

CUESTIONARIO SOBRE LA FACTIBILIDAD DE UN PROTOCOLO AL CONVENIO DE
LA HAYA DE 1980

PARTE I – POSIBLES COMPONENTES DE UN PROTOCOLO

Usted ha sido requerido para dar sus visiones en cada uno de los siguientes posibles componentes de un protocolo. Para hacer esto sería de ayuda si usted pudiera indicar para cada uno de ellos:

- Si, en su opinión, disposiciones sobre estos asuntos podrían servir para un propósito útil; y
- Cuan alta prioridad usted asignaría al desarrollo de disposiciones sobre estos asuntos.

1. Mediación, conciliación y otros medios similares para promover la solución amigable de casos bajo el Convenio.

1.1 Expresamente autorizando el uso de mediación/ conciliación/ otros medios para promover la resolución amigable de casos bajo el Convenio.

Respuesta: Esta Autoridad Central considera necesario incluir estas formas de solución amigable en un protocolo en orden a unificar las regulaciones o el tratamiento dado en los diferentes Estados Parte a estos asuntos en relación tanto con solicitudes de restitución como de visitas.

1.2 Incorporar aspectos de fondo o procedimiento relativo al uso de tales medios (Ej. Concerniente a materias tales como confidencialidad, la interrelación entre el proceso de mediación y los procedimientos de retorno, o el reconocimiento y cumplimiento de acuerdos resultantes de mediación)

Respuesta: Como previamente se indicó, los referidos aspectos deberían ser incorporados con el objeto de unificar criterios relativos a las diferentes formas de solución amigable y a los programas o mecanismos usados por los Estados, especialmente en lo que dice relación con los tiempos o plazos involucrados y la forma en que las negociaciones son manejadas cuando uno de los padres está en el extranjero.

2. Comunicaciones Judiciales Directas

2.1 Proporcionar un fundamento legal para el uso de comunicaciones judiciales directas transfronterizas en relación a casos conocidos bajo el Convenio.

Respuesta: Consideramos prioritario incorporar este aspecto o tema, basado primariamente en nuestra experiencia practica la cual nos hace creer que las comunicaciones judiciales directas transfronterizas necesitan un fundamento legal para poder "masificar" su uso en sistemas legales como el nuestro. La tradición procesal del sistema legal continental y principios tales como la independencia y la legalidad algunas veces impiden o no alientan el uso de este tipo de comunicaciones.

En nuestra experiencia, las comunicaciones judiciales directas pueden ser una gran ayuda cuando se trata de resolver solicitudes de restitución de una manera más satisfactoria y sirve para el propósito de facilitar el regreso seguro del niño sustraído, e incluso algunas veces el regreso de la propia madre o padre sustractor.

2.2 Definir la esfera o ámbito de tales comunicaciones e iniciar resguardos procesales para su uso.

Respuesta: Creemos que incorporar estos aspectos es absolutamente necesario debido a que están claramente relacionados con los problemas indicados en el punto 2.1

2.3 Proporcionar un fundamento explícito para la Red Internacional de Jueces de La Haya.

Respuesta: Consideramos que, en el largo plazo, podría resultar útil, pero no pensamos que deba ser una prioridad ahora, tal como si debieran serlo los aspectos de los puntos 2.1 y 2.2

3. Procedimientos rápidos o expeditos.

3.1 Disposiciones más explícitas o estrictas para asegurar que las solicitudes de retorno sean procesadas rápidamente en primera instancia, en apelación y en la etapa de cumplimiento.

Respuesta: Consideramos que esto debe ser una prioridad no solamente para las solicitudes de restitución, sino también para las solicitudes de visitas. Esto considerando especialmente que las disposiciones del artículo 11 no son suficientes para asegurar que

un procedimiento de urgencia sea realmente aplicado a estos casos. Hemos detectado casos en los cuales la solicitud es interpuesta ante el tribunal competente cerca de un año después de recibida la solicitud por la Autoridad Central Requerida (Dónde no han existido obstáculos para la localización del niño), o apelaciones que toman más de 18 meses en ser resueltas. Estos son problemas que directamente infringen los objetivos del Convenio.

3.2 Otros.

4. Regreso seguro del niño

Medidas específicas (p.ej. medidas de protección provisionales) pueden ser adoptadas por los estados involucrados para asegurar el regreso seguro del niño y, en caso de ser procedentes, del padre acompañante.

