

## **GUIDE TO GOOD PRACTICE**

*under the Hague Convention of 25 October 1980 on the  
Civil Aspects of International Child Abduction*

### **PART III – PREVENTIVE MEASURES**





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### **PART III – PREVENTIVE MEASURES**

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## INTRODUCTION

The *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*<sup>1</sup> has 75 States Parties at the time of writing, representing diverse cultures and legal systems.<sup>2</sup> The proliferation of new Contracting States<sup>3</sup> and the need to ensure that implementation and operation of the Convention are seen by all States as a continuing process of development and review, has inevitably led to discussion concerning “good practices”. During the Fourth Meeting of the Special Commission held in The Hague from 22–28 March 2001, to review, and make recommendations on, practice under the Convention, the following recommendation was made:

“Contracting States to the Convention should co-operate with each other and with the Permanent Bureau to develop a good practice guide which expands on Article 7 of the Convention. This guide would be a practical, “how-to” guide, to help implement the Convention. It would concentrate on operational issues and be targeted particularly at new Contracting States. It would not be binding nor infringe upon the independence of the judiciary. The methodology should be left to the Permanent Bureau”.<sup>4</sup>

In response to this recommendation, the Permanent Bureau of the Hague Conference, in consultation with Contracting States, drew up two Parts of the Guide to Good Practice. Part I deals with Central Authority Practice<sup>5</sup> and Part II with Implementing Measures.<sup>6</sup> These Parts of the Guide were approved by the Special Commission concerning the Convention which met in The Hague from 27 September – 1 October 2002, and were subsequently published in English, French and Spanish. Additionally, the Special Commission of 2002 recommended that:

“The Permanent Bureau should continue to gather information concerning the measures adopted in different Contracting States to prevent abductions from taking place. The experience of non-governmental organisations in this field should be taken into account. The Permanent Bureau should prepare a report on the subject with a view to the possible development of a Guide to Good Practice”.<sup>7</sup>

This Part III of the Guide to Good Practice consequently deals with preventive measures. Preventing abduction is a key aim of the 1980 Convention and it is widely acknowledged that it is better to prevent abduction than to have to seek a child’s return after abduction.<sup>8</sup>

It should be noted from the outset that Part III of the Guide to Good Practice differs in scope from Parts I and II. The scope is broader than the previous Parts, as it is not confined to

<sup>1</sup> Hereinafter, “the 1980 Convention”.

<sup>2</sup> The status of all Hague Conventions can be followed on the website of the Hague Conference at < [www.hcch.net](http://www.hcch.net) > → Child Abduction Homepage → Status of the Convention.

<sup>3</sup> Of the 75 Contracting States, 17 have ratified or acceded to the Convention since 2000, an increase of 23% in just 5 years.

<sup>4</sup> See Conclusions and Recommendations of the Fourth 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* (22 – 28 March 2001), drawn up by the Permanent Bureau. (Hereinafter, “Conclusions and Recommendations of the Fourth Special Commission”), at para. 1.16.

<sup>5</sup> Guide to Good Practice – Part I – Central Authority Practice, drawn up by the Permanent Bureau (Hereinafter, “Guide to Good Practice – Central Authority Practice”). Available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > → Child Abduction Homepage → Guide to Good Practice.

<sup>6</sup> Guide to Good Practice – Part II – Implementing Measures, drawn up by the Permanent Bureau (Hereinafter, “Guide to Good Practice - Implementing Measures”). < [www.hcch.net](http://www.hcch.net) > → Child Abduction Homepage → Guide to Good Practice.

<sup>7</sup> See Conclusions and Recommendations of the Special Commission concerning the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (27 September – 2 October 2002), drawn up by the Permanent Bureau. (Hereinafter, “Conclusions and Recommendations of the 2002 Special Commission”), at para. 1(b).

<sup>8</sup> See United Kingdom (Scotland) response to the Questionnaire [*infra* note 13]: “We very much take the view that ‘prevention is better than cure’. Even when a child is returned promptly it can still suffer negative effects from abduction.” Additionally, the French Ministry of Justice website states that: “It is often easier to prevent a wrongful removal of your child than to seek his or her whereabouts and/or return once the child has been removed” [translation by the Permanent Bureau]. < [www.diplomatie.gouv.fr/francais/FAMILLES/enlevements/prevenir\\_00.html](http://www.diplomatie.gouv.fr/francais/FAMILLES/enlevements/prevenir_00.html) >.

dealing solely with good practice in relation to the implementation or operation of the 1980 Convention. Its objective is to give guidance more generally as to the type of preventive measures that States might consider adopting in order to reduce the incidence of child abduction. The measures highlighted in this Part of the Guide may be of relevance to Contracting and non-Contracting States alike.<sup>9</sup> This Guide does not attempt to impose uniformity on procedure or practice.<sup>10</sup>

The role played by different governmental or non-governmental agencies and authorities in relation to child abduction also varies considerably from one State to another. Therefore the Guide focuses on the types of preventive measures that may be implemented, rather than on the agencies or authorities which operate such measures. Although measures are diverse and will be implemented differently from State to State, the purpose of this Guide is to list procedures and practices which States might wish to consider implementing.<sup>11</sup>



Nothing in this Guide may be construed as binding on States Parties to the 1980 Convention. However, all States Parties, and in particular Central Authorities designated under the Convention, are encouraged to review their own practices, and where appropriate and feasible, to improve them. For both established and developing Central Authorities, the implementation of the Convention should be seen as a continuing, progressive or incremental process of improvement.<sup>12</sup>



Preparation for this Part III of the Guide to Good Practice commenced with the drafting of a Background Document and a Questionnaire, which were circulated to all Contracting States in February 2003.<sup>13</sup> This Guide builds on the Background Document and draws on responses received to the Questionnaire. Additionally, information has been gathered from a series of meetings with experts in this field and through further consultation with Central Authorities. In almost every case examples are drawn from existing practices.



<sup>9</sup> Indeed, many States not yet Party to the 1980 Convention are Party to the *United Nations Convention of 20 November 1989 on the Rights of the Child* which by Article 35 requires States Parties to “take all appropriate national, bilateral and multilateral measures to prevent abduction of, the sale of or traffic in children for any purpose or in any form”.

<sup>10</sup> Conversely, the introduction to the Guide to Good Practice – Central Authority Practice states that: “The Guide should ... help to resolve differences and unify practice among Central Authorities”.

<sup>11</sup> In Italy’s response to the Questionnaire [*infra* at note 13] it is stated that: “It would be interesting to receive detailed information relating to the activities of other States with regard to preventive measures, in order to evaluate the possibility of introducing equivalent measures also in [Italy]” [translation by the Permanent Bureau]. Additionally, in Panama’s response to the Questionnaire it stated that: “All the countries should unite, in order to draw a document of general consensus, whereby measures are given to prevent the international abduction. If this document is drawn, it should present the practical experiences of different countries, so that other countries may utilize them in their own legislations”.

<sup>12</sup> See Conclusions and Recommendations of the Fourth Special Commission, *supra* note 4, at para. 2.1.

<sup>13</sup> The background document and responses to the Questionnaire are available on the website of the Hague Conference < [www.hcch.net](http://www.hcch.net) > → Child Abduction Homepage → The Hague Project on Preventive Measures. At the time of writing, 20 States and 2 non-governmental organisations have responded to the Questionnaire.

The Permanent Bureau would like to thank the many Central Authorities and the experts including experts from non-governmental organisations, whose accumulated wisdom and experience has contributed to the Guide.<sup>14</sup> Particular thanks are due to Sarah Armstrong, Legal Officer with the Permanent Bureau, who carried out the principal work on this Part of the Guide and to Jonathan Tomkin, former Legal Officer.



**Certain preventive measures referred to in this Guide will be more appropriate to particular circumstances, legal systems or geographical areas. Accordingly, it is important to emphasise that it will not necessarily be possible, or even desirable, to implement all preventive measures referred to in this Guide in all States, or to apply all measures in all circumstances.**

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<sup>14</sup> In particular the Permanent Bureau wishes to extend its thanks to Ms Michelle Bernier-Toth (State Department, United States), Ms Béatrice Biondi (Central Authority, France), Ms Linda Brown (State Department, United States), Ms Odette Brun (CSMEE, France), Ms Denise Carter (Reunite, United Kingdom), Ms Lesia Caseley (National Ports Office, United Kingdom), Ms Véronique Chauveau (Lawyer, France), Ms Maria Seoane de Chiodi (Central Authority, Argentina), Mr Vincent Faber (International Social Service), Ms Joyce Friedman (Central Authority, Israel), Mr Ignacio Goicoechea (Central Authority, Argentina), Judge Pilar Gonzalvez (Judge, Spain), Ms Nancy Hammer (NCMEC, United States), Mr Paul Hatton (National Ports Office, United Kingdom), Ms Barbara Hechter (Central Authority, South Africa), Ms Anne-Marie Hutchinson (Lawyer, United Kingdom), Mr Stéphane Javet (Central Authority, France), Mr Hugh Kelly (Police, United Kingdom), Professor Nigel Lowe (Academic, United Kingdom), Ms Reeva Parker (Central Authority, Canada), Ms Sarah Parsons (Foreign and Commonwealth Office, United Kingdom), Ms Els Prins (*Stichting Ombudsman*, Netherlands), Ms France Rémillard (Central Authority, Canada), Ms Kathy Ruckman (State Department, United States), Ms Rosa Saladino (Central Authority, Australia), Ms Pam Southey (Ministry of Justice, New Zealand), Ms Carolin Speich (Central Authority, Germany), Mr François Thomas (Central Authority, France), Lord Justice Mathew Thorpe (Judge, Court of Appeals of England and Wales), Mr David Urwyler (Central Authority, Switzerland), Ms Edith van Dieren (*Stichting Ombudsman*, Netherlands), Ms Christel van Goethem (Child Focus, Belgium), Ms Cathy Wong (Central Authority, China – (Hong Kong Special Administrative Region) (hereinafter, “China (Hong Kong SAR)”), Professor Siegfried Willutzki (Judge, Germany), and Christelle Gavard, Caroline Harnois and Rita Villanueva (Permanent Bureau).



# EXECUTIVE SUMMARY

## **1. SUMMARY: PROACTIVE MEASURES – CREATING A LEGAL ENVIRONMENT WHICH REDUCES THE RISK OF ABDUCTION**

- States should promote a legal environment which reduces the risk of abduction.

### **1.1 INTERNATIONAL INSTRUMENTS**

- Where international instruments concerning child abduction have been implemented successfully, are operating effectively and are well publicised, they may deter abductions.

#### ***1.1.1 The 1980 Convention***

##### ***1.1.1.1 Implementation***

- Contracting States should encourage other States, where appropriate, to ratify or accede to the 1980 Convention.
- Contracting States should consider the advantages of accepting the accessions of other Contracting States and give prompt attention to this matter when new accessions occur.
- Promoting the use of the Questionnaire for newly acceding States helps to ensure the continuing growth of the Convention without weakening its operation.
- Newly acceding States are encouraged to have their responses to this Questionnaire posted on the Hague Conference website to be of use to other States.
- Contracting States should promote the use of the Guide to Good Practice.
- Implementation of the Convention should be seen as a continuing process of development and improvement.

##### ***1.1.1.2 Central Authorities***

- Central Authorities should be provided with the human and material resources necessary for the effective implementation, monitoring and review of appropriate preventive measures.

#### ***1.1.2 Other global and regional instruments***

- Consideration should be given to the promotion of other global and regional instruments addressing international child abduction, in particular, the *Hague*

*Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (the 1996 Convention).*

### **1.1.3 Bilateral arrangements**

- States considering entering into bilateral arrangements with non-Contracting States concerning child abduction might seek advice and assistance from States with experience in this field. Further information may also be obtained from the Permanent Bureau.
- The added advantages of operating within a multilateral framework should not be ignored.

## **1.2 DOMESTIC LAW AND PROCEDURE**

- Certain provisions in domestic law prohibiting or placing conditions upon removing a child from a jurisdiction can help to prevent abduction.

### **1.2.1 Travel documentation**

The following measures may be considered:

- Requiring children to have separate travel documentation.
- Requiring the consent of both parents before issuing travel documentation for children.
- Taking into account the potential for international child abduction in rules relating to the issuing of visas for children.
- Taking into account orders or agreements seeking to prevent abduction in the context of visa applications for a child.

### **1.2.2 Consent to travel**

The following measures may be considered:

- Requiring proof that consent has been given, where necessary, prior to permitting a child to leave a jurisdiction.
- Adopting a standardised consent form to aid certainty and consistency.

### **1.2.3 Border controls and open borders**

The following measures may be considered:

- Applying border controls to check travel documentation.
- Adopting rules enabling authorities to stop or to question a traveller, in appropriate circumstances, even where there are open borders or less stringent controls.
- Using modern technologies to ensure tighter controls at international borders.

#### **1.2.4 Commercial air and sea carriers**

The following measure may be considered:

- Requesting commercial air and sea carriers to be alert to the problem of child abduction, and inviting their co-operation and active participation in the implementation of appropriate preventive measures.

### **1.3 CRIMINAL LAW**

- Provisions in domestic law criminalising the removal or attempted removal of a child from a jurisdiction may deter abduction.

