación de Coordinadora de Organismos No Gubernamentales que trabajan con la niñez y adolescencia, (CODENI), es miembro de la Autoridad Central (CONAPINA) www.codeni.org.ni

Panama – Panama :

La autoridad central no tiene información de registro de organizaciones no gubernamentales en la República de Panamá sobre la materia.

Paraguay – Paraguay :

[Sin respuesta]

Poland – Pologne :

The foundation ITAKA is a Polish non-governmental organization which is involved in the matters of child abduction not only in Poland but also abroad. The address of ITAKA: ITAKA 00-959 Warszawa, skr. pocztowa 110, telephone number: 048 22 654 70 70; **www.itaka.org.pl**

Portugal – Portugal :

Yes, the Portugal Central Authority would like to bring up to date that there is a privileged NGO that is related to the Convention of 1980, which is the Institute of Child Support [*Instituto de Apoio à Criança (IAC*)], a partner to the project (Promoting Integrated European policies on missing and sexual exploited children) developed through the Childscope. Its contact details are the following: address: Largo da Memória, n.º 14 1349-045 LISBOA Phone: 00 351 213 617 880, Website: www.iacriança.pt, Email: iacsede@netcabo.pt. There is another institution that specifically works on parental abduction mater which is the Portuguese Association for Victim Support (APAV - Associação Portuguesa de Apoio à Vítima) and its contacts are: Rua do Comércio n.º 56 – 5.º (headquarters + 12 local points), 1100-150 Lisboa, Portugal, Phone: +351 21 888 47 32, Email: apav.sede@apav.pt, Website: http://www.apav.pt.

Romania – Roumanie :

We have no knowledge of there being in Romania any non-governmental organizations acting in this field.

Slovakia – Slovaquie :

There are no non-governmental organizations involved in these cases that the Slovak CA knows of.

South Africa – Afrique du Sud :

The Centre for Child Law, University of Pretoria . www.up.ac.za

Spain – Espagne :

En España existen numerosas ONGS dedicadas a la infancia, adolescencia y juventud que abarcan una amplia problemática. Como Asociación específica para el tema de sustracción de menores podemos citar a la “Asociación para la Recuperación de Niños Sacados de su País”
C/ Castelló 31, 1º izda, Oficina E
28001 Madrid
Tel: 34 91 435 90 00

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Fax: 34 91 435 71 00
Web: www. recuperacion-menores. com
E-mail: info@recuperacion-menores.com

Sweden – Suède :

Epikur- International social service (ISS)
Skälbyvägen 134
175 60 Järfälla
Telephone: + 46 8 759 66 78
Fax: + 46 8 759 66 72
www.epikur.se

Institute for Psychotherapy and Ethic Issues
Kungsgatan 54
111 35 Stockholm
Sweden
Telephone/fax: + 46 (8) 243 398

Switzerland – Suisse :

En particulier la Fondation suisse du Service social international.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

Reunite
PO Box 7124
Leicester
LE1 7XX
United Kingdom

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

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

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

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

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

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United States – Etats Unis :

The National Center for Missing and Exploited Children (NCMEC) is the primary NGO in the United States that deals with parental abductions. It handles all incoming Convention cases for the U.S. Central Authority. The NCMEC web site is http://www.ncmec.org.

For other NGOs involved with abduction work, please see website for the Association of Missing and Exploited Children's Organizations: http://www.amecoinc.org/.

In addition, the National Conference of Commissioners on Uniform State Laws (NCCUSL) has created uniform legislation on jurisdiction in child custody matters. See response to question 12.

Uruguay – Uruguay :

[Sin respuesta]

14. Services provided by the Permanent Bureau – Services offerts par le Bureau Permanent

Question 52	
Please comment or state your reflections on services provided by the Permanent Bureau to assist the implementation and operation of the Convention, such as:	**Veuillez faire part de vos observations ou réflexions sur les services offerts par le Bureau permanent destinés à aider la mise en œuvre et au fonctionnement de la Convention, tels que :**
a) INCADAT;	**a) INCADAT ;**
b) the Judges' Newsletter on International Child Protection;	**b) la Lettre des juges sur la protection internationale des enfants ;**
c) the bibliography of the Convention;	**c) la bibliographie relative à la Convention ;**
d) the Child Abduction Section on the website of the Hague Conference;	**d) la page « Espace enlèvement d'enfants » du site Internet de la Conférence de La Haye ;**
e) INCASTAT (the database for the electronic collection and analysis of statistics on the Convention, which is currently being developed);	**e) INCASTAT (la base de données pour le rassemblement et l'analyse sous forme électronique des statistiques relatives à la Convention ; actuellement en cours d'élaboration) ;**
f) iChild (the electronic case management system designed by the Canadian software company WorldReach, which is currently being piloted by seven Central Authorities in six Contracting States).	**f) iChild (système électronique de gestion des dossiers créé par WorldReach, compagnie informatique canadienne ; actuellement testé par sept Autorités centrales et six Etats contractants) ;**
g) support for national / international judicial (and other) seminars / conferences concerning the Convention;	**g) l'assistance fournie aux niveaux national et international dans le cadre de séminaires et de conférences judiciaires (et autres) relatifs à la Convention ;**

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h) support for communications among Central Authorities, including maintenance of updated contact details.	h) l'assistance fournie dans le cadre des communications entre Autorités centrales, notamment par la tenue à jour d'une liste de coordonnées.

Argentina – Argentine :

En general toda la información contenida en la página www.hcch.net es de continua consulta por esta Autoridad Central, también sirviendo de referencia a aquellas personas interesadas en la temática.

La información se mantiene siempre actualizada y por lo tanto resulta confiable, para conocer por ejemplo el estado de ratificación o adhesión por parte de los Estados, los datos de contacto de las Autoridades Centrales, etc.

También resulta de gran utilidad Incadat al momento de cotejar sentencias dictadas por los países extranjeros sobre aspectos puntuales de la Convención, como por ejemplo residencia habitual, grave riesgo, etc.

Lo que también se estima de gran importancia son los seminarios desarrollados por la Conferencia de La Haya, tanto de Autoridades Centrales como de Jueces, donde no solo se distrubuye material muy valioso sobre la materia, sino que permite el intercambio de opiniones y la busqueda de soluciones a los obstáculos que pueden surgir en la práctica en la implementación del Convenio.

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Australia – Australie :

a) INCADAT is an accessible and practical resource in researching and monitoring the development of case law in international jurisdictions relating to international child abduction. It would be useful if decisions from courts in Contracting States were directly uploaded to ensure that the database is current.

b) The Judges' Newsletter on International Child Protection has continued to prove an excellent resource in informing on international trends and developments in international jurisdictions. It is understood that it is widely used by Australian Central Authorities and the judiciary.

c) While the bibliography to the Convention is a comprehensive and extensive resource it is not regularly used.

d) The Child Abduction Section on the website of the Hague Convention is a useful central resource for accessing information relating to the operation of the convention. The Australian Central Authority primarily relies on the site to obtain contact details of Central Authorities and the status of signatures, ratifications and accessions.

e) The Australian Central Authority currently provides statistics to the Permanent Bureau in the required format. The development of an accessible database would be welcomed to assist in reporting and analysing international experience.

f) Australia was one of the six Contracting States that piloted iChild. As explained in Australia's response to the Questionnaire, it was not an effective case management system for Australia's needs.

g) The Australian Central Authority supports the organisation of national and international judicial and other seminars concerning the Convention. It has found that they facilitate exchange of information to influence domestic practices in the operation of the Convention.

h) The Australian Central Authority has strong communication with Central Authorities particularly where there is a high volume of cases, such as New Zealand. The Australian Central Authority would welcome opportunities to improve communication with other Central Authorities to enhance the case management.

The Australian Central Authority notes the importance of regular maintenance of the contact list and would support implementing a universal system to ensure that the list is updated.

Austria – Autriche :

We appreciate all those services.

Canada – Canada :

Ontario
Ontario has found INCADAT to be a useful tool.

Quebec
Very useful for international searches for decisions that apply the Hague Convention.

Manitoba
We have found INCADAT to be a useful tool but have some questions as to the criteria for inclusion of cases. In the late summer of 2004 a number of summaries of Canadian Court of Appeal decisions respecting the Convention were sent to the Permanent Bureau but were not included on INCADAT. We are not certain if this was an administrative oversight or a conscious decision.

Alberta
INCADAT is excellent.

Ontario
The judges' newsletter is a useful and interesting tool from an academic perspective.

Quebec
Very useful to have access to judges' vies on application and international interpretation of the Hague Convention.

Manitoba
The Judges' newsletter is a fabulous resource and provides a great deal of useful information to Central Authorities and others involved in Convention cases or interested in international family law issues.

New Brunswick
Very helpful.

Alberta
The judges newsletter is excellent.

Ontario
The bibliography is useful.

New-Brunswick
It is very helpful.

Manitoba
The bibliography is very useful.

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Quebec
Never used, since many documents are in neither English nor French.

Ontario
The child abduction section of the website would be improved by establishing a more user-friendly way in which to determine between which States the Hague Convention is in force.

Quebec
The Quebec Central Authority goes to this page very often to obtain the latest contact information for Central Authorities, access to questionnaire responses for new acceding States, INCADAT and links to pertinent sites.

Manitoba
This section is well set out.
One tool that would be extremely useful would be a feature allowing you to search individual countries and ascertain the other countries in relation to whom the Convention is in force (i.e. a list with the effective dates and means by which the Convention came into force [accession or ratification]).

New Brunswick
Very helpful.

Ontario
INCASTAT should be a useful resource.

Quebec
Not yet used because it is being developed. However, it will certainly be interesting to see the figure for other countries, which will give is an indication of whether or not the Hague Convention is effective.

Ontario
The Ontario Central Authority is currently engaged in the test group for the iChild database. While it should prove invaluable in terms of formulating year end statistics, it is somewhat cumbersome to use on a day-to-day basis as a case management tool.

Quebec
iChild is currently being tested by the Quebec Central Authority; testing began in October 2005.

Ontario
Permanent Bureau support for conferences concerning the convention is a worthwhile exercise which fosters international information and issue sharing.

Quebec
Very useful in promoting the operation of the Hague Convention in new States, but more importantly ensuring that the Convention is properly applied in certain other States.

New Brunswick
Very helpful.

Manitoba
Permanent Bureau support for/attendance at Judicial and continuing legal education conferences is extremely valuable and ensures an international perspective is brought to the issues discussed.

Ontario
The support for communications among Central Authorities could be improved. More effort could be made by the Permanent Bureau in this area.

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New Brunswick
Very helpful.

Quebec
Very important in order to obtain the latest contact information for Central Authorities, provided those authorities submit up-to-date information to the Permanent Bureau.

Manitoba
It would be helpful if the Permanent Bureau had the capacity to send periodic reminders to Central Authorities for statistical, website or contact updates.

**

Ontario
L'Ontario considère qu'INCADAT est un instrument très utile.

Québec
Très utile pour la recherche au niveau international des décisions en application de la Convention de La Haye.

Manitoba
Nous avons trouvé INCADAT utile, mais nous avons certaines interrogations quant aux critères d'inclusion des dossiers. À la fin de l'été 2004, plusieurs résumés d'arrêts de cours d'appel canadiennes relatives à la Convention ont été envoyés au Bureau permanent mais n'ont pas été inclus dans INCADAT. Nous ne savons pas s'il s'agissait là d'une omission administrative ou d'un choix délibéré.

Alberta
INCADAT est excellent.

Ontario
La Lettre des juges est utile et intéressante du point de vue du droit.

Québec
Très utile d'avoir accès à la vision des juges sur l'application de la Convention de La Haye et l'interprétation qui en est faite au niveau international.

Manitoba
La Lettre des juges est une ressource fabuleuse, et elle fournit une quantité considérable d'informations utiles pour les Autorités centrales et les autres parties dans les dossiers fondés sur la Convention de La Haye ou pour ceux qui s'intéressent aux questions de droit de la famille à dimension internationale.

Nouveau-Brunswick
Très utile.

Alberta
La Lettre des juges est excellente.

Ontario
La bibliographie est utile.

Québec
Jamais utilisée puisque plusieurs documents ne sont ni en anglais ni en français.

Manitoba
La bibliographie est très utile.

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Nouveau-Brunswick
Très utile.

Ontario
On pourrait améliorer la page « Espace enlèvement d'enfants » du site Internet en créant un moyen plus simple de déterminer entre quels États la Convention de La Haye est en vigueur.

Québec
Cette page est très souvent consultée par l'Autorité centrale du Québec pour obtenir les dernières coordonnées des Autorités centrales, l'accès aux réponses du questionnaire pour les nouveaux États adhérents, INCADAT et liens vers d'autres sites pertinents.

Manitoba
Cette section est bien conçue.
Un complément utile consisterait à ajouter une fonction permettant de vérifier l'état de la Convention relativement à des État spécifiques (c.-à-d. une liste des États adhérents indiquant les dates d'entrée en vigueur et le mode d'accession (adhésion ou ratification)).

Nouveau-Brunswick
Très utile.

Ontario
INCASTAT devrait s'avérer une ressource utile.

Québec
Pas encore utilisée puisque en cour d'élaboration. Toutefois, il sera certainement intéressant de voir les chiffres des autres pays qui pourront nous donner une indication du bon fonctionnement ou non de la Convention de La Haye

Ontario
L'Autorité centrale de l'Ontario compte actuellement parmi les organismes qui mettent à l'essai le logiciel iChild. Celui-ci devrait s'avérer fort utile pour produire des statistiques de fin d'exercice, mais il est un peu malcommode comme outil de gestion de dossiers au quotidien.

Québec

La banque iChild est présentement en test par l'Autorité centrale du Québec et cela depuis octobre 2005.

Ontario
L'assistance que le Bureau permanent fournit dans le cadre de conférences relatives à la Convention est un exercice utile qui favorise le partage de renseignements et les échanges internationaux.

Québec
Très utile pour faire connaître le fonctionnement de la Convention de La Haye dans les nouveaux États mais surtout de s'assurer de sa bonne application dans certains autres États.

Manitoba
L'assistance du Bureau permanent dans le cadre de conférences judiciaires et de formation juridique permanente est extrêmement utile et elle assure que les questions abordées reçoivent aussi un éclairage international.

Nouveau-Brunswick
Très utile.

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Ontario
L'assistance fournie dans le cadre des communications entre Autorités centrales pourrait être améliorée. Le Bureau permanent pourrait faire plus d'efforts dans ce domaine.

Nouveau-Brunswick
Très utile.

Québec
Très importante afin d'obtenir les dernières coordonnées des Autorités centrales en autant que ces dernières fournissent les informations à jour au Bureau Permanent.

Manitoba
Ce serait utile si le Bureau permanent avait la capacité de rappeler périodiquement aux Autorités centrales de mettre à jour leurs statistiques, leurs sites Web et leurs coordonnées.

Chile – Chili :

a) En general es bastante útil, el problema actualmente es la dificultad que existe para encontrar fallos en español (aunque sabemos también, que en este punto es fundamental la cooperación de todas las Autoridades Centrales, por lo que asumimos la falta de más fallos, también como falla nuestra).

b) Es muy interesante la información contenida, y creemos de gran utilidad no sólo para jueces, sino que para toda persona que utiliza el Convenio.

c) Bastante completa, aunque muchos títulos a veces son difíciles de encontrar.

d) Muy práctica y completa, esta Autoridad Central está constantemente consultando el sitio.

e) Desconocemos el servicio. Pero nos parece muy práctico contar con un sistema de estadísticas.

f) No conocemos directamente el programa, sin embargo, de acuerdo a lo comentado nos parece excelente contar con un sistema estándar como base de datos, por lo que estaríamos muy dispuestos a utilizarlo.

g) Todos los seminarios y conferencias han tenido siempre gran utilidad para esta Autoridad Central y para los Jueces que han participado. Nuestro problema en ocasiones, como Autoridad Central, es que no tenemos los fondos para participar en ellos.

h) Absolutamente fundamental es poder contar con la asistencia de la Oficina Permanente, y con los datos de las Autoridades Centrales actualizados, como ha ocurrido hasta ahora.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

a) it provides very useful reference abd is very user friendly.
b) It provides very useful reference.
c) It serves as quick reference.
d) It provides very useful reference.
e) We have no comments but we believe it will provide very useful reference.
f) We have not used it yet and hope that it will be very user friendly.
g) We have no comments but we believe such support will greatly assist the Central Authorities in organising judicial seminars / conferences concerning the Convention.
h) It is very important to have such support in order to maintain the efficiency in implementing the Convention.

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China (SAR Macao) – Chine (RAS Macao) :

It is only fair to highlight the important and valuable contributions of the Permanent Bureau in what concerns the assistance to the implementation and operation of the Convention. Specifically regarding the above-mentioned a) to d) items, it should be stressed that in practice they prove to be very helpful, if not indispensable, tools.

Colombia – Colombie :

a) Hemos tenido dificultad para entrar a INCADAT, la página de inicio es accesible pero ninguna otra. Necesitamos orientación técnica en cuanto a la apertura de la correspondiente página.

b) Como quiera que no ha sido posible entrar en forma plena a la página no conocemos el boletín.

c) Muy útil.

d) La hemos consultado y ha sido de gran utilidad.

e) No la conocemos, por la misma dificultad anteriormente mencionada.

f) No conocemos el programa, aunque sería muy importante poder disponer del mismo.

g) Muy útil y necesaria para la operación del Convenio.
Es muy importante obtener su apoyo para la capacitación de las autoridades judiciales en Colombia encargadas de la aplicación del Convenio.

En Colombia los funcionarios judiciales dependen directamente del Consejo Superior de la Judicatura, por eso la convocatoria que hace el ICBF no ha resultado tan eficaz, debe ser el mismo Consejo Superior de La Judicatura el responsable y comprometido en el proceso de capacitación de los jueces, es por eso que solicitamos que sea la misma HCCH la que proponga la capacitación y brinde su apoyo técnico para el logro de ese objetivo.

Podrían brindarnos ese apoyo?, Cómo se puede gestionar?

h) Muy importante y efectiva. Valdría aquí la pena, la sensibilización que pudiera ofrecer la Oficina Permanente a los Jueces y Magistrados a través del Consejo Superior de la Judicatura.

Costa Rica – Costa Rica :

Los servicios son excelentes, pero esta Autoridad Central no padece de problemas asociados a cómo realizar una correcta interpretación y aplicación del Convenio conforme al Derecho interno costarricense. Quizás sí nos serviría de mucho cualquier ampliación informativa en lo que respecta al servicio de asistencia en las comunicaciones entre autoridades centrales, teniendo en cuenta los problemas que tenemos con las autoridades centrales de México y Nicaragua.

Cyprus – Chypres :

[No answer]

Czech Republic – République tchèque :

We appreciate all of them very much.

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Denmark – Danemark :

a) We find that INCADAT is a very good instrument.

b) No comment.

c) We find that the bibliography of the Convention is a very good instrument.

d) We use the website very often and find it of great importance that the contact information to the different Central Authorities is updated.

e) We look forward to the development on the INCASTAT.

f) iChild seems as an interesting project.

g) No comment.

h) No comment.

Ecuador – Equateur :

a) No se ha utilizado debido a problemas aparentemente técnicos que impedían que en el Ecuador se pueda ingresar a la página y revisar los datos.

b) Es muy útil para la Oficina de Autoridad Central, sin embargo ha sido muy difícil difundir el documento a todos los jueces de la niñez y adolescencia del país.

c) Es constantemente utilizada.

d) Es constantemente utilizada.

e) No ha sido utilizada.

f) Nos interesaría implementarlo.

g) La asistencia brindada por la Conferencia de La Haya a través de su Oficial de Enlace para América Latina, Dr. Ignacio Goicoechea ha sido muy positiva. Consideramos necesario que este apoyo continúe y que podamos contar con expertos de la Conferencia en seminarios y conferencias nacionales.

h) Es constantemente utilizada.

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El Salvador – El Salvador :

Todos los servicios son de gran utilidad, sin embargo, es imperioso establecer períodos más cercanos de actualización, brindarnos mayor información respecto al sistema electrónico para gestión de casos.

Finland – Finlande :

Generally the Finnish Central Authority finds all these services useful. Especially INCADAT has proved to be a very good tool, and the Convention web site is frequently visited. It is important that the web site has accurate information and is updated accordingly.

Finnish Central Authority does not have experience of iChild service, and has some doubts of possible language problems in its wider use.

France – France :

L'autorité centrale française n'a aucune observation particulière à formuler sur l'ensemble des services offerts par le Bureau permanent.

Ce bureau tient toutefois à souligner que les informations disponibles sur la page "Espace enlèvement d'enfants" du site Internet de la Conférence de La Haye sont très complètes.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

b) Es de gran ayuda para la interpretación de casos y formas de resolución, se utiliza como derecho comparado, similar a nuestra legislación.
g) La Autoridad Central Guatemalteca, necesita de esta asistencia.
h) La Autoridad Central Guatemalteca, necesita de esta asistencia.

Iceland – Islande :

The services provided by the Permanent Bureau are very good. We use the website very much.

Ireland – Irlande :

i) This is useful, and has been used in order to forward case law to other Central Authorities.

j) [No answer]

k) [No answer]

l) This is useful, particularly for updated information in relation to the location of foreign Central Authorities.

m) This office is not familiar with this database.

n) This office is not familiar with this software.

o) [No answer]

p) [No answer]

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Israel – Israël :

a) INCADAT is a crucial and invaluable tool for learning how the Convention is being applied in various countries, and for hopefully ultimately achieving a more universal application of the Convention in the different countries.

b) The Judges' Newsletter is an invaluable source of information concerning the implementation and operation of the Convention in the different countries. As the Special Committee meetings only take place every four years, the newsletter helps Central Authorities keep informed of matters and issues arising in between.

c) The bibliography is a very valuable research and educational tool.

d) The Israeli Central Authority commends the Permanent Bureau on the Child Abduction Section on the website of the Hague Conference. It contains valuable

information on numerous aspects involving the implementation and operation of the Convention, as well as important information concerning abductions to non-Convention countries. The Israeli Central makes very regular use of different parts of the website. It would suggest that the website include a section containing the relevant legislation for each country concerning the implementation and operation of the Convention.

e) This database will provide valuable information concerning the operation of the Convention in different countries. For example, Israel has been experiencing particular problems with certain countries, which regularly refuse to return abducted children, applying very loose interpretations of the defences under Article 13(b). Having access to such statistics will show whether this is a problem common to other countries. If such a problem does exist, the countries can then turn to the Permanent Bureau to make them aware of the problem and provide any possible assistance or suggestions in terms of solving such problems.

f) See answer to question 47 above.

g) In the experience of the Israeli Central Authority, the Permanent Bureau was extremely helpful and supportive in a recent conference that took place between the United States and Israel, including sending a representative who made a presentation and also participated in a panel discussion. The profile of the conference was raised by this participation on behalf of the Permanent Bureau. It brought about further awareness of the role of the Permanent Bureau, and showed the open-door policy of the Permanent Bureau in terms of brain-storming for solutions to problems.

h) On a number of occasions the Central Authority for Israel has experienced difficulties with the phone numbers/fax numbers/e-mail addresses of other Central Authorities. As such forms of instant communication are crucial in terms of the goals and operation of the Convention, the Central Authority has contacted the Permanent Bureau in order to inquire as to whether changes have been made in the relevant country with respect to such contact details. The Permanent Bureau has taken prompt action by contacting the relevant country. It appears that a number of Central Authorities have not updated the Permanent Bureau with respect to such changes, including ones as simple as changes in area codes. Central Authorities should ensure that they update the Permanent Bureau of such changes so that this information can be disseminated to the other central authorities, and to prevent any hindrances / delays in the operation of the Convention.

