

PART B -QUESTIONNAIRE CONCERNING THE PRACTICAL OPERATION OF THE CONVENTION AND VIEWS ON POSSIBLE RECOMMENDATIONS

INTRODUCTION TO THE QUESTIONNAIRE

5 The questionnaire which appears below is addressed in the first place to States Parties to the 1980 Convention. It has three broad objectives:

- a* to seek information concerning significant developments since 1997 in law or practice surrounding the Convention in the different Contracting States;
- b* to identify current difficulties experienced in the practical operation of the Convention; and
- c* to test opinion in respect of certain possible recommendations.

6 With respect to *a* and *b* above, it should be emphasised that respondents are also invited to identify and comment upon matters concerning the practical operation of the Convention which are not addressed specifically in the Questionnaire.

7 With respect to *c* above, the Special Commission on general affairs in May 2000 broadly supported the idea that the Special Commission of March 2001 should, subject to the necessary consensus, attempt to arrive at recommendations to improve the practical operation of the Convention. With this in view, and in order to begin to determine in what areas a consensus may exist, the Questionnaire seeks the initial reaction of respondents to a number of possible draft recommendations. It is recognised that some States may not be in a position to comment on all of the recommendations at this stage. Also the right of delegations, alone or in combination, to make alternative or additional recommendations, should be emphasised. In this regard, it would add to the efficiency of proceedings if States could as far as possible give advance notification to the Permanent Bureau of any proposed recommendations, preferably in conjunction with their responses to the Questionnaire.

8 The Questionnaire is also being sent to non-Party Member States invited to attend the Special Commission, as well as intergovernmental organisations and non-governmental international organisations invited to attend. All of these are invited to make such submissions in response to the Questionnaire as they deem to be appropriate. In addition, this document will be posted on the Hague Conference website (www.hcch.net).

9 The Permanent Bureau would be grateful if responses to the Questionnaire could be sent to the Permanent Bureau, if possible in electronic form, **by 19 January 2001**.

Questionnaire concerning the practical operation of the Convention and views on possible recommendations

(1) The role and functioning of Central Authorities¹

- General questions:

- 1 Have any difficulties arisen in practice in achieving effective communication or co-operation with other Central Authorities in accordance with Article 7 of the Convention? If so, please specify. – **No** -
- 2 Have any of the duties of Central Authorities, as set out in Article 7, raised any problems in practice? **Some cases are delayed because the Central Authorities does not send the application for return to the court immediately, cfr. Article 7 (1)**

- Particular questions:

- 3 What measures are taken by your Central Authority or others to secure the voluntary return of a child or to bring about an amicable resolution of the issues (Article 7 c))? – **Letter to the abducting party, briefly explaining the convention, giving a short time limit for voluntary return of the child(ren).** Do these measures lead to delay? **If the abducting party does not return the child within the time limit, this measure will probably lead to some delay. Abductors generally given 1 week to return child(ren).**
- 4 What measures does your Central Authority take to provide or facilitate the provision of legal aid and advice in Hague proceedings, including the participation of legal counsel and advisors (Article 7 g))? **A list of Norwegian lawyers interested in Hague cases has now been sent to all Central Authorities. Application form for legal aid will be sent to the requesting Central Authority together with confirmation of receipt of application. If the applicant does not qualify for legal aid, he/she will be informed that he/she must be prepared to pay for the legal costs him/herself.** Do these measures result in delays in your own jurisdiction or, where cases originate in your country, in any of the requested jurisdictions? **Although the legal aid applications in this type of cases are priority cases, the consideration of applications for legal aid takes some time. Such applications are considered by the County Governor.**

¹ Conclusion IV of the first Special Commission called upon States to:

“... give their Central Authorities adequate powers to play a dynamic role, as well as the qualified personnel and resources, including modern means of communication, needed in order expeditiously to handle requests for return of children or for access”. (Overall Conclusions of the Special Commission of October 1989 on the operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, February 1990, Conclusion IV at p. 45.)