Respuesta: La redacción del artículo 7 en esta materia nos ha dado la flexibilidad para buscar o proponer a los Tribunales diversas medidas según cada caso en particular. Sin embargo, en el largo plazo puede ser una mejor solución especificar algunas medidas (solamente de forma explicativa). También consideramos que resulta útil especificar la posibilidad de adoptar medidas respecto del padre acompañante.

4.2 Proveer cooperación entre las cortes o entre las Autoridades Centrales para asegurar el retorno seguro del niño y eliminar los obstáculos para su regreso.

Respuesta: Consideramos que es una prioridad, particularmente respecto de la cooperación entre los tribunales, lo que facilita y mejora el cumplimiento de las medidas adoptadas para el retorno seguro tanto del niño como del padre acompañante.

4.3 Proveer el intercambio de información tras el regreso del niño.

Respuesta: Creemos que el seguimiento de los casos tras el retorno puede constituir una mejora muy importante a la forma de operación del Convenio. Ello, porque actualmente no existen los mecanismos que permitan, por ejemplo, verificar el cumplimiento de las medidas provisionales adoptadas por un Tribunal chileno para el regreso seguro del niño o verificar la forma en que se da cumplimiento a un acuerdo extrajudicial de retorno voluntario. Es por ello que la cooperación entre las Autoridades Centrales es vital y la forma en que esto ha sido entendido varía entre las Autoridades Centrales, por lo que un criterio unificador sería útil.

4.4 Otros.

5. Alegaciones de violencia doméstica

5.1 Proveer guía en la forma en que dichas alegaciones deben ser manejadas en el contexto del procedimiento para el regreso del niño.

Respuesta: Ya que la violencia doméstica es uno de los argumentos más empleados por el padre abductor (en su mayoría madres) para validar la abducción o como una base para la excepción contemplada en el artículo 13.b, consideramos relevante discutir la forma en que debe ser manejado con el fin de unificar el criterio en esta materia.

5.2 Otros

6. La postura del niño

6.1 Más provisiones relacionadas con el derecho del niño a ser oído y a tener sus opiniones en cuenta durante el curso del procedimiento.

Respuesta: Consideramos que la redacción del artículo 13, en conjunto con los artículos 3 y 12 de la Convención de los Derechos del Niño son suficientes en relación a esta materia. No creemos que deba ser incluido en la discusión en el protocolo.

6.2 Otros.

7. Cumplimiento de orden de retorno

7.1 Provisiones explícitas en relación a los procedimientos de cumplimiento (p.ej., limitar los desafíos legales, promover el cumplimiento voluntario)

Respuesta: En relación a esta materia, consideramos que es importante su discusión, especialmente en relación a la limitación de las impugnaciones legales, ya que de acuerdo a nuestra experiencia, este es un obstáculo importante al solicitar la ejecución de las ordenes de regreso, debido al hecho de que la dilación en las resoluciones de dichas impugnaciones puede llevar al eventual cambio de la decisión por no regresar el niño, considerando el tiempo transcurrido desde la abducción y la adaptación del niño al nuevo ambiente.

7.2 Otros.

8. Visitas-Relación directa y regular/ Contacto

8.1 Clarificar las obligaciones bajo el artículo 21 de la Convención (p.ej., las responsabilidades de las Autoridades Centrales)

Respuesta: Creemos que esto es un tema prioritario, ya que las provisiones de la Convención en esta materia no son claras. Esta falta de claridad respecto del tratamiento de la relación directa y regular ha llevado a las Autoridades Centrales a tener diversas interpretaciones (algunas muy restringidas) que eventualmente implica no cumplir con el objetivo de la Convención de proteger los derechos de visitas.

8.2 Facilitar el contacto entre el niño y el padre abandonado durante el procedimiento de retorno.

Respuesta: Este tema es prioritario, ya que mantener el contacto con el padre abandonado es un derecho del niño y, además, por cuanto (1) evita ocasionar mayor perjuicio al niño, como alienación parental, y (2) facilita las resoluciones amistosas de conflicto en lo posible (debido al hecho de que al principio de la abducción, uno de las principales preocupaciones del padre abandonado es que el niño sea cuidado y que viva en buenas condiciones. Facilitar el contacto con el niño puede aliviar al padre abandonado de sus temores, y ayudar a alcanzar soluciones amistosas)

8.3 Otros

9. Definiciones o re-definiciones

9.1 Derechos de custodia

Respuesta: Hemos alcanzado un nivel en el cual la redacción amplia de la definición del artículo 5 ha sido de gran uso práctico, cuando se trata de analizar cada caso por nuestros Tribunales, porque tiene la capacidad de operar para diversos sistemas legales. Sin embargo, cabe destacar que este es el resultado de muchos años de promoción de la Convención entre los diversos actores en nuestro país (jueces, consejeros técnicos, abogados, etc.). Luego, consideramos valioso discutir las definiciones refinadas a este respecto y también en relación al punto 9.2, con el propósito de mejorar la operatividad de la Convención.