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Italy – Italie :

a) Service très efficace pour tous les praticiens du droit.

b) L'Autorité Centrale italienne ne la connaît pas. Nous aimerions la recevoir.

c) L'Autorité Centrale italienne ne la connaît pas. Nous aimerions la recevoir.

d) Efficace service de diffusion d'informations.

e) Instrument dont l'efficacité potentielle est assimilable à celle d'INCADAT.

f) L'Autorité Centrale ne l'a pas encore eu l'occasion de l'expérimenter.

g) Toujours utile et précieuse.

h) Ponctuelle et fiable.

Latvia – Lettonie :

The Central Authority of Latvia through Administration of the Courts has informed Latvia's Courts about INCADAT data base, about its provided facilities to get acquainted with experience and practice in Courts in other member states in terms of implementation of Convention. In several situations, several Courts are provided with The Judge's Newsletter. Section „Child Abduction" at the website of The Hague Conference also is highly valued.

Lithuania – Lituanie :

All these services provided by the Permanent Bureau are very useful and facilitate understanding of the operation of the 1980 Convention as well as its practical application and implementation. On the other hand, workshops and training for the newly acceding states should be organised more actively. The Ministry of Justice informed us that, being not responsible for the implementation of the Convention (it is not a central authority), it has no opinion on or proposals for the usefulness of the measures intended for judges and related to the Convention's implementation.

Malta – Malte :

a) The database is a valuable tool, especially for lawyers and judges, in order to see how other countries are interpreting the Convention and how they are dealing with cases;

b) The Newsletter is very informative and gives a wide perspective from experts in the field of child abduction. It also gives a valuable overview of seminars and conferences. In general, it helps in the better understanding of the Convention;

c) The bibliography is quite extensive, but it should be more accessible on the internet, for ease of reference;

d) The Child Abduction Section is a very important webpage for people dealing with child abduction cases, as well as for abducting and leftbehind parents, since it gathers the most important information in one place;

e) INCASTAT is a useful tool for states (both Convention countries and non-Convention countries), researchers and other interested parties, since it gives access to statistics and allows for the identification of trends in particular states;

f) It is very useful for Central Authorities who have a large amount of cases to be able to manage and process them in a consistent manner;

g) It is imperative for judges who deal with child abduction cases to have access to international conferences and seminars since it enables them toshare experiences and to learn from the experiences of Judges in other States;

h) The updating of Central Authorities' contact details is very important, as such contact details are essential for the good communication between Central Authorities.

Mexico – Méxique :

a) Excelente, para ilustrar a los jueces el como se han resuelto en otros países los casos de La Haya.

b) Excelente documento para actualizar a los jueces sobre el tema alrededor del mundo.

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c) Excelente.

d) Excelente.

e) No lo conozco.

f) No lo conocemos.

g) El mejor método para difundir el tema, actualizar a las autoridades centrales y capacitar a los jueces.

h) indispensable para realizar el trabajo.

Monaco – Monaco :

Pas de remarque particulière sauf sur le fait que la page Internet « Espace enlèvement d'enfants » est facile d'accès et simple d'utilisation.

Netherlands – Pays-Bas :

The Dutch Central Authority considers the services provided by the Permanent Bureau very useful to its general practice. It would welcome access to more court decisions of other member states on INCADAT. The Dutch Central Authority makes use especially of the information given by the Child Abduction Section on the website of the Hague Conference. The service (pilot) of iChild is still being tested by the Dutch Central Authority.

New Zealand – Nouvelle Zélande :

[No answer]

Nicaragua – Nicaragua :

Nos gustaría conocer acerca de: iChild (sistema electrónico de gestión de casos, diseñado por la compañía de software canadiense WorldReach, que está siendo probado por siete Autoridades Centrales en seis Estados contratantes).

Panama – Panama :

a) Se ha proporcionado esta información a abogados particulares a fin que investiguen jurisprudencia que sirva de base para los procesos o recursos, y la aplicación que otros países brindan al Convenio.

b) Dicho boletín es enviado a las autoridades judiciales para conocimiento y análisis.

c) Se utiliza como base el Informe de la Doctora Elisa Pérez Vera

d) Es revisada por la autoridad central fin de conocer los avances y para buscar la documentación que emite la conferencia en idioma español, si ha existido traducción.

e) No ha sido utilizada.

f) Se está utilizando como un proyecto piloto

g) La autoridad central está desarrollando programas en este sentido para mejorar la aplicación del convenio, para ello la Conferencia de la Haya ha dado su apoyo a través del funcionario enlace para Latinoamérica, Ignacio Goicochea.

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h) Se utiliza la página web de la conferencia para buscar los datos y correos electrónicos de la autoridad central de otros Estados.

Paraguay – Paraguay :

[Sin respuesta]

Poland – Pologne :

The Permanent Bureau of The Hague Conference on Private International Law provides not only people who are interested in institution of the proceeding but also lawyers, who deal with the cases under the Convention on a daily basis with comprehensive information about the Hague Convention itself as well as its implementation and operation. All the ways of disseminating information mentioned in the questions, such as creating databases or other publications are of use for the officers implementing the Convention. We strongly support and anticipate introduction of new means of disseminating information by the Permanent Bureau. We find it extremely important and useful that the Bureau offers a wide range of training courses (such as seminars and conferences) for the judges and other officers who operate under the Convention, therefore we strongly support the idea of such training courses in the future.

The Polish Central Authority would like to express its gratitude and recognition of the work and initiatives of the Permanent Bureau of the Hague Conference on Private International Law.

Portugal – Portugal :

The Portuguese Central Authority considers of a great utility the Hague's Conference support on the different aspects of The Hague Convention 1980 implementation.

Romania – Roumanie :

We consider as very good and extremely useful the activity of the Permanent Bureau for the efficient application of the Convention.

The Romanian Ministry of Justice used the information in the Guide of good practice as a source of inspiration in developing the domestic law meant to facilitate the implementation of the Convention in Romania (Law no. 369/2004).

Slovakia – Slovaquie :

The Slovak CA appreciate very much all the services provided by the Permanent Bureau, especially the INCADAT and the Child Abduction Section. The Slovak CA also intends to extend the content of its library, whereas the information provided by the Bibliography of the Convention shall be very useful.

South Africa – Afrique du Sud :

a) very helpful and user friendly.

b) the circulation thereof could be broadened.

c) well set out.

d) very good.

e) Not apllicable.

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f) R.S.A has experienced some connectivity problems, which have become resolved. It could be of future use.

g) There should be more interaction among the various Central Authorities.

h) It is very good.

Spain – Espagne :

Todos los servicios citados se consideran de una gran actualidad.

Sweden – Suède :

Generally, the Swedish Central Authority finds all these services useful. It is important that the web site has accurate information and is updated frequently.

a) Especially INCADAT has proved to be a very good tool, and the Convention web site is frequently visited.

b) The Judge's Newsletter is a good resource and provides a great deal of useful information to Central Authorities and others involved in Convention cases or interested in international family law issues.

c) The Swedish Central Authority has never used the bibliography of the Convention.

d) The Swedish Central Authority finds that the Child Abduction Section is very useful.

e) INCASTAT should be a useful tool.

f) The Swedish Central Authority does not have experience of the iChild service.

g) Sweden is satisfied with the support for national as well as international seminars / conferences concerning the Convention and has participated and hosted different types of conferences (see question 23 above).

h) The Swedish Central Authority has noted that the contact details for Central Authorities published on the Hague Conference's website are not always up to date and considers it essential to the support for communication among Central Authorities for such information to be kept up to date.

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Switzerland – Suisse :

L'autorité centrale suisse salue le travail d'accompagnement du Bureau Permanent à la mise en œuvre de la convention et ce, dans son ensemble. Elle l'en remercie.

Des améliorations sont toujours possibles. Il conviendrait ainsi d'assurer que la jurisprudence récente de pays non anglophones soit mieux représentée dans INCADAT.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

a) This is a useful method of disseminating information amongst interested parties.

b) This is a useful tool.

c) This is a useful source of information, although sometimes contact details for Central Authorities are not current.

d) This will be a useful tool for monitoring trends.

e) This is a good idea in principle, where all Contracting States are in a position to sign up to the system.

f) [No answer]

g) [No answer]

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

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

c) [No answer]

d) [No answer]

e) [No answer]

f) [No answer]

g) This question has been fully considered under paragraph 23 above.

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

United States – Etats Unis :

a) A very valuable tool. The USCA and NCMEC recommend its use to attorneys litigating cases in the U.S.

b) A valuable tool.

c) Somewhat useful.

d) Very good.

e) A good idea.

f) An important tool, but not likely to be used in the U.S. for technical and security reasons.

g) Very important. The U.S. particularly appreciates the presence of Permanent Bureau representatives at its bi-lateral and multi-lateral judicial seminars.

h) Updated contact details are extremely important and constantly used at the USCA.

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Uruguay – Uruguay :

Los servicios indicados por los distintos ítems se considera que son todos de alto valor, pero resultan de especial interés para esta Autoridad Central, los indicados en los literales b) "Boletín de los Jueces", por lo que solicitamos su remisión periódica;

f) el señalado en literal f; y

g) asistencia a seminarios y jornadas referidos al Convenio, para lo cual ha de ser necesario contar con financiamiento capaza de cubrir el desplazamiento y estadía en dichos eventos de abogados de esta autoridad Central y de Jueces.

Question 53	
Have you any comments or suggestions concerning the activities in which the Permanent Bureau engages to assist in the effective functioning of the Convention?	**Souhaitez-vous faire des observations ou des suggestions quant aux activités du Bureau Permanent visant à favoriser le fonctionnement efficace de la Convention ?**

Argentina – Argentine :

Entendemos que podría potenciarse la capacitación a través de seminarios y pasantías, a los países de America Latina, especialmente teniendo en cuenta la reciente incorporación de algunos que por ende cuentan con pocos años de experiencia en la implementación el Convenio. Esto ayudaría no sólo a la difusión del Convenio en dichos países, sino también dotaría de mayores instrumentos a las Autoridades Centrales, en una función tan clave de la cual depende la exitosa aplicación del mismo.

Australia – Australie :

It would be useful if upon being notified of a State's accession to the Convention, that there is additional information provided to Convention States with respect to the practices, procedures, including the documentation required for successful communication from that State. This would be seen to greatly assist in the effective functioning of the Convention. Ukraine's recent accession was noted as a positive addition to the Convention. The Australian Central Authority would welcome material regarding Ukraine's requirements and processes in communication under the Convention and similarly value the promotion and exchange of practice, procedure and policy amongst all current Convention and newly acceded States. In this way adherence to accepted practice would avoid delays and better allow for the prompt return of children consistent with the principles of the Convention.

Austria – Autriche :

No comments or suggestions.

Canada – Canada :

Quebec
On one or two occasions, we told left-behind parties to file their complaints about the poor operation of the Hague Convention with certain States. Those complaints resulted in the Permanent Bureau writing to the Central Authority concerned asking for information and explanations.

Manitoba
The Permanent Bureau does a wonderful job developing background and discussion materials, coordinating the Judges' Newsletter and generally supporting knowledge of the Abduction Convention.

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Nova Scotia
The services provided by the Permanent Bureau to assist the implementation and operation of the Convention are useful to the Central Authority in Nova Scotia, the lawyers who represent Applicants before the Courts and the Judges themselves.

**

Québec
Il est arrivé à une ou deux reprises que nous indiquions aux parents victimes de faire part de leurs plaintes sur le mauvais fonctionnement de la Convention de La Haye avec certains États. Il résultait de ces plaintes une lettre transmise par le Bureau Permanent à l'Autorité centrale concernée afin de demander des informations et explications.

Manitoba
Le Bureau permanent fait un travail formidable aux plans de l'élaboration de documents d'information et de travail, de la coordination de la Lettre des juges et, de manière générale, des activités qui contribuent à accroître la connaissance de la Convention.

Nouvelle-Écosse
Les services fournis par le Bureau permanent pour aider à la mise en œuvre et au fonctionnement de la Convention sont utiles pour l'Autorité centrale en Nouvelle-Écosse, pour les avocats qui représentent des requérants devant les tribunaux et pour les juges eux-mêmes.

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Chile – Chili :

Consideramos importante potenciar más actividades entre las Autoridades de América Latina. Sería positivo contar con más instancias para intercambiar experiencias y unificar criterios. Lo mismo respecto a los Jueces, potenciar más la figura del Juez de Enlace y el intercambio de experiencia entre los Jueces de Latinoamérica.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We fully appreciate the Permanent Bureau's efforts in organizing conferences and special meetings as well as providing support and maintaining relevant materials and updates information in its website for the effective operation of the Convention by the Central Authorities.

China (SAR Macao) – Chine (RAS Macao) :

Yes, it is believed that a regional conference on the practical aspects of the Convention as well as specialised training concerning the implementation of the Convention should be considered.

Colombia – Colombie :

Que por favor se actualice la página en cuanto a los Estados que son parte del Convenio.

Aunque entendemos la naturaleza y funciones de la Oficina permanente, a futuro, puede pensarse en que la misma resuelva asuntos de fondo sobre la interpretación o ejecución del convenio y que se constituyan en una instancia para la resolución de los conflictos de interpretación.

Sería posible que la Oficina Permanente en algún momento, con la anuencia de los Estados Parte pudiera desarrollar funciones de árbitro o amigable componedor?.

Costa Rica – Costa Rica :

SÍ: sería saludable que se ustedes se sirvan capacitar a vuestros instructores anglosajones en el tema de las enormes diferencias conceptuales que existen entre el sistema jurídico COMMON LAW y el sistema CIVIL LAW (el nuestro), a ver si acaso algún día esos señores entienden el sentido y alcances de la figura de la autoridad parental vista como función y conjunto de poderes-deberes de papá y mamá respecto de sus hijos menores de edad. También capacítenles en los temas de Violencia Doméstica y Perspectiva de Género, para que se sensibilicen un poco hacia esa problemática social.

Cyprus – Chypres :

More seminars to be held on a national level.

Czech Republic – République tchèque :

For instance by assisting in organizing more training sessions for judges, social workers and other persons involved at international and regional levels.

Denmark – Danemark :

No comments or suggestions.

Ecuador – Equateur :

No.

El Salvador – El Salvador :

Sería extraordinario que la oficina permanente actuara como intermediario o enlace en los casos en que por cualquier motivo no se haya logrado una comunicación eficaz entre autoridades centrales.

Finland – Finlande :

[No answer]

France – France :

Les services et activités du Bureau permanent contribuent d'ores et déjà à la mise en oeuvre efficace de la convention de La Haye. A ce stade, l'autorité centrale française n'a pas de suggestion spécifique à formuler.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

No comment.

Ireland – Irlande :

[No answer]

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Israel – Israël :

The Israeli Central Authority has experienced frustration in some Judgments of foreign courts where the Convention has not been properly applied, where the foreign Central Authority has even acknowledged this. In such cases, prior to the hearing of the appeal of the Judgment, it might be valuable, if possible, to obtain an independent opinion from the Permanent Bureau, which could have valuable effect on the appeal and hopefully ensure a more correct and consistent application of the Convention.

Italy – Italie :

Le Bureau Permanent devrait exercer davantage de pouvoirs à l'encontre des Autorités Centrales et des États Membres défaillants.

Latvia – Lettonie :

We do not have additional comments or suggestions.

Lithuania – Lituanie :

None.

Malta – Malte :

All activities, in which the Permanent Bureau is engaged, are a step towards the better functioning of the Convention, and they are very much appreciated.

Mexico – México :

Solo felicitarle por l trabajo que realiza la Conferencia de La Haya con el tema.

Monaco – Monaco :

Pas de remarque particulière.

Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

Information provided is very accessible and easy to follow.

Nicaragua – Nicaragua :

En general se considera que estos servicios son de gran utilidad, sin embrago deben hacerse mayores esfuerzos en lo relativo a la asistencia para seminarios / conferencias a nivel nacional / internacional de carácter judicial (y otro tipo) relativos al Convenio.

Panama – Panama :

No.

Paraguay – Paraguay :

[Sin respuesta]

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Poland – Pologne :

Please see answer to question 52.

Portugal – Portugal :

No, we have not.

Romania – Roumanie :

Please see answer to question 52.

Slovakia – Slovaquie :

No, except of more possibilities for training and education of professionals, especially for judges, social workers and employees of the Central Authorities.

South Africa – Afrique du Sud :

The possibility of a biennial seminar for Central Authorities / Convention lawyers could be explored.

Spain – Espagne :

Ningún comentario relevante.

Sweden – Suède :

The Swedish Central Authority appreciates the efforts of the permanent Bureau. The website is frequently used by the Swedish Central Authority.

Switzerland – Suisse :

Le Bureau Permanent pourrait soutenir une réflexion sur l'avenir de la Convention et les améliorations ou changements qui pourraient lui être apportés, pour mieux refléter, notamment, l'impact de la Convention de La Haye de 1996 et de la Convention des Nations Unies de 1989 sur les droits de l'enfant.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

No.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

[No answer]

United States – Etats Unis :

The U.S. very much appreciates the efforts of the Permanent Bureau.

Uruguay – Uruguay :

Creemos que la participación en encuentros especializados sobre restitución internacional de los operados básicos en el tema, Autoridades Centrales y Jueces, ha de resultar de utilidad para asegurar una adecuada cooperación internacional en la materia.

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15. Compliance with the Convention – Respect de la Convention

Question 54	
Are there any Contracting States with whom you are having particular difficulties in achieving successful co-operation? Please specify these difficulties.	**Votre Etat rencontre-t-il des difficultés particulières avec certains Etats contractants, faisant obstacle à une coopération efficace ? Veuillez préciser la nature de ces difficultés.**

Argentina – Argentine :

Las mayores dificultades se han presentado con España, Brasil y Mexico.

En el caso de México y Brasil, hemos podido observar que se presentan muchas demoras en el ámbito judicial. Aquel que sustrajo o retuvo al menor, tiene la posibilidad de presentar innumerables recursos que acarrean demoras al procedimiento. Por otro lado, se observa que en muchas ocasiones se ha otorgado a la nacionalidad del sustractor o del niño preponderancia por sobre la residencia habitual del menor, en contradicción con lo establecido en el Convenio.

El caso de España es diferente. Lo que existen son dificultades de comunicación, lo cual no permite mantener debidamente al tanto a los peticionantes. Tampoco se facilita el contacto directo entre los peticionantes y los Abogados que representan en los casos, lo cual podría ser una gran ventaja para la rápidez de las comunicaciones. A eso se suman algunos problemas de interpretación del Convenio, como por ejemplo la falta de aceptación de los supuestos de retención ilícita y la no aplicación de lo que prevee el derecho argentino en materia de custodia para determinar cuando se ha producido un traslado ilícito, en concordancia con los artículos 3 y 5 del Convenio.

Australia – Australie :

The Australian Central Authority has been unable to communicate successfully with Guatemala and Mexico. Only limited communication has been achieved with Spain and Macau. There have been delays in communication with Turkey, although it is duly considered that there appears to be limited resources available to expedite communication and practice. On a general basis, the Australian CA has noted that Colombia and Brazil communicate in Spanish, resulting in further delays.

Austria – Autriche :

Communication with Serbia is problematic.

Experiences with Macedonia have been bad in one specific case. They told us that they were unable to locate the children and established a decision concerning divorce and custody – in favour of the abducting parent – some months later.

Greece denies the enforcement of return orders.

Some Latin American states are rather slow providing the required information (but this may have been caused by the applicant's bad cooperation).

Canada – Canada :

Ontario

There are a number of contracting States with whom Ontario has had difficulty in receiving co-operation:

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a) There are a few States which do not respond to the Ontario Central Authority in a timely fashion. Some States will not respond unless repeatedly prompted. This invariably results in a delay in the process of applications.
b) There are a few States which are difficult to contact using e-mail or facsimile transmission.
c) There is one State which has failed to enact the Hague Convention into local law, despite their stated intention to do so.

<u>Quebec</u>
It took six months for one return request to be submitted by a Central Authority. The judge then ordered the return of the child without calling the mother to give testimony. The mother challenged the decision and raised the problem of the jurisdiction of the courts (between Family Court and the Federal Court). Because the Federal Court judge was sick, it was another several months before the case was transferred to another judge. Throughout that time, the father was able to visit his son in the State in question under the mother's supervision. In the end, the judge ruled that the mother moved the child wrongfully and that custody was a matter for the Quebec court to decide. He did not order the child returned, however, but instead urged the parties to negotiate an agreement and gave them 60 days to come to terms. The father ultimately stated that an agreement was out of the question and asked that the case be returned to the judge for a decision. Several comments by the judges and the Central Authority were made to the effect that the child would be better off with his mother given his young age and that the father should negotiate visiting rights.

An application for return was submitted to the Central Authority of a State based on an interim decision made in Quebec granting custody to the mother and visiting rights to the father and ordering the mother to respect certain conditions. Those conditions were imposed after the mother first abducted the children to the State in question in 1999 and following her arrest in the United States and extradition to Quebec. The application for return was not treated as such, but rather as a request to protect the father's visiting rights. We were told that the mother was contacted and that she said she had no objection to the children going to Quebec for a vacation. On two occasions, the mother failed to respect the father's visiting rights by not putting the children on an airplane on the appointed dates. We have made many requests to have the case transferred to a judge in order to get a decision in the State in question confirming the father's visiting rights, but are told that nothing can be done because there is no guarantee that the children will be returned to the State after they visit Quebec. The federal Central Authority has sent them a letter asking them to explain their failure to cooperate in applying the Hague Convention.

In one case, it took more than a year to get a Court of Appeal hearing date.

In another case, the District Attorney would not initiate proceedings to have the children placed with social services during the proceedings on the Hague Convention despite all the evidence showing that the father had problems with drugs, violence and instability. The answer we got was that if social services intervened and took the children into custody, the Hague Convention case would be set aside in order to be managed by social services, meaning the children would not be returned to their mother for several months despite the custody decision she had in Quebec. In the end, a report was made by neighbours, the children were taken by social services and the mother was able to return to Quebec with the children a few days later without the Hague Convention being used.

Trial court and Court of Appeal decisions ordering the return of children to Quebec. Refusal by the mother to return or send the children back to Quebec. Lack of cooperation from attorney general in enforcing the decisions. Intervention by a magistrate to no avail. The mother moved and still not abide by the decisions. Finally, after more than six months and pressure from Quebec authorities and the embassy, the new attorney general agreed to have the children placed with social services so that the father could take advantage of Air Canada's free ticket program to go get his children two days later.

Two applications from fathers to arrange visiting rights in Quebec with their children living in the State in question. More than two year in both cases before decisions were made refusing the allow the children to come to Quebec. In the decisions, visiting rights were granted in the State in question, without any indication as to the specific terms and conditions of those visits. One decision was appealed in order to specify terms for the exercise of visiting rights. The Court of Appeal dismissed the father's application, saying that until the child reached the age of 15, the mother could not be forced to send him to his father in Quebec.