Conclusion 3 of the second Special Commission to review the operation of the Convention was as follows:

“The Central Authorities designated by the States Parties play a key role in making the Convention function. They should act dynamically and should be provided with the staff and other resources needed in order to carry out their functions effectively.” (Report of the second Special Commission meeting to review the operation of the Hague Convention on the Civil Aspects of International Child Abduction, June 1993, Conclusion 3 at p. 16.)

- 5 Does your Central Authority represent applicant parents in Hague proceedings? - **No** - If so, has this role given rise to any difficulties or conflicts, for example with respect to other functions carried out by your Central Authority?
- 6 What obligations does your Central Authority have, and what measures does it take, to ensure that a child returned to your country from abroad receives appropriate protection, especially where issues of (alleged) abuse or violence have arisen?² **The Central Authority is obliged to take measures as set out in the Convention. We have no experience with this type of cases.**

In particular, does your Central Authority:

- a* ensure that appropriate child protection bodies are alerted; **-Yes-**
- b* provide information to either parent in respect of legal, financial, protection and other resources in your State; **-Yes-**
- c* facilitate contact with bodies providing such resources; **Yes – by providing necessary information**
- d* assist in providing any necessary care for the child pending custody proceedings; **We provide information**
- e* provide any other support, advice or information to a parent who accompanies the child on return; **We provide advice and information**
- f* provide any assistance in ensuring that undertakings attached to a return order are respected. **Only through practical assistance and information.**

² Respondents are reminded of the discussions which took place during the third Special Commission (see Report of the third Special Commission, *op. cit.* footnote 3, especially paragraphs 57 to 64 and Annexes I to III). The synthesis of that discussion, as drawn up by the Permanent Bureau (see Annex III), was as follows:

"1 To the extent permitted by the powers of their Central Authority and by the legal and social welfare systems of their country, Contracting States accept that Central Authorities have an obligation under Article 7 *h* to ensure appropriate child protection bodies are alerted so they may act to protect the welfare of children upon return until the jurisdiction of the appropriate court has been effectively invoked, in certain cases.

2 It is recognised that, in most cases, a consideration of the child's best interests requires that both parents have the opportunity to participate and be heard in custody proceedings. Central Authorities should therefore co-operate to the fullest extent possible to provide information respecting, legal, financial, protection and other resources in the requesting State, and facilitate contact with these bodies in appropriate cases.

[3 The measures which may be taken in fulfilment of the obligation under Article 7 *h* to take or cause to be taken an action to protect the welfare of children may include, for example:

a) alerting the appropriate protection agencies or judicial authorities in the requesting State of the return of a child who may be in danger;

b) advising the requested State, upon request, of the protective measures and services available in the requesting State to secure the safe return of a particular child;

[c] providing the requested State with a report on the welfare of the child;]

d) encouraging the use of Article 21 of the Convention to secure the effective exercise of access or visitation rights.]"

- 7 What arrangements does your Central Authority make for organising or securing the effective exercise of rights of access (Article 7 f)? **Practical assistance: general information, legal aid, exchange information between parties**

In particular, in the case of an applicant from abroad,³ does your Central Authority:

- a* provide information or advice; **yes**
- b* facilitate the provision of legal aid or advice; **yes**
- c* initiate or assist in the institution of proceedings, where appropriate, on behalf of the applicant; **The Central Authority is not a party in the conflict and can not initiate proceedings on its own. Court proceedings has to be initiated by parties. The Central Authority can only provide practical assistance and information.**

³ In answering these questions please distinguish where appropriate between:

- a* applications pending return proceedings;
- b* applications following a refusal to return a child;
- c* applications not made in connection with other proceedings; and
- d* applications to modify existing access orders.

Please note also that the term "access" should be read as including all forms of contact.