## **2. SUMMARY: PROACTIVE MEASURES – WHERE THERE IS A PERCEIVED HEIGHTENED RISK OF ABDUCTION**

### **2.1 FAMILY BREAKDOWN**

#### **2.1.1 *Voluntary agreements and mediation***

- Promoting voluntary agreements, and facilitating mediation in relation to issues of custody or contact/access may help to prevent subsequent abduction.
- The advantages of providing specialist mediation for couples in cross-cultural relationships may be considered.

#### **2.1.2 *Legislative provisions and court orders***

- Domestic law regulating divorce, custody and contact/access may include provisions seeking to prevent or discourage abduction.
- States should ensure that preventive measures in domestic law are placed on a firm legislative footing.

### **2.2 RELOCATION**

- A highly restrictive approach to relocation issues may have an adverse effect on the operation of the 1980 Convention and may encourage abduction.

#### **2.2.1 *Safeguarding the rights of the contact parent during relocation***

- As a general principle, legal provisions and decisions relating to issues of transfrontier contact/access should take account of the risk of international child abduction.
- Legal safeguards helping to guarantee the effective exercise of transfrontier contact/access, may help to prevent abduction.
- Consideration should be given to the benefits of becoming a Party to multilateral instruments seeking to regulate transfrontier contact/access issues, particularly the 1996 Hague Convention.

#### **2.2.2 *Safeguarding the rights of the custodial parent when a child is involved in contact/access visits abroad***

- Legal provisions relating to transfrontier contact/access should include safeguards designed to reduce the risk of wrongful retention of a child during contact/access visits abroad.

## **2.3 RECOGNITION AND ENFORCEMENT OF ORDERS ABROAD**

- **Provisions for the mutual recognition (including advance recognition) and enforcement of orders relating to custody or contact/access constitute an important part of a legal environment which deters abduction.**

### **3. SUMMARY: REACTIVE MEASURES – RESPONDING TO A CREDIBLE RISK OF ABDUCTION**

- Domestic legal provisions and administrative practices should enable State authorities to respond rapidly and effectively where there is a credible risk of abduction.

#### **3.1 BARRIERS TO INTERNATIONAL TRAVEL**

- Effective barriers to international travel should be capable of being implemented without delay.

##### **3.1.1 Travel documentation**

###### **3.1.1.1 Issuing passports and identity cards**

The following measures may be of assistance in responding to a credible risk of abduction:

- Implementing a passport alert system to notify a named person if a passport application is made for a child.
- Refusing to issue a passport to a named child, or refusing to inscribe a child into the passport of a parent, where there is a credible risk of abduction.
- Ensuring orders preventing removal from a jurisdiction are immediately transmitted to Passport Authorities requesting them not to issue a passport to a child.
- Empowering Passport Authorities to inscribe warnings or conditions in passports issued to children.

###### **3.1.1.2 Issuing visas**

- Applications for visas for parents and children should be capable of being considered separately.
- Parents seeking to prevent a visa being issued to a child should be made aware that obtaining a visa for a child to enter one State might allow entry into other States in a region.

###### **3.1.1.3 Withdrawing and revoking passports and identity cards**

- Consideration should be given to implementing a procedure for the withdrawal or revocation of a child's passport where there is a credible risk of abduction.

- Consideration should be given to implementing a procedure for the withdrawal or revocation, in appropriate circumstances, of an adult's passport for the purpose of removing an inscription relating to a child.
- A system allowing for, or requiring, the lodging of a passport belonging to a child and/or to a parent with an appropriate authority for the duration of a contact/access visit can constitute an effective safeguard against abduction.

#### 3.1.1.4 *Children with more than one nationality*

- Promoting co-operation between Consular Offices in relation to issuing, withdrawing and/or revoking passports and visas for children with more than one nationality is a useful preventive measure.

### 3.1.2 **Border control**

#### 3.1.2.1 *Stop orders*

- A stop order is a valuable legal mechanism to prevent a child from leaving a jurisdiction. It is beneficial if a stop order can be obtained expeditiously, including where necessary *ex parte* and out-of-hours.
- Stop orders should be clearly and accurately phrased, taking into account the possibility that a child or adult with more than one nationality may be travelling on a passport of another State.
- Stop orders should be expeditiously transmitted to relevant authorities.

#### 3.1.2.2 *Port alert/watch systems*

- Operating a port alert/watch system is a valuable mechanism to prevent a child from leaving a jurisdiction.
- The information required to activate these systems should be transmitted to the relevant ports without delay.
- Promoting co-operation at border controls facilitates the sharing of information and data necessary to operate a port alert/watch system.

#### 3.1.2.3 *Checks at international borders*

- Using modern technologies at international borders can be a highly efficient way to prevent a known person from leaving, or entering a State.
- Staff operating border controls should be given sufficient legal powers, supported by the necessary technological resources, to enable them to carry out their designated functions.



## 3.2 LEGISLATIVE PROVISIONS AND COURT ORDERS

- Either parent fearing abduction should have effective access to preventive legal remedies, including, where appropriate, the ability to seek an order clarifying a parent's legal status vis-à-vis the child.

### 3.2.1 *Measures which may make abduction more difficult to carry out*

- Domestic legal provisions may make abduction more difficult to carry out, such as restricting or placing conditions on international travel.
- Additional powers may include the imposition of restrictions or limitations on contact/access arrangements or the granting of an interim custody order.
- Where there are court proceedings relating to a child, it may be beneficial to institute provisional measures seeking to prevent abduction.

### 3.2.2 *Measures which may serve as a disincentive to abduction*

- Domestic legal provisions might provide a disincentive to abduction, such as, requiring a monetary guarantee against removal or specifying the punitive measures that would be imposed if abduction occurs.

### 3.2.3 *Measures which grant powers to authorities and agencies*

- Police officers and other relevant bodies and agencies should be given sufficient powers to enable them to provide appropriate assistance to prevent abductions.
- Authorities should be aware that in some, but not all States, a criminal allegation is required to empower police officers and other relevant bodies and agencies to act to prevent removal from a jurisdiction.

## 3.3 ACCESS TO THE COURTS

- Effective access to the courts is essential to enable either parent to obtain, modify or have recognised and enforced any necessary preventive order.
- Effective access to the courts includes, where appropriate, access to legal aid, translation of documents and interpretation.
- In emergency situations access to courts should be available expeditiously and, if necessary, out-of-hours.
- In emergency situations it may be advantageous to allow orders to be obtained *ex parte*.
- Relevant court orders should be acted upon and enforced without delay.

## **4. SUMMARY: PROVISION AND DISSEMINATION OF INFORMATION**

- Provision and dissemination of relevant information is in itself an important preventive measure.

### **4.1 INFORMATION ON PROACTIVE MEASURES**

#### **4.1.1 *Raising awareness as to the dynamics and serious consequences of international child abduction***

- General information should be provided to the public that unilateral removal of a child is usually wrongful.
- General information should be provided to the public highlighting the harmful effects of abduction on a child and the importance for the child of maintaining, as far as possible, meaningful relationships with both parents.

#### **4.1.2 *Raising awareness of preventive measures***

- Awareness of the risk of child abduction is a factor upon which the effectiveness of many other preventive measures depends. Members of the public should be provided with information highlighting the most effective means of preventing abduction.
- Contracting States are encouraged to promote awareness of the operation of the 1980 Convention.
- Parents who are separating, divorcing or discussing custody or contact/access issues, may benefit from information on the existence of preventive measures and authorities and agencies able to offer assistance.

#### **4.1.3 *Raising awareness of protective measures***

- Information should be provided on protective services available for parents and children in the State of habitual residence.

### **4.2 INFORMATION ON REACTIVE MEASURES**

- Information should be provided on preventive measures which can be put in place to respond to a credible risk of abduction.
- Parents should have ready access to information regarding preventive measures, in particular, concerning the legal processes and administrative procedures that should be followed to activate certain preventive measures.

#### **4.2.1 A Prevention Document**

- States may consider creating and disseminating a comprehensive Prevention Document for parents detailing preventive measures and providing contact information for agencies and authorities able to assist with particular measures.
- This document should highlight emergency procedures and practical steps which can be taken by a parent who fears an abduction, and should be available in relevant languages.

#### **4.2.2 Specific information**

- Agencies and authorities operating specific preventive measures should provide information as to the operation of these measures in the relevant State.

### **4.3 DISSEMINATION**

- General information on preventive measures operating in a State should be disseminated broadly.

#### **4.3.1 The media**

- The media provide the means of disseminating general information on abduction to a large number of people.
- Where the media are seeking information in relation to a specific case, authorities may direct attention to preventive measures and the aims of the 1980 Convention.

#### **4.3.2 The Internet**

- The Internet is an important medium for disseminating information on preventive measures as it is accessible across international borders and time zones.
- To increase accessibility, information should be provided and disseminated in different languages.
- Websites providing information on preventing abductions might contain links to other websites operating in the State or in other States which offer relevant advice and information, including a link to the website of the Hague Conference.
- Information provided by way of the Internet should be monitored and kept up-to-date.
- A State's Prevention Document should be available on the Internet.

### **4.3.3 Printed information**

- To ensure broad dissemination, information should be provided in printed form as well as through the Internet.
- Printed information should be readily available in relevant public places.
- Printed information should be kept up-to-date, if necessary by the addition of inserts.
- A State's Prevention Document should be available in printed form.

### **4.3.4 Presentation of information**

- Information on preventing abduction should be presented clearly and concisely so as to be easily understood by distressed parents.
- Information on emergency procedures should be highlighted and separated from other more general information in order to be easily accessible.

### **4.3.5 Publicity campaigns**

- Consideration should be given to initiating a poster or other publicity campaign to disseminate information about international child abduction.

### **4.3.6 A central point for information**

- There should be a central point for the provision and dissemination of information within the State in relation to preventing child abduction. This might be the Central Authority or another body.
- Agencies and authorities able to provide information and advice on preventive measures should be easily contactable. Particular attention should be paid to the provision of contact details, in particular, where appropriate, modern rapid means of communication.
- Agencies and authorities operating telephone hotlines should ensure personnel are well trained to provide appropriate information to the caller.

## **5. SUMMARY: TRAINING AND CO-OPERATION**

- Appropriate training of professionals is a key factor in any scheme of prevention.
- Preventing abduction requires co-operation between different agencies and authorities within a jurisdiction and in different jurisdictions.

### **5.1 THE 1980 CONVENTION**

#### **5.1.1 *Review meetings***

- Contracting States are encouraged to continue to participate fully in Special Commission meetings to review the operation of the 1980 Convention, including participation in consultation particularly in the form of questionnaires.
- Attendance at Special Commission meetings is beneficial for developing relationships with colleagues from other States, which can increase co-operation.

#### **5.1.2 *Post-Convention services***

- Attention should be drawn to the post-Convention services provided and facilitated by the Permanent Bureau of the Hague Conference to educate and train professionals operating the 1980 Convention, including preventive measures.

#### **5.1.3 *Central Authorities***

- Central Authorities operating the 1980 Convention are required to co-operate with each other and to promote co-operation amongst competent authorities in their own States.
- Central Authorities should be given sufficient powers, qualified personnel, and adequate material resources to enable them to draw up strategies for implementing preventive measures and to review their operation.
- Central Authorities are urged to compile a procedural manual for use in training new staff and as a reference for existing staff. This manual should contain a section on implementing and operating preventive measures.
- Central Authorities should actively encourage co-operation between professionals working to prevent child abduction, in order to ensure a coherent and coordinated prevention strategy.

## **5.2 TRAINING TO ACT PROACTIVELY**

- Training for legal practitioners involved with divorce, custody or contact/access issues should highlight the importance of considering proactive preventive measures to deter or discourage abduction.
- Training of the relevant professionals should include raising awareness of the serious consequences of international child abduction.

## **5.3 TRAINING TO IMPLEMENT AND OPERATE REACTIVE MEASURES**

- Training should emphasise the need for expeditious action in order to prevent abduction.
- Training should emphasise the need to understand the complementary roles of the different agencies and professionals.
- Professionals should, as appropriate, be trained to be able to spot an imminent abduction and implement appropriate preventive measures.

## **5.4 IN-HOUSE TRAINING**

- Agencies and authorities with responsibility for operating preventive measures should ensure that training in how to operate these measures is included in the general training curriculum.
- Agencies and authorities should ensure that procedural manuals are available to staff as a reference for how to operate preventive measures. Information relating to emergency measures should be separated out for easy access.
- Members of a profession who develop a particular expertise in handling child abduction issues should share this expertise with other colleagues and ensure that colleagues are kept up-to-date with relevant issues.

## **5.5 INTERAGENCY TRAINING**

- Agencies and authorities working within a State should co-operate and undertake interagency training in order to be aware of the roles of other authorities.
- The establishment of interagency groups can be beneficial for sharing knowledge across different agencies and to act as a forum for discussion and action to improve the implementation and operation of preventive measures.

## **5.6 TRAINING AT THE INTERNATIONAL LEVEL**

- Cross border training and co-operation enhance prevention.

- **Training at the international or regional level should draw upon the expertise of relevant international or regional organisations, such as, inter alia, non-governmental organisations, the International Social Service (ISS) and Interpol.**
- **Professionals working to prevent child abduction should establish and develop networks with their counterparts in other jurisdictions.**





# THE GUIDE

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#### **5. TRAINING AND CO-OPERATION**

- 5.1 THE 1980 CONVENTION
  - 5.1.1 Review meetings
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- 5.2 TRAINING TO ACT PROACTIVELY
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- 5.4 IN-HOUSE TRAINING
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- 5.6 TRAINING AT THE INTERNATIONAL LEVEL

#### **APPENDIX – DEVELOPING A PREVENTION STRATEGY**

## 1. PROACTIVE MEASURES – CREATING A LEGAL ENVIRONMENT WHICH REDUCES THE RISK OF ABDUCTION

- States should promote a legal environment which reduces the risk of abduction.