**

Ontario
L'Ontario a eu de la difficulté à obtenir une coopération efficace de plusieurs États contractants :

d) Il y a quelques États qui ne répondent pas à l'Autorité centrale de l'Ontario en temps opportun. Certains États ne répondent pas à moins que l'on rapplique à répétition. Cela occasionne invariablement des retards dans le traitement des demandes.
e) Il y a quelques États avec lesquels il est difficile de communiquer par courriel ou par télécopieur.
f) Il y a un État qui a omis de mettre en œuvre la Convention dans son droit interne, malgré son intention déclarée de le faire.

Québec
Il a fallu 6 mois avant qu'une requête pour le retour soit introduite par une Autorité centrale. Ensuite, un juge a ordonné le retour de l'enfant sans avoir convoqué la mère. Celle-ci a contesté la décision et soulevé le problème de la compétence des tribunaux (entre la Cour de famille et la Cour Fédérale). Le juge de la Cour Fédérale étant malade, il a fallu attendre encore quelques mois avant que le dossier soit transféré à un autre juge. Pendant tout ce temps, le père a pu visiter son fils dans l'État en question de façon supervisée par la mère. Finalement, le juge conclut que la mère a déplacé l'enfant illicitement et que c'est au tribunal du Québec de décider de la garde. Il n'ordonne toutefois pas le retour de l'enfant; il invite plutôt les parties à négocier une entente et leur accorde un délai de 60 jours pour y arriver. Le père a finalement fait savoir qu'il n'y avait pas possibilité d'une entente et a demandé de retourner le dossier au juge pour une décision. Plusieurs commentaires par les juges et l'Autorité centrale ont été faits à l'effet que l'enfant serait mieux avec sa mère étant donné son jeune âge et que le père devrait négocier des droits de visite.

Une demande de retour a été faite à l'Autorité centrale d'un État basée sur une décision intérimaire du Québec accordant la garde à la mère et des droits de visite au père tout en ordonnant à la mère de respecter certaines conditions. Ces conditions ont été mises suite au premier enlèvement par la mère des enfants en 1999 vers l'État en question et suite à son arrestation aux États-Unis et extradition au Québec. La demande de retour n'a pas été traitée comme telle mais plutôt comme une demande pour protéger les droits de visite du père. On nous indiquait avoir communiqué avec la mère qui disait ne pas s'opposer à ce que les enfants viennent en vacances au Québec. À deux reprises la mère n'a pas respecté ces droits de visite en ne mettant pas les enfants sur l'avion aux dates prévues. Malgré nos nombreuses demandes à l'effet que le dossier soit transmis à un juge afin d'obtenir une décision dans l'État en question, qui confirme les droits de visite

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du père, on nous répond qu'il n'y a rien à faire puisqu'il n'y a aucune garantie que les enfants seront retournés dans l'État après leur visite au Québec. Une lettre de l'Autorité centrale fédérale leur a été transmise demandant des explications sur leur non-coopération à l'application de la Convention de La Haye.

Dans une affaire, il a fallu plus d'un an avant d'obtenir une date d'audition devant la Cour d'Appel.

Dans une autre affaire, le District Attorney n'a pas voulu entreprendre des procédures pour le placement des enfants avec les services sociaux pendant les procédures sur la Convention de La Haye malgré toutes les preuves à l'effet que le père avait des problèmes de drogue, de violence et d'instabilité. On nous a répondu que si les services sociaux intervenaient pour prendre les enfants en charge, le dossier de la Convention de La Haye serait écarté pour être géré par les services sociaux, ce qui voulait dire que les enfants ne seraient pas retournés à leur mère avant quelques mois malgré la décision de garde qu'elle détenait du Québec. Finalement, un signalement a été fait pas des voisins, les enfants ont été pris en charge par les services sociaux et la mère a pu revenir avec les enfants au Québec quelques jours plus tard sans que la Convention de La Haye ne soit entreprise.

Décisions du Tribunal de première instance et de la Cour d'Appel qui ordonnaient le retour des enfants au Québec. Refus de la mère de retourner ou de ramener les enfants au Québec. Non-coopération du Procureur à forcer l'exécution des décisions. Intervention d'un Juge d'instruction qui n'a rien donné. La mère déménage et ne respecte pas encore les décisions. Finalement, après plus de 6 mois et de pressions par les Autorités du Québec et de l'Ambassade, le nouveau Procureur a accepté de faire placer les enfants avec les services sociaux pour permettre au père de bénéficier du programme de Air Canada pour des billets d'avion gratuits afin d'aller chercher ses enfants 2 jours plus tard.

Deux demandes par des pères pour organiser des droits de visite au Québec avec leurs enfants qui résident dans l'État en question. Plus de deux ans dans les deux dossiers avant que des décisions ne soient rendues refusant de laisser venir les enfants au Québec. Dans les décisions, on accordait des droits de visite dans l'État en question sans en indiquer de modalités précises pour ces exercices. Une décision a été portée en appel afin que des modalités précises soient rendues sur l'exercice de ces droits de visite. La Cour d'Appel a refusé la requête du père en indiquant qu'avant l'âge de 15 ans, il n'était pas possible de forcer la mère à faire voyager l'enfant chez son père au Québec.

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Chile – Chili :

Brasil y México demoran mucho tiempo en contestar y en iniciar las solicitudes. Estos países, más España en general no informar el estado del juicio de restitución, y especialmente con España nos hemos enterado del resultado del juicio porque la madre sustractora se lo comunicó al padre solicitante y de la Autoridad Central Española ninguna respuesta a nuestros requerimientos en meses.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

There are so far no particular difficulties ion co-operating with other Central Authorities.

China (SAR Macao) – Chine (RAS Macao) :

No.

Colombia – Colombie :

Hemos tenido inconvenientes con Costa Rica.

Su legislación interna no permite una adecuada ejecución del Convenio.

La Autoridad Central que cumple funciones de protección de derechos de la niñez, no cumple con la toma de medidas provisionales a tiempo para restablecer en parte los derechos de los niños ni aplica sanciones por su incumplimiento.

Costa Rica – Costa Rica :

Sí: México y Nicaragua (ver supra respuestas a las preguntas N° 01 y 02).

Cyprus – Chypres :

No.

Czech Republic – République tchèque :

No.

Denmark – Danemark :

Please see the answer to question 1.

Ecuador – Equateur :

No.

El Salvador – El Salvador :

Ninguno.

Finland – Finlande :

[No answer]

France – France :

De manière générale le ministère de la justice français n'a pas rencontré, dans ses relations avec ses homologues, de difficulté de nature à faire obstacle à l'application de la convention de La Haye.

Greece – Grèce :

Usually with Argentina, Bulgaria, Turkey, Romania (lack of sufficient communication and cooperation).

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

No.

Ireland – Irlande :

[No answer]

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Israel – Israël :

The Israeli Central Authority has great difficulty in communicating with the Central Authority for Mexico. Letters are regularly not answered, and phone messages are not returned.

Great difficulty is being experienced with Turkey in terms of the non-enforcement of a final order for the return of a child to Israel. The abducting mother went into hiding with the child in December, 2005, and the Turkish authorities claim that they are unable to locate her. On the other hand, the mother has been making various applications to the Turkish courts on different matters, for her own interests.

Great difficulty is being experienced with Brazil. Even in cases where a child's address or phone number has been provided, it can take several months to confirm the child's location. The court proceedings themselves are extremely lengthy and, including appeal proceedings, can drag on for a number of years. Brazil's legislation does not provide for expediting Hague Convention proceedings, nor are Hague cases given any priority over regular family matters. Parents in Israel have not been given advance notice of hearing dates, and only become aware that there was a hearing after a Judgment has issued. They are therefore denied the opportunity of participating in the trial.

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Italy – Italie :

Cf. question 1.

Latvia – Lettonie :

As an example for difficulties which we have experienced we would like to notice unwillingness from the Central Authorities abroad to take into account Latvia's reservation in accordance with Article 24 of the Convention that Latvia doesn't accept documents in French. Recently, however situation has changed to the positive way.

Lithuania – Lituanie :

Lithuanian competent authorites have not encountered such problems so far.

Malta – Malte :

No particular difficulties have been encountered.

Mexico – Méxique :

No.

Monaco – Monaco :

Non. Les difficultés rencontrées proviennent surtout du fait que souvent les Etats vers lesquels les enfants sont déplacés ne sont pas parties à la Convention.

Netherlands – Pays-Bas :

See the response to question 2.

New Zealand – Nouvelle Zélande :

See response to question 1. Particular reference is made to the Central Authority of England and Wales. New Zealand has experienced difficulties with the CA failing to respond to requests for information and progress reports not provided.

Nicaragua – Nicaragua :

Ninguno

Panama – Panama :

No.

Paraguay – Paraguay :

[Sin respuesta]

Poland – Pologne :

We have encountered some difficulties in co-operation with some of the Contracting States, however, it refers to a small number of individual cases. It is not possible to specify the objections to any of the Contracting States on the basis of few individual examples. The burden of incurring the costs of legal advisor's assistance seems to cause difficulties for the Polish citizens, which is necessary when a case is heard by a court in one of the Contracting States, while some of those States have little possibility of appointing a public defender.

Portugal – Portugal :

Yes. The Portuguese Central Authority has some difficulties with efficient and expedite communications with some countries namely with the Czech Republic and some States from South America.

Romania – Roumanie :

Yes, with the Republic of Serbia. We sent a request for returning some illicitly displaced children. We did no even receive a confirmation that our request was received, although we repeatedly wrote back.

Slovakia – Slovaquie :

See the answer to Question No 1.

South Africa – Afrique du Sud :

Generally no, though contact with the Zimbabwean Central Authority has been particularly difficult.

Spain – Espagne :

Sí, con Alemania, que no proporciona información sobre sus procedimientos, no respeta las resoluciones judiciales españolas, establece muchas limitaciones al ejercicio del derecho de visitas; con México que no proporciona ningún tipo de información, ni siquiera acusa recibo de las solicitudes, con Paraguay, con Argentina que remite solicitudes que no cumplen los requisitos del Convenio, con Holanda, con Brasil y Chile que exigen documentación no exigida por el Convenio como es la situación financiera o económica del solicitante, Perú, Colombia por la excesiva demora en proporcionar información

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Sweden – Suède :

The Swedish Central Authority has had difficulties in achieving successful co-operation with some countries because of time delays and problems with responding to requests for progress reports. An additional problem is when no adequate translation of the documents sent to the Swedish Central Authority has been made in accordance with article 24 of the Hague Convention. This also leads to delay in the proceedings.

Switzerland – Suisse :

Oui: manque de coopération ou coopération déficiente avec certains Etats.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

Please see the answer to Question 2.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

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

In particular:

- Greece – non enforcement of return order.
- Spain – time delays and a problem with responding to requests for progress reports.
- USA – the attorneys instructed do not necessarily have experience in the area of child abduction.

United States – Etats Unis :

Please see the 2006 Hague Compliance Report at:
http://www.travel.state.gov/pdf/2006_Hague_Compliance_Report_doc041806.pdf.

Uruguay – Uruguay :

No.

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Question 55	
Are you aware of situations / circumstances in which there has been avoidance / evasion of the Convention?	**Avez-vous connaissance de situations / circonstances dans lesquelles les dispositions de la Convention ont été contournées ?**

Argentina – Argentine :

Consideramos que la falta de comunicación es una evasión del Convenio. También entendemos que es una evasión del Convenio el aplicar normativa interna por sobre las disposiciones de dicho instrumento, a menos que la jerarquía de las normas del país requerido así lo establezca. Un ejemplo común es cuando se rechaza una restitución por brindar prioridad a una madre en el cuidado de los hijos pequeños, de acuerdo con lo establecido en el derecho interno de dicho país. En definivita, lo que se estaría suscitando es que el Juez del Estado de Refugio se estaría arrogando en un procedimiento de restitución, jurisdicción sobre cuestiones atinentes a la custodia, desnaturalizando de esta manera los objetivos del Convenio.

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Australia – Australie :

No.

Austria – Autriche :

See reply 54 concerning Macedonia.

Canada – Canada :

- One State has a legal remedy which has the effect of staying the Hague application or put putting it aside, pending determination of the remedy. The result of this is to negate the effectiveness of the Convention.
- There is one State which has failed to enact the Hague Convention into local law, despite their stated intention to do so.

**

- Le droit d'un État prévoit un recours en justice qui a pour effet de suspendre la demande fondée sur la Convention de La Haye ou de la mettre de côté, en attendant qu'il soit statué sur ce recours. Cela a pour effet de paralyser la Convention.
- Il y a un État qui a omis de mettre en œuvre la Convention dans son droit interne, malgré son intention déclarée de le faire.

Chile – Chili :

Brasil, simplemente no tramitó en años dos solicitudes de restitución y en la actualidad llevan ambos casos 2 años en el trámite de la apelación, sin que recibamos noticias al respecto.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We are not aware of such situations / circumstances.

China (SAR Macao) – Chine (RAS Macao) :

No.

Colombia – Colombie :

En estricto sentido no hemos tenido situaciones de evasión, pero si de interpretación del derecho de guarda contemplado en el Convenio, que ha impedido que se conceda la restitución a Colombia de un niño, bajo la consideración de que el padre que no tenga el derecho de custodia no puede solicitar la restitución, aún cuando no haya otorgado permiso de salida del país del niño. En Colombia, así un padre o madre tengan el derecho de custodia por acuerdo, acto administrativo o decisión judicial, para sacar al niño del país, debe contar con la autorización del otro padre o madre y en su defecto con autorización administrativa o judicial.

Costa Rica – Costa Rica :

Se han documentado indicios razonables que apuntan hacia la Autoridad Central de México con ocasión de un caso concreto.

Cyprus – Chypres :

[No answer]

Czech Republic – République tchèque :

No.

Denmark – Danemark :

No comment.

Ecuador – Equateur :

No.

El Salvador – El Salvador :

Ninguna.

Finland – Finlande :

[No answer]

France – France :

L'autorité centrale française n'a pas eu à connaître de situations dans lesquelles les dispositions de la convention ont été contournées.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

No.

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Ireland – Irlande :

No.

Israel – Israël :

Certain countries have consistently refused to return children to Israel on clearly erroneous reasoning which circumvents the provisions and spirit of the Convention. For example, in some judgments from Brazil and Italy, it seems clear that the court was pre-disposed to not return a child to Israel, and either circumvented the Convention or interpreted the Convention in a way contrary to existing precedent, in order to attain the result that it wanted.

Italy – Italie :

À notre connaissance, non.

Latvia – Lettonie :

Up to now we have not observed such situations/ circumstances.

Lithuania – Lituanie :

No cases of avoidance of application of the Convention are known to the Ministry of Justice and other institutions.

Malta – Malte :

None, to our knowledge.

Mexico – Méxique :

No.

Monaco – Monaco :

Non.

Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

No.

The comments of Goddard J should be noted in the second High Court judgment in *Punter*, that if shuttle custody cases create a serial habitual residence, this may create a loophole in the Convention where protection is not afforded to the parent in the initial habitual residence.

Nicaragua – Nicaragua :

Ninguno

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Panama – Panama :

Francia no había aceptado la adhesión de Panamá y se solicitó una restitución internacional, fundamentada en la cooperación internacional, y la documentación fue devuelta indicando la falta de aceptación.

El padre tuvo que realizar las gestiones a través de Italia, ya que tenía esa nacionalidad.

Posteriormente, a los seis meses Francia aceptó la adhesión de Panamá, sin embargo, el padre mantuvo la solicitud de Italia a Francia.

Paraguay – Paraguay :

[Sin respuesta]

Poland – Pologne :

Please see answer to question 54.

Portugal – Portugal :

No, we have not.

Romania – Roumanie :

No.

Slovakia – Slovaquie :

No such experience.

South Africa – Afrique du Sud :

No.

Spain – Espagne :

Caso con Irlanda en el que se solicitaba un derecho de visitas. Irlanda nunca realizó la búsqueda del menor ni inició procedimiento, poniendo todo tipo de trabas y obstáculos.

Sweden – Suède :

None.

Switzerland – Suisse :

[Pas de réponse]

United Kingdom (Scotland) – Royaume Uni (Écosse) :

No.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

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United States – Etats Unis :

Please see the 2006 Hague Compliance Report at: http://www.travel.state.gov/pdf/2006_Hague_Compliance_Report_doc041806.pdf.

Uruguay – Uruguay :

En ocasiones se ha constatado una imperfecta aplicación de las soluciones convencionales por los jueces que intervienen en los pedidos de restitución, atribuible a un insuficiente conocimiento de las soluciones en la materia.

16. Non-Convention cases and non-Conventions States – Les affaires non fondées sur la Convention et les Etats non parties

Question 56	
Are you aware of any troubling cases of international abduction which fall outside the scope of the Convention?	**Avez-vous connaissance d'affaires d'enlèvement international sources d'inquiétude qui sortent du champ d'application de la Convention ?**

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Argentina – Argentine :

Los principales planteos que son preocupantes y no se encuentran en el ámbito del Convenio, son aquellos en los que estan involucrados adolescentes que ya han cumplido los 16 años, sobre todo cuando existen temores de explotación y ejercicio de la prostitución. También son preocupantes aquellos casos que se suscitan con los países musulmanes, toda vez que no permiten practicamente ofrecer ninguna solucion, quedando las madre en situación de desprotección ante un secuestro perpetrado por una persona de este orígen, con el traslado de los menores hacia dichos países.

Australia – Australie :

No.

Austria – Autriche :

Cases outside the scope of the Convention always have their problems. There are nearly no legal ways to get a child back.

Canada – Canada :

<u>Consular Affairs Bureau at Foreign Affairs Canada</u>
Yes. For example, the child is habitually resident in a Contracting State and is abducted to a non-Hague Country. The abducting parent and child reside in the non-Hague country of over a year. The abducting parent then relocates to a Hague country. The left behind parent cannot apply for the return of the child under the Hague Convention as the habitual residence of the child has been deemed a non-Hague country, even though the child was initially abducted from a Contracting State.

<u>Manitoba</u>
Manitoba has one current case with a non-Convention state. One of the challenges is cultural attitudes to parental rights and responsibilities post-separation. Query how this State would deal with requests for return in light of these cultural attitudes, even if the State were to become a party to the Convention. Would children be returned or would parents be given a false sense of security about the possibility of return?

**

Bureau des affaires consulaires du ministère des Affaires étrangères du Canada
Oui. Par exemple, l'enfant qui réside habituellement dans un État contractant et qui a été enlevé vers un État non contractant. Le parent qui a enlevé l'enfant et l'enfant résident dans l'État non partie à la Convention pendant plus d'un an. Ce n'est qu'alors que ce parent va vivre dans un État contractant. Le parent à qui l'enfant a été enlevé ne peut alors faire de demande en vertu de la Convention pour le retour de l'enfant car l'enfant est présumé résider dans un État non contractant même s'il a été enlevé à l'origine d'un État contractant.

Manitoba
Manitoba a un cas actif avec un État non contractant. Un des défis consiste dans l'approche culturelle envers les droits parentaux et les responsabilités après la séparation. La question est de savoir comment, dans ces États, même s'ils étaient partie à la Convention, les demandes de retour seraient traitées à la lumière de cette approche culturelle. Est-ce que l'enfant serait retourné ou est-ce que les parents auraient un sentiment de sécurité à propos du retour qui ne serait pas certain?

Chile – Chili :

Hay muchos casos en que si bien los niños son mayores de 16 años siguen siendo menores de edad, por lo que en muchos casos creemos que sería importante la aplicación del convenio a todo menor de edad (18 años en el caso de Chile).

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We are not aware of such cases.

China (SAR Macao) – Chine (RAS Macao) :

No.

Colombia – Colombie :

Si, nos causa preocupación varios casos de padres o madres que han dado permiso de salida del país a sus hijos y por desconocimiento no han indicado la fecha de retorno, constituyéndose imposible alegar una retención, quedando esta situación al margen del ámbito de aplicación del convenio; casos que se han intervenido por vía consular y que están supeditados a la voluntad de la persona que retiene de devolver o no al niño y como segunda posibilidad que el padre que reclama el retorno del niño tenga que viajar al país donde se encuentra a debatir la custodia o las visitas. En tal sentido consideramos muy útil que Colombia apruebe la Convención de La Haya de 1996.

Hay situaciones que generan la no posibilidad de aplicación del convenio, ejemplo cuando el padre o madre que reclama la restitución o regulación internacional de visitas, no cuenta con los recursos económicos para el pago de honorarios o con la posibilidad de ingresar al país, por que no se les otorga la visa y aunque la situación formalmente esté dentro del ámbito de aplicación del convenio y sea susceptible de ser resuelta a favor del aplicante es inoperante por las limitaciones reales que se le presentan.

Costa Rica – Costa Rica :

No.

Cyprus – Chypres :

No.

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Czech Republic – République tchèque :

Yes, we are.

Denmark – Danemark :

The Danish Central Authority is not aware of any troubling cases of international abduction which fall outside the scope of the convention. However the Central Authority does not handle non-convention cases. These cases are dealt with by the Danish Ministry of Foreign Affairs.

Ecuador – Equateur :

No.

El Salvador – El Salvador :

Para El Salvador, es realmente preocupante el hecho que no es posible aplicar el convenio con los Estados Unidos de América, país al que han emigrado tantos salvadoreños.

Finland – Finlande :

[No answer]

France – France :

L'autorité centrale française a eu à connaître d'affaires qui n'entrent pas dans le champ d'application de la convention et qui ont été source d'inquiétudes pour les requérants, en particulier lorsque le parent qui a déplacé l'enfant vers un pays membre, se réfugie ensuite dans un Etat non signataire.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

No.

Ireland – Irlande :

No, but this office would not generally be aware of such cases, as the best place for assistance in such a matter is the Department of Foreign Affairs, which is able to provide some consular assistance.

Israel – Israël :

The Israel Central Authority is often approached in cases of abductions to non-member countries. Two cases have been particularly troubling. In one case, a mother was able to obtain a court order without the father's knowledge, permitting her to travel from Israel to the United States for one month, after which she was to return to Israel. Rather than returning to Israel, she took the child to Germany. It was only after two years of efforts by police and private investigators that the mother and child were subsequently located

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in Russia. As Russia is not a member of the Hague Convention, the father had to institute custody proceedings. The mother was awarded custody while the father was granted visitation. However, the father is unable to exercise his visitation rights as the Russian Interior Ministry refuses to grant him a visa to allow him to travel to Russia, and will not provide reasons for the refusal. As a result the father has been totally cut from his daughter, whom he has not seen for 5 years. This case demonstrates the difficulties that are encountered when dealing with countries who are not members of the Convention, and do not act in the spirit of the Convention.

The second case involves a mother who abducted her child from Israel. The Israel Police were eventually able to trace them to South Korea, by seizing her brother's computer and tracking the e-mails. Eventually the mother contacted the Israeli Consulate in South Korea requesting the extension of her passport as well as that of her daughter. In light of the mother's actions in abducting the child to South Korea it was decided not to extend the passports but to offer the mother and child travel documents that would enable them to return to Israel. However despite this and the efforts of the Israeli consul to mediate the conflict the mother refused to return to Israel with the child, preferring to flee with the child to Russia, where she originally came from, a few days before the expiration date of the passports. Also in this case the father has been cut off from his child whom he has not seen or a number of years.