- d assist in ensuring that the terms or conditions on which access has been ordered or agreed are respected; ***There is no separate system for Hague cases. If access is ordered/agreed, the enforcement is left to the bodies which enforce these matters according to Norwegian legislation. Central Authority can provide practical assistance and information.***
- e assist in cases where modification of existing access provisions is being sought. ***Yes, by providing practical assistance and information***

- 8 Please comment on any developments in relation to the maintenance of statistics concerning the operations of your Central Authority. Has your Central Authority been able to return to the Permanent Bureau annual statistics in accordance with the Hague standard forms? - ***Yes*** -If not, please explain why?
- 9 Can you affirm or reaffirm, as the case may be, support for the conclusions reached by the first, second and third Special Commissions, as set out in footnotes 11 and 12? ***Yes, our impression is that the far most abductions are carried out by the primary caretaker.***
- 10 Would you support any other recommendations in respect of the particular functions which Central Authorities do or might carry out, especially with regard to the matters raised in questions 6 and 7 above? ***We are not reluctant to discuss recommendations in respect of the functions of the Central Authorities.***

(2) Judicial proceedings, including appeals and enforcement issues, and questions of interpretation⁴

- 1 How many courts and how many judges potentially have jurisdiction to hear an application for the return of a child? If there is more than one level of jurisdiction at first instance, please specify the number of courts and judges for each level. ***There are 87 courts of first instance with all together about 340 judges with potential jurisdiction in Hague cases.***
- 2 Do you have any special arrangements whereby jurisdiction to hear return applications is concentrated in a limited number of courts? - ***No*** - Are such arrangements being contemplated? ***A separate system for Hague cases is not being contemplated. Norway receives 10-20 return applications per year and there is proven no need for a separate system so far.***
- 3 What measures exist to ensure that Hague applications are dealt with promptly (Article 7) and expeditiously (Article 11)? In particular:

⁴ Delay in legal proceedings has long been identified as a major cause of difficulties in the operation of the Convention. For example, the second Special Commission called upon States Parties to make "all possible efforts ... to expedite such proceedings." (Report of the second Special Commission meeting to review the operation of the Hague Convention on the Civil Aspects of International Child Abduction, June 1993, Conclusion 7 at p. 18.)

- a is it possible for the application to be determined on the basis of documentary evidence alone? – **Yes** –
- b what special measures/rules exist to control or limit the evidence (particularly the oral evidence) which may be admitted in Hague proceedings? ***The main rule according to the Norwegian Civil Procedure Act (CPA) is that this type of cases is determined on the basis of documentary evidence alone. According to the CPA the court, in case of oral evidence, has the right not to admit evidence in a limited number of situations, for example if the evidence in the court's opinion is not relevant to the case.***
- c who exercises control over the procedures following the filing of the application with the court and prior to the court proceedings, and how is that control exercised? ***The Central Authority exercises control through contact with the other Central Authority, the parties and with the court.***

d what appeal is possible from the grant or refusal of a return application, within what time limits do appeals operate, on what grounds and subject to what limitations? ***The First Instance court order can be appealed to the Courts of Appeal on grounds of claimed procedural faults in the Court of First Instance, faults in assessment of evidence and faults in interpretation of legislation.***

The Appeal Courts' orders can be appealed to the Supreme Court on grounds of claimed procedural faults and faults in interpretation of legislation.

The time limit for appeal is two – 2 – weeks running from the time the court order is served to the party.

4 In what circumstances, and by what procedures/methods, will a determination be made as to whether a child objects to being returned? ***Interviews/observations by specialist (psychiatrist) or by the judge him/herself in his/her office (not in the court room). Normally the same way as in custody cases with due regard to the limited amount of time.***

5 In what circumstances in practice will the objections of the child be held to justify a refusal to return? (Please indicate the statutory basis, if any.) ***We have found no Hague determination in Court of Appeal or Supreme Court with an isolated consideration of this legal basis for return. In a First Instance determination of October 1999 the Court found that a denial can not purely be based on a "best interest of the child"-point of view. The child would have to express a distinct overweight of emotions against returning. The possibility of extraordinary influence by the abducting parent (brainwash) had to be taken into consideration. The Court found reason to take account of the child's point of view as it was considered very mature for the age (10 years+).***

6 Where the person opposing return raises any other defences under Article 13 or Article 20, what are the procedural consequences? What burden of proof rests on the defendant? ***According to the main rule regarding burden of proof in Norwegian civil procedure, the court bases its determination on the most probable fact.***

According to the Supreme Court of Norway the defendant must prove a distinct probability for the defences under the Hague Convention. The term "distinct probability" is established in Norwegian Civil procedure and indicates a substantially heavier burden of proof than the main rule in civil cases.