9.2 Ver 9.1

9.3 Otros

10. Traslado internacional de un niño

10.1 En relación a las circunstancias en que un padre pueda trasladar legamente a un niño de su país a vivir en otro lugar.

Respuesta: Consideramos que esto es importante como forma de prevenir las abducciones y sus consecuencias negativas para los niños. Pero el tratamiento que se le dé a esta materia debe ser tratado con cautela para evitar su uso abusivo con el fin de justificar las abducciones.

10.2 Promover los acuerdos entre los padres respecto del traslado.

Respuesta: Consideramos importante promover acuerdos entre los padres respecto al traslado del niño, para así hacer el procedimiento más fácil, expedito y más capaz de resguardar el interés superior del niño.

10.3 Otros.

**QUESTIONNAIRE RELATIF A L'OPPORTUNITE ET A LA FAISABILITE D'UN
PROTOCOLE A LA CONVENTION DE LA HAYE DU 25 OCTOBRE 1980 SUR LES
ASPECTS CIVILS DE L'ENLEVEMENT INTERNATIONAL D'ENFANTS**

établi par le Bureau Permanent

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**QUESTIONNAIRE ON THE DESIRABILITY AND FEASIBILITY OF A
PROTOCOL TO THE HAGUE CONVENTION OF 25 OCTOBER 1980 ON THE
CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION**

drawn up by the Permanent Bureau

*Document préliminaire No 2 de décembre 2010 à l'intention de la
Commission spéciale de juin 2011 sur le fonctionnement pratique de la
Convention Enlèvement d'enfants de 1980 et de la
Convention Protection des enfants de 1996*

*Preliminary Document No 2 of December 2010 for the attention of the
Special Commission of June 2011 on the practical operation of the
1980 Hague Child Abduction Convention and the
1996 Hague Child Protection Convention*

**QUESTIONNAIRE RELATIF A L'OPPORTUNITE ET A LA FAISABILITE D'UN
PROTOCOLE A LA CONVENTION DE LA HAYE DU 25 OCTOBRE 1980 SUR LES
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**QUESTIONNAIRE ON THE DESIRABILITY AND FEASIBILITY OF A
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INTRODUCTION TO THE QUESTIONNAIRE

Mandate

The Council on General Affairs and Policy of the Hague Conference, at its meeting of April 2009

“... authorised the Permanent Bureau to engage in preliminary consultations concerning the desirability and feasibility of a protocol to the [*Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*] containing auxiliary rules to improve the operation of the Convention”.¹

Furthermore, the Council on General Affairs and Policy requested the Permanent Bureau to prepare a report on the consultations for the Special Commission on the practical operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (hereinafter “the 1980 Hague Convention” or “the Convention”) in 2011. The Council stated that the Report should also “take into account the extent to which the provisions of the 1996 Hague Convention supplement those of the 1980 Hague Convention.”²

To assist in the preparation of this report, in April 2010 the Council on General Affairs and Policy authorised the Permanent Bureau to circulate a Questionnaire “to States Parties and Members later this year seeking general views as well as views in relation to the specific elements which might form part of a protocol”³ to the 1980 Hague Convention.

Objectives of the Questionnaire

In accordance with the mandate, this Questionnaire seeks general views on the desirability and feasibility of a protocol, as well as views on specific matters which might form part of a protocol.

It is not the objective of this Questionnaire to gather opinions on the precise rules or language that should appear in a protocol, but rather on the broad elements which might be covered by a protocol, as well as the feasibility of achieving consensus on those matters.⁴ The purpose at this stage is to gather opinions which will inform the discussion on whether the Hague Conference should embark on the formal process of developing a protocol. This is a matter which will be discussed in the Special Commission, but the final decision lies with the Council on General Affairs and Policy.⁵

The Permanent Bureau intends, except where expressly asked not to do so, to place all replies to the Questionnaire on the Hague Conference website (< www.hcch.net >).