Some preventive measures are proactive rather than reactive, in that they operate to preempt any decision to abduct, rather than respond to an abduction or threat of abduction that has already occurred. Such measures include, for example, the implementation of laws or administrative procedures that regulate the cross-border movement of children, and the issuing and use of travel documentation. The mere existence of rules and regulations in these and other areas may act as a deterrent to abduction.

Many proactive preventive measures are generally applicable which is particularly important as the dynamics of international child abduction vary and it is not always possible to predict when abduction may occur.<sup>15</sup> Abductors may be, *inter alia*, fathers or mothers, primary carers or non-custodial parents, nationals of the State of destination or with seemingly no connection to that State.<sup>16</sup> Equally, parents may be married and cohabiting immediately prior to abduction, or they may be in the process of separating or divorcing, or have been separated or divorced for some time. Generally applicable measures are vital in preventing abduction in cases where there was no prior warning and therefore no opportunity to implement other more specific preventive measures.

### 1.1 INTERNATIONAL INSTRUMENTS

- Where international instruments concerning child abduction have been implemented successfully, are operating effectively and are well publicised, they may deter abductions.

Many international instruments recognise the importance of preventing international child abduction, and seek to provide a remedy when abduction occurs. Where these instruments have been implemented successfully, are operating effectively and are well publicised, they may deter a parent from abducting a child.

#### 1.1.1 The 1980 Convention

##### 1.1.1.1 Implementation

- Contracting States should encourage other States, where appropriate, to ratify or accede to the 1980 Convention.
- Contracting States should consider the advantages of accepting the accessions of other Contracting States and give prompt attention to this matter when new accessions occur.

<sup>15</sup> According to Germany's response to the Questionnaire, "[t]he dilemma that makes prevention so difficult is the range of motives and situations in life from which abduction can stem".

<sup>16</sup> See "A Statistical Analysis of Applications made in 1999 under the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* drawn up by Nigel Lowe, Sarah Armstrong and Anest Mathias, Revised Version, November 2001, previously circulated as Preliminary Document No 3, available at < www.hcch.net > → Child Abduction Homepage → Statistics (Hereinafter, "1999 Statistical Survey"). According to this research 69% of abductors were female and 52% were nationals of the State to which they took the child.

- Promoting the use of the Questionnaire for newly acceding States helps to ensure the continuing growth of the Convention without weakening its operation.
- Newly acceding States are encouraged to have their responses to this Questionnaire posted on the Hague Conference website to be of use to other States.
- Contracting States should promote the use of the Guide to Good Practice.
- Implementation of the Convention should be seen as a continuing process of development and improvement.

The key international instrument seeking to prevent international child abduction is the 1980 Convention. The desire to prevent abduction lies at the heart of this Convention. Indeed seeking to “counter the increase in abductions” is stated to be the underlying basis upon which the Convention was founded.<sup>17</sup> It is clear from the Explanatory Report<sup>18</sup> that it was not envisaged that the Convention would be a purely reactive instrument, providing a remedy where abduction had occurred, but also, and perhaps predominantly, the existence of the Convention was intended to prevent abduction. Certainly, responses to the Questionnaire indicate that the existence of the Convention itself is a good preventive measure.<sup>19</sup>

The Convention establishes procedures to ensure that, in the event of wrongful removal or retention, the child will be returned promptly to enable the authorities of the State where the child is habitually resident to decide issues of custody, contact/access and in some States relocation.<sup>20</sup> The Convention currently operates across all continents and many different legal systems. There are 75 States Parties to the Convention at the time of writing.<sup>21</sup> If the Convention has been successfully implemented,<sup>22</sup> and is operating efficiently it may deter someone from contemplating abduction between two Contracting States.<sup>23</sup> In this regard, the more States which ratify or accede to the Convention the greater the deterrent effect. Therefore, Contracting States should encourage other States to ratify or accede to the Convention.<sup>24</sup>

When a State accedes to the Convention, it is for the existing Contracting States to accept that accession before the Convention will produce effects between the two States. Contracting States should consider the advantages of accepting the accessions of other

<sup>17</sup> E. Pérez-Vera, Explanatory Report in *Actes et documents de la Quatorzième session, Tome III, Enlèvement d'enfants/Child abduction*, at para. 10 p. 428. (Hereinafter, “Pérez-Vera Explanatory Report”). Available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > → Child Abduction Homepage → Explanatory Report.

<sup>18</sup> See *ibid.*

<sup>19</sup> See the response of United Kingdom (Scotland) to the Questionnaire: “The Convention in itself can act as a preventive measure”. Additionally, Finland stated that “[t]he effectiveness of the Convention’s return mechanism is the best preventive measure.” Also Germany has commented that, “the strictest possible implementation of the Hague Convention ... after an abduction has taken place would presumably be successful in achieving deterring effects”.

<sup>20</sup> It is the object and purpose 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*, to establish world wide uniform rules on jurisdiction for these issues. (Hereinafter, “the 1996 Convention”).

<sup>21</sup> For an up-to-date list of Contracting States see < [www.hcch.net](http://www.hcch.net) > → Child Abduction Homepage → Status of the Convention.

<sup>22</sup> See further in Guide to Good Practice - Implementing Measures, *supra* note 6.

<sup>23</sup> United Kingdom (Scotland), in its response to the Questionnaire stated that, “[t]here is anecdotal evidence from solicitors and non-governmental organisations to suggest that increased knowledge of the Hague Convention and the likelihood of the return of a child, acts as prevention in some instances”.

<sup>24</sup> See Conclusions and Recommendations of the Fourth Special Commission, *supra* note 4. In particular it is recommended at para. 7.2 that: “Endeavours should continue to be made to encourage ratifications of, and accessions to, the 1980 Convention by States willing and able to undertake the Convention obligations. Contracting States are encouraged to arrange meetings at a regional level for this purpose.”

Contracting States,<sup>25</sup> and give prompt attention to this matter when new accessions occur. To assist with this process, a Questionnaire for newly acceding States is available via the website of the Hague Conference.<sup>26</sup> This Questionnaire alerts newly acceding States to the need to establish suitable structures to implement and operate the Convention. Contracting States considering accepting the accession might make use of the answers provided. Use of this Questionnaire should be promoted to ensure the continuing growth of the Convention without weakening its operation. Responses received to this Questionnaire are posted onto the website of the Hague Conference to be of use to other States.<sup>27</sup>

All Contracting States, new and old, are also reminded that implementation of the Convention in national legal systems should be seen not so much as an end-product, but as a process that is continuously under development and review. By adopting such an approach one maintains and even enhances the deterrent effect of the Convention. In this regard, reference should be made to the Guide to Good Practice – Implementing Measures.<sup>28</sup> It should also be remembered that the Conclusions and Recommendations of the Fourth Meeting of the Special Commission state that:

“The national and regional legal frameworks, in which the Convention has to operate, are subject to sometimes significant changes. The same applies to technological means, which could potentially facilitate the operation of the Convention. It is therefore suggested that implementation, whether national or regional, should always be seen as a continuing process of development and improvement, even if the text of the Convention itself remains unchanged”.<sup>29</sup>

### 1.1.1.2 Central Authorities

- **Central Authorities should be provided with the human and material resources necessary for the effective implementation, monitoring and review of appropriate preventive measures.**

As a general principle, Central Authorities operating the 1980 Convention ought to have the human and material resources required for the effective development and operation of appropriate preventive measures in order to reduce the instances of abduction. More particularly, Central Authorities should have adequate resources to draw up strategies for implementing preventive measures and to review and evaluate the effect of implementation. In establishing a Central Authority and evaluating an existing authority, reference should be made to the Guide to Good Practice – Central Authority Practice.<sup>30</sup>

### 1.1.2 Other global and regional instruments

- **Consideration should be given to the promotion of other global and regional instruments addressing international child abduction, in particular, the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children* (the 1996 Convention).**

<sup>25</sup> For an overview of the status of the Convention see < [www.hcch.net](http://www.hcch.net) > → Child Abduction Homepage → Status of the Convention.

<sup>26</sup> See < [www.hcch.net](http://www.hcch.net) > → Child Abduction Homepage → Standard Questionnaire for Newly Acceding States.

<sup>27</sup> Discussion at the Special Commission concerning the Convention in September/October 2002 recommended the use of this Questionnaire. The responses of several States, including certain ratifying States, are available on the Hague Conference website for consultation by other States. See < [www.hcch.net](http://www.hcch.net) > → Child Abduction Homepage → Standard Questionnaire for Newly Acceding States.

<sup>28</sup> *Supra* note 6.

<sup>29</sup> *Supra* note 4, at para. 2.1.

<sup>30</sup> *Supra* note 5.

Other global and regional instruments address the issue of the wrongful removal or retention of children. The *United Nations Convention on the Rights of the Child of 1989*, is the most widely accepted multilateral Convention concerning children<sup>31</sup> and encourages States Parties to seek to prevent child abduction.<sup>32</sup> Other instruments place obligations on States Parties, to seek to prevent abduction, and/or to oblige States Parties to provide a remedy in the event of abduction. Global or regional instruments containing relevant provisions include *inter alia*:

- the *European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children of 1980*;<sup>33</sup>
- the *Inter-American Convention on the International Return of Children of 1989*;<sup>34</sup>
- the *Inter-American Convention on International Traffic in Minors of 1994*;<sup>35</sup>
- the *Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children of 1996*.<sup>36</sup>
- the *European Convention on Contact Concerning Children of 2003*;<sup>37</sup> and
- *Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000*.<sup>38</sup>

Certainly, the 1996 Convention is a useful adjunct and complement to the 1980 Convention.<sup>39</sup> Indeed the International Social Service has commented that “[t]he promotion of the ratification of the Hague Convention of 1996 appears essential to us, as its application will contribute to the prevention of child abduction”.

Where these instruments have broad acceptance and are operating effectively, they may deter a parent from abducting a child between States Parties. Equally, where these instruments reinforce principles of the 1980 Convention, they may improve the operation of and thus add to the deterrent effect of this Convention.

### 1.1.3 *Bilateral arrangements*

- **States considering entering into bilateral arrangements with non-Contracting States concerning child abduction might seek advice and assistance from States with experience in this field. Further information may also be obtained from the Permanent Bureau.**

<sup>31</sup> At the time of writing there are 192 States Parties to this Convention.

<sup>32</sup> See particularly, Articles 11 and 35 in relation to child abduction.

<sup>33</sup> This Convention deals with the recognition and enforcement of orders relating to children.

<sup>34</sup> See particularly, Article 1.

<sup>35</sup> See particularly, Articles 3 and 12–22.

<sup>36</sup> See particularly, Articles 7 and 35.

<sup>37</sup> See particularly, Articles 10, 16 and 20. (Hereinafter, “Council of Europe Contact Convention”).

<sup>38</sup> See particularly, Articles 10 and 11.

<sup>39</sup> The Conclusions and Recommendations of the Fourth Special Commission, *supra* note 4 stated at para. 7.1: “The Special Commission recognises the potential advantages of the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children* as an adjunct to the 1980 Convention, and recommends that Contracting States should consider ratification or accession.” On 1 April 2003, this Convention was signed by the then 14 European Union Member States who had not yet signed it, and Australia and Switzerland in a ceremony held at the Peace Palace in The Hague.

- **The added advantages of operating within a multilateral framework should not be ignored.**

Some Contracting States to the 1980 Convention have entered into bilateral arrangements concerning child abduction with non-Contracting States. Some of these bilateral arrangements draw upon multilateral instruments, such as the 1980 Convention, others take the form of consular co-operation agreements or administrative agreement protocols.<sup>40</sup> Some agreements work better than others and States considering entering into such agreements might seek advice and assistance from States experienced in this field. Further information may also be obtained from the Permanent Bureau. While such agreements may deter abduction, States should also bear in mind the advantages of encouraging non-Contracting States to join multilateral instruments wherever possible. The benefits of a multilateral instrument include a greater number of States between which the provisions are applicable, and a broader basis for promoting international co-operation, good practices and compliance. It should be remembered that child abduction may involve more than two States.

## 1.2 DOMESTIC LAW AND PROCEDURE

- **Certain provisions in domestic law prohibiting or placing conditions upon removing a child from a jurisdiction can help to prevent abduction.**

Many States have rules regulating international travel or placing restrictions upon unilateral removal or retention of a child by one parent. Conditions on and barriers to international travel such as: the obligation to present relevant travel documentation in order to leave and/or enter a State; the requirement for parental consent before a child is permitted to leave the jurisdiction; and the existence of controls at international borders are useful measures for preventing abduction. These measures are beneficial as it is better, particularly for the child involved, to seek to prevent the initial removal through domestic law, than to rely subsequently on international law to seek return of a child. Additionally, domestic laws seeking to prevent abduction are particularly necessary where one or both of the States involved are not Parties to relevant international instruments.