Does the raising of defences under Articles 13 or 20 in practice lead to delay? ***We have no experience with Article 20 cases. Article 13 cases might lead to delay, for example if the court finds it necessary with an expert opinion on the consequences of a return for the child, but not necessarily.*** What measures, if any, exist to reduce such delay to a minimum?

- 6 Please specify the procedures in place in your jurisdiction to ensure that return orders are enforced promptly and effectively? Are there circumstances (apart from pending appeals) in which execution of a return order may not be effected. **The main rule is that return orders shall be effected despite pending appeal. Exemptions can be made by the court (Court of First Instance and, in case of appeal, the Court of Appeal).** Do return orders require separate enforcement proceedings? – **No - the court is competent to include the enforcement order in the order in which the return question is determined.** Is there appeal from such proceedings? - **In case of separate enforcement hearings; yes** - Are such enforcement procedures routinely invoked, and are they successful in achieving the enforcement of return orders?
- 7 Would you support any of the following recommendations?
- a calling upon States Parties to consider the considerable advantages to be gained from a concentration of jurisdiction in a limited number of courts.⁵ – **Yes -**
 - b underscoring the obligation of States Parties to process return applications expeditiously, and making it clear that this obligation extends also to appeal procedures.⁶ – **Yes -**
 - c calling upon trial and appellate courts to set and adhere to timetables that ensure the speedy determination of return applications.⁷ **Yes, but it has to be taken into consideration that all cases are not alike, that progress does not always depend on the courts. For example the requesting party's delays in providing necessary documentation/information can also cause delays.**

⁵ See, for example, Conclusion No 4 of the "De Ruwenberg II" Judicial Seminar (footnote 7, above):

"It is recognised that, in cases involving the international protection of children, considerable advantages are to be gained from a concentration of jurisdiction in a limited number of courts/tribunals. These advantages include the accumulation of experience among the Judges and practitioners concerned and the development of greater mutual confidence between legal systems."

This conclusion was supported by the judges present at the Washington Judicial Conference (footnote 7, above).

⁶ See, for example, Conclusion No 2 of the Washington Judicial Conference:

"Prompt decision-making under the Hague Child Abduction Convention serves the best interests of children. It is the responsibility of the judiciary at both the trial and appellate levels firmly to manage the progress of return cases under the Convention. Trial and appellate courts should set and adhere to timetables that ensure the expeditious determination of Hague applications."

⁷ See above, footnote 16.

- d calling for firm judicial management, both at trial and appellate levels, of the progress of return applications.⁸ – **Yes** -
- e calling upon States Parties to enforce return orders promptly and effectively.⁹ – **Yes** –
- f recommending that the “grave risk” defence under Article 13 should be narrowly construed.¹⁰ **Yes – It is important that all States Parties construe the defences in the same way**
- g proposing any other measures (please specify) to improve the efficiency and speed with which applications are processed and orders enforced. ***In our experience: 1) Some Central Authorities use too much time considering if the requirements of the Convention are fulfilled. This delays the filing of a petition before the court and thereby the determination of the Hague case as a whole. The Central Authority is only competent to reject the application if it is manifest that the requirements of the Convention are not fulfilled. If this is not the case, the consideration of the return application should be left to the courts immediately. 2) Some Central Authorities send all correspondence in their own language even if this is not one of the two official languages under the Convention. Language barriers then might delay the case. 3) Some courts tend to treat Hague cases like ordinary custody cases meaning that time might be spent on issues irrelevant under the Convention. In addition such an approach easily leads to non-compliance. 4) In some states judicial assistance is formally required/practically 100% necessary to file the petition for return with the court. High attorney fees might then stop or at least seriously delay even clear cases from being determined by the court. 5) Enforcement might turn out to be just as important as determining the return question. In our opinion some states have clearly insufficient systems for enforcing Hague determinations causing extensive delays in the return of the children. 6) Direct contact between courts and parties when further documentation is needed instead of requests through the Central Authorities.***

In our experience Great Britain’s system in Hague cases work extremely well and should function as a model for the other State Parties.