Italy – Italie :

De nombreux cas d'enlèvements dans lesquels est impliqué un Pays étranger n'ayant pas ratifié la Convention de La Haye relèvent du ressort du Ministère des Affaires Étrangères.

Latvia – Lettonie :

Latvia has experienced several cases related to the child abduction which are outside the scope of the Convention. In such cases usually one of the parents is from the country what isn't member state of the Convention or from the country which doesn't accepted accession of the Latvia (e.g. Russian federation and United States of the America).

Lithuania – Lituanie :

SCRPAS has dealt with cases concerning unlawful taking away of children to Lebanon and Denmark.

Malta – Malte :

The most difficult cases outside the scope of the Convention are mainly cases of children who are taken from Malta to North Africa or the Middle East.

Mexico – Méxique :

No.

Monaco – Monaco :

La DSJ connaît actuellement une affaire dans laquelle une enfant monégasque, de parents monégasques, née à Nice, mais ayant sa résidence habituelle à Monaco, a été déplacée en Ukraine par la mère de l'enfant le 14 septembre 2005. Le 16 septembre 2005, dans le cadre d'une procédure de divorce, le juge tutélaire monégasque accordait un droit de visite et d'hébergement au père de l'enfant. Toutefois, l'enfant dont le retour en Principauté était prévu pour le 18 septembre, n'a pas eu lieu. La mère est rentrée seule d'Ukraine prétextant une maladie de sa fille qui était restée chez ses grands-parents. Le 7 octobre 2005, les grands-parents obtenaient la garde provisoire de l'enfant du Tribunal du Quartier de Pertcherski à Kiev et introduisait une requête en déchéance d'autorité parentale du père et privation du droit de garde de la mère.

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Le 4 novembre 2005, la Cour d'appel de Monaco a confirmé l'ordonnance du juge tutélaire du 16 septembre 2005 en ce qu'elle ordonnait une mesure d'assistance éducative confiée à la Direction des Affaires Sociales et Sanitaires et rejetait la demande du père de se voir confier l'enfant. Toutefois, elle l'a réformée en ordonnant le placement de l'enfant dans un Foyer spécialisé pour en vue d'assurer sa sécurité et en accordant un droit de visite au père et à la mère.

Le 9 février 2006, le Tribunal de première instance de Monaco rendait un jugement dans lequel il confiait la garde de l'enfant, sans préjudice de la mesure de placement préconisée par la Cour d'appel dans le cadre de l'assistance éducative, au père.

La mère a interjeté appel de cette décision.

En Ukraine, le 16 mars 2006, le Tribunal du quartier Petcherskiy de la ville de Kiev, déboutait le père de sa demande d'annulation des mesures provisoires plaçant l'enfant chez ses grands-parents.

Le 19 avril 2006, la Cour d'appel de Kiev a débouté les demandes des avocats ukrainiens du père de renouveler les délais pour déposer les demandes d'appel.

Le 15 juin 2006, le Tribunal du quartier Petcherskiy de la ville de Kiev a rendu un jugement, concernant la déchéance d'autorité parentale du père en faveur des grands-parents de l'enfant (requérants). Les juges ont accueilli toutes les demandes de ceux-ci et ont débouté le père.

Le 19 juin 2006, les avocats ukrainiens du père ont déposé une demande d'appel. Le jugement par écrit devait leur parvenir le 26 ou 27 juin 2006.

L'application de la Convention de La Haye est remise en cause au motif que l'Ukraine n'est pas partie à la Convention. Il est dès lors impossible d'avoir un contact direct et avec une autorité sur place.

Toutefois, l'article 4 de la Convention dispose que :

« La Convention s'applique à tout enfant qui avait sa résidence habituelle dans un Etat contractant immédiatement avant l'atteinte aux droits de garde ou de visite. L'application de la Convention cesse lorsque l'enfant parvient à l'âge de 16 ans. »

Or, en l'espèce, il convient de rappeler que lorsque l'enfant a été déplacée en Ukraine, le 14 septembre 2006, elle était placée sous la garde de sa mère par ordonnance du juge conciliateur du 3 mai 2006. Mais depuis, une décision judiciaire l'a placée dans un Foyer spécialisé.

Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

No.

Nicaragua – Nicaragua :

[Sin respuesta]

Panama – Panama :

No.

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Paraguay – Paraguay :

[Sin respuesta]

Poland – Pologne :

We have no knowledge of such cases.

Portugal – Portugal :

Yes, the Portuguese Central Authority is aware of some troubles cases with the East and Arabian Countries.

Romania – Roumanie :

Yes, the Islamic States.

Slovakia – Slovaquie :

Yes, in some cases it is very difficult to locate the child; especially when the child is abducted into one of the non-conventional countries. Basically there are no other measures to examine the social background of the child in these cases except of using the International Social Service. Eventually, the applicant loses contacts with the child completely and the aim of the Convention in such case is impossible to fulfill.

South Africa – Afrique du Sud :

Our immediate neighbours in Southern Africa, which are trying to at least secure bilateral agreements.

Spain – Espagne :

Caso con Argelia, Rusia.

Sweden – Suède :

Some of the most difficult cases the Swedish Central Authority deals with involve abductions to countries not parties to the Convention and countries that do not recognize parental rights to both parents.

The Swedish Central Authority welcome ongoing dialogue between Convention and Non-Convention states, such as the Malta Conference, on improving co-operation, mutual understanding of different legal systems and efforts to find common ground on legal principles to protect the best interests of the child.

Switzerland – Suisse :

Oui: l'autorité centrale met à disposition un aide mémoire spécifique pour les parents concernés par de telles affaires ; la Section de la protection consulaire du Département fédéral des affaires étrangères est l'interlocuteur principal de ces personnes (voir aussi réponse ad 58). L'autorité centrale reste principalement à disposition de ladite section pour des conseils ou des échanges de vues.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

We are not aware of any as we deal exclusively with Convention cases. All non-Convention cases are dealt with by the Foreign and Commonwealth Office. If the Central Authority for Scotland is contacted with a query on a non-Convention case, officials will

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explain that it cannot deal with the case directly. However, the Central Authority can help co-ordinate with the FCO. As far as the UK/Pakistan Protocol is concerned, there is extremely limited involvement by the Central Authority for Scotland with individual cases as these are primarily dealt with by the Foreign and Commonwealth Office.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

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

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

United States – Etats Unis :

Some of the most difficult cases that the U.S. Central Authority deals with involve abductions to countries not parties to the Convention and countries that do not recognize parental rights to both parents, especially in countries that follow Shari'a law.

Uruguay – Uruguay :

[Sin respuesta]

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Question 57	
Are there any States that you would particularly like to see become a State Party to the Convention? Are there any States (which are not Parties to the Convention or Members of the Hague Conference) that you would like to see invited to the Special Commission meeting in October / November 2006. Would you be willing to contribute to a fund to enable certain developing States to attend?	**Souhaitez-vous voir certains Etats devenir partie à la Convention ? Souhaitez-vous voir certains Etats (ni parties à la Convention, ni membres de la Conférence) participer à la réunion de la Commission spéciale d'octobre / novembre 2006 ? Votre Etat serait-il prêt à contribuer au financement d'un fonds permettant à certains Etats en voie de développement de participer à cette réunion ?**

Argentina – Argentine :

Un país respecto del cual hemos recibido varias consultas es Japón, por ese motivo creemos que sería positiva su incorporación al Convenio.

Australia – Australie :

Yes. The Australian Central Authority would like to see India, Papua New Guinea, Tonga and Samoa become a State party to the Convention.

Australia is providing financial assistance to facilitate Indonesia's participation in the Special Commission meeting.

Austria – Autriche :

There should be invitations to all member states of the European Council and all "neighbour states" of the EC (esp. all Arabic Mediterranean states).

Canada – Canada :

Canada would particularly like to see Japan accede to the Convention. The Consular Affairs Bureau at Foreign Affairs Canada currently have 23 active child cases with Japan.

**

Le Canada aimerait particulièrement voir le Japon adhérer à la Convention. Le Bureau des affaires consulaires du ministère des Affaires étrangères s'occupe de 23 cas actifs d'enlèvement d'enfants avec le Japon.

Chile – Chili :

Sería importante que todo China suscribiera el convenio. Asimismo, hemos tenido muchos casos con Bolivia en que sólo hemos podido intentar un regreso voluntario, por no ser ellos parte del Convenio.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We have no particular recommendation at the moment.

China (SAR Macao) – Chine (RAS Macao) :

Not applicable.

Colombia – Colombie :

Aunque Francia es Estado parte, desearíamos que el tratado entre en vigor entre Colombia y éste país, son muchos los casos de sustracción de niños que se encuentran en Francia.

De igual manera, desearíamos que Bolivia, aunque no reporta buen número de casos, se haga parte del Convenio, así mismo los países Islámicos con los cuales se nos presentan problemas de niños que son retenidos allí por sus padres, perdiendo todo contacto con la madre Colombiana y sin posibilidad de ayuda diplomática por no existir representación en esos países. Lo importante será, desde todo punto de vista que se de el respeto por los derechos humanos y de la niñez.

Costa Rica – Costa Rica :

En este momento no se tiene competencia para responder afirmativamente a esta cuestión.

Cyprus – Chypres :

No.

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Czech Republic – République tchèque :

Yes, for example Ukraine.

Denmark – Danemark :

No comment.

Ecuador – Equateur :

No es nuestra competencia.

El Salvador – El Salvador :

[Sin respuesta]

Finland – Finlande :

Finland would like especially Russia to become a member of the Convention. The topic has been on the agenda of bi-lateral ministerial meetings with Russia as well as in discussions between EU and Russia.

France – France :

L'autorité centrale française est des plus favorables à l'élargissement du nombre d'Etats liés par ladite convention, persuadée que la généralisation des échanges entre les autorités du plus grand nombre de pays sur des mécanismes communs de collaboration participe à la propagation de valeurs juridiques partagées et à la plus grande prise en compte, par les juridictions nationales, des exigences de la coopération internationale.

L'autorité centrale française regrette de ne pas disposer de ligne budgétaire lui permettant de contribuer au financement d'un fonds permettant à certains Etats de participer à cette réunion.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

No comment.

Ireland – Irlande :

No comment.

Israel – Israël :

Whilst Israel is interested in having as many nations join the Convention as possible in order to make the remedies provided for by the Convention widely available, there must be assurances of mutuality and that these countries work to enforce the tenets of the Convention in accordance with the principles enunciated in the Good Practice Guides, Perez-Vera's report and the legal precedents that have evolved over the years. Aside

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from the above caveat the Central Authority would be interested in seeing Russia, India and the Philippines join the Convention.

Italy – Italie :

Il serait souhaitable que le nombre le plus élevé possible d'États ratifiaient la Convention et participaient aux réunions de la Commission. Malheureusement, l'Autorité centrale italienne ne peut assurer aucun apport financier.

Latvia – Lettonie :

Insomuch as that one of the Latvia's neighbours is Russian Federation as well as that in Latvia large proportion is Russians, there is need to examine suggestion to invite Russian Federation to accede and ratify the Convention. There is useful also to invite Russian Federation to take a part at the meetings of the Special Commission.

Lithuania – Lituanie :

We have no proposals in this area.

Malta – Malte :

Malta would like to see Islamic States present at the Special Commission, and their possible accession to the Convention would be welcome.

Mexico – Méxique :

[Sin respuesta]

Monaco – Monaco :

L' Ukraine et l'Iran.

La Principauté n'est pas disposée à contribuer à un fonds spécial de financement.

Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

Yes. Samoa, India, Thailand. and China.

Nicaragua – Nicaragua :

[Sin respuesta]

Panama – Panama :

No.

Paraguay – Paraguay :

[Sin respuesta]

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Poland – Pologne :

We do not have any comments on that matter.

Portugal – Portugal :

Yes, we would like to count under the Hague Conference the African Countries which integrates the *Palop's Community*. (countries which official language is Portuguese).

Romania – Roumanie :

Fist question: yes, the Islamic law states; especially Egypt, Syria (there are numerous marriages of Romanian citizens with citizens of these states).

Second question: No.

Slovakia – Slovaquie :

Yes, particularly Russia, Ukraine and Egypt.

South Africa – Afrique du Sud :

Namibia, Botswana, Mozambique, Lesotho and Swaziland. The R.S.A Central Authority operates under severe budgetary constraints and would not be in a position to contribute.

Spain – Espagne :

Argelia, Bolivia o Rusia.
España no está en estos momentos en condiciones de contribuir a un fondo para que estos países participen

Sweden – Suède :

Sweden would welcome as many states as possible become parties to the 1980 Hague Convention.

Switzerland – Suisse :

[Pas de réponse]

United Kingdom (Scotland) – Royaume Uni (Écosse) :

We would support Lord Justice Thorpe's suggestions (Please see the response from England & Wales to this question).

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

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United States – Etats Unis :

The United States would like to see all countries that would meet our accession criteria become a party to the Convention. We would particularly like to see the countries below become State Parties, in light of the large number of U.S. cases with these countries. Countries are listed in order according to the number of cases since 2000: India (largest number), Jordan, Japan, Pakistan, Egypt, Lebanon, the Philippines, and Russia.

The United States Department of State cannot fund travel for officials of other governments.

Uruguay – Uruguay :

[Sin respuesta]

Question 58	
Do you have any comments on bilateral or other agreements between your State and a non-Contracting State?	**Pouvez-vous fournir des renseignements sur tout accord bilatéral ou régional qui existe entre votre Etat et un autre Etat non partie ?**

Argentina – Argentine :

Entre la República Argentina y la mayoría de los países latinoamericanos, se encuentra vigente la Convención Interamericana sobre Restitución de Menores. La mayoría de los Estados signatarios son también parte del Convenio de La Haya, aplicandose entre los mismos la Interamericana, salvo acuerdo en contrario.

Australia – Australie :

The bi-lateral agreement that exists between Australia and Egypt has thus far been positive.

Austria – Autriche :

No comments.

Canada – Canada :

See comments at question 59.

<u>Manitoba</u>
Like other Canadian provinces/territories, Manitoba has child custody enforcement legislation that can be used by a left-behind parent to request enforcement of a foreign custody or access order for a child under the age of 18. This legislation provides an additional remedy in some abduction cases.

**

Voir les commentaires à la Question 59.

<u>Manitoba</u>
Comme d'autres provinces et territoires canadiens, le Manitoba possède des lois en matière de garde d'enfant et d'exécution qui peuvent être utilisées par un parent qui demande l'exécution d'une ordonnance étrangère en matière de garde ou de droit de visite pour un enfant de moins de 18 ans. Ces lois procurent un remède additionnel dans les cas d'enlèvement d'enfants.

Chile – Chili :

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No contamos con acuerdos bilaterales.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We have no comments in this respect.

China (SAR Macao) – Chine (RAS Macao) :

No.

Colombia – Colombie :

No conocemos de la existencia de acuerdos bilaterales sobre el tema.

Costa Rica – Costa Rica :

No.

Cyprus – Chypres :

No.

Czech Republic – République tchèque :

No.

Denmark – Danemark :

Denmark does not have any bilateral agreements with non-Contracting States.

Ecuador – Equateur :

No.

El Salvador – El Salvador :

Ninguno.

Finland – Finlande :

Finland does not have any bi-lateral agreements relating to child abduction issues with non-Convention countries.

France – France :

Depuis l'entrée en vigueur, le 1er mars 2005, du Règlement du Conseil n°2201/2003 du 27 novembre 2003 dit de Bruxelles II bis, les conventions bilatérales suivantes ne sont plus applicables :

- Convention franco-autrichienne du 27 février 1979 d'entraide et de coopération judiciaire;
- Convention franco-portugaise du 20 juillet 1983 de coopération judiciaire relative à la protection des mineurs;
- Convention franco-tchèque du 10 mai 1984 relative à l'entraide judiciaire, à la reconnaissance et à l'exécution des décisions en matière civile, familiale et commerciale;

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- Convention franco-slovaque du 10 mai 1984 relative à l'entraide judiciaire, à la reconnaissance et à l'exécution des décisions en matière civile, familiale et commerciale;

Des conventions bilatérales lient par ailleurs la France à des pays non membres de l'Union européenne :

- L'échange de lettres franco-algérien du 18 septembre 1980 relatif à la coopération et à l'entraide judiciaire;
- Convention franco-algérienne du 21 juin 1988 relative aux enfants issus de couples mixtes séparés;
- Accords franco-béninois du 27 février 1975 de coopération en matière de justice;
- Convention franco-brésilienne du 28 mai 1996 d'entraide judiciaire en matière civile;
- Entente du 9 septembre 1977 relative aux questions d'entraide judiciaire civile, commerciale et administrative (pour la province du Québec seulement);
- Convention franco-congolaise du 1er janvier 1974 de coopération en matière judiciaire;
- Convention franco-djiboutienne du 27 septembre 1986 de coopération judiciaire en matière civile, y compris le statut personnel, et en matière commerciale, sociale et administrative;
- Convention franco-égyptienne du 15 mars 1982 sur la coopération judiciaire en matière civile y compris le statut personnel, et en matière sociale, commerciale, et administrative;
- Accords franco-libanais du 12 juillet 1999 concernant la coopération en certaines matières familiales;
- Convention franco-marocaine du 10 août 1981 relative au statut des personnes et de la famille et à la coopération judiciaire;
- Convention franco-nigérienne du 19 février 1977 de coopération en matière judiciaire;
- Convention franco-sénégalaise du 29 mars 1974 de coopération en matière judiciaire;
- Accord franco-tchadien du 6 mars 1976 en matière judiciaire;
- Convention franco-togolaise du 23 mars 1976;
- Convention franco-tunisienne du 18 mars 1982 relative à l'entraide judiciaire en matière de droit de garde des enfants, de droit de visite et d'obligations alimentaires.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

There are no bilateral agreements between Iceland other States.

Ireland – Irlande :

No comment.

Israel – Israël :

There are currently no bilateral or other agreements between Israel and any other countries concerning international child abduction.

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Italy – Italie :

L'Italie a stipulé un accord avec le Liban.

Latvia – Lettonie :

We do not have additional comments.

Lithuania – Lituanie :

Lithuania has not entered into any bilateral agreements with non-Contracting States related to the implementation of the Convention.

Malta – Malte :

To date, Malta has no bilateral agreements with any non-contracting States.

Mexico – Méxique :

[Sin respuesta]

Monaco – Monaco :

La Principauté n'est partie à aucun accord de ce type. Toutefois, il est à noter que de par sa proximité avec la France et l'Italie, les juridictions monégasques ont à connaître des cas de divorce dans lesquels les parties habitent d'un côté et de l'autre de la frontière. Ces situations n'engendrent pas obligatoirement des déplacements illicites mais les magistrats sont néanmoins sensibilisés aux situations familiales difficiles qui revêtent un caractère international.

Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

New Zealand does not have any formal bilateral agreements with other states.

Nicaragua – Nicaragua :

A la fecha no hemos celebrado acuerdo de esta naturaleza.

Panama – Panama :

No.

Paraguay – Paraguay :

[Sin respuesta]

Poland – Pologne :

The Republic of Poland has concluded a number of bilateral agreements, which provide for a possibility of executing a judgment concerning the return of a child. We concluded bilateral agreements with the following countries: Algeria, Egypt, Morocco, Russia and Syria.

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Portugal – Portugal :

No, Portugal has no agreements with Non-Contracting States.

Romania – Roumanie :

We have no bilateral agreements in the field covered by the Convention.

Slovakia – Slovaquie :

There is only bilateral agreement between the Slovak republic and the countries of the previous U.S.S.R. "about the legal help and the legal relations in the field of civil, family and criminal matters", which refers to the most general legal relations between the countries.

South Africa – Afrique du Sud :

Not in particular. However, in the case of South Africa bilateral agreements need to be concluded with neighboring countries like Namibia, Botswana, Mozambique, Lesotho and Swaziland.

Spain – Espagne :

España mantiene un convenio bilateral con Marruecos sobre reconocimiento y ejecución de resoluciones judiciales en materia de derecho de custodia y de visita y devolución de menores. Los procedimientos tramitados al amparo de este Convenio suelen demorarse bastante en el tiempo. Cuesta trabajo ejecutar las resoluciones judiciales de devolución de menores dictadas por los tribunales marroquíes.

Sweden – Suède :

Sweden has bilateral agreements with Tunisia and Egypt.

Switzerland – Suisse :

Accord bilatéral concernant la coopération dans certaines matières familiales avec le Liban - Mise en œuvre à travers une commission bipartite en cours.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

Please see the response from England & Wales to this question.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

Please refer to the answer to question 23 above.

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

In general terms, when reviewing other bi-lateral agreements between other States, it is clear that these agreements are very rarely used. To date Reunite has been unable to identify which government department undertakes the management and monitoring of such bi-lateral/multi-lateral agreements and been unable to access any statistical information.

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United States – Etats Unis :

The U.S. has pursued bi-lateral "Memoranda of Understanding on Consular Cooperation in Cases Concerning Parental Access to Children" with some countries (currently signed MOUs with Egypt, Jordan and Lebanon) where the 1980 Convention is not in force and where we have a significant number of U.S. citizen children being wrongfully held in violation of a parent's custodial rights. These agreements are based on the Vienna Convention on Consular Relations, Article 55, and guiding principles of the Hague Convention, where possible. They are intended to enhance consular and other cooperation in these difficult cases, but not as substitute for participation in the 1980 Convention. The U.S. government continues to encourage as many countries as possible to join the 1980 Convention.

Uruguay – Uruguay :

En el ámbito regional un importante número de Estados son Parte de la Convención Interamericana de 1989 sobre Restitución Internacional de Menores – Antigua y Barbuda; Argentina; Belice; Bolivia; Brasil; Costa Rica; Ecuador; México; Nicaragua; Paraguay; Perú, Uruguay y Venezuela – por lo que entendemos de interés propiciar jornadas y otras actividades tendientes a armonizar la aplicación de dicha Convención con la de La Haya.

Question 59	
What additional information would you find useful on the non-Hague Convention page on INCADAT available at < www.incadat.com >.	**Quels renseignements utiles souhaiteriez-vous ajouter à la page « Enlèvements ne relevant pas de la Convention de La Haye » d'INCADAT, disponible à l'adresse suivante : < www.incadat.com > ?**

Argentina – Argentine :

Consideramos que la información allí contenida es adecuada.

Australia – Australie :

Listings of agreements or instruments under the headings on the INCADAT–non-Hague Convention page "*Global Instruments - Regional Instruments*" and "*Bilateral Instruments - Agreements & Declarations*" would be a valuable resource.

Austria – Autriche :

No comments.

Canada – Canada :

The Consular Affairs Bureau at Foreign Affairs Canada thinks it would be useful to have a list of countries that were successful in negotiating a bilateral agreement or Memorandum of Understanding with non-Hague countries. As an example, Canada has a consular agreement with Lebanon and Egypt relating to family matters.

Quebec
A visit to the site shows that there is currently no information. I do not understand why this page is on INCADAT. Perhaps there ought to be a link on the "Child Abduction" page. Information on the law applicable in those countries and possible solutions for returning children removed to those countries would be very useful in giving left-behind parents better advice.