¹ “Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference (31 March – 2 April 2009)”, p. 2, available on the Hague Conference website at < www.hcch.net >, under “Work in Progress”, then “General Affairs”.

² *Ibid.* References to “the 1996 Hague Convention” are 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*.

³ “Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference (7-9 April 2010)”, p. 2, available on the Hague Conference website at < www.hcch.net >, under “Work in Progress”, then “General Affairs”.

⁴ In relation to the issue of feasibility it is relevant to point out that as a minimum all the States Parties to the 1980 Hague Convention, as well as all Members of the Hague Conference on Private International Law, would be invited to participate in the negotiations regarding a protocol, and that such negotiations would proceed to the furthest extent possible on a consensus basis.

⁵ See notes 1 and 3.

We would appreciate that replies be sent to the Permanent Bureau, if possible by e-mail, to < secretariat@hcch.net > no later than **15 March 2011**.

Any queries concerning this Questionnaire should be addressed to William Duncan, Deputy Secretary General (< wd@hcch.nl >) and / or Nicolas Sauvage, Legal Officer (< ns@hcch.nl >).

**QUESTIONNAIRE ON THE DESIRABILITY AND FEASIBILITY OF A
PROTOCOL TO THE HAGUE CONVENTION OF 25 OCTOBER 1980 ON THE
CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION**

Name of State: Chile

For follow-up purposes

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PART I - POSSIBLE COMPONENTS OF A PROTOCOL

You are asked to give your views on each of the following possible components of a protocol. In doing so it would be helpful if you could indicate **for each of them**:

- Whether, in your opinion, provisions on these matters could serve a useful purpose; and
- How high a priority you would attach to the development of provisions on these matters.

1. Mediation, conciliation and other similar means to promote the amicable resolution of cases under the Convention⁶

- 1.1 Expressly authorising the use of mediation / conciliation / other means to promote the amicable resolution of cases under the Convention
This Central Authority considers it is necessary to include these forms of amicable solutions in order to unify the regulation or treatment given in the different States to these matters in relation with both return and access applications.
- 1.2 Addressing issues of substance and procedure surrounding the use of such means (*e.g.*, concerning matters such as confidentiality, the interrelationship between the mediation process and return proceedings, or the recognition and enforcement of agreements resulting from mediation)
As previously indicated, those said issues should be addressed in order to unify the criteria about the different forms of amicable resolution and the different schemes used by the States, specially time scheme and the way negotiations are handled when one of the parents is abroad.
- 1.3 Others

⁶ See Arts 7(2) c) and 10 of the Convention. See also Part III of the "Conclusions and Recommendations of the Fifth Meeting of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and the practical 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* (30 October – 9 November 2006)" (hereinafter referred to as the "Conclusions and Recommendations of the 2006 Special Commission"), available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings". A Guide to Good Practice on Mediation under the 1980 Hague Child Abduction Convention is currently under preparation. A draft Guide will be submitted to the Special Commission meeting in June 2011. A "Preliminary Outline of the Guide to Good Practice on Mediation under the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (for consultation with the expert group)" is available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Cross-border family mediation". Co-ordination would be needed between the work on the Guide to Good Practice and the development of provisions on mediation in a protocol.

2. Direct judicial communications⁷

- 2.1 Providing a legal basis for the use of direct cross-border judicial communications in respect of cases brought under the Convention
We consider it a priority, based primarily on our practical experience which makes us believe that direct cross-border judicial communications need some legal basis in order to be able to "massify" in every legal system. In our continental legal system, procedural tradition and principles such as independence and legality tends to limit and do not encourage the use of such communications. In our experience direct judicial communications can be a great aid to execute return applications in a more satisfactorily way. This also is useful to the puprose of facillitating a safe return of the abducted children, and eventually, of the abducting parent.
- 2.2 Defining the scope of such direct communications and setting out procedural safeguards for their use
We believe that addressing these issues is absolutely necessary since are closely related to the problems indicated on 2.1
- 2.3 Providing an explicit basis for the International Hague Network of Judges
We considere that this could be useful in the long term, but we don't think it is now a priority, such as 2.1 and 2.2.
- 2.4 Others