- 8 Please indicate any important developments since 1996 in your jurisdiction in the interpretation of Convention concepts, in particular the following: **-No significant development**

⁸ See above, footnote 16.

⁹ See, for example, Conclusion No 4 of the Washington Judicial Conference (footnote 7, above):

“It is recommended that State parties ensure that there are simple and effective mechanisms to enforce orders for the return of children.”

¹⁰ See, for example, Conclusion No 5 of the Washington Judicial Conference (footnote 7, above):

“The Article 13 *b* ‘grave risk’ defense has generally been narrowly construed by courts in member states. It is in keeping with the objectives of the Hague Child Abduction Convention to construe the Article 13 *b* grave risk defense narrowly.”

- rights of custody (Article 3 *a* and Article 5 *a*);
- habitual residence (Article 3 *a* and Article 4);
- rights of access (Article 5 *b*);
- the actual exercise (of rights of custody) (Article 3 *b* and Article 13 *a*);
- the settlement of the child in its new environment (Article 12);
- consent or acquiescence to the removal or retention of the child (Article 13 *a*);
- grave risk (Article 13 *b*);
- exposure to physical or psychological harm (Article 13 *b*);
- intolerable situation (Article 13 *b*);
- fundamental principles relating to the protection of human rights and fundamental freedoms (Article 20).

(3) Issues surrounding the safe and prompt return of the child (and the custodial parent, where relevant)¹¹

- 1 To what extent are your courts, when considering a return application, entitled and prepared to employ “undertakings” (i.e. promises offered by, or required of the applicant) as a means of overcoming obstacles to the prompt return of a child? **No experience with undertakings employed by Norwegian courts. Reason to believe that Norwegian courts will be reserved against invoking undertakings as the Convention does not explicitly open for the employment measures that put duties on the requesting State Party. Undertakings will probably just be invoked to secure safe return for the child to its home state.** Please describe the subject-matter of undertakings required/requested. At what point in return proceedings are possible undertakings first raised, and how? **No experience**
- 2 Will your courts/authorities enforce or assist in implementing such undertakings in respect of a child returned to your jurisdiction? **The Hague Convention is implemented into Norwegian legislation. Other than that there is no separate system for Hague cases. If undertakings (for example intermediary custody determinations) are to be enforced by Norwegian authorities, this would require legal basis for enforcement outside the Hague Convention. Undertakings will of course not be a problem if they have legal basis in other Conventions (for example the Luxembourg Convention) or bilateral agreements implemented in Norwegian legislation.** Is a differentiation made between undertakings by agreement among the parties and those made at the request of the court? - **Not in regards of enforcement**
- 3 To what extent are your courts entitled and 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) to overcome obstacles to the prompt return of a child? - **No experience**
- 4 Is consideration being given to the possible advantages of the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children*, in providing a jurisdictional basis for protective measures associated with return orders (Article 7), in providing for their recognition by operation of law (Article 23), and in communicating information relevant to the protection of the child (Article 34)? **So far – no**
- 5 Have you experience of cases in which 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? - **No experience** - If so, how have such issues been resolved?

¹¹ The context of these questions is the experience of several States that the majority of return applications now concern (alleged) abduction by the child’s primary caretaker, and that these cases often give rise to concerns about supports available for, or even the protection of, the returning child and accompanying parent within the country to which the child is to be returned. The role played by Central Authorities in this context is covered by question 6 of section 1 of the Questionnaire.