### 1.2.1 *Travel documentation*

The following measures may be considered:

- **Requiring children to have separate travel documentation.**
- **Requiring the consent of both parents before issuing travel documentation for children.**
- **Taking into account the potential for international child abduction in rules relating to the issuing of visas for children.**
- **Taking into account orders or agreements seeking to prevent abduction in the context of visa applications for a child.**

<sup>40</sup> For further information, reference should be made to *Child Abduction and Transfrontier Access: Bilateral Conventions and Islamic States – A Research Paper* drawn up by Caroline Gosselain for the Permanent Bureau and circulated as Preliminary Document No 7 at the Special Commission concerning the 1980 Convention held in The Hague in September and October 2002. Available at < [www.hcch.net](http://www.hcch.net) > → Child Abduction Homepage → Special Commission Related Documents. Further information is also available in the Autumn 2004 edition of the Judges' Newsletter, which focuses on the Malta Judicial Conference on Cross Frontier Family Law Issues involving Certain Hague and non-Hague States.



Rules requiring possession of travel documentation, such as a passport, an identity card, and possibly additionally, a visa, may deter abduction if the parent is not in possession of the necessary documentation either for himself or herself and/or for the child.

In response to the Questionnaire it was noted that, “regulations concerning the issuance of a passport to a child are crucial for the prevention of child abductions abroad”.<sup>41</sup> Many States require the consent of both<sup>42</sup> parents having particular rights or responsibilities in respect of a child, before issuing a passport or an identity card to that child.<sup>43</sup> In some States, only a parent with custody of a child may apply for a passport. However, the signatures of both parents are nevertheless required before the passport will be issued.<sup>44</sup> In some States both parents may be required to go in person to seek a passport from the relevant authority in order to evidence their consent.<sup>45</sup> Additionally, the child may be required to be present.<sup>46</sup> It should be emphasised that, depending on the jurisdiction, the requirement for consent to issue travel documentation to a child may be in addition to a separate requirement for parental consent to permit a child to leave a jurisdiction on any given occasion (discussed in the following section).

In some States it is possible to inscribe dependent children into the passport or onto the identity card of a parent. The child is therefore able to travel freely with that parent. It has been suggested that this can facilitate abduction. Therefore, an increasing number of States are introducing legislation which requires children to have their own passports.<sup>47</sup>

In addition to the requirement for a passport or identity card, certain States require nationals of particular States to obtain an entry visa. Sensible rules relating to the acquisition of visas may help to prevent abduction, especially where a child is already in possession of a passport/identity card or is inscribed into the passport/identity card of a parent.<sup>48</sup> A visa may dictate the length of time that a person is entitled to stay within a State and where a parent has an order restricting the amount of time that the child may be out of the habitual residence State, this should be taken into account by those issuing visas. Visa laws and regulations should also provide grounds for refusal of a visa if the child’s travel would constitute a wrongful removal. The consent of both parents may be needed before a visa will be issued.<sup>49</sup> Some States’ Foreign Missions require children to go in person to the Embassy or Consular Office in order to be issued with a visa.<sup>50</sup> Additionally an application for a visa may not be granted if it is apparent that the traveller will not have sufficient funding to return home. Therefore, if a traveller does not intend his or her stay to be temporary, a visa will be denied.<sup>51</sup> In another State, to ensure that the stay is temporary, evidence of a return ticket is

<sup>41</sup> See the response of Poland to the Questionnaire. Additionally, Canada in response to the Questionnaire stated that: “The safest way to prevent abductions is therefore to control the issuance of passports”.

<sup>42</sup> According to the response of United Kingdom (Scotland) to the Questionnaire, unless an objection has been lodged, the United Kingdom Passport Authority will normally issue a passport on the basis of the consent of either parent.

<sup>43</sup> See the responses of Argentina, Canada, Croatia, Denmark, Finland, Iceland, Malta, Panama, Poland and Sweden to the Questionnaire. See Article 264 (4<sup>o</sup>) of the Argentine Civil Code. In the United States, a law of 2 July 2001, Public Law 106-113, Section 236, requires the consent of both parents before issuing a passport to a child under the age of 14.

<sup>44</sup> See the response of Canada (Quebec) to the Questionnaire. However, in other States a parent with sole custody of a child may unilaterally arrange for that child to be issued with a passport or identity card. See also the responses of Austria and Denmark to the Questionnaire.

<sup>45</sup> The child of divorced parents in Israel may only receive a passport if the parents both go to the Passport Authority and sign their consent, see the response of Israel to the Questionnaire. In Malta’s response to the Questionnaire, they stated that both parents must show their consent by signing the application form in the presence of the “Recommender”.

<sup>46</sup> See the response of Sweden to the Questionnaire.

<sup>47</sup> With regard to the United Kingdom, since 5 October 1998 it has not been possible to inscribe a child into the passport of an adult. Similarly in Canada, this has not been possible since December 2001. All applications for passports for children after these dates can only be for a separate passport. In Croatia and New Zealand, children are also issued with a separate passport.

<sup>48</sup> For information on how this system operates in the United States, see < [www.usembassy.org.uk/cons\\_new/visa/index.html](http://www.usembassy.org.uk/cons_new/visa/index.html) >.

<sup>49</sup> See the responses of Finland and Iceland to the Questionnaire. In Iceland both legal guardians must apply jointly for a visa for a child and as a condition of granting a visa, at least one parent must be travelling with the child.

<sup>50</sup> See the response of Finland to the Questionnaire.

<sup>51</sup> See the response of Sweden to the Questionnaire, citing: < [www.migrationsverket.se/english.jsp](http://www.migrationsverket.se/english.jsp) >.

necessary before a visa will be issued.<sup>52</sup>

### 1.2.2 Consent to travel

The following measures may be considered:

- Requiring proof that consent has been given, where necessary, prior to permitting a child to leave a jurisdiction.
- Adopting a standardised consent form to aid certainty and consistency.

It has been suggested that the introduction of a generally applicable requirement to obtain the consent of both parents before allowing a child to leave a State would greatly assist in preventing abduction.<sup>53</sup> Already, in certain States, albeit a minority, such a requirement exists, and a child may only leave a jurisdiction with parental consent (regardless of whether or not the child is in possession of valid travel documentation).<sup>54</sup> Such consent must be obtained for each and every journey abroad. In a majority of States, however, the requirement for parental consent is confined to the *issuing of travel documentation*, rather than to the right to travel abroad *per se*. In such States, it is assumed that parental consent to the issuing of travel documentation includes consent to the subsequent utilisation of such documentation. Care should be taken to ensure that consent is freely given and has not been fraudulently obtained.

Amongst the States that require parental consent before a child may leave the jurisdiction, the rules governing such consent vary. For example, it may be that the consent of *both parents* (irrespective of whether or not they are married, separated or divorced and whether or not one has sole custody) is required before a child may lawfully leave the jurisdiction.<sup>55</sup> In other States, only a parent (or parents) with custody rights will need to consent to a child leaving the jurisdiction, usually by written authorisation, which must in some circumstances be notarised.<sup>56</sup>

There may be benefit in agreeing a single standardised consent form (in several languages) which would assist those operating border controls so that they would be able to ascertain swiftly if the authorisation to travel has been granted (and in particular that any necessary evidentiary requirements in respect of such authorisation have been satisfied). Moreover, a standardised form of consent would make the consent procedure less burdensome for travellers. At present, if a child who is not accompanied by both parents journeys across more than one State, it is conceivable that a different form of consent could be required in each jurisdiction traversed. A standardised consent form would ensure certainty and consistency.

In this regard the Permanent Bureau is working in consultation with States and relevant authorities, on the possibility of developing a recommended or standardised form that could be used in these situations. This form would need to be approved by a Special Commission meeting and could subsequently be available via the Hague Conference website.

### 1.2.3 Border controls and open borders

The following measures may be considered:

<sup>52</sup> See the response of Malta to the Questionnaire.

<sup>53</sup> See the response of Canada to the Questionnaire.

<sup>54</sup> See Article 264 (4<sup>o</sup>) of the Argentine Civil Code and Article 28, paragraph 8 of the Children's Act no 76/2003 in Iceland, in relation to parents who have joint custody.

<sup>55</sup> See Article 264 (4<sup>o</sup>) of the Argentine Civil Code.

<sup>56</sup> See the responses of Canada, Iceland and Estonia to the Questionnaire.

- **Applying border controls to check travel documentation.**
- **Adopting rules enabling authorities to stop or to question a traveller, in appropriate circumstances, even where there are open borders or less stringent controls.**
- **Using modern technologies to ensure tighter controls at international borders.**

The requirement to obtain travel documentation and/or consent has a limited effect where these papers are not subsequently checked at international borders. Indeed, one questionnaire respondent stated the opinion that, checking of documentation at borders is the most effective preventive measure.<sup>57</sup> Another questionnaire respondent, highlighting the importance of border controls, noted that, “[p]rovisions and measures ... may become ineffective when border controls in the country are not duly carried out”.<sup>58</sup> The type of border controls may vary depending upon the method of transportation and possibly the nationality of the traveller, or the State of destination.

There are several States between which it is possible for anyone to travel with little or no documentation or border control. Indeed, in certain areas, such as within the States Parties to the *Convention Implementing the Schengen Agreement*,<sup>59</sup> free movement across international borders is actively encouraged. The deterrent effect of having some barriers to international travel should not be underestimated.<sup>60</sup> In this respect, a questionnaire respondent from a State Party to the Schengen Convention stated that, “[t]aking into account the ... areas of free movement without border controls it is, in practice, difficult to prevent a removal ... if the itinerary and date of departure is unknown”.<sup>61</sup> States Parties to the Schengen Convention, all of which are also Contracting States to the 1980 Convention, have recognised the importance of some border controls in certain situations and there is an information system<sup>62</sup> in place to facilitate the exchange of data,<sup>63</sup> though this has not been extended explicitly to assist in the prevention of child abduction.<sup>64</sup> It is possible for any State within the *Schengen* area to initiate temporary border controls in relation to the other States. The ability to initiate temporary barriers, where appropriate, may play a part in preventing abduction between States operating open borders. Knowledge of the existence of these measures may also deter abduction.

In some circumstances the nationality of the traveller additionally affects the level of controls at international borders. For example, there are less stringent controls for citizens of European Community States travelling within the European Community; or citizens of the

<sup>57</sup> See the response of Canada (Quebec): “The most effective means of prevention is, of course, controlling travel documents”.

<sup>58</sup> See the response of Argentina to the Questionnaire.

<sup>59</sup> In 1985, Belgium, France, Germany, Luxembourg and the Netherlands decided to create a territory without internal borders. The agreement was reached at a town called Schengen in Luxembourg, and the area created became known as the “Schengen area”. Today 15 States are included in the “Schengen area”, Austria, Belgium, Denmark, France, Finland, Germany, Greece, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain and Sweden. Additionally, Switzerland will join the Schengen area in 2007.

<sup>60</sup> See the Report of the Third Special Commission meeting to review the operation of the *Hague Convention on the Civil Aspects of International Child Abduction* (17 - 21 March 1997) drawn up by the Permanent Bureau. (Hereinafter the “Report of the Third Special Commission”), which states at para 25, “The elimination of border controls within ‘Schengenland’ will greatly facilitate child abduction within that area”.

<sup>61</sup> See the response of Finland to the Questionnaire.

<sup>62</sup> The Schengen Information System (SIS).

<sup>63</sup> In response to the Questionnaire, Germany has stated that, a preventive alert in respect of a “possible” child abduction is not possible within the area covered under the Schengen Agreement. An alert in the Schengen Information System (SIS) does not come into question unless a record of offences exists, *i.e.* the offence was already committed.

<sup>64</sup> The European Union has been discussing the second generation of the SIS (SIS II). The Council concluded in June 2004 that SIS II shall comprise *inter alia* “the technical possibility to include a new category of alert on minors to be precluded from leaving the Schengen area – the appropriate legal and functional requirements in this area are to be examined in detail”. There are several issues which have been put to a Working Group but with so far no conclusive answer. Attention is also drawn to the fact that non-European Union States participate in the SIS.

States Parties to the Nordic Passport Agreement,<sup>65</sup> travelling within that area. However, even where controls are less strict for particular nationals or travel is between States with an open border, travel documentation may still be required in certain circumstances. Although documentation may only be subject to checks on an *ad hoc* basis, the requirement to have such documents may constitute a deterrent to abduction. Equally, even where travel documentation is not required travellers may still have to pass through border controls.<sup>66</sup> This means that where a child is travelling with a single parent, the border guards could question that parent or check that the other parent had given any necessary consent.<sup>67</sup>

In addition to traditional border controls, some States are using more sophisticated technology to seek to regulate international travel. Some States use electronic passport readers which scan the passports of all passengers entering or departing the jurisdiction.<sup>68</sup> Such controls are often more effective than manual checks. Information relating to the traveller, such as custody or contact/access arrangements or the need for parental consent before travel, can be held electronically within the passport. Passport readers can then pick up this information when scanned. In one State a system of passport scanning for people leaving by way of particular ports is being piloted.<sup>69</sup> The use of such technologies at border controls can deter abduction. In one State travellers who do not need visas are required to possess a machine-readable passport in order to enter the State. It is anticipated that by late 2005 biometric passports will be necessary to enter this State, unless the passport was issued prior to this rule coming into force.<sup>70</sup> This measure may greatly reduce the ability to abduct a child into this State, provided border guards are alerted to the possible abduction.