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Le Bureau des affaires consulaires du ministère des Affaires étrangères du Canada pense qu'il serait utile d'avoir une liste d'États qui ont pu négocier des traités bilatéraux ou des protocoles d'entente avec des États non contractants. Par exemple, le Canada a des ententes consulaires avec le Liban et l'Égypte en matière familiale.

Québec
Une visite du site révèle qu'il n'y a aucun renseignement pour l'instant. Je ne comprends pas pourquoi cette page se retrouve sur INCADAT. Il y aurait peut-être lieu de faire un lien sur la page «Espace enlèvement d'enfants». Des informations sur le droit applicable dans ces pays et les solutions possibles pour ramener des enfants enlevés vers ces pays seraient très utiles pour mieux conseiller les parents victimes.

Chile – Chili :

Más fallos en español.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

It is very comprehensive and we have no suggestions on additional information or topics.

China (SAR Macao) – Chine (RAS Macao) :

No.

Colombia – Colombie :

No estamos en posibilidad de sugerir por la imposibilidad de acceso.

Costa Rica – Costa Rica :

Quizás un espacio chat de intercambio de opiniones jurídicas.

Cyprus – Chypres :

More access to case law and statute law of the Hague Convention countries.

Czech Republic – République tchèque :

No comment.

Denmark – Danemark :

No comment.

Ecuador – Equateur :

No aplica pues no hemos podido utilizar esta herramienta.

El Salvador – El Salvador :

[Sin respuesta]

Finland – Finlande :

[No answer]

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France – France :

Pour les mêmes raisons que celles indiquées aux questions n° 53 et 54, l'autorité centrale française n'a pas d'observation particulière à formuler concernant la mise en ligne de la page "Enlèvements ne relevant pas de la Convention de La Haye" d'INCADAT.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

No comment.

Ireland – Irlande :

No comment.

Israel – Israël :

It would be beneficial if the page could provide names of contact people in non-member countries such as government personnel (Ministry of Justice, police, welfare authorities, etc.) that may be able to provide some assistance or information.

Italy – Italie :

Aucun renseignement.

Latvia – Lettonie :

We do not have additional comments.

Lithuania – Lituanie :

Information on court decisions provided in INCADAT is detailed and clear enough.

Malta – Malte :

It would be useful to have an overview of the legislation regarding child abduction, in non-Convention Countries.

Mexico – Méxique :

[Sin respuesta]

Monaco – Monaco :

Aucun.

Netherlands – Pays-Bas :

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

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New Zealand – Nouvelle Zélande :

[No answer]

Nicaragua – Nicaragua :

[Sin respuesta]

Panama – Panama :

No.

Paraguay – Paraguay :

[Sin respuesta]

Poland – Pologne :

We have no suggestions concerning that matter.

Portugal – Portugal :

No, the Portuguese Central Authority has not.

Romania – Roumanie :

[No answer]

Slovakia – Slovaquie :

No comment.

South Africa – Afrique du Sud :

None.

Spain – Espagne :

Es importante el desarrollo de INCADAT en el área de la lengua española.

Sweden – Suède :

The Swedish Central Authority is of the opinion that the information on INCADAT is very useful and the Swedish Central Authority would hope that it is maintained and regularly updated.

Switzerland – Suisse :

[Pas de réponse]

United Kingdom (Scotland) – Royaume Uni (Écosse) :

[No answer]

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

[No answer]

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United States – Etats Unis :

We believe the information on INCADAT is very useful and would hope that it is maintained and updated often.

Uruguay – Uruguay :

[Sin respuesta]

17. Relationship with other instruments – Liens avec d'autres instruments

Question 60	
Do you have any comments or observations on the impact of regional instruments on the operation of the 1980 Hague Convention, for example, *Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000* and the *1989 Inter-American Convention on the International Return of Children*?	**Souhaitez-vous faire des commentaires ou des observations quant à l'influence possible sur le fonctionnement de la Convention de La Haye de 1980 d'instruments régionaux tels que le *Règlement du Conseil (CE) No 2201/2003 du 27 novembre 2003 relatif à la compétence, la reconnaissance et l'exécution des décisions en matière matrimoniale et en matière de responsabilité parentale abrogeant le règlement (CE) No 1347/2000* et la *Convention interaméricaine de 1989 sur le retour international des mineurs* ?**

Argentina – Argentine :

Como ya se indicara, los Estados parte de ambos Convenios aplicarán la Convención Interamericana con preferencia sobre la de La Haya, salvo reserva en contrario. Esta es una ventaja, ya que este instrumento prevee cuestiones que tienen que ver con la problemática específica de la región. A modo de ejemplo, la Convención Interamericana permite la iniciación de los procedimientos a través de los consulados, y a través de exhorto o carta rogatoria, estando esta práctica muy enraizada en la cultura judicial de nuestros países.

Australia – Australie :

No.

Austria – Autriche :

The main impact of the Council Regulation is
- the need to hear the child (but Austrian law demands a hearing in all cases concerning this child's care and education);
- the suspension of the possibility to refuse to return a child on the grounds stated in Art 13b (this may lead to different decisions regarding EC-member states and other countries).

Canada – Canada :

Not applicable.

**

Sans objet.

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Chile – Chili :

No.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We have no comments.

China (SAR Macao) – Chine (RAS Macao) :

No.

Colombia – Colombie :

El Reglamento no es de nuestro conocimiento.

La Convención Interamericana sobre Restitución Internacional de Menores fue ratificada en Colombia por la Ley 880 de enero 19 de 2004. Por ser parte Colombia del sistema Regional interamericano, una vez entre en vigor la Convención, será de gran utilidad su aplicación con los países parte, dado que ésta complementa algunos asuntos que no están bien definidos en el Convenio de La Haya, por ejemplo los términos de trámite y decisión de las solicitudes de Restitución, entre otros aspectos.

Costa Rica – Costa Rica :

No.

Cyprus – Chypres :

Positive Convention.

Czech Republic – République tchèque :

We believe that the Council Regulation (EC) No 2201/2003 is a very useful instrument for the more effective application of the 1980 Hague Convention.

Denmark – Danemark :

No comments or observations.

Ecuador – Equateur :

No.

El Salvador – El Salvador :

Ninguno.

Finland – Finlande :

The entry into force of the Brussels II bis Regulation has not changed the basic handling of the return cases or the cooperation of the Central Authorities. The articles of the Brussels II bis -Regulation relating to return of a child that complement the Hague Convention, have not yet been applied in court in Finland.

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France – France :

Le règlement CE 2201/2003, qui intègre le mécanisme de retour prévu dans la Convention de la Haye du 25 octobre 1980, contient des mesures qui renforcent son caractère impératif, notamment en renforçant l'obligation d'audition des mineurs et en fixant le délai de six semaines sous forme de règle, et en restreignant les conditions d'application de l'article 13 de la convention de la Haye.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

There are no special comments or observations, other than those that Icelandic authorities will have to monitor closely the impact Council Regulation No. 2201/2003 will have in future on the operation and interpretation of the Hague Convention, both within the EC and in relations between EC countries and third countries, *inter alia* EFTA countries such as Iceland. It is our understanding that the Regulation goes even further in securing the return of children under the circumstances dealt with in the Convention, especially and notably under EC Article 11, paragraph 4. This raises questions as to how Icelandic authorities shall respond to the issue in question when raised in return proceedings concerning EC member countries and Iceland. See also answers to questions 25-30 on this issue.

Ireland – Irlande :

Council Regulation (EC) No. 2201/2003 has proved beneficial, particularly in relation to situations where a court refuses to return a child.

Israel – Israël :

These are not applicable to Israel.

Italy – Italie :

Aucun commentaire. Le Règlement n° 2201/2003 est complémentaire à la Convention de La Haye et en élargit le champ d'application.

Latvia – Lettonie :

We do not have additional comments.

Lithuania – Lituanie :

Since 1 March 2005, Regulation 2201/2003 has been directly applied and supercedes national law in all the EU Member States except for Denmark. Therefore, in our opinion, the adoption of the Regulation promotes the application of the 1980 Convention among these states. Furthermore, training related to the implementation of the Regulation as described above facilitates the practical application of the 1980 Convention.

Malta – Malte :

Brussels II *bis* is a very useful Regulation which complements the Convention and which can have an impact on the outcome of an abduction case.

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Mexico – Méxique :

No.

Monaco – Monaco :

La Principauté de Monaco n'a pas de commentaire particulier à formuler sur le règlement CE visé étant donné qu'elle n'est pas membre de l'Union européenne ni sur la Convention interaméricaine.

Netherlands – Pays-Bas :

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

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

New Zealand – Nouvelle Zélande :

[No answer]

Nicaragua – Nicaragua :

[Sin respuesta]

Panama – Panama :

No.

Paraguay – Paraguay :

[Sin respuesta]

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Poland – Pologne :

In our view, the Hague Convention along with the provisions of the Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing Regulation (EC) No 1347/2000 as well as the Convention on the Rights of the Children, adopted by the General Assembly of the United Nations on 20 November 1989 indicate all the possible dangers connected with international child abduction and complement each other constituting an effective measure in dealing with the issue.

Portugal – Portugal :

As the Council Regulation is complementary to the Convention, and the procedures sometimes are not very clear on the cases which have been presented to our Central Authority, from time to time it is difficult to accomplish the delay stipulated in the Convention.

Romania – Roumanie :

No.

Slovakia – Slovaquie :

The Council Regulation No 2201/2003 has a very important role next to the Convention and state laws as well, since it brought some new provisions applying to the whole Hague proceedings.

Firstly, it regulates the definition of "the abduction" more strictly; it adds that the custody is considered to be exercised jointly even when one parent cannot decide on the child's residence without the consent of the other holder of parental responsibility. Subsequently, the removal of a child from one Member State to another without the consent of the relevant person constitutes abduction. This definition is helpful in cases, when it is not clear if the of act of removing the child is really an abduction.

Stricter and new is also the principle that the child shall be returned if she/he can be protected in the Member State of Origin. This increases the role of the Central Authorities in the whole process of return where they and other authorities in the state of origin must take concrete measures to protect the child after the return. However, this point may be questionable in some case as the Regulation does not specify the term" adequate arrangements."

It also imposes concrete duties to the court as it enforces the right of the child to be heard during the procedure and the child has to be heard unless his age and degree of maturity does not allow it. This point should not cause any problems in the practice of the court, since also the state law of the Slovak Republic provides that child has the right to be heard court.

Another obligation of the court is to give an opportunity to the applicant to be heard in the court, other wise the return of the child cannot be refused.

The court shall also issue a decision within a six-week deadline, unless there are there are exceptional circumstances that prevent the court from doing so. This provision may cause issues in the practice of the court as there are no state laws in Slovakia referring to the extent of evidence in the Hague proceedings. This fact may cause that the procedure of evidence will consume a longer period of time than 6 weeks.

To sum up, The Hague Convention is supplemented by certain provisions of the Regulation. The aim of the Regulation is certainly to speed up the process under The Hague Convention and it gives the right to be heard to all the parties of proceedings which secures the essential right to a fair trial without any unreasonable delays and it fortifies the aim of the UN Convention on the Rights of Children.

However, the provisions referring to the impact of the Hague proceedings on the following custodial proceedings and subsequently, the position of the abductor in the country of origin in these proceedings, are missing.

South Africa – Afrique du Sud :

None.

Spain – Espagne :

Dicho Reglamento se considera que modaliza el Convenio de 1980 aprovechando la vigencia de su Art. 36 y supone un desarrollo importante para un área geográfica donde la supresión del exequátur es un objetivo que se va consiguiendo y en donde la mayor confianza mutua y creación de un espacio común, permiten mayores avances en esta

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área. El impacto futuro está por ver, pero la apuesta europea parece positiva, mas ahora que la Comunidad va a entrar a formar parte de la Conferencia como organización de integración económica regional.

Sweden – Suède :

The entry into force of the Brussels II Regulation has not changed the basic handling of the return cases or the cooperation of the Central Authorities. However, Articles 11(2)-11(5) in the Brussels II Regulation states that a court cannot refuse to return a child on the basis of Article 13 *b)* of the Hague Convention if it is established that the adequate arrangements have been made to secure the protection of the child after his or her return. This means that the court must order the return of the child even if the return would put the child at risk provided it is satisfied by the arrangements. This may give rise to the possibility of a return order being made where a non-return order might otherwise have been made under Article 13 *b)*, and would, on the same facts, still be made if the requesting State was not a Member State of the European Union.

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

The articles of the Brussels II Regulation relating to return of a child that complement the Hague convention, have not yet been applied in Swedish courts.

Switzerland – Suisse :

[Pas de réponse]

United Kingdom (Scotland) – Royaume Uni (Écosse) :

[No answer]

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

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

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

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

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United States – Etats Unis :

We have so far not seen any effect of the either the EC regulation or the Inter-American Convention on the operation of the 1980 Hague Convention.

Uruguay – Uruguay :

[Sin respuesta]

Question 61	
Do you have any comments or observations on the impact of international instruments on the operation of the 1980 Hague Convention, in particular, the *1989 United Nations Convention on the Rights of the Child*?	**Souhaitez-vous faire des commentaires ou des observations quant à l'influence possible sur le fonctionnement de la Convention de La Haye de 1980 d'instruments internationaux, notamment la *Convention des Nations Unies de 1989 relative aux droits de l'enfant* ?**

Argentina – Argentine :

Como se planteara más arriba, un aspecto negativo sería la utilización del interés interés superior del niño como una excusa para rechazar sin más motivo la restitución de un menor, olvidando que dicho interés se ve cumplido cuando se protege al menor en el plano internacional de los traslados o retenciones ilícitas de que puedan ser objeto por parte de uno de sus padres, derecho que por otra parte también esta contemplado en la Convención sobre los Derechos del NIño, la cual invita a los Estados a firmar tratados en esta materia.

Como aspecto positivo, la Convención sobre los Derechos del Niño sirve para respaldar cuestiones que surgen en el tratamiento de casos en el marco del Convenio de La Haya de 1980, tales como las visitas y la posibilidad del menor de dar su opinión, otorgando este instrumento mayor fuerza y precisión a dichos conceptos.

Australia – Australie :

No we have not seen any direct impact of other international instruments and Australia's ratification of the *1989 United Nations Convention on the Rights of the Child* has not directly impacted on the operation of the 1980 Hague Convention.

Austria – Autriche :

No impact can be detected.

Canada – Canada :

<u>Saskatchewan</u>
This Convention is sometimes used as a tool for interpreting our legislation.

**

<u>Saskatchewan</u>
Cette convention est parfois utilisée pour interpréter nos lois internes.

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Chile – Chili :

En muchos casos los jueces en vez de complementar ambas Convenciones, las contraponen, utilizando el interés superior del niño como causal para denegar una restitución.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We have no comments.

China (SAR Macao) – Chine (RAS Macao) :

The two international instruments complement each other as regards the protection of rights of the child, which is one of the aims of the MSAR Basic Law, which expressly determines that children are to be taken care of and protected by the Region.

Colombia – Colombie :

La Convención de los derechos del niño fundamenta la ejecución del Convenio de La Haya de 1980, y también soporta todas las actuaciones administrativas y judiciales de las autoridades encargadas de resolver sobre los asuntos de niñez y de familia. La Convención se ha constituido en el pilar que ilustra y orienta las políticas y decisiones en Colombia en esa materia.

Por ser tratados que reconocen Derechos Humanos nuestra constitución política los incorpora expresamente en su artículo 93 y 94 y les otorga prevalencia sobre la legislación interna.

Costa Rica – Costa Rica :

Según la más reciente jurisprudencia costarricense vertida en torno al Convenio de la Haya, tanto la Convención Sobre los Derechos del Niño, como su principio rector del Interés Superior del Niño, continúan ocupando un lugar privilegiado como instrumentos de interpretación legal en lo que respecta a la protección de los derechos de los niños y niñas, amén de que funcionan como un eje transversal para toda disposición o resolución judicial. Es más, dicho principio se impone como el elemento más significativo a la hora de decidir la ejecución o no de la restitución, por encima incluso de los derechos de padres y madres, postura judicial compartida en todos sus extremos por el Patronato Nacional de la Infancia.

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Cyprus – Chypres :

Positive comments.

Czech Republic – République tchèque :

In several cases the application of the 1980 Hague Convention was interpreted by the opposing parties, by media or by the Ministry of Labour and Social Affairs as opposing to the rule mentioned in Article 3 of the Convention of the Rights of the Child, *i.e.* „the best interest of the child".

Denmark – Danemark :

No comments or observations.

Ecuador – Equateur :

El principio del interés superior del niño establecido en la Convención de las Naciones Unidas es de obligatoria aplicación por parte de los órganos judiciales y administrativos, inclusive en procesos de restitución internacional.

El Salvador – El Salvador :

Ninguno.

Finland – Finlande :

[No answer]

France – France :

La Convention des nations Unies de 1989 ne contenant pas de disposition contradictoire avec les principes de la Convention de la Haye du 25 octobre 1980, il ne semble pas qu'elle puisse avoir une influence l'une sur l'autre.

Selon la jurisprudence récente de la Cour de Cassation française, la Convention des nations Unies de 1989 peut être directement invoquée devant le juge.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

There are no special comments or observations.

Ireland – Irlande :

No comment.

Israel – Israël :

Claims have been made that there are contradictions between the Hague Convention and the 1989 United Nations Convention on the Rights of the Child This claim is primarily voiced by academics. They claim that the goal of the Hague Convention is to protect parents; whereas the goal of the UNCRC is to protect children. It is also claimed that the courts prefer protecting the goal of the Hague Convention by narrowly interpreting the defenses in the Convention, rather than protecting the best interest of the child.

An Israeli judge does not agree with this approach. In her opinion, while it true that the term "the best interest of the child" is not mentioned in the Convention, it is impossible to say that it is not relevant to the Convention. True, the considerations of the best interest of the child as they are looked at while determining custody are not relevant. However, the basic assumption of the Convention is that it is in the best interest of the child to return to the country from which he was abducted, that the custody be determined in that country, and that the question of custody not be influenced by the abduction. The Convention serves the best interest of the child by returning him immediately to the place from which he was abducted, to his friends, his school, and in general to his familiar environment. That is why the defense of "grave risk" limits the

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scope of the best interest of the child as examined by the court, and the court will assess the best interest of the child while considering the goals of the Convention.

The approach of the Convention is that the court will not reward behavior that is against the law, and the court will do everything in its power to make sure that the “sinner” will not be rewarded. If the court were to decide on the custody matter in a case of abduction, the court would in essence be giving validity to the unlawful behavior of the abductor. This would also give incentive to abduct children in order to achieve an advantage in custody battles. Of course, in order for the court to consider the custody issue, would take time and hence thwart to goal of the Convention- the idea that the Convention offer “first aid” and immediate relief.

The position of the Convention is that the abduction itself impairs the best interest of the child.

The principle of “the best interest of the child” is an important and central principle in all the countries that have signed the Convention- and no court will discuss the matter of a child while ignoring the child’s good. Thus, even though the principle of the best interest of the child is not an independent principle, it is most definitely taken into consideration in the Convention and in the defenses to the return, which the Convention recognizes. The best interest of the child that is examined in the context of the Convention is narrow, but one cannot claim that it does not exist.

The Convention takes into consideration, while relying on the similarity between the legal systems of the countries who have signed the Convention, that when the issue of custody comes before the court in the country to which the child was returned, that court will consider the issue of the best interest of the child. According to the Convention, the role of the court is to be a temporary passageway on the way to the proceedings in the country of origin. Because of this temporary nature, the court only checks a narrow test of the best interest of the child, while leaving the protection of the best interest of the child and the welfare of the child in the long term- to the court in the country of origin when it decides the custody matter.

In summary, the model of the Convention weighs the different interests that need protection in the matter of child abduction as the people who drafted the Convention understood them. These interests include the protection of the law, honoring the legitimate rights of parents as defined in their country of origin and best interest of the child that he should not be abducted and that the court in his place of residence should decide his fate.

Israel's National Welfare Officer is of the view that so long as the courts in the contracting countries stand by the time requirements in the Convention and ensure humanitarian concerns for the return of children (including proper protection), as well as ensuring visitation prior to the court hearing on the return, we minimize any possible conflicts. This approach is consistent with the provisions and goals of the UN Convention on the Rights of the Child.

It is suggested that an in-depth discussion take place during the Special Commission Meeting, to attempt to resolve the tension between the Convention and the 1989 UN Convention on the Rights of the Child.

Italy – Italie :

Aucun commentaire ou observation.

Latvia – Lettonie :

We do not have comments or concrete observations.

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Lithuania – Lituanie :

We have no comments on the effect of the UN Convention on the Rights of the Child upon the 1980 Convention.

Malta – Malte :

The UN Convention on the Rights of the Child must surely have had an impact on the Hague Convention. Its guiding principles, especially the best interest of the child are a very important issue in cases of child abduction, as is the right of the child to a family. It is also an important tool in guiding States to take the appropriate measures for the prevention of the abduction of children.

Mexico – Méxique :

El Gobierno de México al ratificar la Convención de los Derechos del Niño, se comprometió de acuerdo con su artículo 4º constitucional a tomar todas las medidas administrativas, legislativas y de otra índole para hacer efectivos los derechos y garantías reconocidas en ellas.

Bajo la Convención de los Derechos del niño se reconoce a todos los menores de 18 años como sujetos plenos de derecho, sin distinción o discriminación. En ese sentido, México es un país que ha estado interesado en asumir los compromisos en beneficio de la niñez. Lo que ha permitido la creación de un Sistema Nacional para el Seguimiento y Vigilancia de la Aplicación de la Convención, el cual permite la concertación de varios sectores sociales, e incluye un mecanismo mixto de Gobierno en todos sus niveles en coordinación con la sociedad civil, a efecto de detectar focos de violación de los derechos del niño, lo que permite el desarrollo de acciones preventivas y asistenciales, ello, mediante la concertación y coordinación de capacidades, recursos y experiencias institucionales para prevenir atender y erradicar entre otros las sustracciones y/o retenciones ilícitas de menores.

Por ello, la vinculación de México a la Convención de los Derechos de Niño, ha sido un paso trascendental para nuestro país, y sobre todo una guía en la protección de los derechos del niño.

Monaco – Monaco :

La Convention des Nations Unies est plus largement ratifiée que celle de La Haye et peut être invoquée là où celle de La Haye est inapplicable notamment en vue de rétablir les liens qui ont été rompus entre l'enfant déplacé et le parent resté sur place.

Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

[No answer]

Nicaragua – Nicaragua :

Nicaragua es parte de la Convención de las Naciones Unidas sobre los Derechos del Niño, al ratificar la Convención sobre los Derechos del Niño, se comprometió a adoptar medidas administrativas, legislativas de orden nacional, así como también promover

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concertaciones de acuerdos, resoluciones y convenios bilaterales o multilaterales con el objetivo de prevenir y luchar contra los traslados ilícitos de niñas, niños y adolescentes.

La Constitución Política de la República de Nicaragua en su artículo setenta y uno establece la plena vigencia de la Convención sobre los Derechos del Niño, por lo que es prioridad dar efectividad a los derechos, libertades y garantías reconocidos en dicha Convención ya que en Nicaragua las niñas, niños y adolescentes representan un poco más de la mitad de la población del país.