- 6 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. ***According to the Norwegian Criminal Act Article 216, criminal proceedings in abduction cases must be initiated by the offended custodian. The remaining custodian must request before the police that the abductor is prosecuted and sentenced for the police to be competent to investigate and prosecute the abductor.***

- 7 Please comment on any experience, as a requesting or as a requested State, of cases in which the deciding judge has, before determining an application for return, communicated with a judge or other authority in the requesting State and, if so, for what purposes. What procedural safeguards surround such communications? ***Other than a determination according to Article 15 of the Convention we have no experience with cases in which communication between judges has taken place.***

- 8 Has an appointment been made in your country of a judge or other person competent to act as a focus or channel for communication between judges at the international level in child abduction/access cases?¹² - **No** -
- 9 Where a child is returned to your Country, what provisions for legal aid and advice exist to assist the accompanying parent in any subsequent legal proceedings concerning the custody or protection of the child? ***The accompanying parent has the same right to legal aid/advice as the other party as long as the custody case is filed before a Norwegian Court. An application will be considered according to the Legal Aid Act.***
- 10 Where a custody order has been granted in the jurisdiction of, and in favour of, the left behind parent, is the order subject to review if the child is returned, upon application of the abducting parent? ***According to the Children Act parents have the right to bring custody orders before the courts for review any time. An existing custody order can only be revoked if the court finds particular grounds weighing for a change in the existing order. If the court does not find such particular grounds the existing order must be upheld. The determination is made according to the best interest of the child.***
- 11 Would you support any of the following recommendations?
- a* that Contracting States should consider ratification of or accession to 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*, to provide a basis for jurisdiction, recognition and enforcement, and co-operation in respect of measures of protection of a child which are attached to return orders. ***Yes – as opposed to today’s situation, it could prove to be an advantage if all contracting States under the 1980 Convention had the same obligations regarding recognition and enforcement of custody orders.***
- b* that Contracting States should provide swift and accessible procedures for obtaining, in the jurisdiction to which the child is to be returned, any necessary protective measures prior to the return of the child. ***–Yes-***
- c* that Contracting States should take measures to ensure that, save in exceptional cases, the abducting parent will be permitted to enter the Country to which the child is returned for the purpose of taking part in legal proceedings concerning custody or protection of the child. ***–Yes-***
- d* that Contracting States should provide a rapid procedure for the review of any criminal charges arising out of a child’s abduction/unlawful retention by a parent in cases where the return of the child is to be effected by judicial order or by agreement. ***– Yes-***
- e* that Contracting States should nominate a judge or other person or authority with responsibility to facilitate at the international level communications between judges or between a judge and another authority.¹³ ***– Yes-***

¹² See footnote 23, below.

¹³ See, for example, Conclusion No 1 of the “De Ruwenberg I” Judicial Seminar (footnote 7, above):

“The recommendation was made that, following the example of Australia, judges attending the seminar

- f* that the Permanent Bureau of the Hague Conference on Private International Law should continue to explore practical mechanisms for facilitating direct judicial communications, taking into account the administrative and legal aspects of this development. – **Yes-**

(4) Procedures for securing cross-frontier access/contact between parent and child¹⁴

- 1 What provisions for legal aid/advice/representation in respect of a foreign applicant for an access order exist in your jurisdiction? ***There is no separate system for foreign applicants. As long as the legal advice is best given by a Norwegian attorney or proceedings will be held before a Norwegian court, the Legal Aid Act is applicable. Foreign applicants are considered on the same terms as Norwegians.***
- 2 On what basis do your courts at present exercise jurisdiction to:
- a* grant and
b modify access/contact orders?

Section 47 of the Norwegian Children Act 1980. The main issue is the best interest of the child.

- 3 What provisions exist for the recognition and enforcement in your jurisdiction of foreign access orders, in particular where the order has been made by a

should raise with the relevant authorities in their jurisdictions (e.g., court presidents or other officials, as appropriate within the different legal cultures) the potential usefulness of designating one or more members of the judiciary to act as a channel of communication and liaison with their national Central Authorities, with other judges within their own jurisdictions and with judges in other states, in respect, at least initially, of issues relevant to the operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction."

This recommendation was endorsed in Conclusion No 5 of the "De Ruwenberg II" Judicial Seminar (footnote 7, above), as follows:

"The need for more effective methods of international judicial co-operation in respect of child protection is emphasised, as well as the necessity for direct communication between Judges in different

jurisdictions in certain cases. The idea of the appointment of liaison Judges in the different jurisdictions, to act as channels of communication in international cases, is supported. Further exploration of the administrative and legal aspects of this concept should be carried out. The continued development of an international network of Judges in the field of international child protection to promote personal contacts and the exchange of information is also supported."