3. Expeditious procedures⁸

- 3.1 More explicit or stricter provisions to ensure that return applications are processed rapidly at first instance, on appeal and at the enforcement stage
We consider this to be a priority not only for return applications, but also to access applications. This specially considering that the provisions on article 11 are not enough to assure that urgent procedures are really applied to the cases. We have detected cases on which the application is filed by competent judicial authority nearly a year after it was received by the Requested Central Authority (where there has not been the obstacle of localizing the child), and appeals that take over 18 months to be solved.
- 3.2 Others

4. The safe return of the child⁹

- 4.1 Specifying measures (e.g., interim protective orders) which may be taken by either of the States involved to help ensure the safe return of the child and, where appropriate, an accompanying parent
The wording of article 7 on this matter, as we have understand it, has

⁷ See Part VI of the Conclusions and Recommendations of the 2006 Special Commission, *ibid.*

⁸ See Arts 2 and 11 of the Convention. See also para. 1.4.1 of the Conclusions and Recommendations of the 2006 Special Commission (*ibid.*), and Hague Conference on Private International Law, *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part II – Implementing Measures*, Jordan Publishing Limited, 2003, para. 6.3, available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice".

⁹ See Art. 7(2) *h* of the Convention. See also para. 1.1.12, Part VIII and Appendix of the Conclusions and Recommendations of the 2006 Special Commission (*op. cit.* note 6). See also Hague Conference on Private International Law, *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part I – Central Authority Practice*, Jordan Publishing Limited, 2003, in particular para. 6.3, available on the Hague Conference website at *ibid.* See also relevant provisions of the 1996 Hague Convention.

given us the flexibility to look forward ensure safe return in procedures on Chilean Courts, according to the background of the case. Nevertheless, it may be a better solution, in the long term, to specify some measures (only in an explanatory form). Also we believe that specifying the possibility of taking measures regarding the accompanying parent can be useful.

- 4.2 Providing for co-operation between courts or between Central Authorities in securing the safe return of the child and removing obstacles to return

We consider it to be priority, specially regarding cooperation between Courts, which will facilitate and improve the enforcement of measures taken for the safe return of both child and accompanying parent

- 4.3 Providing for an exchange of information following the return of the child

We believe that following up cases after the return may be a very good improvement to the operation of the convention. This because, at this time we don't have any mechanisms that permit us to, for example, verify the compliance of the measures taken by a Chilean Court for the safe return of a child, nor verify the way an extra-judicial agreement for voluntary return is complied. For these, cooperation between Central Authorities and unifying criteria can be very useful.

- 4.4 Others

5. **Allegations of domestic violence**

- 5.1 Providing guidance on the manner in which such allegations should be handled in the context of proceedings for the return of a child
Since domestic violence is one of the main reasons used by the abducting parent (mostly mothers) for validating the abduction or as a basis for the exception of article 13.b, we consider it relevant to discuss the manner it should be handled, also to unify criteria in this matter
- 5.2 Others

6. **The views of the child**¹⁰

- 6.1 Further provisions concerning the right of the child to be heard and to have his or her views taken into account in the course of return proceedings
We consider that the wording of article 13, together with articles 3 and 12 of the Convention on the Rights of the Child are enough on this matter. We don't think it should be included on the discussion on the protocol
- 6.2 Others
Regarding the child's right to be heard, we believe that it is essential to the goals of both the 1980 Hague Convention and the Convention on Rights of the Child, that the rights of children during Court procedures be represented directly by a guardian ad-litem or a similar legal institution, such as ones provided on several legal systems. Therefore, we consider it of high importance to include the said legal institution in the protocol's discussion.

7. **Enforcement of return orders**¹¹

- 7.1 Explicit provisions concerning enforcement procedures (e.g., limiting legal challenges, promoting voluntary compliance)
Regarding this issue, we consider it important to discuss this matter, specially regarding the limitation of legal challenges; since, in our experience, this is one important obstacle when enforcing return decisions, due to the fact that dilation on the resolution of the said challenges may eventually lead to changing the decision for not returning the child, considering the time elapsed since the abduction occurred and the adaptation of the child to the new environment.
- 7.2 Others

8. **Access / contact**¹²

- 8.1 Clarifying obligations under Article 21 of the Convention (e.g., the responsibilities of Central Authorities)

¹⁰ See Art. 13(2) of the Convention. See also Appendix of the Conclusions and Recommendations of the 2006 Special Commission (*op. cit.* note 6).