Por otra parte es responsabilidad gubernamental promover y apoyar políticas, programas y proyectos, en favor de la niñez y la adolescencia, prevaleciendo siempre como principio fundamental de la Nación el interés superior de las niñas, niños y adolescentes, y tomando en consideración que la familia, la sociedad, el Estado y las instituciones privadas deben brindar protección integral a las niñas, niños y adolescentes, reconociéndoles sus derechos y respetándoles plenamente sus libertades y garantías como personas.

A partir de la ratificación de la Convención sobre los Derechos del Niño, en Nicaragua se han realizado esfuerzos y acciones efectivas que han propiciado de manera progresiva el establecimiento de un marco jurídico y social para garantizar la justicia, la paz, el reconocimiento y la protección de la niñez y la adolescencia, y garantizar a las niñas, niños y adolescentes su desarrollo pleno y el ejercicio de sus derechos.

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Panama – Panama :

No.

Paraguay – Paraguay :

[Sin respuesta]

Poland – Pologne :

Please see answer to question 60.

Portugal – Portugal :

Yes, the Portuguese Central Authority would like to inform when the *1980 Hague Convention* is applied the main principles of the *1989 United Nations Convention on the Rights of the Child* are commonly observed.

Romania – Roumanie :

Romanian judges always take into account the provisions of the 1989 UN Convention on children's rights, when trying a case based on the Hague Convention.

Slovakia – Slovaquie :

See the answer to Question above.

South Africa – Afrique du Sud :

Article 12 of the UNCRC, read with the terms of the Convention, in respect of hearing the voice of the child.

Spain – Espagne :

Se considera clave el papel de la Convención sobre los Derechos del Niño adoptada y abierta a la firma y ratificada por la Asamblea General en su resolución 44/25, de 20 de

noviembre de 1989. Son claves en esta materia sus Arts. 9.3 y 11. Sin duda, este Convenio multilateral de las Naciones Unidas es el mas ampliamente aceptado con al menos 192 Estados parte y anima a los Estados parte a buscar formulas que eviten la sustracción de menores. Son igualmente de gran ayuda para el correcto funcionamiento del Convenio de La Haya de 1980, el Convenio de 29 de mayo de 1993 relativo a la protección del menor y a la cooperación en materia de Adopción Internacional y el Convenio de La Haya de 19 de octubre de 1996 relativo a la competencia, la ley aplicable, el reconocimiento, la ejecución y la cooperación en materia de responsabilidad parental y de medidas de protección de los niños, ya en vigor, y que sustituye al Convenio de La Haya de 1961 sobre competencia de las autoridades y ley aplicable en materia de protección de menores, en cuanto es un accesorio útil y complementa al Convenio de 1980. Merece también una mención, en esta área de la sustracción internacional de menores, el convenio europeo relativo al derecho de visita a menores de 15 de mayo de 2003 o convenio sobre derecho de visita del Consejo de Europa. Es un convenio que entró en vigor el 1 de septiembre de 2005. De este convenio cabe una especial referencia a sus artículos 10, 16 y 20 relativos al establecimiento de salvaguardas y garantías en los contactos, al retorno del menor y al hecho de que la Convención no afecta a otras Convenciones aplicables en la misma materia, no siendo obstáculo para la aplicación del Convenio de La Haya de 5 de octubre de 1961, del Convenio de La Haya de 25 de octubre de 1980, del Convenio de Luxemburgo de 20 de mayo de 1980 y del Convenio de La Haya de 19 de octubre de 1996. En esta materia tampoco debe olvidarse la cita del Convenio europeo relativo al reconocimiento y la ejecución de decisiones en materia de custodia de menores, así como al restablecimiento de dicha custodia, hecho en Luxemburgo el 20 de mayo de 1980, del Convenio entre el Reino de España y el Reino de Marruecos sobre asistencia judicial, reconocimiento y ejecución de resoluciones judiciales en materia de derecho de custodia y derecho de visita y devolución de menores, hecho en Madrid el 30 de mayo de 1997 y del sistema interamericano sobre protección de derechos humanos con cita cuando menos de la Convención Interamericana sobre restitución internacional de menores adoptada en Montevideo, Uruguay, en fecha 15 de julio de 1989 y adoptada por la cuarta conferencia especializada interamericana sobre derecho internacional privado, con entrada en vigor el 4 de noviembre de 1994. Junto a esta Convención y para este llamado sistema interamericano, debe citarse la Convención interamericana de 18 de marzo de 1994 sobre tráfico internacional de menores, cuyo objetivo lo es la prevención y sanción del tráfico internacional de menores, así como la regulación de los aspectos civiles y penales del mismo. En éste área geográfica, es muy importante el recurso las resoluciones de la O.E.A., y a los trabajos de las Conferencias especializadas interamericanas sobre Derecho Internacional Privado, accesibles en la Web del instituto interamericano del niño, la niña y adolescentes.

Todos los instrumentos internacionales citados, junto a los demás existentes en la materia, sin olvidar los bilaterales, se estima que coadyuvan de forma útil a lograr los objetivos del Convenio de La Haya de 1980, evidente referente en esta materia para todos ellos.

Sweden – Suède :

The ratification of the UNCRC has not had any direct impact on the operation of the 1980 Hague Convention.

Switzerland – Suisse :

Renforçateur en cas de besoin notamment pour la protection des droits de visite transfrontière (art. 9, 10 CDE) ; également en cas de besoin pour l’audition des enfants (art. 12) son intérêt supérieur (art. 3), sa représentation. Enfin par rapport à des Etats non parties à CLAH-80, les articles précités et l’article 11 CDE.

Plus spécifiquement, il conviendra d'engager une réflexion sur l'impact de la notion d'intérêt supérieur de l'enfant, consacrée par la Convention des Nations Unies de 1989,

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dans l'application de l'article 13, alinéa 1, lettre b) de la Convention de La Haye, tenant compte de la jurisprudence récente des Cours suprêmes de l'Italie et de la France.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

Please see the response from England & Wales to this question.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

United States – Etats Unis :

We are unaware of other international instruments impacting the implementation of the 1980 Hague Convention.

Uruguay – Uruguay :

La Convención de Naciones Unidas sobre los Derechos del Niño de 1989 constituye una normativa básica en materia de protección de menores, cuyas soluciones entendemos se conjugan adecuadamente con los de la Convención de La Haya, vr. gr., lo emergente de los arts. 3; 11; 12; etc.

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18. The Hague Convention of 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children - La Convention de La Haye de 1996 concernant la compétence, la loi applicable, la reconnaissance, l'exécution et la coopération en matière de responsabilité parentale et de mesures de protection des enfants

Question 62	
If the 1996 Hague Convention is in force in your State, do you have any comments regarding (a) how it has been implemented; (b) how it is operating?	**Si la Convention de La Haye de 1996 est entrée en vigueur dans votre Etat, pourriez-vous commenter (a) la manière dont la Convention a été mise en œuvre et (b) la façon dont la Convention fonctionne ?**

Argentina – Argentine :

[Sin respuesta]

Australia – Australie :

The 1996 Hague Convention has been in force since 2003. Each State and Territory will also implement the Convention through model legislation relating to child protection matters. Australia has not received any applications under the Convention.

Austria – Autriche :

See reply 63.

Canada – Canada :

Canada is not a party to the 1996 Convention.

**

Le Canada n'est pas partie à la Convention de 1996.

Chile – Chili :

Este Convenio no se encuentra vigente en Chile. Se está analizando la posibilidad de adherir a este Convenio, sin embargo no es decisión de esta Autoridad Central, por lo que no podemos responder estas interrogantes.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

The 1996 Hague Convention is not applicable to the HKSAR. We have no comments.

China (SAR Macao) – Chine (RAS Macao) :

Not applicable.

Colombia – Colombie :

No está ratificado en Colombia.

Costa Rica – Costa Rica :

Dicho instrumento no está en vigor en el Estado costarricense.

Cyprus – Chypres :

[No answer]

Czech Republic – République tchèque :

In fact we have not experienced matters pursuant to the above Convention with relation to the child abduction.

Denmark – Danemark :

The 1996 Hague Convention has been implemented in Danish legislation by Act No. 434 of May 8, 2006. However, the date for the commencement of the Act – and the Convention – is not fixed, since Denmark has not ratified the Convention yet.

The Convention is implemented by incorporation. The implementing act also stipulates certain procedural rules to secure the implementation of Art. 24 and Art. 26. Further the act changes the general provisions in the Danish Administration of Justice Act concerning international jurisdiction in custody cases, so it is in conformity with the convention.

Ecuador – Equateur :

Autoridad Central no ha recibido procesos en aplicación al Convenio de 1996 a pesar de tenerlo vigente en el Ecuador. La razón principal es la falta de conocimiento sobre su contenido y alcance. Sería necesario iniciar procesos de difusión y capacitación sobre dicho instrumento internacional.

El Salvador – El Salvador :

El Salvador no es parte del convenio en mención.

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Finland – Finlande :

The 1996 Convention is not yet in force in Finland.

France – France :

Le processus de ratification de la convention de La Haye de 1996 est actuellement en cours en France.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

Iceland has not yet signed nor implemented the Hague Convention of 1996 on Jurisdiction, Applicable law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children. It has been decided to implement it and preparations are under way.

Ireland – Irlande :

Not applicable.

Israel – Israël :

This Convention is not in force in Israel.

Italy – Italie :

L'Italie n'a pas ratifié la Convention de La Haye de 1996.

Latvia – Lettonie :

Convention of 1996 in Latvia is in force since 1st April, 2003. We do not have additional comments about its operation.

Lithuania – Lituanie :

There are no laws or other legal acts adopted in Lithuania that would directly govern the procedure of implementation of the 1996 Convention or similar issues. In Lithuania, this Convention took effect not long ago – on 1 September 2004; it is a document of direct application not requiring adoption of any regulations for its implementation. To the best of SCRPAS's knowledge, Lithuanian courts have no practice in the application of the Convention. Furthermore, Council Regulation (EC) No. 2201/2003 is applied instead of the 1996 Convention in the following cases: (a) permanent place of residence of the child is in the territory of a EU Member State; and (b) for the purposes of recognition and execution of a court decision adopted in a EU Member State in the territory of another EU Member State even if permanent place of residence of the child is in the territory of a third state which is a Contracting Party to the 1996 Convention. As the number of Contracting Parties to the 1996 Convention that are not EU Member States is not large, this Convention would not be extensively applied in Lithuania. On the other hand, an analysis of the Lithuanian judicial practice shows that at present judges do not have a good understanding of the peculiar features of application of the 1996 Convention,

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therefore, sometimes the Convention is not applied in judicial cases even if there are grounds for applying it.

Malta – Malte :

The Convention is not in force in Malta.

Mexico – Méxique :

[Sin respuesta]

Monaco – Monaco :

Cette Convention est entrée en vigueur en Principauté le 1er janvier 2002 par application de l'ordonnance souveraine n°16.277du 2 avril 2004. LA Direction des Services Judiciaires a été désignée en qualité d'Autorité Centrale.

L'adhésion de Monaco étant récente, la Principauté ne bénéficie pas de recul nécessaire sur l'application de cette convention. A ce jour, une seule affaire a été introduite auprès du juge tutélaire sur le fondement de cette convention mais elle n'a pas encore été jugée.

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Netherlands – Pays-Bas :

The Netherlands signed the Convention as early as 1997. An Act authorizing the ratification of the Convention by the Netherlands has passed the national Parliament. The EU Council decision concerning joint ratification of the Convention by the EU Member States has not yet been adopted as a result of a reservation made by Spain.

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

New Zealand – Nouvelle Zélande :

[No answer]

Nicaragua – Nicaragua :

Este Convenio, no se encuentra en Vigor en Nicaragua.

Panama – Panama :

El Convenio de la Haya de 19 de octubre de 1996, no ha sido ratificado par Panamá.

Paraguay – Paraguay :

[Sin respuesta]

Poland – Pologne :

Poland is not a State Party to the Convention of 1996, however, Poland signed the Convention on 22 November 2000. The works leading to implementing the Convention are in progress. Currently we anticipate the decision of the Council of the European Union on ratification of the Convention by the Member States of the European Union. Poland would appreciate creating such a guide.

Portugal – Portugal :

Yes, the Portuguese Central Authority would like to inform that the *1996 Hague Convention* was signed by Portugal in April 1, 2003, but it has not been ratified yet. However, it is important to bear in mind that Portugal made a declaration to this Convention, in the following terms:

Articles 23, 26 and 52 of the Convention allow Contracting Parties a degree of flexibility in order to apply a simple and rapid regime for the recognition and enforcement of judgments. The Community rules provide for a system of recognition and enforcement which is at least as favourable as the rules laid down in the Convention. Accordingly, a judgment given in a Court of a Member State of the European Union, in respect of a matter relating to the Convention, shall be recognised and enforced in Portugal by application of the relevant internal rules of Community law.

Romania – Roumanie :

Romania is not yet party to the 1996 Hague Convention.

Slovakia – Slovaquie :

The Hague Convention of 1996 is in force in the Slovak Republic. We do not have any comments on its implementation or operating. We find useful its accession by all Member States of the European Union.

South Africa – Afrique du Sud :

a) The Convention has been implemented by the South African Central Authority in line with the terms set out in Articles 7, 10, 12 and 13, with due regard to international practices and jurisprudence.

b) One of the challenges that we face is that once a matter is litigated and opposed, the civil process can and does at times leads to delays. Other than the constraints by the civil process the Convention is operating well.

Spain – Espagne :

En el caso de España, el Convenio indicado no está en vigor.

Sweden – Suède :

The 1996 Convention is not yet in force in Sweden.

Switzerland – Suisse :

[Pas de réponse]

United Kingdom (Scotland) – Royaume Uni (Écosse) :

[No answer]

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United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

[No answer]

United States – Etats Unis :

Not applicable.

Uruguay – Uruguay :

No se encuentra en vigor.

Question 63	
If the 1996 Hague Convention is not in force in your State, is your State considering implementing this Convention? What are viewed as (a) the main advantages and (b) the main difficulties in implementing this Convention?	**Si la Convention de La Haye de 1996 n'est pas entrée en vigueur dans votre Etat, sa mise en œuvre est-elle envisagée ? Quels sont (a) les avantages principaux et (b) les principales difficultés liées à la mise en œuvre de la Convention ?**

Argentina – Argentine :

En efecto, la República Argentina está estudiando la posibilidad de ratificar este Convenio, viendo como una de sus grandes ventajas, la posibilidad que otorga de incrementar la cooperación internacional entre los países que forman parte del Convenio, y la amplitud de materias que cubre. Como dificultad, se puede indicar la rigidez de los países de Latinoamerica en general a deslindarse de competencia en estas cuestiones.

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Australia – Australie :

Not applicable.

Austria – Autriche :

Austria's ratification is dependent on all EC-Member States ratifying together.

Canada – Canada :

We are currently analysing the rules set out in the 1996 Convention in the hope of finding solutions to interprovincial (in Canada) and international problems regarding parental responsibility, in particular problems related to child custody and visiting rights. A federal/provincial/territorial working group has been set up for this purpose, with Quebec and Manitoba as co-chairs. The working group on jurisdiction and enforcement related to parental responsibilities and personal contacts (a subcommittee of CCSO-Family Justice) has a specific mandate to analyse the 1996 Hague Convention; examine federal, provincial and territorial legislation on child custody and visiting rights; study issues related to the Hague Convention on the Civil Aspects of International Child Abduction; etc. As part of its proceedings, the working group is discussing the appropriateness of implementing the 1996 Hague Convention in Canada.

While the 1996 Hague Convention is seen as an instrument that can help solve a number of cross-jurisdictional problems experienced by Canadian provinces in the area of child custody and visiting rights in particular, its very broad area of application (it also covers youth protection measure and other protective measures, such as *kafala*) makes it harder to study. Representatives of other government departments and agencies will eventually have to be involved in analysing the Convention; in Quebec, that means in particular the Department of Health and Social Services and the Office of the Public

Curator, which are also responsible for matters included in the application of the Convention, such as youth protection and protection of the property of minors. That is one of the problems. Another is the need to consider, in order to implement the Convention, a sufficient number of legislative amendments in the provinces in addition to demanding changes to federal divorce laws.

**

Nous analysons actuellement les règles prévues à la Convention de 1996 dans la perspective d'y trouver des solutions aux problèmes interprovinciaux (au Canada) et internationaux rencontrés en matière de responsabilité parentale, en particulier les problèmes liés à la garde d'enfants et au droit de visite. Un Groupe de travail fédéral/provincial/territorial a été mis sur pied à cette fin, avec le Québec et le Manitoba comme co-présidents. Le Groupe de travail sur la compétence et l'exécution en matière de responsabilités parentales et de contacts personnels (un sous-comité du CCHF-Justice familiale) a précisément pour mandat d'analyser la Convention de La Haye de 1996, d'examiner les dispositions législatives fédérales, provinciales et territoriales en matière de garde d'enfants et de droit de visite et d'examiner les questions liées à la Convention de La Haye sur les aspects civils de l'enlèvement international d'enfants, entre autres. Dans le cadre de ses travaux, l'opportunité de mettre en œuvre la Convention de La Haye de 1996 au Canada est discutée.

Si la Convention de La Haye 1996 est vue comme un instrument pouvant aider à solutionner un certain nombre de problèmes inter-juridictionnels que connaissent les provinces canadiennes en matière de garde d'enfants et de droit de visite notamment, son champ d'application très large (il couvre également les mesures de protection de la jeunesse et d'autres mesures de protection, dont la kafala), rend son examen plus difficile. Cela exigera que soient éventuellement associés aux travaux d'analyse de la Convention, des représentants d'autres ministères et organismes du gouvernement, notamment au Québec, ceux des ministères de la Santé et des Services sociaux et de la Curatelle Publique, responsables eux aussi de questions comprises dans le champ d'application de la Convention, soit la protection de la jeunesse et la protection des biens des mineurs. Cela constitue une des difficultés rencontrées. On peut mentionner, comme autre difficulté, la nécessité de devoir envisager, pour la mise en œuvre de la Convention, un nombre assez important de modifications législatives dans les provinces, en plus d'exiger des modifications à la législation fédérale en matière de divorce.

Chile – Chili :

Ver pregunta 62.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

According to the Basic Law of the HKSAR, which is the constitutional document of the HKSAR, the application to the HKSAR of international agreements to which the People's Republic of China is or becomes a party shall be decided by the Central Peoples' Government, in accordance with the circumstances and needs of the HKSAR, and after seeking the views of the Government of HKSAR. We will give due consideration to the 1996 Hague Convention and express our views through the Central People's Government of China in due course.

China (SAR Macao) – Chine (RAS Macao) :

Not applicable.

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Colombia – Colombie :

Colombia está considerando incorporar dentro de su legislación el Convenio y el ICBF fue consultado sobre el tema.

Costa Rica – Costa Rica :

Por motivos obvios de separación de poderes, esta pregunta no compete ser respondida por esta Autoridad Central. Es decir, la información pertinente debe ser solicitada al Ministerio de Relaciones Exteriores de la República de Costa Rica.

Cyprus – Chypres :

[No answer]

Czech Republic – République tchèque :

[No answer]

Denmark – Danemark :

Please see answer to question 62.

Ecuador – Equateur :

No aplica

El Salvador – El Salvador :

En cuanto a si el Estado está considerando o no la implementación de este convenio, debe ser el Ministerio de Relaciones Exteriores el que proporcione la respuesta.

Finland – Finlande :

Finland has signed the 1996 Convention in 2003 together with the other EU Member States and is ready to proceed with ratification as soon as necessary decisions within the EU have been made.

France – France :

Oui. Le règlement 2201/2003, déjà en vigueur au sein de l'Union, comprenant de nombreuses dispositions similaires à celle de la Convention de la Haye de 96, sa mise en oeuvre ne devrait pas soulever de difficulté.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

See question 62.

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Ireland – Irlande :

Ireland enacted legislation on 16 December 2000 (the Protection of Children (Hague Convention) Act 2000) which would give the force of law to the 1996 Convention and enables the State to ratify the Convention. Clearance at EU level is being sought by the State to proceed with signature and ratification of the Convention.

Israel – Israël :

The main difficulty in implementing the Convention stems from the content of Article 8(2)(c) of the Convention.

Article 8(2)(c) allows authorities within Contracting States to make a request to another Contracting State to assume jurisdiction over a case and to take measures to protect the child where it is in the best interests of that child to do so. The authorities which may be approached to assume jurisdiction include authorities seized of an application for divorce or legal separation of the child's parents or for annulment of their marriage.

This article is problematic when applied to the Israeli legal system since the authorities which may be approached to assume jurisdiction include Israel's religious courts. Such religious courts (namely, the Rabbinic, Sharia, Christian and Druze Courts) apply their respective religious laws to cases within their jurisdiction and do not practice civil law or private international law.

Italy – Italie :

L'Autorité Centrale ne peut pas préconiser si l'Italie ratifiera ou pas la Convention de la Haye de 1996, ceci relevant exclusivement du ressort du pouvoir politique. Les avantages et les difficultés correspondants ne pourront faire l'objet d'évaluation que si et lorsque la Convention devient applicable.

Latvia – Lettonie :

[No answer]

Lithuania – Lituanie :

[No answer]

Malta – Malte :

Malta is currently considering the implementation of the 1996 Convention, and has yet to reach a final decision. No particular difficulties were encountered with regard to the Convention's interpretation, however, a Guide to Good Practice would be welcome.

Mexico – México :

[Sin respuesta]

Monaco – Monaco :

Sans objet.

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Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

[No answer]

Nicaragua – Nicaragua :

[Sin respuesta]

Panama – Panama :

El Convenio de la Haya de 19 de octubre de 1996, no ha sido ratificado par Panamá.

Paraguay – Paraguay :

[Sin respuesta]

Poland – Pologne :

Please see answer to question 62.

Portugal – Portugal :

No, the *1996 Hague Convention* has not entrered into force in our country.

Romania – Roumanie :

Yes; Romania has begun taking the necessary steps towards becoming a party to this Convention, a procedure which is due to end this year.

Slovakia – Slovaquie :

The main advantage of the Convention is its complementary character to the conventions concerning the children.

South Africa – Afrique du Sud :

Not applicable.

Spain – Espagne :

En España, la Decisión del Consejo de 19 de diciembre de 2002, le autorizó a firmar tal Convenio con ciertas salvedades. Dicho Convenio esta pendiente de ser ratificado por los Estados miembros de la Comunidad Europea, incluido España, algo que no pueden hacer de forma individual los Estados miembros al contener materias que fueron objeto de cesión a la Comunidad tras el Tratado de Ámsterdam. Por ello y tras la Propuesta de Decisión del Consejo sobre la adhesión de la Comunidad Europea a la Conferencia de La Haya de Derecho Internacional Privado de 9 de diciembre de 2005, como Organización Integración Económica Regional, se espera que cuando la Comunidad sea miembro de la Conferencia, pueda ser ratificado dicho Convenio en la forma que de una u otra forma se articule. Tras ello, y cuando este en vigor el Convenio de 1996, no se estima que plantee

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dificultades de implementación, siendo evidentes las ventajas que puede aportar, siempre en su necesaria coordinación con el Reglamento 2201/2003, ya prevista en el Art. 61 del propio Reglamento comunitario.

Sweden – Suède :

Sweden has signed the 1996 Convention in 2003 together with the other EU member States and is ready to proceed with ratification as soon as the necessary decisions within the EU have been made.