This conclusion was in turn endorsed at the Washington Judicial Conference (footnote 7, above).

Liaison judges have already been appointed for England and Wales, Australia, New Zealand, Hong Kong and Cyprus.

¹⁴ The role played by Central Authorities in this context is covered by question 7 of section 1 of the Questionnaire. In answering these questions please distinguish where appropriate between:

- a* applications pending return proceedings;
b applications following a refusal to return a child;
c applications not made in connection with other proceedings; and
d applications to modify existing access orders.

Please note also that the term "access" should be read as including all forms of contact.

court or other authority of the country of the child's habitual residence? ***European Convention of 20 May 1980 on Recognition and Enforcement of Decisions concerning Custody of Children and on restoration of Custody of Children (Luxembourg Convention), Convention of 6 February 1932 between the Nordic states containing interlegal provisions regarding marriage, adoption etc, Act concerning recognition and enforcement of Nordic Court Orders regarding Private Law of 10 June 1977.*** In this context is consideration being given to 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?* – **Not so far**

- 4 What, if any, provision exists to ensure that cross-frontier access applications (including appeals) are processed expeditiously? ***No separate system for cross-frontier access cases before the courts. According to domestic legislation, an intermediary determination can be processed expeditiously.***
- 5 What facilities/procedures are in place to promote agreement between parents in international access/contact cases? ***No separate system accept the role of the Central Authority. According to domestic legislation (the Children Act), mandatory mediation is an absolute condition for bringing the case before the court. Courts generally seek agreement at all stages of the proceedings when preferable.***
- 6 Do your courts in practice accept a presumption in favour of allowing access/contact to the non-custodial parent? - ***Yes – The Children Act prescribes the right of the child to have access to both parents. Contact with both parents is generally regarded to in the best interest of the child. This is followed up by courts in practice, meaning that access only is denied in extreme cases when other options (supervision etc.) are impossible/not recommendable with regard to the welfare of the child.***
- 7 What conditions are likely to be imposed on access in respect of a non-custodial abducting parent? ***Access under supervision, withdrawal of travelling documents to prevent abductor from fleeing the country with the child.***

- 8 What information concerning services and what other facilities are available to overseas applicants for access/contact orders? – **All public information is available. The Central Authority will provide practical assistance and information.**
- 9 What problems have you experienced and what procedures exist in your country as regards co-operation with other jurisdictions in respect of: - **Generally the exercise of access rights to some extent always depends on co-operation between the parents. In these cases the co-operation seems to be the main problem. Other than that we have no specific experiences.**
- a the effective exercise of rights of access in your/in the other jurisdiction; **Procedures: co-operation through conventions**
- b the granting or maintaining of access rights to a parent residing abroad/in your jurisdiction;
- c the restriction or termination of access rights to a parent residing abroad/in your jurisdiction.
- 10 What, if any, measures are available to your courts to help guarantee adherence by parents to access conditions (e.g. financial guarantees, surrender of passports)? **See question 7 above**
- 11 How in practice are access orders enforced? **Enforcement through coercive fines set to an amount per day the custodial parent resists access.**
- 12 Would you support recommendations in respect of any of the particular issues raised in the preceding questions? If so, please specify.

(5) Securing State compliance with Convention obligations

Please comment upon any serious problems of non-compliance with Convention obligations of which your authorities have knowledge or experience and which have affected the proper functioning of the Convention.

- **lack of implementation of Convention into domestic legislation**
- **lack of/substantial delays in enforcement of return orders**
- **examples of slow processes by courts**

- 1 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? **We gather information about the legislation of the acceding state on issues relevant under the Convention, such as parental responsibility, rights of access and the practice of the courts in these matters. Special concern about whether the custody decisions are made under due regard to the best interest of the child. The information is gathered through the Ministry of Foreign Affairs.**
- 2 Would you favour the drawing up of a standard questionnaire to be submitted by Contracting States to each newly acceding State with a view to assisting

them to decide whether or not to accept the accession? - **No** - What questions would you include

- 3 Are you in favour of an increase in the number of Special Commissions¹⁵ (or similar meetings) to review the practical operation of the Convention? - **No** – Would you also favour the idea that additional Special Commissions should review particular aspects of the operation of the Convention (for example, the problems surrounding the protection of rights of access, or the issues that arise when allegations of abuse or domestic violence are raised in return proceedings or the practical and procedural issues surrounding direct communications between judges at the international level, or the enforcement of return orders by Contracting States)?