### 1.2.4 Commercial air and sea carriers

The following measure may be considered:

- **Requesting commercial air and sea carriers to be alert to the problem of child abduction, and inviting their co-operation and active participation in the implementation of appropriate preventive measures.**

Travel by air or sea involving commercial carriers is frequently subject to stricter controls than travel over land.<sup>71</sup> There may be no requirement from the relevant governments to possess travel documentation but airlines and ferry companies may require it nonetheless.<sup>72</sup> This is because, where a passenger is not granted entry into the destination State, it is usually the responsibility of the carrier to return that passenger at its own cost.<sup>73</sup> Knowledge of the need to show relevant travel documentation to board a commercial carrier may act as a deterrent.

Commercial air and sea carriers are generally vigilant in ensuring travellers are in possession of valid travel documentation. However, they are rarely under a specific legal obligation to implement measures designed to prevent or detect child abduction.<sup>74</sup> A questionnaire

<sup>65</sup> The Nordic Countries Agreement of 12 July 1957 is in force between Denmark, Finland, Iceland, Norway and Sweden.

<sup>66</sup> According to Argentina's response to the Questionnaire, passports and visas are not required for travel by Argentine nationals in order to enter bordering States (Chile, Bolivia, Brazil, Paraguay and Uruguay).

<sup>67</sup> See the responses of Argentina, Canada and Slovakia to the Questionnaire.

<sup>68</sup> In Australia this system, Passenger Analysis Clearance and Evaluation (PACE) is highly effective.

<sup>69</sup> Information obtained from meeting with the Home Office, London, March 2003.

<sup>70</sup> For further information, on this system which is operating in the United States, see < [http://www.usembassy.org.uk/cons\\_new/visa/index.html](http://www.usembassy.org.uk/cons_new/visa/index.html) >.

<sup>71</sup> In response to the Questionnaire, Argentina has stated that: "Border controls are highly effective in terms of air carriers and ferries but become less effective in dry/land boundaries."

<sup>72</sup> See the response of United Kingdom (Scotland) to the Questionnaire.

<sup>73</sup> See the response of Child Focus (a non-governmental organisation based in Belgium) to the Questionnaire.

<sup>74</sup> See, for example, the responses of Austria, China (Hong Kong SAR), Croatia, Estonia, Finland, Germany, Iceland, Israel, Italy, Malta, Panama, Poland, Slovakia, and United Kingdom (Scotland) to the Questionnaire. Nevertheless, Finland, in its

respondent noted, that personnel working for air and sea carriers demand proof of consent where a child is not travelling with both parents.<sup>75</sup> Another respondent indicated that, while there is no legal obligation, air and sea carriers are encouraged to verify that a parent travelling alone with his or her child possesses a letter of consent from the other parent. This letter should be signed and dated and authorise the journey being undertaken.<sup>76</sup>

### 1.3 CRIMINAL LAW

- **Provisions in domestic law criminalising the removal or attempted removal of a child from a jurisdiction may deter abduction.**

International parental child abduction is a criminal offence in many States.<sup>77</sup> However, definitions as to what precisely constitutes the offence vary from one State to another. For example, in some jurisdictions only wrongful removal of a child constitutes a criminal offence,<sup>78</sup> while in other jurisdictions wrongful retention can also be a criminal offence.<sup>79</sup> In some States parental child abduction is only an offence if the abducting parent has no parental responsibility or custody rights.<sup>80</sup> In other States, a parent with custody rights may be guilty of child abduction if, by removing a child from the jurisdiction, he or she deprives another parent of his or her contact or access rights.<sup>81</sup> Legislation in certain States creates an offence specifically relating to abduction by parents<sup>82</sup> whereas, in other States, only a more general offence of abduction exists, which in most instances can be applied to parents and third parties alike.<sup>83</sup>

The definition of a child (or more particularly, the age at which a person ceases to be a child for the purposes of a particular child abduction offence) varies from State to State. The responses to the Questionnaire indicate that the relevant age ranges between 14 and 16 years.<sup>84</sup> There are also significant variations between States regarding the criminal penalty imposed for the offence of child abduction. In some States the offence may be punishable by a term of imprisonment of up to 6 months while in other States an abductor may be sentenced to over 10 years.<sup>85</sup> A questionnaire respondent noted that, “stringent penalties

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response to the Questionnaire pointed out that air and sea carriers do co-operate with the police in order to prevent child abduction.

<sup>75</sup> See the response of Argentina to the Questionnaire.

<sup>76</sup> See the response of Canada (Quebec) to the Questionnaire.

<sup>77</sup> Child abduction is a criminal offence in many States, including Argentina, Belgium, Canada, China (Hong Kong SAR), Croatia, Denmark, Finland, France, Germany, Iceland, Israel, Italy, Malta, New Zealand, Panama, Sweden, Switzerland and the United Kingdom – but not in all States. Parental child abduction is not a criminal offence in Australia or Estonia for example.

<sup>78</sup> For example, in the United Kingdom.

<sup>79</sup> According to Polish law wrongful retention is a criminal offence in Poland provided it can be punished in the State where it was committed.

<sup>80</sup> See the response of Austria, Poland and Slovakia to the Questionnaire. However, in Sweden, for example, a parent having joint custody may be guilty of abduction, if he or she abducts the child from the other parent.

<sup>81</sup> See the responses of ICMEC/NCMEC to the Questionnaire and in particular the International Parental Kidnapping Crime Act, 18 USC 1204 (US Federal law).

<sup>82</sup> See the responses of Canada, Finland, United Kingdom (Scotland) and ICMEC/NCMEC to the Questionnaire.

<sup>83</sup> See the response of New Zealand, Slovakia, and Switzerland to the Questionnaire. However, in Portugal, at present authorities are reluctant to consider parental child abduction as a criminal offence within the remit of Article 249 of the Portuguese Penal Code.

<sup>84</sup> Article 282(1) of the Canadian Criminal Code (Federal) makes the abduction of a child under 14 years an offence. In China (Hong Kong SAR), different abduction offences can be applied in respect of a child under 14, an unmarried girl under 16 and a child under 18 years old. In Poland Article 211 of the Criminal Code applies in relation to an abduction of a child under 15 years old. In New Zealand, a young person for the purposes of Section 210 of the Crimes Act, 1961 is defined as a person under 16 years old.

<sup>85</sup> Under Section 5, Chapter 25 of the Finnish Penal Code the abduction of a child under 16 is punishable by fine or imprisonment of up to 6 months. In Israel, the offence of child abduction may be punishable by a maximum term of imprisonment of 7 years. Article 193 gr. of the General Penal Code of Iceland (No. 19/1940) provides that a person who abducts a child from the care of its parent (or legal charge) or aids in such abduction, shall be fined or is subject to imprisonment for up to 16 years or life.

serve to deter potential abductors”.<sup>86</sup> In certain States criminal culpability extends not simply to the abductor, but also to a person who incites the act of abduction or acts as an accomplice.<sup>87</sup>

Apart from a specific offence of child abduction, many States have additional and related offences in their criminal law. In some States, for example, it may be an offence to prevent contact/access between a child and a non-custodial parent<sup>88</sup> or to breach a custody or contact/access order.<sup>89</sup> Other related offences include, attempting to obtain a passport by fraudulent means,<sup>90</sup> trafficking<sup>91</sup> and wrongfully depriving a person of their personal liberty.<sup>92</sup>

It is clear from the Report of the Third Meeting of the Special Commission that “[t]he main purpose of [the criminalisation of parental child abduction] should be to deter such abductions including abductions concerning States which are not Parties to the Convention”.<sup>93</sup> It should be emphasised, that while a criminal allegation may be necessary to implement certain preventive measures or to act as a deterrent to abduction, if an abductor succeeds in leaving the jurisdiction an existing criminal allegation may have an adverse affect on an application under the 1980 Convention. (See below at 3.2.3)

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<sup>86</sup> See the response of Israel to the Questionnaire.

<sup>87</sup> See Article 211 of the Criminal Code of Poland.

<sup>88</sup> See Article 2° of Act 24.270 of the Argentine Penal Code. In Estonia, this is an offence under the civil law. See also the Response of United Kingdom (Scotland) to the Questionnaire.

<sup>89</sup> See s 127 of the Canadian Criminal Code (Federal) and s 50(1) of the Family Maintenance Act of Manitoba. See also the responses of Croatia and Italy to the Questionnaire.

<sup>90</sup> See subsection 57(2) of the Canadian Criminal Code (Federal).

<sup>91</sup> See the response of Germany to the Questionnaire. In particular, Section 181(1) No. 2 and Section 236 of the German Criminal Code.

<sup>92</sup> See, for example, Chapter 25 of the Finnish Penal Code, and Section 239 of the German Criminal Code.

<sup>93</sup> See Report of the Third Special Commission, *supra* note 60, at para. 4

## 2. PROACTIVE MEASURES – WHERE THERE IS A PERCEIVED HEIGHTENED RISK OF ABDUCTION

In addition to preventive measures of general application, it may be necessary to implement further pre-emptive preventive measures in specific circumstances where there is a perceived heightened risk of abduction. Examples of situations of heightened risk include parental separation, or proposed relocation. In introducing measures of a pre-emptive nature it is important to strike a balance between, on the one hand, avoiding the imposition of restrictions and limitations which may encroach upon a person's fundamental rights or constitutional freedoms<sup>94</sup> (and which may ultimately have the unintended and reverse effect of actually inciting abduction), and on the other hand, creating a regulatory framework which prevents abduction and ensures protection for the child's right to maintain contact with both parents.<sup>95</sup>

### 2.1 FAMILY BREAKDOWN

In situations of family breakdown it may be highly desirable to put some proactive preventive measures in place. In this regard, it has been noted that “[t]he application of preventive measures seems to be a necessity, particularly where highly quarrelsome couples are concerned”.<sup>96</sup> Where parents are seeking voluntary agreements or court orders to regulate custody or contact/access decisions, it is often possible to include provisions within such agreements, or ancillary to such orders, which seek to prevent abduction.

Additionally, there may be justification for imposing some further restrictions on a parent's ability to travel unilaterally with a child, as a precautionary measure against wrongful removal or retention.<sup>97</sup> Rules relating to the issuing of passports and the requirement of parental consent to travel are in some States stricter when parents are living apart. (See above at 1.2.1)

#### 2.1.1 Voluntary agreements and mediation

- Promoting voluntary agreements, and facilitating mediation in relation to issues of custody or contact/access may help to prevent subsequent abduction.
- The advantages of providing specialist mediation for couples in cross-cultural relationships may be considered.

Securing a voluntary agreement at a stage when parents are separating or discussing issues of custody or contact/access is a useful preventive measure in itself.<sup>98</sup> One questionnaire

<sup>94</sup> Slovakia, in its response to the Questionnaire suggested that to implement certain pre-emptive measures, legislation would have to be introduced in its domestic law in order to ensure that any restrictions, qualifications or limitations on its citizens' fundamental rights or freedoms would be clearly provided for in law. Otherwise, there might be a danger that the pre-emptive measures will be unconstitutional.

<sup>95</sup> See the *United Nations Convention on the Rights of the Child* at Article 10(2).

<sup>96</sup> See the response of Germany to the Questionnaire.

<sup>97</sup> See the case law of the European Court of Human Rights which has required strict scrutiny in respect to restrictions on parental rights to access recognising that unreasonable restrictions may lead to the increased alienation of the child from his or her parents. See further: *Transfrontier Access/Contact* and the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* The Final Report drawn up by William Duncan, Deputy Secretary General (Hereinafter, 'Transfrontier Access/Contact Report'), available at < www.hcch.net > → Child Abduction Homepage → Special Commission Related Documents. This Report cites the following cases: *Elsholz v. Germany* Judgment of 13 July 2000, citing *inter alia* *Johansen v. Norway*, Judgment of 7 August 1996 and *Bronda, v. Italy*, Judgment of 19 June 1998. See also *Kutzner v. Germany*, Judgment of 26 February 2002.

<sup>98</sup> This is one of the suggestions outlined in “*Conflit familial, déplacements d'enfants et co-opération judiciaire internationale en Europe*” *Rapport de recherche sous la direction de Hugues Fulchiron, décembre 2002* at p 437.

respondent suggested that in order to prevent abduction, “[m]ajor effort should be made to encourage the parents to reach voluntary solutions”.<sup>99</sup> In order to encourage voluntary settlements, family mediation can be helpful.<sup>100</sup> It has been suggested by a specialist non-governmental organisation that mediation is probably the most important measure in trying to prevent abduction.<sup>101</sup> Equally, if parents experience breakdown in their relationship they should try to maintain contact with each other and each other’s relatives as a means of preventing abduction.<sup>102</sup> This could be facilitated by family mediation.