Switzerland – Suisse :

Un projet en vue de ratification est en consultation auprès des milieux intéressés et sera vraisemblablement soumis au Parlement fédéral en 2007.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

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

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

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

United States – Etats Unis :

The United States is considering becoming a party to the 1996 Convention. We are currently discussing the advantages and difficulties of implementing this Convention in the United States.

Uruguay – Uruguay :

En Uruguay la aprobación del Convenio se encuentra en análisis del Poder Legislativo.

Question 64	
Have you experienced any difficulties concerning interpretation of particular provisions?	**Rencontrez-vous des difficultés particulières d'interprétation de certaines dispositions ?**

Argentina – Argentine :

Si bien la interpretación de las disposiciones de este Convenio no presentan dificultades, se está analizando si las mismas no contrarían lo dispuesto en materia de protección de menores por nuestra legislación interna.

Australia – Australie :

Not applicable.

Austria – Autriche :

See reply 63.

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Canada – Canada :

Within the working group studying the 1996 Convention, we encounter fewer problems with interpretation of the provisions of the Convention than problems understanding the practical implications of its eventual application in Canada. Several provinces seem to be having trouble envisioning in real terms how the Convention will apply. How, for example, will the responsibilities of the Central Authority be exercised given that its assigned areas of responsibility fall within the jurisdiction of more than one government department or agency? Further, how will transfers of jurisdiction from one court to another be made, and what delays will such transfers cause? The absence of specific examples of application of the Convention by others States Parties is a weakness in that regard. The problems identified above are less severe in Quebec than in the other provinces.

**

Au sein du Groupe de travail qui examine la Convention de 1996, nous rencontrons moins des problèmes d'interprétation des dispositions de la Convention que des difficultés de compréhension des implications pratiques de son application éventuelle au Canada. Pour plusieurs provinces, il semble difficile d'envisager concrètement la façon dont la Convention va s'appliquer. Comment, par exemple, seront exercées les responsabilités de l'Autorité centrale, compte tenu, notamment, que les domaines de responsabilité qui lui sont attribués ressortissent à la compétence de plus d'un ministère ou organisme du gouvernement? De même, comment s'effectueront en pratique les transferts de compétence d'un tribunal à un autre et quels seront les délais occasionnés par de tels transferts? L'absence d'exemples concrets d'application de la Convention par d'autres États parties constitue, à cet égard, une lacune. Les problèmes identifiés ci-dessus se présentent avec moins d'acuité au Québec que dans les autres provinces.

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Chile – Chili :

Ver pregunta 62.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We have not experienced any difficulties concerning interpretation of the provisions of the 1996 Hague Convention.

China (SAR Macao) – Chine (RAS Macao) :

Not applicable.

Colombia – Colombie :

No. por no estar en ejecución.

Conocemos sus disposiciones y consideramos que las mismas se ajustan a las necesidades en esa materia en nuestro país.

La lectura de algunos de sus artículos ofrece dificultad para su entendimiento, podría mejorarse la forma de redacción para facilitar su comprensión.

Costa Rica – Costa Rica :

Por lo contestado en la pregunta 62, esta cuestión no se puede responder.

Cyprus – Chypres :

[No answer]

Czech Republic – République tchèque :

No.

Denmark – Danemark :

We had difficulties in interpretation of:

- The scope of Articles 3 and 4, and the effect on Danish legislation.
- The scope of Articles 24 and 26, since the Danish Administration on Justice Act did not have provisions concerning pre-recognition or declaration of enforceability (exequatur-procedure).
- The scope of Article 41.
- Article 21 was very difficult to interpret.

Ecuador – Equateur :

En particular no, en general, como se señaló anteriormente, es necesario realizar un proceso de capacitación sobre el instrumento.

El Salvador – El Salvador :

[Sin respuesta]

Finland – Finlande :

[No answer]

France – France :

Non.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

See question 62.

Ireland – Irlande :

As this has not yet been enacted in this jurisdiction, this question does not apply.

Israel – Israël :

Not relevant.

Italy – Italie :

Non.

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Latvia – Lettonie :

There were no difficulties related to interpretation of special rules.

Lithuania – Lituanie :

As Lithuania has no history of application of the 1996 Convention, it is hard to identify difficulties in the interpretation of its provisions. However, it is possible that linguistic problems of interpretation may arise. For example, both the 1996 Convention and the 1980 Convention contain the term "habitual residence", which has been translated in the Lithuanian version of the 1996 Convention as "permanent place of residence" ("domicile"). However, such translation is inaccurate both from linguistic and legal point of view. Therefore, mistakes can be made while using only the Lithuanian version of the Convention, as the child's place of residence can be mixed with his/her permanent place of residence.

Malta – Malte :

Please see answer to question 63.

Mexico – Méxique :

[Sin respuesta]

Monaco – Monaco :

Pas encore d'opinion.

Netherlands – Pays-Bas :

No.

New Zealand – Nouvelle Zélande :

[No answer]

Nicaragua – Nicaragua :

[Sin respuesta]

Panama – Panama :

El Convenio de la Haya de 19 de octubre de 1996, no ha sido ratificado par Panamá.

Paraguay – Paraguay :

[Sin respuesta]

Poland – Pologne :

Please see answer to question 62.

Portugal – Portugal :

No.

Romania – Roumanie :

We cannot say for sure, yet.

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Slovakia – Slovaquie :

No, we do not have any experience of problems concerning interpretation.

South Africa – Afrique du Sud :

Generally no.

Spain – Espagne :

Nada que responder.

Sweden – Suède :

[No answer]

Switzerland – Suisse :

[Pas de réponse]

United Kingdom (Scotland) – Royaume Uni (Écosse) :

Please see the response to Question 63 above.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

See response to 63 above.

United States – Etats Unis :

Not applicable.

Uruguay – Uruguay :

[Sin respuesta]

Question 65	
Would you find a Guide to Good Practice on implementation of this Convention useful?	**Estimez-vous qu'un Guide de bonnes pratiques sur la mise en œuvre de la Convention de 1996 serait utile ?**

Argentina – Argentine :

Estimamos que sería de gran utilidad.

Australia – Australie :

Yes, a Guide to Good Practice would be useful but it would be more important to encourage more States to join the convention.

Austria – Autriche :

See reply 63.

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Canada – Canada :

It would be extremely useful and would respond to a need identified by provincial and territorial officials.

**

Un tel guide serait extrêmement utile, et il répondrait à un besoin évoqué par des fonctionnaires provinciaux et territoriaux.

Chile – Chili :

Ver pregunta 62.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We would certainly find such a Guide useful.

China (SAR Macao) – Chine (RAS Macao) :

Not applicable.

Colombia – Colombie :

Si sería muy útil ojalá fuera simultánea a su entrada en ejecución.

Costa Rica – Costa Rica :

Claro que sí.

Cyprus – Chypres :

[No answer]

Czech Republic – République tchèque :

No comment.

Denmark – Danemark :

We find that a Guide to Good Practice could be of great importance for countries that are in process of implementing the Convention.

Ecuador – Equateur :

Si.

El Salvador – El Salvador :

[Sin respuesta]

Finland – Finlande :

A guide might be useful.

France – France :

Oui.

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Greece – Grèce :

[No answer]

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

See question 62.

Ireland – Irlande :

Yes.

Israel – Israël :

The Israeli Central Authority is of the view that Guides to Good Practice may be useful with respect to any Convention, in order to promote consistency between the member countries both in terms of interpretation of Convention concepts and implementation approaches.

Italy – Italie :

Oui.

Latvia – Lettonie :

Latvia expresses readiness to propose its opinion regarding concrete suggestions which are significant for inclusion in the Guide both in terms of methodological guidelines and implementation issues.

Lithuania – Lituanie :

Guidance on practical implementation of the 1996 Convention is lacking. Therefore, a good practice guide on the implementation of the Convention would be very useful.

Mexico – Méxique :

[Sin respuesta]

Malta – Malte :

Please see answer to question 63.

Monaco – Monaco :

Oui.

Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

[No answer]

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Nicaragua – Nicaragua :

Las Guías de Buenas prácticas, facilitan la interpretación y aplicación de los Convenios.

Panama – Panama :

El Convenio de la Haya de 19 de octubre de 1996, no ha sido ratificado par Panamá.

Paraguay – Paraguay :

[Sin respuesta]

Poland – Pologne :

Please see answer to question 62.

Portugal – Portugal :

Yes, for the countries which have signed, ratified and apply the *1996 Hague Convention*.

Romania – Roumanie :

Yes.

Slovakia – Slovaquie :

Yes, we find very useful guides to all conventions.

South Africa – Afrique du Sud :

Most definitevly.

Spain – Espagne :

Seria de gran utilidad siempre que se coordinara con las guías prácticas ya existentes respecto al Convenio de 1980 y respecto al Reglamento 2201/2003.

Sweden – Suède :

Even if the Swedish Central Authority is not a party to the 1996 Hague Convention at the present day, it is presumably helpful with a Guide to Good practice as guidance for the interpretation of the Convention if Sweden becomes a party.

Switzerland – Suisse :

Oui, à la condition qu'il s'agisse d'un véritable outil de travail simple et clair, pouvant servir aux praticiens qui ne traitent que rarement des cas de protection internationale d'enfants.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

Please see the response to Question 63 above.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

See response to 63 above.

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United States – Etats Unis :

Yes.

Uruguay – Uruguay :

Creemos sería de utilidad para la mejor protección de los niños.

Question 66	
The Special Commission of 2001 recognised the potential advantages of the 1996 Hague Convention as an adjunct to the 1980 Hague Convention, and recommended that Contracting States should consider ratification or accession. How has your State responded to this recommendation?	**La Commission spéciale de 2001 a reconnu les avantages potentiels de la Convention de La Haye de 1996 comme complément de la Convention de La Haye de 1980, et a recommandé aux Etats contractants d'envisager une ratification ou une adhésion à cette Convention. Comment votre Etat a-t-il répondu à cette recommandation ?**

Argentina – Argentine :

La República Argentina ha recibido favorablemente dicha recomendación y es por ello que está considerando su incorporación.

Australia – Australie :

Australia ratified the 1996 Convention in 2003.

Austria – Autriche :

See reply 63.

Canada – Canada :

Canada has responded through ongoing federal/provincial/territorial work to review the Convention and assess the implications of implementing same.

**

Le Canada y a répondu en entreprenant un examen de la Convention et des répercussions éventuelles de sa mise en oeuvre.

Chile – Chili :

Ver pregunta 62.

China (SAR Hong Kong) – Chine (RAS Hongkong) :

As responded above, the application to the HKSAR of international agreements to which the People's Republic of China is or becomes a party shall be decided by the Central People's Government of China. We will give due consideration to this recommendation and express our views through the Central People's Government of China in due course.

China (SAR Macao) – Chine (RAS Macao) :

Not applicable.

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Colombia – Colombie :

El ICBF conoció el texto del Convenio e hizo sus recomendaciones sobre el mismo en su oportunidad. La ratificación depende de la voluntad política del Gobierno Colombiano.

Costa Rica – Costa Rica :

Por lo contestado en la pregunta 62, esta cuestión no se puede responder.

Cyprus – Chypres :

[No answer]

Czech Republic – République tchèque :

Czech Republic signed and ratified the 1996 Convention before the 2001 Special Commission met.

Denmark – Danemark :

Please see the answer to question 62.

Denmark signed the 1996 convention on April 1, 2003, together with the other member states of the European Union. The Convention is now implemented in Danish Legislation, and Denmark is ready to ratify. However, Denmark wishes to ratify the convention together with the other European member states.

Ecuador – Equateur :

No aplica.

El Salvador – El Salvador :

[Sin respuesta]

Finland – Finlande :

Please see answer to question 63.

France – France :

La ratification de la Convention de la Haye de 1996 devrait être prochainement soumise au vote du Parlement.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

[Sin respuesta]

Iceland – Islande :

See question 62.

Ireland – Irlande :

See Question 63 above.

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Israel – Israël :

See answer to question 62 above.

Italy – Italie :

Ce domaine relève du ressort du pouvoir législatif.

Latvia – Lettonie :

Latvia esteems this relevant recommendation what promotes development of common sense with combining both Conventions toward to the common goal – protection of the rights of children and protection of common or separated rights of parents.

Lithuania – Lituanie :

The Republic of Lithuania has acceded to both Hague Conventions. The 1980 Convention has been applied since 1 September 2002 and the 1996 Convention since 1 September 2004.

Malta – Malte :

Please see answer to question 63.

Mexico – México :

[Sin respuesta]

Monaco – Monaco :

La Principauté a adhéré à la Convention et l'a ratifiée.

Netherlands – Pays-Bas :

See the response to question 62.

New Zealand – Nouvelle Zélande :

[No answer]

Nicaragua – Nicaragua :

[Sin respuesta]

Panama – Panama :

El Convenio de la Haya de 19 de octubre de 1996, no ha sido ratificado par Panamá.

Paraguay – Paraguay :

[Sin respuesta]

Poland – Pologne :

Please see answer to question 62.

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Portugal – Portugal :

In the first phase, Portugal has considered to ratify this instrument of private international law, but later reviewed its position after the entry into force of the Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 2201/2003 of the European Union.

Romania – Roumanie :

Please see answer to question 63.

Slovakia – Slovaquie :

Slovak Republic ratified the Convention prior to the recommendation of the Special Commission.

South Africa – Afrique du Sud :

The advantages have been acknowledged. The accession issue will be prioritized as soon as possible after capacity and other internal matters have become resolved.

Spain – Espagne :

Esta pregunta queda ya respondida con las anteriores, siendo evidente que la Comunidad Europea considera a este Convenio como un instrumento de gran utilidad y se dispone, por ello, a conseguir su aplicación efectiva dentro de la propia Comunidad europea según ya se ha indicado.

Sweden – Suède :

See question 63 above.

Switzerland – Suisse :

En faveur d'une ratification.

United Kingdom (Scotland) – Royaume Uni (Écosse) :

Please see the response to Question 63 above.

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

See response to 63 above.

United States – Etats Unis :

We are in the process of considering whether to become a party to the 1996 Convention.

Uruguay – Uruguay :

Se ha entendido dicha recomendación como positiva.

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19. Any other matters and recommendations – Autres questions et recommandations

Question 67	
States are invited to comment on any other matters which they may wish to raise concerning the practical operation of the 1980 Convention or the implementation of the 1996 Convention.	**Les Etats sont invités à transmettre leurs observations sur toute autre question qu'ils souhaiteraient soulever sur le fonctionnement pratique de la Convention de 1980 ou sur la mise en œuvre de la Convention de 1996.**

Argentina – Argentine :

[Sin respuesta]

Australia – Australie :

Not applicable.

Austria – Autriche :

No comments.

Canada – Canada :

[No answer]

**

[Pas de réponse]

Chile – Chili :

[Sin respuesta]

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We have no comments.

China (SAR Macao) – Chine (RAS Macao) :

Not applicable.

Colombia – Colombie :

El Convenio de La Haya en su ejecución ha presentado dificultades en cuanto a la interpretación del artículo 5 literal a).

El derecho de guarda (custodia) en los países de Centro y Sur América no comporta un ejercicio absoluto, pues aún cuando un padre o madre lo ejerza exclusivamente, por acuerdo, acto administrativo o decisión judicial, esto no le otorga la facultad de sacar del país al niño o niña sin consentimiento del otro padre, que conserva su derecho de patria potestad, ni el de cambiarle de residencia habitual.

En la aplicación práctica del Convenio con países Europeos se ha tenido inconveniente cuando el padre aplicante no tiene deferido el derecho de custodia, caso en el cuál se le niega la restitución por considerar que no existe traslado o retención ilegal.

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Consideramos importante que la interpretación de este artículo se haga en armonía con las legislaciones internas de los países requirentes, pues el objetivo del tratado es recuperar el status quo del niño; esto es devolverlo a su país de residencia habitual, concepto que según la doctrina es de carácter principal y no subsidiario, en concordancia con lo dispuesto en el artículo 16 del Convenio de La Haya de 1980.

Costa Rica – Costa Rica :

A continuación se expone el siguiente comentario sobre el rol de la autoridad central e insumos normativos para los jueces:

De acuerdo con Pérez Vera, el rol genérico de la Autoridad Central es funcionar como un mecanismo administrativo ORGANIZADOR, INTERMEDIARIO ó FACILITADOR (neutral y objetivo) de la actuación de las partes inmersas en un conflicto interparental (papá vs mamá) que ya trascendió las fronteras nacionales.

Sin embargo, en la práctica este rol o perfil genérico puede trasformarse, incrementarse ó disminuirse dependiendo de si la Autoridad Central es requirente, requerida, ó si dicha Autoridad Central recae, ya sea en un Ministerio de Relaciones Exteriores (cancillería), un Ministerio de Justicia ó, un Ministerio o Instituto de Niñez & Adolescencia. Y precisamente sobre el punto nos advertía Pérez Vera lo siguiente: "un error en la elección de la Autoridad Central puede tener consecuencias decisivas para las pretensiones de las partes (1149)".

Ahora bien, si a lo anterior sumamos que el Convenio de la Haya no especifica cuales deben ser la ESTRUCTURA y la CAPACIDAD de ACCIÓN de las autoridades centrales[15], ya tenemos una cuestión bastante interesante para el presente debate técnico jurídico: ¿Qué pasa cuando la autoridad central recae en una institución pública que por mandato constitucional le compete defender a toda costa el interés superior del niño (p. ej. el PANI de Costa Rica)? Nos explicamos seguidamente:

Por un lado, el Convenio de la Haya busca satisfacer tres cosas que el instrumento (ó sus creadores) supone deberían de ser necesariamente coincidentes: 1) El derecho parental de "custodia" del padre desposeído; 2) El derecho del niño a un Estado de residencia habitual; y 3) El interés superior del niño.

Por otro lado, el Derecho interno costarricense, empezando por la Constitución Política, impone al Patronato Nacional de la Infancia un deber jurídico de participar en los procesos judiciales con menores involucrados como un verdadero FISCAL ó PROCURADOR en materia de Niñez y Adolescencia, en el sentido de que siempre debe requerir del juez natural (civil, familiar ó minoril) la decisión más próxima del interés superior del niño.

Como se ve, lo anterior pone en entredicho el rol meramente FACILITADOR y procesalmente NEUTRAL que el Convenio de la Haya espera del PANI como Autoridad Central, sobre todo cuando deba actuar como Autoridad Central Requerida. Mucho menos puede pensarse en un PANI inclinado a favor de litigar por el interés manifiesto de un padre requirente adulto, sólo por el mero hecho de ser Autoridad Central (tal y como un sector del Tribunal de Familia así parece haberlo interpretado[16]).

En otras palabras, por regla constitucional el PANI sólo puede litigar a favor del interés superior del niño, independientemente de su condición de Autoridad Central Requerida; en tanto que, excepcionalmente, el PANI podría abogar por el derecho parental de "custodia" del padre desposeído si y sólo si, sus propias pericias psicosociales determinan que la satisfacción de ese derecho coincide con el interés superior del niño. No obstante,

[15] Toda vez que dicho instrumento internacional optó por que ambos aspectos sean regulados por el Derecho interno de cada Estado contratante.

[16] Inexplicablemente, en su polémico voto N° 1963-04, el Tribual de Familia ha pasado por alto que las tareas asignadas a las autoridades centrales pueden ser llevadas a cabo directamente ó con el concurso de una autoridad colaboradora.

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en todo caso adviértase que la coincidencia razonable de tal derecho y de tal interés, ulteriormente dependerá de que el juez natural –*con el auxilio de las autoridades centrales involucradas*- resuelva la solicitud de restitución internacional dentro del plazo sumarísimo recomendado por el Convenio de la Haya: 6 semanas[17].

Esto último pone de manifiesto la enorme relevancia de un tópico no menos importante que el anterior, pero quizás muy poco debatido: el de pedir a las autoridades judiciales de primera y segunda instancia que establezcan y cumplan plazos para asegurar la rápida resolución cautelar de las solicitudes de restitución (justicia judicial pronta y cumplida).

Y es que, al igual que con la estructura y la capacidad de acción de las autoridades centrales, el Convenio de la Haya hace un reenvío al Derecho interno de los Estados contratantes para resolver este problema (rapidez en la tramitación judicial de las solicitudes de restitución), específicamente a partir del artículo 2º, que literalmente dice que cada Estado parte debe recurrir a los procedimientos de urgencia de que dispongan con ocasión de cumplir con los objetivos principales del citado instrumento internacional.

Pues bien, a propósito de este tópico tan interesante, resulta que en el estado actual del ordenamiento jurídico vigente de la República de Costa Rica, existen una serie de "licencias" normativas que aún no se han estrenado y que de ser adecuadamente aplicadas, podrían agilizar sobremanera la velocidad del poder procesal jurisdiccional de los jueces naturales llamados a resolver las solicitudes de restitución internacional. Propiamente se trata de una serie de principios, potestades y deberes legales aplicables por jueces que conozcan asuntos con personas menores de edad involucradas, y que hoy día subyacen implícitos ó explícitos a partir del contenido de los siguientes artículos del vigente Código de Niñez y Adolescencia (Ley de la República Nº 7739): 8º (principio de jerarquía normativa de las fuentes del Derecho de Niñez y Adolescencia); 9º (principio de aplicación preferente); 112º (principio de supletoriedad del Código Procesal Civil cuando no contravenga las normas procesales del Código de Niñez y Adolescencia); 113º.a (principio de ampliación de los poderes del juez en la conducción del proceso); 113º.b (principio de ausencia de ritualismo procesal); 115º.f (deber del juez de resolver las pretensiones de las partes y aquellas disposiciones del Código de Niñez y Adolescencia que le conciernen); 115º.g (deber del juez de evitar cualquier dilación del proceso); 115º.i (poder/deber del juez de usar el poder cautelar); y 118º (deber del juez de evitar el ritualismo procesal).

En fin, tienen la palabra los señores jueces de la República de Costa Rica, en especial los miembros del Tribunal de Familia, quienes por vía de su propia jurisprudencia serán los primeros llamados a llenar aquellos vacíos del Convenio de la Haya que aún no han sido resueltos por nuestro Derecho interno escrito, al menos mientras llegue el día en que el Parlamento por fin decida promulgar una ley que ulteriormente desarrolle el referido instrumento internacional.

Cyprus – Chypres :

[No answer]

Czech Republic – République tchèque :

No comment.

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[17] Me explico: si no hay una decisión de restitución en 6 ó 10 semanas, cada vez resultará más difícil establecer que el derecho del niño a un Estado de residencia habitual equivale al interés superior del niño. Ello por cuanto el transcurso del tiempo en el Estado de residencia actual, necesariamente transculturalizará al niño, aunque sea poco a poco. En otras palabras, después de transcurridas 10 semanas, el Convenio de la Haya empezará a resultar cada vez más inútil e inservible en lo que respecta a proteger el mejor interés del menor.

Denmark – Danemark :

A specific case in Denmark has made it clear that there are some difficulties relating to the situation where parents make agreements on how long a child shall stay in one country, but courts can find that the child's habitual residence has to be decided according to the actually circumstances.

In one specific case parents with joint custody made an agreement that the mother and child should travel to Denmark and stay for one year. While the mother and child stayed in Denmark, the father should visit. After one year the mother and child should return to the State X where the child should stay permanently. According to the agreement any dispute in relation to the arrangement should be handled by the Family Court in State X.