¹⁵ All other things being equal, the approximate additional expenses arising for the annual budget of the Hague Conference would amount to Dfl. 30,000 (for an additional Commission of 3 days every 2 years), or Dfl. 20,000 (every 3 years).

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5 Are there any other measures or mechanisms which you would recommend:

- a* to improve the monitoring of the operation of the Convention;
- b* to assist States in meeting their Convention obligations;
- c* to evaluate whether serious violations of Convention obligations have occurred?

(6) Miscellaneous and general

- 1 Have you any comments or suggestions concerning the activities in which the Permanent Bureau engages to assist in the effective functioning of the Convention, and on the funding of such activities?¹⁶
- 2 Are there any additional ways in which the Permanent Bureau might provide assistance? Do you favour the preparation of a list of potential Permanent Bureau functions and tasks that could only be performed if the Permanent Bureau were to receive additional financial and human resources either through approval of an increased budget or through voluntary contributions to accounts set aside for that purpose?
- 3 Would you favour a recommendation that States Parties should, on a regular annual basis, make returns of statistics concerning the operation of the Convention on the standard forms established by the Permanent Bureau, and that these statistics should be collated and made public (for example on the Hague Conference website) on an annual basis? - **Yes** -

¹⁶ The present activities of the Permanent Bureau fall into the following categories:

- a* assisting in the maintenance of good communications between Central Authorities, by inter alia seeking and disseminating (through the Hague Conference website and other means) reliable contact data;
- b* giving informal advice and assistance to Central Authorities and others on matters of interpretation and procedure under the Convention;
- c* drawing the attention of States Parties to, and offering advice about, situations in which obstacles have arisen to the proper functioning of the Convention;
- d* offering advice of a general nature and referrals in individual cases;
- e* advising Contracting States in relation to implementation of the Convention;
- f* organising and supporting training conferences and seminars for judges, Central Authority personnel and practitioners;
- g* gathering and evaluating statistics;
- h* maintaining INCADAT (the international child abduction database of judicial decisions, available at: www.incadat.com);
- i* undertaking preparation and research for the regular periodic reviews of the Convention;
- j* the publication of a judicial newsletter as a step towards building an international judicial network;
- k* encouraging wider ratification of the Convention.

With respect to many of these activities, no provision is made in the regular budget of the Hague Conference. They therefore depend largely or entirely on extra budgetary funding.

- 4 Would you favour a recommendation supporting the holding of more judicial and other seminars, both national and international, on the subject-matter of the Convention? - **Yes** -
- 5 Are there any particular measures which you would favour to promote further ratifications of and accessions to the Convention?
- 6 Please provide information concerning any bilateral arrangements made with non-Hague States with a view to achieving all or any of the objectives set out in Article 1 of the Convention. **Protocol signed together with Tunisia – both State Parties expressing their will to contribute to voluntary solutions in case of abductions between the two states.**
- 7 Do you have any comments on the following proposition:

*"Courts take significantly different approaches to relocation cases, which are occurring with a frequency not contemplated in 1980 when the Hague Child Abduction Convention was drafted. Courts should be aware that highly restrictive approaches to relocation can adversely affect the operation of the Hague Child Abduction Convention."*¹⁷

The number of abduction cases in Norway is so small that it is not possible to prove correlation between relocation practice and the operation of the Convention.

We have no empirical knowledge regarding the practice of Norwegian courts in relocation cases. Each case is decided on the basis of the best interest of each child.

¹⁷ Conclusion No 9 of the Washington Judicial Conference (footnote 7, above). A "relocation" case is one in which a custodial parent applies to a court for permission to move permanently, together with the child, to a new country.