Certainly, mediation is more likely to be successful at an early stage than at a point where there is increased animosity between parents because of a threat or a fear of abduction. If parents can maintain communication between each other in respect of their children, they may be less likely to act unilaterally. A local branch of the International Social Service has developed pre and post marital counselling programmes especially for cross-cultural families. An aim of this counselling is to prevent child abduction, which is possibly more likely where the parents originate from different countries.<sup>103</sup>

The Council of Europe Contact Convention<sup>104</sup> also recognises the importance of voluntary agreements and mediation in cross border situations by requiring States Parties to seek to “encourage parents ... to reach amicable agreements in respect to contact, in particular through the use of family mediation”.<sup>105</sup>

### 2.1.2 *Legislative provisions and court orders*

- **Domestic law regulating divorce, custody and contact/access may include provisions seeking to prevent or discourage abduction.**
- **States should ensure that preventive measures in domestic law are placed on a firm legislative footing.**

Domestic law regulating divorce, custody and contact/access may include provisions seeking to prevent or discourage<sup>106</sup> abduction. Legislation recently passed in one State requires regional court judges hearing divorce or custody cases to assess whether the facts of the case indicate a risk of abduction. If so, they should ensure that appropriate preventive measures are put in place.<sup>107</sup> In another State, the best interests of the child (explicitly including the potential risk of illegal abduction or illegal retention) are to be given primary consideration when courts are considering any orders and decisions regarding custody, residence or contact.<sup>108</sup>

When courts are dealing with cases of family breakdown, they may wish, or the parents may choose, to include in any orders or agreements, ancillary orders aimed at preventing abduction. Such orders may be designed to make abduction more difficult to carry out in practice, or to put in place disincentives to abduction. In deciding what restrictive measures are necessary courts need to take into account both the need to protect the child from

<sup>99</sup> See the response of Sweden to the Questionnaire.

<sup>100</sup> In this respect it should be noted, that once abduction has occurred Contracting States are mandated by the 1980 Convention to seek a voluntary resolution, see Articles 10 and 7(c).

<sup>101</sup> Meeting with Child Focus, Brussels, May 2003. The International Social Service also recommends that courts handling separations order mediation before deciding on the terms of separation or divorce.

<sup>102</sup> Reunite – International Child Abduction Centre.

<sup>103</sup> Kondoyanni, Director ISS Hellenic Branch “Counselling services to cross-cultural families: A tool for Prevention”, May 2004.

<sup>104</sup> *Supra* note 37.

<sup>105</sup> See Article 7.

<sup>106</sup> One of the purposes of Part III of Ontario’s Children’s Law Reform Act 1990 is stated in s 19 (c) as being, “to discourage the abduction of children as an alternative to the determination of custody rights by due process”. See the response of Canada to the Questionnaire.

<sup>107</sup> See the response of ICMEC/NCMEC to the Questionnaire. Such legislation exists in the United States in California, Illinois and Oregon.

<sup>108</sup> See Swedish Parental Code 1998, Chapter 6 section 2a.



abduction and the child's right to maintain contact/access with both parents.<sup>109</sup> Stricter rules may be justified where there is a credible risk of abduction. (See below at 3.2)

Setting out a clear legislative basis for civil liability (as well as for criminal liability) may also act as an effective disincentive to abduction. In certain States, a parent who abducts a child will, without prejudice to his or her criminal liability, have committed a wrongful act under civil law. As a result, he or she may be liable to pay the parent having custody of the child for all costs and expenses incurred in pursuing the return of the child.<sup>110</sup>

The responses to the Questionnaire indicate that in many States courts have broad powers to make whatever orders they consider necessary to prevent abduction.<sup>111</sup> However, it would also appear that in many States there is a lack of specific legislation designed to deter or serve as a disincentive to child abduction.<sup>112</sup> Although broad judicial discretion may well give courts flexibility to take wide-ranging measures to prevent abduction, such discretion should supplement, not substitute, relevant legislation. By putting preventive measures on a firm legislative footing, one ensures that there is a clear and unambiguous warning of the potential consequences of attempting to abduct a child.

## 2.2 RELOCATION

- **A highly restrictive approach to relocation issues may have an adverse effect on the operation of the 1980 Convention<sup>113</sup> and may encourage abduction.**

Where a custodial parent<sup>114</sup> relocates to another State with the child, the other parent may wish to take measures to seek to protect his or her contact/access with the child. Equally, if a contact parent moves abroad, the custodial parent may wish to take steps to protect against potential wrongful retention of the child by the contact parent, when the child is involved in a contact/access visit abroad.

States take very different approaches to the issue of relocation. In some States, the consent of all persons with custody of a child is usually required before granting an order to allow a child to relocate.<sup>115</sup> The consent of a parent with contact/access rights may additionally be required.<sup>116</sup> In some States it is for the courts to decide issues of relocation<sup>117</sup> while in other States relocation is a decision of the parents and not the courts.<sup>118</sup> It might also be a

<sup>109</sup> See Article 10(2) of the *United Nations Convention on the Rights of the Child*.

<sup>110</sup> See the response of Germany of the Questionnaire. The legislative basis for civil liability is Section 823[2] of the German Civil Code.

<sup>111</sup> Where a child has been abducted into Israel the courts have broad powers under the Hague Convention Law (Return of Abducted Children) 1991, to prevent further abduction. The court may, for example, consider issuing "any other order that could prevent further harm to the child or to the rights of the interested parties, or that could ensure the voluntary return of the child, or the peaceful resolution of the matter". See the response of Israel to the Questionnaire.

<sup>112</sup> The importance of such measures has been emphasised in a number of the responses to the Questionnaire, and in some States measures are soon to be introduced. According to the response of Slovakia to the Questionnaire, "[t]here are no specific legislative provisions in Slovak law which might act as a deterrent or which may have a preventive effect. In connection with the re-codification of the Code of Civil Procedure (and the ratification of the European Contact Convention) such measures will most likely be introduced".

<sup>113</sup> See *infra* note 124.

<sup>114</sup> It is recognised that "custodial parent" is a concept which has lost relevance in some legal systems. However, for the purposes of this Guide to Good Practice, the term "custodial parent" is used to refer to the parent with whom the child normally lives.

<sup>115</sup> See Article 264 (4<sup>o</sup>) of the Argentine Civil Code, and in relation to Iceland, Article 39, paragraph 2, of the Law in Respect of Children, No. 20/1992, (Article 28 paragraph 8, of the new Act, No. 76/2003). In relation to United Kingdom (Scotland) see The Children (Scotland) Act 1995 s 2(3).

<sup>116</sup> See the response of United Kingdom (Scotland) to the Questionnaire.

<sup>117</sup> In China (Hong Kong SAR), under Rule 94 of the Matrimonial Causes Rules (MCR) (Cap. 179A) an application for permanent removal of a child under 18 should be made to the court. See the response of China (Hong Kong SAR) to the Questionnaire.

<sup>118</sup> Some States, including Finland and Slovakia, have stated that courts rarely if ever consider cases of relocation. In Iceland, a court cannot make a decision permitting a parent to remove a child from the jurisdiction. In Denmark and Sweden, a parent who has sole custody can make a unilateral decision regarding the State of residence of the child.

requirement under national law that a custodial parent gives notice of any intended change of place of residence.<sup>119</sup>

Courts deciding on issues of relocation may attach various conditions to orders including the necessity to ensure that any orders relating to the contact/access of the left-behind parent can be recognised in the second State.<sup>120</sup> Courts may also require a significant period of notice of the proposed relocation to allow the left-behind parent opportunity to contest the application if desired.<sup>121</sup> Several questionnaire respondents noted that where either parent is not satisfied with a relocation decision there might be a heightened risk of abduction; the parent who is not granted a right to relocate may subsequently abduct;<sup>122</sup> and the left-behind parent who is dissatisfied with the provisions protecting his or her contact/access may retain a child on a subsequent contact/access visit.<sup>123</sup> In this regard, the Conclusions and Recommendations of the Fourth Special Commission state that:

“Courts take significantly different approaches to relocation cases, which are occurring with a frequency not contemplated in 1980 when the Convention was drafted. It is recognised that a highly restrictive approach to relocation applications may have an adverse effect on the operation of the 1980 Convention”.<sup>124</sup>

### 2.2.1 *Safeguarding the rights of the contact parent during relocation*

- **As a general principle, legal provisions and decisions relating to issues of transfrontier contact/access should take account of the risk of international child abduction.**
- **Legal safeguards helping to guarantee the effective exercise of transfrontier contact/access may help to prevent abduction.**
- **Consideration should be given to the benefits of becoming a Party to multilateral instruments seeking to regulate transfrontier contact/access issues, particularly the 1996 Hague Convention.**

Approximately 17% of applications under the 1980 Convention relate to contact/access where a parent and a child live in different States.<sup>125</sup> Additionally, it is felt that many applicants making return applications are actually seeking to secure access.<sup>126</sup> The 1980 Convention by Article 21 aims to “organis[e] or secur[e] the effective exercise of rights of access” and to “remove, as far as possible, all obstacles to the exercise of such rights”. Safeguarding access rights is essential to preventing abduction. At the Third Meeting of the Special Commission to review the operation of the 1980 Convention it was succinctly stated that, “abductions might even be prevented by helping parents to gain proper access to their children”.<sup>127</sup> States should be particularly alert to the potential for international abduction in dealing with cases that involve transfrontier contact/access issues.<sup>128</sup>

<sup>119</sup> For example, under the Children’s Law Act, 1997, c.C-8.2 in relation to Saskatchewan, and the Canadian Divorce Act (Federal).

<sup>120</sup> See the response of Canada to the Questionnaire.

<sup>121</sup> Under the Canadian Divorce Act (Federal) any parent with custody of a child of the marriage who intends to change the place of residence of that child must notify the other parent at least 30 days before the change or within such other period as the court may specify. See also the response of Malta to the Questionnaire.

<sup>122</sup> See the response of Argentina to the Questionnaire.

<sup>123</sup> See the responses of Argentina, Israel and Malta to the Questionnaire.

<sup>124</sup> *Supra* note 4, at para. 7.3.

<sup>125</sup> See 1999 Statistical Survey. *Supra* note 16.

<sup>126</sup> See *ibid.* Several return applications resulted in access being ordered or agreed.

<sup>127</sup> *Supra* note 60, at para. 80.

<sup>128</sup> Attention should be paid to the Permanent Bureau’s on-going work on this topic, particularly the Transfrontier Access/Contact Report. *Supra* note 97.

The Special Commission of 2002 formulated several conclusions in relation to transfrontier contact/access, including, *inter alia*:

“Work should continue on a separate chapter of the Guide to Good Practice relating to transfrontier access/contact in the context of the 1980 Convention with the following objectives:

- a. to promote consistent and best practices in relation to those matters which it is agreed fall within the competence and obligations of the States Parties under the Convention;
- b. to provide examples of practice even in relation to matters which fall within the disputed areas of interpretation”.<sup>129</sup>

In addition, the Special Commission concluded that:

“Work should begin on the formulation of general principles and considerations. The idea is not to create a set of principles applying to access cases generally, but rather to draw attention to certain general considerations and special features, which need to be borne in mind by Contracting States and their authorities when formulating policies in respect of international access / contact cases. These general principles would not be binding; they would be advisory in nature. As well as offering general advice to States in formulating policy in this area, the general principles could be helpful to the courts and other authorities, as well as to applicants as they present their cases.”<sup>130</sup>

The Council of Europe Contact Convention contains provisions designed to safeguard the contact parents’ enjoyment of contact/access. Suggested safeguards and guarantees include: supervision of contact; an obligation for a person to provide for the travel and expenses of the child, and if appropriate the person accompanying the child; a security to be deposited by the person with whom the child is usually living to ensure that the person seeking contact is not prevented from having contact; a fine to be imposed on the person with whom the child is usually living, should this person refuse to comply with a contact order.<sup>131</sup> Many of these safeguards exist in national laws.<sup>132</sup> Equally, States should bear in mind the benefits of becoming Parties to multilateral instruments which seek to regulate this area of law.<sup>133</sup>

## **2.2.2 Safeguarding the rights of the custodial parent when a child is involved in contact/access visits abroad**

- **Legal provisions relating to transfrontier contact/access should include safeguards designed to reduce the risk of wrongful retention of a child during contact/access visits abroad.**

The custodial parent might wish to seek protections against unlawful retention or abduction when a child is involved in a contact/access visit abroad.<sup>134</sup> In these situations, a court might consider granting additional protection to act as a deterrent. A court may, for example, make a contact/access order conditional on certain requirements being fulfilled, such as: the supervision of contact by a professional or family member; the deposit of a monetary security by the contact person; a requirement that the contact parent report regularly to the police or some other authority during the contact period;<sup>135</sup> and/or, that a child’s arrival and departure

<sup>129</sup> *Supra* note 7, at para 2 (c).

<sup>130</sup> *Supra* note 7, at para 2 (d).

<sup>131</sup> See Article 10(2)(a).

<sup>132</sup> See the responses to the Questionnaire. Examples of national legislation in this area include, the Estonian Family Law Act, Section 52(1); the Finnish Child Custody and Right of Access Act, Section 9; the German Civil Code, Section 1684; the Swedish Parental Code of 1998, Section 15.

<sup>133</sup> See *supra* at 1.1.2

<sup>134</sup> Both retention and removal are contemplated under Articles 1 and 3 of the 1980 Convention.

<sup>135</sup> See the response of Canada (Quebec) to the Questionnaire.

be registered at the embassy in the destination State.<sup>136</sup> The court might also require that the parent exercising contact/access provide it with one or more of the following: relevant contact details abroad; passport number(s); credit card details; driving licence numbers; contact details of employer and friends; photocopies of air tickets; itinerary for travel.