¹¹ See Part V of the Conclusions and Recommendations of the 2006 Special Commission (*op. cit.* note 6), and Hague Conference on Private International Law, *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part IV – Enforcement*, Bristol, Family Law (Jordan Publishing Limited), 2010, available on the Hague Conference website at *ibid.*

¹² See Arts 7(2) f) and 21 of the Convention. See also paras 1.7.1 to 1.7.3 of the Conclusions and Recommendations of the 2006 Special Commission (*op. cit.* note 6), and Hague Conference on Private International Law, *Transfrontier Contact Concerning Children – General Principles and Guide to Good Practice*, Jordan Publishing Limited, 2008, available on the Hague Conference website at *ibid.* See also relevant provisions of the 1996 Hague Convention.

This we believe it to be of high priority, since the provisions of Convention on this matter are not clear enough. This lack of clarity regarding the treatment of access right has lead the Central Authorities to different interpretations (some very restrictive ones) that eventually implies not complyin with the objective of the Convention of proteccting rights of access.

8.2 Facilitating contact between the child and the left-behind parent during the return procedure

This should be a priority, since maintaining contact with the left behid parent is a right to the child, but also because (1) it avoids further prejudice to the child such as parental alienation and (2) facilitates amicable resolutions when possible (due to the fact that at the beginning of the abduction, one of the main concerns of the left-behind parent is to make sure that the child is well treated and living in good conditions. Facilitating contact with the child, may relieve the left-behind parent of his o hers concerns, and help by this to reach amicable solutions)

8.3 Others

9. **Definitions or refined definitions**¹³

- 9.1 Rights of custody
We have reached an stage, in which the open wording of the definition of article 5 has became of great practical use, when it comes to analyzing each case by our Courts, because it has the capacity to operate for different legal systems. Nevertheless, it is worth pointing out that this is the result of several years of promoting the convention among the several actors within our country (judges, technical counsellors, attorneys, etc). So we consider it valuable to discuss refined definitions for this issue as well as of 9.2, in order to improve the operativity of the Covention
- 9.2 Habitual residence
See 9.1
- 9.3 Others

10. **International relocation of a child**¹⁴

- 10.1 Addressing the circumstances in which one parent may lawfully remove a child to live in a new country
We consider this important, as a matter of prevention of abductions and its negative consequences to the children. But the treatment to be given to this matter should be dealt with caution in order to avoid abusively use to justify abductions
- 10.2 Promoting agreement between parents in respect of relocation
We consider important to promote agreement between parents in respect of relocation of the child, we believe that this could make the procedure easier, faster and much more able to regard the child best interest.
- 10.3 Others

11. **Reviewing of the operation of the Convention**¹⁵

- 11.1 Providing an explicit legal basis for convening the Special Commission to review the practical operation of the Convention and to encourage the development of good practices under the Convention
We consider it a priority to improve the operation of the Convention.
- 11.2 Requiring the co-operation of Contracting States in gathering statistics and case law under the Convention and in completing country profiles
We consider it also a priority, since the said information is absolutely relevant for the practical operation of the Convention and for improving the way it operates
- 11.3 Establishing a body competent to review States Parties' compliance with Convention obligations

¹³ See in particular Art. 5 of the Convention. See also para. 1.7.3 of the Conclusions and Recommendations of the 2006 Special Commission (*op. cit.* note 6), and paras 8 to 11 of the "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*", available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings".

¹⁴ See paras 1.7.4 and 1.7.5 of the Conclusions and Recommendations of the 2006 Special Commission (*op. cit.* note 6).

¹⁵ Five meetings of the Special Commission to review the practical operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* have been held, in 1989, 1993, 1997, 2001, and 2006. This Questionnaire is drawn up for the attention of the Sixth Meeting which is planned for June 2011 (first part) and January 2012 (second part). Conclusions and Recommendations of previous meetings are available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings".

This we consider, as well, to be a priority since right now there is no way of demanding the compliance to any State Party to the Convention, when problems or obstacles are detected.

11.4 Others

12. Others

Please indicate any other matters which you think should be considered for inclusion in a protocol containing auxiliary rules to improve the operation of the Convention.

PART II - THE GENERAL QUESTION

1. In the light of your views given above, and considering that decisions will need to be taken by consensus, should the Hague Conference on Private International Law embark on the formal process of developing a protocol to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*? (Please indicate if you are in favour, opposed or undecided.)
We are in favour
2. If in favour, what level of priority would you attach to this exercise?
We believe it should had a high priority