After 6 months in Denmark the mother applied for sole custody in Denmark. The father immediately made a request on return of the child. According to Article 16 the custody case was suspended until it was determined whether or not the child should be returned under this convention. The Danish Court did not find that the child's stay in Denmark was illegal according to Article 3 in the Convention, since there was a written agreement between the parties saying that the mother and child was allowed to stay in Denmark for one year. Shortly hereafter the Danish County Court revoked the joint custody and sole parenting in respect of the child was awarded to the mother. The mother and child did not return to State X after one year. Once again the father made a request on return of the child.

The High court decided that the child should not be returned. The court found that according to the actually circumstances the child had her habitual residence in Denmark. The court noted that an agreement between parents on where a child shall have habitual residence is not binding, since the decision on where a child has residence has to be decided according to the actually circumstances.

The court noted that the father had made a considerable effort to uphold contact with the child and that the father had acted in confidence with the agreement between the parents and had tried to get the child returned since the mother applied for sole custody in Denmark and therefore could feel that he is placed in an unfair position. In spite of that the court had not found that it could disregard the fact that the child had now stayed more than a year legally in Denmark. The return was therefore denied in accordance with Article 12 of the Hague Convention.

Ecuador – Equateur :

[Sin respuesta]

El Salvador – El Salvador :

No existen comentarios por el momento.

Finland – Finlande :

Concerning the 1980 Convention, the Finnish Central Authority would like to highlight the Central Authorities' crucial role to act dynamically and to monitor that all local authorities and actors involved apply the Convention efficiently. Handling of cases should be swift in all stages of the procedure, at the Central Authority, at the first instance court, at the appeal level and in enforcement. The gravest problem in return cases is delayed processes that take too long.

In some States obtaining free legal aid cause significant delays and may take so long that it does not help the applicant in practice. Moreover, regardless of legal aid, the litigation costs may rise very high. We have experienced that this a problem especially in the U.S.A.

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France – France :

Sans objet.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

En el presente cuestionario fueron respondidas las preguntas que de conformidad con la experiencia actual pudieron realizarse, ya que a la presente fecha han sido muy pocos los casos recibidos.

Iceland – Islande :

No comment.

Ireland – Irlande :

No comment.

Israel – Israël :

1) The Central Authority for Israel recently encountered a particularly troubling issue in a case after the courts in the requested country had ordered the return of a child to Israel (which order became absolute after confirmation by two levels of appeal courts). The abducting parent, rather than returning the child to Israel, went into hiding with the child. A possibility arose that the child may have been taken to a third contracting country. When the Central Authority wrote to the third Central Authority inquiring as to whether that country would recognize and enforce the order for the return of the child, it was answered in the negative and informed that a new application for return would have to be submitted and then processed in the third country. Such a process has severe consequences. It causes significant delays by having to process a new application, including possibilities of appeal. The Israeli Central Authority suggests that this issue be raised for discussion, to determine possible resolutions to the matter without harming the goals of the Convention.

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In that same case, there is reason to believe that the abducting mother will remain in hiding until a much later time, and will then attempt to have the return order vacated, based on "change in circumstances" – ie. she will utilize the fact that the child will have been in her care for such an extended period, without any contact with the father, in order to argue that it would not be in the child's best interests to return her to a father, as she refuses to return, in a foreign country whom she now does not know. Such practice must be vehemently denounced, as it will lead to the destruction of the Convention.

2) The Israeli Central Authority has, in numerous outgoing cases, experienced lengthy delays in the process of locating the child in the requested state, even in cases where it has provided a telephone number and, in some cases, an address. In cases where a child is abducted to Israel and a telephone number is provided, the Central Authority can immediately contact the Israel Police and almost instantly obtain the address for the subscriber to that phone number. Likewise, if the child is of compulsory school age, the Ministry of Education can be requested to provide the address of the child, so long as the child has been registered in a school in Israel. This is normally done within a number of days. In some cases, it has taken months for the authorities in other countries to confirm a child's location, even when it turns out that the child was attending school in the requested country throughout that period. It is suggested that information concerning a

child's location that is in the hands of government authorities should be immediately available to the Central Authorities (taking into account any internal law requirements) on an instant basis. It might also be suggested that Central Authorities inform each other of what possibilities are open to them in searching for children.

3) The Israeli Central Authority recently experienced a situation where in the evening hours, an Israeli parent went to the police claiming that his wife had abducted their infant child. She left on a flight to Spain, and was believed to be continuing within the hour on a connecting flight to Columbia, her country of origin. The police contacted the Israeli Central Authority for assistance as the father wished to have the mother and child detained in Spain, so as to prevent a further abduction. There does not appear to be any mechanism under the Hague Convention to detain the mother so quickly and prevent her from boarding another flight. Fortunately Columbia is a member country, and upon receiving the necessary information, an application pursuant to the Hague Convention could be sent to Columbia. However the matter would be much more complicated if she were to be fleeing to a non-member country. Further, there was no criminal mechanism to prevent her from boarding the continuing flight. The Israeli Central Authority wishes to know whether any other Central Authority has encountered a similar situation, and how they resolved it. It would also welcome any ideas from any central authorities as to possible solutions for such a problem. In such cases, it would be helpful if all of the Central Authorities would have an after-hours emergency contact number, for consultation between the central authorities.

4) Countries that have not made the reservation under Article 26 are to be responsible for providing an attorney unless the matter is covered by their legal system. However, in practice, this is not the case - some countries have informed the Israeli Central Authority that regardless of not having made the objection, they will not provide an attorney for the applicant parent. This is directly contrary to Article 42 of the Convention, which states that such reservations can only be made at the time of ratification/acceptance/approval or accession. In addition, some countries provide an attorney at the first level of court, but then refuse to provide an attorney on appeal. The Israeli Central Authority sees nothing in the Convention that permits such a differentiation. Such a practice discriminates against indigent parents, and denies them of the ability to pursue an appeal for the return of their children. If such a procedure is due to the internal laws of the particular country, it is suggested that the country consider amending its internal law so that it is consistent with the provisions and goals of the Convention.

5) It is suggested that each country provide the name and contact details of a person in the welfare field who can be contacted when there are concerns for a child's welfare. In Israel, that person is:

Ms. Ronit Tsur
National Welfare Officer
Ministry of Welfare
10 Yad Haruzim Street
Jerusalem, Israel 91012
Tel: 972-2-670-8485
Fax: 972-2-670-8357

6) In some cases, there is a basis to believe that after an abducted child is returned to the country of return, the parent who sought his return will not allow the abducting parent access to the child. In such a case, particularly where experts have determined that it is in the best interests of the child to have on-going contact with the parent, it is suggested that prior to ordering the return of the child, the court require that an order be obtained in the country of habitual residence providing for interim access between the child and that parent.

7) Lack of reciprocity between countries in the application of the Convention

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The courts in Israel attempt that the proceedings according to the Convention be expeditious, by running the proceedings in the most efficient manner. They are very cautious in interpreting the Convention, and give the defenses in the Convention a narrow interpretation. However, some of the rulings in other countries are not consistent with these parameters.

The lack of mutuality is very disturbing. There are some countries that have regularly refused to return children to Israel, often for reasons in contradiction with both the provisions and goals of the Convention and with previous precedents.

A very disturbing case involves the case with Italy referred to in questions 9 and 13 above. To recall, two children, ages 7 and 9, were abducted from Israel to Italy by their mother. The father applied for their return under the Hague Convention. The Italian court refused to order the return of the children, stating that in the three months the children had been in Italy, they had acclimatized well, and that forcibly separating them from their mother (who was unwilling to return, for no valid reason), after having been forcibly separated from their father, would be too traumatic for them. This clearly erroneous decision caused much outcry, and the Italian Central Authority, in a rare move, joined the father's appeal. However the appeal was dismissed. The mother subsequently obtained a custody order from the courts in Italy.

Three years later, when the father, who had had extremely difficulty in seeing the children, was finally allowed an overnight visit in Italy, he returned to Israel with the children, who he claims clearly stated to them that they wanted to return to Israel. The mother then filed under the Convention for their return to Italy. The Family Court in Israel refused to order the return of the children to Italy, based on the children's objections to the return. The judge noted the erroneousness of the Italian court's jdugment. The mother appealed to the District Court, which held that the children did not have the maturity to make a reasoned decision in the matter, and therefore ordered that the children be returned to Italy. The father's appeal to the Supreme Court of Israel was dismissed.

What is troubling about this case is that the Italian court's refusal to return the children to Israel was clearly in contradiction to the provisions and spirit of the Convention. It condoned the wrongful uprooting of the children from their habitual residence, which caused them great trauma. The father claimed that the children continued to be in trauma as a result of their forced stay in Italy, which led to their cooperation in their subsequent removal to Israel. Despite the wrongful approach of the Italian courts, the Israeli courts decided the case in accordance with the provisions of the Convention. The lack of reciprocity has caused serious concern amongst the legal fraternity in Israel. It could further lead to the destruction of the Convention, as abducting parents may choose their destination based on which countries are known to not honour the Convention.

8) Threat of criminal proceedings as an impediment to visitation.

In a number of cases handled by the Israeli Central Authority, a situation has arisen where the left behind parent, in addition to, or as a pre-requisite to, the Hague application for return, has filed a criminal complaint with the police concerning the abduction of the child. When the child is returned, the criminal complaint is left open, thereby preventing the non-custodial parent from visiting the child for fear of arrest. This is harmful to the child who suffers as a result of not having access to one of his /her parents. When the Israeli Central Authority has approached the Central Authority, of countries where criminal complaint have been filed, for assistance in having the file closed, in order to enable the non-custodial parent to visit, the response of the Central Authority has been that they had no jurisdiction to do so. This has clearly resulted in harm to the child who is entitled to access to both parents and is against the UN Convention on the Rights of the Child.

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Italy – Italie :

Aucune observation.

Latvia – Lettonie :

[No answer]

Lithuania – Lituanie :

In the opinion of the Ministry of Justice, in order to secure uniform interpretation and application of the Hague Conventions, it is expedient both to publish comments on the Convention and decisions adopted by courts and to systematise and summarise judicial practices of the Contracting States gained in the course of application of the Conventions' provisions. In addition, the texts of the Conventions could be published together with comments on each Article and an overview of practice of courts that have interpreted/adopted the Article.

Malta – Malte :

Due to the fact that Malta is not yet a party to the 1996 Convention, it would be interesting to learn more about its application, and about its interaction with Regulation Brussels II *bis*.

Mexico – Méxique :

[Sin respuesta]

Monaco – Monaco :

[Pas de réponse]

Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

[No answer]

Nicaragua – Nicaragua :

[Sin respuesta]

Panama – Panama :

[Sin respuesta]

Paraguay – Paraguay :

[Sin respuesta]

Poland – Pologne :

Poland has no comments or suggestions on the issues.

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Portugal – Portugal :

The Portuguese Central Authority would like to accept the invitation made by *The Hague Conference,* suggesting the implementation of the following items on your web page:

- information about the judicial holidays that are practiced in all Contracting States Courts;
- an automatic program for reliable (namely juridical) and expedite translations.

Romania – Roumanie :

[No answer]

Slovakia – Slovaquie :

The Slovak CA is interested mainly in the discussion on the following matters:

- the measures of locating the child,
- the form of the returning order, the process of enforcing the returning order and its efficiency,
- the concrete process of passing the child from the abductor to the applicant,
- the criminalization of the abduction in general as well as in connection with the European warrant of arrest,
- the extent of evidence demanded by the courts when handling the cases under the Hague Conventions,
- the impact of the Hague proceedings on the following custodial proceedings and the position of the abductor in the country of origin.

South Africa – Afrique du Sud :

None.

Spain – Espagne :

Dificultad en la aplicación del artículo 21 del Convenio dada la diferente interpretación del mismo por los diferentes Estados, así como la dificultad económica de los solicitantes que no tienen acceso a la asistencia legal gratuita, en aquellos estados que han formulado reserva, para iniciar las acciones judiciales oportunas, dada la carestía de las mismas.

Dificultades en la ejecución de las resoluciones de retorno cuando los progenitores carecen de medios económicos para hacer frente a los gastos de traslado (ejemplo: billetes de avión de los países sudamericanos)

Sweden – Suède :

Regarding the 1980 Hague Convention, the Swedish Central Authority would like to emphasize the Central Authorities' crucial role to act dynamically and to monitor that all local authorities and actors involved apply the Convention efficiently. Handling of cases should be swift in all stages of the procedure, at the Central Authority, at the first instance court, at the appeal level and in the enforcement. The most serious problem in return cases is delayed processes that take too long.

In some States obtaining free legal aid cause significant delays and may take so long that it does not help the applicant in practice. Moreover, regardless of legal aid, the litigation costs may rise very high. The Swedish Central authority has experienced this as a problem in some countries.

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Switzerland – Suisse :

[Pas de réponse]

United Kingdom (Scotland) – Royaume Uni (Écosse) :

[No answer]

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

[No answer]

United States – Etats Unis :

See response to question # 30 on our concern over the use of excessive undertakings.

Also, see response to question # 13(f), where we discuss equitable tolling of the filing deadline under the Convention. The USCA supports the concept of equitable tolling of the one-year filing deadline in order to prevent creating an incentive for a taking parent to conceal the whereabouts of a child from the other parent in order to prevent the timely filing of a Hague petition.

Uruguay – Uruguay :

[Sin respuesta]

Question 68	
States are invited to make proposals concerning recommendations to be made by the Special Commission.	**Les Etats sont invités à formuler des propositions sur les recommandations futures que pourrait adopter la Commission spéciale.**

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Argentina – Argentine :

[Sin respuesta]

Australia – Australie :

Not applicable.

Austria – Autriche :

No proposals concerning recommendations.

Canada – Canada :

<u>Proposals</u>

A. That a Country Profile be developed to be completed by all member States. The Country Profile would answer questions such as those identified for possible website content (see question 3 above) and in the questionnaire for newly acceding states.

B. Information about non-Hague Convention remedies in member States could be useful in some cases.

C. That, in light of concerns respecting domestic violence allegations, a distinct Country Profile be developed to provide Courts and Central Authorities with useful information about legislation, resources and approaches to domestic violence cases.

D. That Central Authorities provide information/clarification respecting custody provisions in their domestic legislation and rights that arise by operation of law to other Central Authorities, when requested to do so.

**

Propositions

A. Mettre au point un Profil des États, que chacun des États partie à la Convention devrait établir. Le Profil des États comporterait notamment des renseignements relatifs aux sujets évoqués à la question 3 (contenu de site Web) et dans le questionnaire s'adressant aux nouveaux États adhérants.

B. Des renseignements sur les recours non prévus par la Convention de La Haye dans les États contractants pourraient être utiles dans certains cas.

C. À la lumière des préoccupations relatives aux allégations de violence familiale, élaborer un Profil des États distinct pour fournir aux tribunaux et aux Autorités centrales des renseignements utiles sur les lois, les ressources et les approches relatives aux cas de violence familiale.

D. Que les Autorités centrales fournissent sur demande à d'autres Autorités centrales des renseignements ou des précisions concernant les dispositions de leur droit interne relatives à la garde et aux droits de garde qui existent par le seul effet de la loi.

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Chile – Chili :

[Sin respuesta]

China (SAR Hong Kong) – Chine (RAS Hongkong) :

We have no proposals.

China (SAR Macao) – Chine (RAS Macao) :

Not applicable.

Colombia – Colombie :

Mantener el apoyo a través de los Oficiales de Enlace, que para nuestro caso ha sido de gran utilidad en la ejecución del Convenio de la Haya de 1980.

Se reitera, la posibilidad que a través de la Oficina Permanente se envíe un mensaje de sensibilización hacia los Defensores y Jueces de Familia en Colombia para imprimir mayor celeridad a los procesos que se tramitan en ejecución del Convenio.

Aunque en Colombia no se ha ratificado el Convenio de la Haya de 1996 sería de gran utilidad que para el apoyo técnico dentro del programa de capacitación se contemple este tratado, por lo cual se solicitará al Ministerio de Relaciones Exteriores de Colombia, su concurso para que el Gobierno Nacional se adhiera y ratifique el Convenio de La Haya de 1996.

Costa Rica – Costa Rica :

Teniendo en cuenta lo recién expuesto supra, recomendamos que la Comisión Especial se pronuncie sobre lo idóneo o no que pueda ser el que la autoridad central recaiga en una institución pública que por mandato constitucional le compete defender a toda costa el interés superior del niño (p. ej. el PANI de Costa Rica). Es decir: ¿sería mejor que la Autoridad Central recaiga en un Ministerio de Relaciones Exteriores? Es todo.

Cyprus – Chypres :

[No answer]

Czech Republic – République tchèque :

[No answer]

Denmark – Danemark :

No comments.

Ecuador – Equateur :

Apoyo de la Conferencia de La Haya para impulsar convenios de hermanamiento.

El Salvador – El Salvador :

[Sin respuesta]

Finland – Finlande :

[No answer]

France – France :

Le mécanisme mis en place par la convention de La Haye, de retour au lieu de sa résidence de l'enfant illicitement déplacé, a pu susciter certaines interrogations quant à son caractère automatique.

L'introduction d'une phase de recherche négociée de règlement de la situation créée par le déplacement ne doit en rien nuire ou porter atteinte au principe du retour de l'enfant dans l'Etat de sa résidence habituelle.

La recherche d'une issue amiable ne peut se concevoir que si elle est encadrée par les autorités centrales des deux Etats concernés, organisée dans l'Etat de la résidence habituelle du mineur, et limitée dans le temps.

La réunion de ces conditions permettrait de préserver les enfants du risque de se voir privés de toute relation avec le parent rapteur, après avoir été privé de toute relation avec l'autre parent.

Greece – Grèce :

[No answer]

Guatemala – Guatemala :

[Sin respuesta]

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Iceland – Islande :

No comment.

Ireland – Irlande :

No comment.

Israel – Israël :

1) In a recent incoming application concerning a child abducted from Nevada, United States, the Israeli Central Authority noted that the application was based on an order of the Nevada Court concerning custody and other matters related to the child. The order further contained provisions that the Hague Convention applies if a parent abducts or wrongfully retains a child in a foreign country. It referred to internal legislation which provides that parents can agree, and the court can include in a custody order, a statement that the United States is the country of the child's habitual residence. The internal legislation further stipulates that a custodial parent must obtain the written consent of the non-custodial parents prior to removing the child from the state of habitual residence. Absent such consent, the custodial parent must obtain permission from the court.

The Israeli Central Authority commends such legislative provisions, which serve a two-fold purpose. Firstly, they serve as a preventive measure by making parents aware of the existence of the Hague Convention and that the wrongful removal/retention of a child will have serious legal consequences. Secondly, such provisions will provide clarity to the foreign court and may eliminate the necessity of an Article 15 declaration, which can cause delays in the handling of an application for return. All countries should be encouraged to have such provisions in their internal legislation.

Italy – Italie :

Aucune proposition : l'action de la Commission s'est toujours avérée utile et précieuse.

Latvia – Lettonie :

[No answer]

Lithuania – Lituanie :

We have no proposals.

Malta – Malte :

Please see answer to question 67.

Mexico – Méxique :

[Sin respuesta]

Monaco – Monaco :

[Pas de réponse]

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Netherlands – Pays-Bas :

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

New Zealand – Nouvelle Zélande :

[No answer]

Nicaragua – Nicaragua :

[Sin respuesta]

Panama – Panama :

[Sin respuesta]

Paraguay – Paraguay :

[Sin respuesta]

Poland – Pologne :

Poland has no comments or suggestions on the issues.

Portugal – Portugal :

The Portuguese Central Authority has no proposals to do concerning the recommendations made by the Special Commission.

Romania – Roumanie :

[No answer]

Slovakia – Slovaquie :

No comments or suggestions on this matter.

South Africa – Afrique du Sud :

None.

Spain – Espagne :

Cumplimiento efectivo por todos los Estados del artículo 21 del Convenio referente al derecho de visitas y facilidades en la prestación de asistencia legal en todos aquellos Estados que han formulado reserva.

Sweden – Suède :

[No answer]

Switzerland – Suisse :

La Suisse invite la Commission spéciale à entamer une discussion sur l'amélioration du fonctionnement de la Convention de 1980, en étudiant sérieusement toutes les possibilités y compris l'élaboration de nouvelles règles contraignantes afin de mieux tenir

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compte de l'intérêt de l'enfant. Les propositions mentionnées ci-après, avancées par la Suisse et entérinées par la Commission des affaires générales et de la politique du mois d'avril 2006 soulignent l'importance de la réflexion qui doit être entamée par cette Commission:

1. Déterminer en détail les procédures et les mesures susceptibles de favoriser le retour volontaire au sens de l'article 10 (en relation avec l'article 7, lettre c)), en tenant notamment compte des méthodes de la conciliation et de la médiation.

2. Arrêter en détail la procédure et les mesures en vue du retour de l'enfant selon l'article 7, alinéa 2, lettre h), ainsi que le règlement du droit de visite (art. 21), ceci à partir des conclusions tirées par la Quatrième réunion de la Commission spéciale sur le fonctionnement de la Convention de La Haye de 1980 et à la suite du document de travail cosigné par la Suisse lors de la rencontre précédente.18

3. Créer des règles complémentaires permettant aux autorités de l'Etat vers lequel l'enfant a été enlevé d'obtenir des informations sur le règlement du droit de garde et sur les relations entre l'enfant et ses parents ainsi que sur le bien-être de l'enfant à la suite de son retour dans l'Etat de sa résidence habituelle.

4. Réduire le délai d'un an prévu à l'article 12, alinéa premier.

5. La portée de l'article 13, alinéa premier, lettre b), devrait être précisée dans ce sens que la relation entre le principe du retour de l'enfant enlevé et l'intérêt de l'enfant sera clarifiée.

En outre et sur le mode de la Recommandation 1.8. contenue dans les Conclusions et Recommandations de la Quatrième réunion de la Commission spéciale (22-28 mars 2001), la Suisse propose que la Conférence de La Haye publie sur son site internet une « brochure, un aide-mémoire ou un prospectus » extrêmement succinct (2-4 pages max.) se rapportant à chaque Etat, avec des informations pratiques sur la mise en œuvre de la Convention et le traitement des cas (médiation, procédures judiciaires, aide judiciaire gratuite, exigences formelles, etc.). Un tel aide-mémoire pourrait servir aux parents intéressés et aux Autorités centrales requérantes. Les sites internet des Etats s'adressent souvent aux requérants dans leur pays et non pas aux parents ou AC à l'étranger. De plus, les sites internet sont trop variés pour obtenir rapidement l'information souhaitée et souvent seulement dans la langue officielle du pays respectif.

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United Kingdom (Scotland) – Royaume Uni (Écosse) :

[No answer]

United Kingdom (England, Wales and Northern Ireland) – Royaume Uni (Angleterre, Pays de Galles et Irlande du Nord) :

[No answer]

United States – Etats Unis :

[No answer]

Uruguay – Uruguay :

[Sin respuesta]

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[18] *Cf.* Rapport de la troisième réunion de la Commission spéciale sur le fonctionnement de la Convention de La Haye de 1980 (1997), Annexe II, Doc. trav. No 20, in Guide de bonnes pratiques, t. I, Annexe 1.