## 2.3 RECOGNITION AND ENFORCEMENT OF ORDERS ABROAD

- **Provisions for the mutual recognition (including advance recognition) and enforcement of orders relating to custody or contact/access constitute an important part of a legal environment which deters abduction.**

Provision for ensuring recognition of foreign custody or contact/access orders is useful in preventing abduction.<sup>137</sup> Particularly because in the scenarios discussed above (where the custodial parent or the parent with contact/access rights moves abroad) the danger exists that an order from the court of origin will not be recognised or enforced in a foreign jurisdiction. To overcome this difficulty, a concerned parent, or court may seek to get existing custody or contact/access orders recognised abroad. Some international and regional instruments make provision for this.<sup>138</sup> The Council of Europe Contact Convention suggests that States might oblige the person seeking contact to present a document issued by the State where the contact is to take place, certifying the recognition and declaration of enforceability of a custody or contact/access order either before an order is made or before contact takes place.<sup>139</sup> The 1996 Hague Convention contains a provision (Article 24) allowing for advance recognition, in one Contracting State of a measure of protection (which includes a custody or contact/access order) taken in another Contracting State.

Before granting an order permitting relocation or travel abroad, a court may require confirmation that the relevant foreign court will recognise and enforce the terms of an order granted. To this end, advance recognition or registration of the order in the country of relocation may be possible, as for example under the 1996 Hague Convention. Another option is for the court of origin to require a party to seek an order in the foreign court, which mirrors the terms of the order granted, or proposed to be granted, by the court of origin. Such orders are commonly referred to as “mirror orders”.<sup>140</sup> It has also been suggested that entering into a notarised agreement that would be recognised in a foreign jurisdiction could provide additional comfort to a parent fearing the denial of contact/access rights or illegal retention of a child during a contact visit abroad.<sup>141</sup> (See above at 2.2.1 and 2.2.2)

<sup>136</sup> See the Transfrontier Access/Contact Report, at chapter III j on *prior guarantees and safeguards*, paragraph 110. *Supra* note 97. However, embassies may have no authority to enforce orders or to coerce parties to adhere to travel plans.

<sup>137</sup> See the response of Canada to the Questionnaire, including The Child Custody Enforcement Act, R.S.M. 1987, c.C360 in relation to Manitoba, the Children’s Law Act, 1997, c.C-8.2 in relation to Saskatchewan and the Extra-provincial Enforcement of Custody Orders Act R.S.A. 2000, c.E-14 in relation to Alberta.

<sup>138</sup> See particularly, the 1996 Convention and the Council of Europe Contact Convention specifically at Article 14(1)(a). See also, the Transfrontier Access / Contact Report, *supra* note 97.

<sup>139</sup> See Article 10(2)(b) and 14(1)(b).

<sup>140</sup> See *Gumbrell v. Jones* [2001] NZFLR 593 available on INCADAT at: [HC/E/NZ 446]

<sup>141</sup> See Lowe, Everall and Nicholls, “International Movement of Children Law Practice and Procedure” (Family Law, 2004), at 149. (Hereinafter “Lowe, Everall and Nicholls”).

### 3. REACTIVE MEASURES – RESPONDING TO A CREDIBLE RISK OF ABDUCTION

- Domestic legal provisions and administrative practices should enable State authorities to respond rapidly and effectively where there is a credible risk of abduction.

In addition to pre-emptive preventive measures which are either generally applicable or are imposed where there is a heightened risk of abduction, States should implement preventive measures to respond to a specific credible risk of abduction. This includes circumstances where there has been a threat of abduction or where it is considered that abduction is very likely to occur. Domestic legal provisions and administrative practices should enable State authorities to respond rapidly and effectively in such circumstances. The actual measures available vary from State to State, and depend upon the particular circumstances, and the perceived urgency, of the situation.<sup>142</sup>

#### 3.1 BARRIERS TO INTERNATIONAL TRAVEL

- Effective barriers to international travel should be capable of being implemented without delay.

In addition to generally applicable barriers to international travel, such as, the requirement to possess and produce valid travel documentation, further measures will be required where there is a credible risk of abduction or abduction is imminent. At this stage prevention relies primarily on putting in place effective barriers to international travel without delay.

##### 3.1.1 Travel documentation

###### 3.1.1.1 Issuing passports and identity cards

The following measures may be of assistance in responding to a credible risk of abduction:

- Implementing a passport alert system to notify a named person if a passport application is made for a child.
- Refusing to issue a passport to a named child, or refusing to inscribe a child into the passport of a parent, where there is a credible risk of abduction.
- Ensuring orders preventing removal from a jurisdiction are immediately transmitted to Passport Authorities preventing them from being able to issue a passport to a child.
- Empowering Passport Authorities to inscribe warnings or conditions in passports issued to children.

In addition to general rules requiring consent to the issuing of any passport for a child, further restrictions may be imposed where there is a credible risk of abduction. It may be possible in some States to revoke consent given for the procurement of a passport<sup>143</sup> or to apply to court

<sup>142</sup> See the response of Canada to the Questionnaire: “Each situation is different and must be assessed on a case-by-case basis to find the preventive measures or solutions that are most appropriate for each parent”.

<sup>143</sup> See the response of Finland to the Questionnaire.

for an order to prohibit the issuing of a passport<sup>144</sup> or, if already issued, the delivery of a passport,<sup>145</sup> or, to prohibit travel of a child, which might then lead to a passport authority refusing to issue a passport. In some States it is possible to place an alert with a Passport Authority so that they will refrain from issuing a passport to a child,<sup>146</sup> or will notify a named person if an application for a passport is received in relation to a specified child.<sup>147</sup> In one State, a court order prohibiting an adult from removing a named child from the jurisdiction will be served immediately on the Passport Authority who will be forbidden to issue a passport to the child.<sup>148</sup> Where joint custodians disagree as regards the issuing of a passport, the courts often have to make a final decision.<sup>149</sup>

In some States a parent can request that an issuing authority place warnings or conditions in a passport relating to its use. These may include the need for the consent of both parents to be shown in addition to the passport when a child is leaving the State.<sup>150</sup> Legislation in one State allows a parent with sole custody to request that this is mentioned in the passport of the child.<sup>151</sup> Additionally, where an identity card is used instead of a passport, it may also be possible to place a note on the identity card indicating consent.<sup>152</sup>

In some States, procuring a passport for a child or an adult by making a knowingly false or misleading statement is a criminal offence.<sup>153</sup> In some States, if a parent fears that the other parent would attempt to use fraudulent means to obtain a passport, it is possible to put the name of the child on a register for a specified period of time so that the relevant authorities are alerted.<sup>154</sup> In one State, if a person suspected on reasonable grounds of having committed a crime, including unlawfully separating a child from a parent, applies for a passport, then the Passport Authority must inform the police officer leading the investigation of the application. The Passport Authority must then wait a week after passing on this information before issuing a passport.<sup>155</sup>

### 3.1.1.2 Issuing visas

- **Applications for visas for parents and children should be capable of being considered separately.**

<sup>144</sup> See the responses of Argentina, China (Hong Kong SAR) to the Questionnaire. See also the New Zealand Care of Children Act 2004, Section 77; and the New Zealand Passports Act 1992, Section 4.

<sup>145</sup> See the response of Argentina to the Questionnaire.

<sup>146</sup> In Canada, if a parent fears that a child may be abducted they can ask the Passport Authority to place a warning on their system in relation to the child. If the child is the subject of a court order, the child will remain on the system until the age of 16. If there is no court order, the child will remain on the system for 3 months and then the parent can request a renewal if appropriate. See the response of Canada (Quebec) to the Questionnaire. See also the response of New Zealand to the Questionnaire.

<sup>147</sup> For information on how this system operates in the United States see < [www.travel.state.gov/passport/ppi/family/family\\_866.html](http://www.travel.state.gov/passport/ppi/family/family_866.html) >.

<sup>148</sup> See the response of Malta to the Questionnaire.

<sup>149</sup> See the response of Sweden to the Questionnaire.

<sup>150</sup> See the response of Canada (Quebec) to the Questionnaire. In France the following conditions can be placed on page 5 of a passport, where the passport is to be issued to a child: a condition that the passport can only be used upon presentation at each border control of the authorisation of both parents. Where a child is to be inscribed in the passport of a parent, that the express consent of the other parent must be provided before the child can be removed. Where the child is to be inscribed into the passport of a third party, that the consent of both parents is given before a child can be removed, and that removal can only be for a stated period. See Circular No. INTD9000124 of May 1990. These restrictions can be registered in three ways which dictate the length of time for which they are valid. They can be registered as, *Mesures d'opposition en urgence*, *mesure d'opposition conservatoire* and *mesure d'opposition de longue durée*.

<sup>151</sup> See the response of Switzerland to the Questionnaire.

<sup>152</sup> See the response of Poland to the Questionnaire where it states that on the basis of bilateral agreements with certain neighbouring States, a note can be attached to ID cards.

<sup>153</sup> See, for example, Section 57(2) of the Canadian Criminal Code (Federal).

<sup>154</sup> See the response of Canada (Quebec) to the Questionnaire.

<sup>155</sup> See the response of Sweden to the Questionnaire. In addition, Sweden commented that this provision is of particular use in cases where a parent that intends to abduct a child, is already suspected of having committed an offence under Chapter 7, Section 4 of the Swedish Penal Code (which is the offence of unlawfully separating a child (under the age of 15) from a parent or parents).

- **Parents seeking to prevent a visa being issued to a child should be made aware that obtaining a visa for a child to enter one State might allow entry into other States in a region.**

States have differing rules regarding the denial of visa applications. A judicial order might be needed to deny or restrict the issuance of a visa.<sup>156</sup> Alternatively, it may be possible for a parent or his or her lawyer to request that a visa will not be issued to a child.<sup>157</sup> A visa may also be refused if it is obvious that granting a visa would facilitate wrongful removal or retention.<sup>158</sup>

A visa obtained for entry into a State in a region operating open borders usually allows entry into all other States in the region.<sup>159</sup> Therefore, if a parent wishes to request that a foreign State does not issue a visa to a child, it may be necessary to formulate the request to all States in the particular region to ensure that the child does not enter the State by way of another State in the region. It is also important for States to consider the issuing of visas based on each individual traveller. In some States, if a visa is granted to a parent it does not necessarily mean that a visa will automatically be granted to a child.<sup>160</sup> In another State, where a visa is granted to a parent, it is likely that a child will also be given a visa for the same period of time.<sup>161</sup>

### 3.1.1.3 *Withdrawing and revoking passports and identity cards*

- **Consideration should be given to implementing a procedure for the withdrawal or revocation of a child's passport where there is a credible risk of abduction.**
- **Consideration should be given to implementing a procedure for the withdrawal or revocation, in appropriate circumstances, of an adult's passport for the purpose of removing an inscription relating to a child.**
- **A system allowing for, or requiring, the lodging of a passport belonging to a child and/or to a parent with an appropriate authority for the duration of a contact/access visit can constitute an effective safeguard against abduction.**

A procedure for the withdrawal or revocation of a child's passport where there is a credible risk of abduction is a useful preventive measure.<sup>162</sup> It is clear from the responses to the Questionnaire that, as a general rule, an application must be made to the court.<sup>163</sup> However, one respondent commented that the Passport Authority has the power to withdraw a child's passport on the request of either parent with custody.<sup>164</sup> In some States the courts have no power to revoke passports save as a condition of contact/access<sup>165</sup> or, in circumstances where the passport holder is detained for investigation.<sup>166</sup> In addition to withdrawing or revoking a child's passport, it may be possible to withdraw the inscription of a child in an

<sup>156</sup> See the response of Argentina to the Questionnaire.

<sup>157</sup> See the response of Canada to the Questionnaire. This is only possible where the child has sole Canadian nationality.

<sup>158</sup> See the response of Poland to the Questionnaire.

<sup>159</sup> See the response of Sweden to the Questionnaire, in relation to the *Schengen* States and the States of the European Economic Area.

<sup>160</sup> See the response of Sweden to the Questionnaire.

<sup>161</sup> See the response of United Kingdom (Scotland) to the Questionnaire.

<sup>162</sup> See the responses of Argentina, Canada, Iceland and Italy to the Questionnaire. See the Canadian Divorce Act (Federal) s16(6).

<sup>163</sup> See the responses of Argentina, Italy, Malta and New Zealand to the Questionnaire.

<sup>164</sup> See the Swedish Passport Act 1978 and the Passport Regulations 1979.

<sup>165</sup> See the Swedish Passport Act 1978 and the Passport Regulations 1979.

<sup>166</sup> See the response of Panama to the Questionnaire.

adult's passport<sup>167</sup> or to order the revocation of an adult's passport to prevent the adult from leaving the jurisdiction with a child.

Conversely, in some States it is not possible to revoke a passport belonging to an adult. Such an action may constitute a violation of the constitutional right of citizens to travel.<sup>168</sup> Nonetheless, it may be possible to order that a passport be lodged with an appropriate authority either on an indefinite basis or on a temporary basis.<sup>169</sup> It is also possible for courts in some States to order that a passport belonging to a child and/or an adult be lodged with an authority for the duration of a contact/access visit. However, issuing authorities must also be notified in such circumstances so that the holder of the passport is prevented from applying for a new passport claiming that his or her old passport has been lost or stolen.<sup>170</sup>

Rules governing the circumstances in which passports or other travel documents may be withdrawn and the procedure to be followed to secure such withdrawal are of particular importance in jurisdictions where the existence of valid travel documentation for a child is considered to offer sufficient evidence of parental consent to travel. Without adequate regulation it may be difficult for a parent who originally consented to the issuing of a passport subsequently to withdraw such consent, or more precisely, to give practical effect to the withdrawal of consent.

#### 3.1.1.4 *Children with more than one nationality*

- **Promoting co-operation between Consular Offices in relation to issuing, withdrawing and/or revoking passports and visas for children with more than one nationality is a useful preventive measure.**

Rules relating to the issuing, restriction, withdrawal or revocation of travel documentation have limited effect in relation to children with more than one nationality. Often, but not always,<sup>171</sup> persons having more than one nationality are entitled to a passport/identity card for any or all of the States of which they are nationals. As a result, any rules restricting the issuing of a passport, or ordering withdrawal or revocation, will not prevent a child or adult from travelling where they are able to use a passport issued by a different State.<sup>172</sup>

In such circumstances, a request might be made, usually via Consular Offices, that a State does not issue a passport to one of its nationals. The other State is under no obligation to act upon this request but, if they agree that there is a credible risk of abduction, they may voluntarily refuse to grant a passport.<sup>173</sup> Generally one State has no authority over the issuing or revocation of a passport from another State.<sup>174</sup> However, in Scotland the Court of Session can order the surrender of not only a United Kingdom passport but also a passport from another State.<sup>175</sup>

It has been stated, in response to the Questionnaire, that the availability of more than one

<sup>167</sup> See the response of Malta to the Questionnaire. In Denmark, it is not possible to recall a passport belonging to a child or an adult, however a new Bill currently before the legislature may make it possible to recall an adult's passport in order to delete a child's name.

<sup>168</sup> See the response of Croatia to the Questionnaire.

<sup>169</sup> See the response of Sweden to the Questionnaire. If a final decision has not been made within one week then the passport must be returned to its holder.

<sup>170</sup> See Article 10(2)(b) of the Council of Europe Convention.

<sup>171</sup> For example, in Poland, dual nationality is not accepted and children are only considered to be nationals of one State. See the response of Poland to the Questionnaire.

<sup>172</sup> For information on dual nationality from the United States and Canada see, respectively, < [www.travel.state.gov/travel/cis\\_pa\\_tw/cis/cis\\_1753.html](http://www.travel.state.gov/travel/cis_pa_tw/cis/cis_1753.html) > and < [www.voyage.gc.ca/main/pubs/dual\\_citizenship-en.asp](http://www.voyage.gc.ca/main/pubs/dual_citizenship-en.asp) >.

<sup>173</sup> Some States have stated that there is often good co-operation with Consular Offices.

<sup>174</sup> See the responses of Canada and Germany to the Questionnaire.

<sup>175</sup> See the response of United Kingdom (Scotland) to the Questionnaire.



passport makes controls at borders more difficult.<sup>176</sup> Some States require their nationals to enter and leave the country on the passport of that country.<sup>177</sup> In all States authorities should be aware that many children involved in potential abductions have more than one nationality.

### 3.1.2 **Border controls**

#### 3.1.2.1 *Stop orders*

- **A stop order is a valuable legal mechanism to prevent a child from leaving a jurisdiction. It is beneficial if a stop order can be obtained expeditiously including where necessary *ex parte* and out-of-hours.**
- **Stop orders should be clearly and accurately phrased, taking into account the possibility that a child or adult with more than one nationality may be travelling on a passport of another State.**
- **Stop orders should be expeditiously transmitted to relevant authorities.**

Stop orders are orders granted by the court to prevent child abduction by empowering authorities at border controls to detain a child and/or abductor, or otherwise to prevent them from leaving the jurisdiction.<sup>178</sup> According to a questionnaire respondent, stop orders are usually very effective and can be obtained *ex parte* and out-of-hours.<sup>179</sup> In some States court orders prohibiting abduction are automatically transmitted to personnel operating border controls,<sup>180</sup> while in other States the parent needs to ensure that the order is duly transmitted.<sup>181</sup> The fact that a child and/or a potential abductor may have more than one passport should also be taken into account by courts issuing stop orders. A stop order is only as effective as the information provided in the order, and can be ineffective when a child and/or a parent are travelling on a different passport not specified in the order.<sup>182</sup> Stop orders are not available in the United States but the United States has commented that border controls are enhanced when an Interpol yellow notice has been issued. This notice provides a legal basis to stop a child at a border and notify local law enforcement.

#### 3.1.2.2 *Port alert/watch systems*

- **Operating a port alert/watch system is a valuable mechanism to prevent a child from leaving a jurisdiction.**
- **The information required to activate these systems should be transmitted to the relevant ports without delay.**

<sup>176</sup> In response to the Questionnaire, Canada (Quebec) has stated: "When a child is both Canadian and a citizen of another country, controlling travel documents becomes more difficult".

<sup>177</sup> See the response of Argentina to the Questionnaire, and see the Canadian Consular Affairs website in relation to Poland at < [www.voyage.gc.ca/main/pubs/dual\\_citizenship-en.asp](http://www.voyage.gc.ca/main/pubs/dual_citizenship-en.asp) >.

<sup>178</sup> In Denmark, for example, airport police can detain a person who is about to wrongfully take a child out of the country. In Slovakia, it is not possible for courts to issue orders of this kind, limiting freedom of movement.

<sup>179</sup> See the response of Israel to the Questionnaire.

<sup>180</sup> In Argentina, an order that prohibits a person leaving the jurisdiction is notified to relevant authorities through the use of ISOPRO, an intranet operated by the Ministry for National Security. In Panama, once a judicial authority has made an order restricting travel, this is immediately communicated to the National Immigration Directorate, who issue the alert to airports and borders. In Malta, orders preventing removal are immediately served upon the Principal Passport Officer, the Commissioner of Police, the Comptroller of Customs and the Chairman of the International Airport.

<sup>181</sup> See the response of China (Hong Kong SAR) to the Questionnaire.

<sup>182</sup> See the response of Israel to the Questionnaire.

- **Promoting co-operation at border controls facilitates the sharing of information and data necessary to operate a port alert/watch system.**

Some form of a port alert/watch system exists in the majority of States that responded to the Questionnaire.<sup>183</sup> These vary in range but essentially involve provision of information on potential abductees and would-be abductors to personnel managing borders with a view to stopping the abduction. In some jurisdictions the port alert/watch system may be activated by a parent who suspects that a child has been abducted.<sup>184</sup> However, in most jurisdictions an alert will only be activated upon production of a valid stop order issued by a court.<sup>185</sup>

Where restrictions have been placed on a passport, or a parent does not consent to a child leaving a jurisdiction, it may be possible to register this opposition with border controls.<sup>186</sup> The information is then disseminated through computer databases accessible by personnel at border points, or in one State by a fax sent daily to all the ports.<sup>187</sup> To ensure that officers at border controls are able to act expeditiously, information must be processed as quickly as possible.<sup>188</sup> Additionally personnel must be given appropriate powers to act. There are often many different authorities operating at border controls and access to information between authorities is vital for the port alert to be successful.<sup>189</sup> These different authorities may have their own computer databases and it may be possible to place details of a suspected abduction onto all databases.<sup>190</sup> The range of information which different computer systems hold varies from one State to another. It has been suggested that where photos can be scanned and added to records this would be of great benefit.<sup>191</sup>

Often to enter information onto these systems, the abduction must be imminent. The measures may only remain in force for a limited period and parents, or others providing the information, may have to specify the presumed point of departure, and the presumed destination.<sup>192</sup> Port alerts can be extremely effective, particularly in island States where international travel is usually by way of air.<sup>193</sup>

### 3.1.2.3 Other barriers at international borders

- **Using modern technologies at international borders can be a highly efficient way to prevent a known person from leaving, or entering a State.**

<sup>183</sup> See the responses of Argentina, Croatia, Denmark, Estonia, Finland, Germany, Iceland, Israel, Italy, Malta, New Zealand, Panama, Poland, Switzerland, and the United Kingdom (Scotland).

<sup>184</sup> See the responses of Croatia and Denmark to the Questionnaire. In Estonia, a parent fearing their child has been abducted are required to contact social services who in turn will notify the border guards and/or the police.

<sup>185</sup> For example, in Australia and China (Hong Kong SAR) and Israel. In its response to the Questionnaire Germany indicated that only in exceptional circumstances, where there is a concrete danger that a parent not having sole custody of a child will attempt to abduct that child, and there is insufficient time to obtain a court order, the Federal Border Police will intervene. Germany explains that the rationale behind this policy is that if the Federal Border police were to intervene in every instance, without the support of a court order authorising intervention, the danger arises that the fulfilment of a lawful public right would be wrongfully impeded.

<sup>186</sup> This is the situation in France. See Circular No INTD9000124 of May 1990.

<sup>187</sup> In the United Kingdom the Child Abduction Warning List is updated and circulated daily to all ports by fax.

<sup>188</sup> See the response of New Zealand to the Questionnaire, which states that court orders are entered onto the customs border control computer system by the Interpol section of the New Zealand Police. Additionally, according to the response of Argentina to the Questionnaire, when a judge prohibits a person from leaving the State this order is sent to all authorities in charge of borders including the police and immigration officials, by way of ISOPRO, an instant communication system.

<sup>189</sup> In this respect co-operation between the relevant authorities is important. See *infra* at 5.5.

<sup>190</sup> In the United Kingdom, the National Ports Office receives information from port alerts and passes relevant details of potential abductees to the Immigration Service Suspect Index Control Unit (ISSICU) who will enter the details onto their own computer watch system. Such details will remain on the system for one month.

<sup>191</sup> Information obtained from meeting with the Heathrow Child Abduction Unit, London, March 2003.

<sup>192</sup> For example, in the United Kingdom a potential abduction must be "real and imminent" and the port stop will remain in force for 28 days. See Practice Direction [1986] 1 ALL ER 983 and *The Child Abduction Act 1984: 'Port Stop' Procedures* Home Office Circular No 21/1986.

<sup>193</sup> See the response of New Zealand to the Questionnaire and the information provided by Australia. New Zealand commented that alerts are widely used and are extremely effective. Out of a population of approximately 4 million, there were 5,108 alerts at the time the Questionnaire was submitted.

- **Staff operating border controls should be given sufficient legal powers, supported by the necessary technological resources, to enable them to carry out their designated functions.**

Where a parent has a court order entitling him/her to remove a child it is often advisable to carry this order when travelling with the child. However, police officers have noted that even where a parent is able to show an order, there may be no indication as to whether the order is current, or indeed if there are any competing orders. In this regard, it has been suggested that establishing a computerised registry of relevant orders accessible to police officers at points of departure could be beneficial.<sup>194</sup> Entries onto this database would have to be made expeditiously, especially if an order is varied or discharged.

In some States police or immigration officers are able to view passenger information prior to flights. This can alert them to the identity of travellers and can be cross-referenced with information on port alert computer databases to help to prevent possible abduction.<sup>195</sup> The use of biometric technology is also a possibility which is being considered by some States. In Iceland at the international airport a biometric surveillance system has been installed. A photograph of the child and evidence of a travel ban need to be provided and then the system will be activated if that child enters the departure area of the airport.<sup>196</sup> Another State is introducing legislation next year requiring those entering the State to be in possession of a biometric passport. These measures while being very effective in the States in which they are operating, are of course limited in scope in relation to travel between States which do not require travel documentation and have no border controls. Staff operating border controls should have the benefit of modern technology to monitor and control movement at international borders. (See above at 1.2.3)

## 3.2 LEGISLATIVE PROVISIONS AND COURT ORDERS

- **Either parent fearing abduction should have effective access to preventive legal remedies, including, where appropriate, the ability to seek an order clarifying a parent's legal status vis-à-vis the child.**

Preventive measures having the force of law are particularly effective.<sup>197</sup> Where there is a credible risk of abduction there are several types of legal measures which can be sought.<sup>198</sup> Court orders may clarify or formalise a parent's legal status vis-à-vis the child. Central Authorities and non-governmental organisations often advise that a parent fearing abduction should seek such a court order<sup>199</sup> particularly where that parent possesses *de facto* rights of custody. It should, however, be noted that possession of a court order is not necessary to invoke proceedings under the 1980 Convention.<sup>200</sup>

### 3.2.1 Measures which may make abduction more difficult to carry out

- **Domestic legal provisions may make abduction more difficult to carry out, such as restricting or placing conditions on international travel.**

<sup>194</sup> Police operating the Child Abduction Unit at Heathrow airport have suggested that this could greatly improve their ability to prevent international child abductions. On the other hand, such a system has been tested in the United States and proved problematic due to the large number of courts in that State which are able to issue orders.

<sup>195</sup> In a meeting with the Heathrow Child Abduction Unit, London, March 2003, it was suggested that if this were implemented more broadly it could help prevent a large number of abductions.

<sup>196</sup> See the response of Iceland to the Questionnaire.

<sup>197</sup> See the response of Malta to the Questionnaire.

<sup>198</sup> For analysis of the usefulness of obtaining a court order in the United Kingdom, see Lowe, Overall and Nicholls at para. 9.3. *Supra* note 141.

<sup>199</sup> See the Reunite – International Child Abduction Centre, Prevention Packs. Available at < www.reunite.org >

<sup>200</sup> See Article 3 of the Convention, and the Pérez-Vera Explanatory Report at para. 68ff. *Supra* note 17.

- **Additional powers may include the imposition of restrictions or limitations on contact/access arrangements or the granting of an interim custody order.**
- **Where there are court proceedings relating to a child, it may be beneficial to institute provisional measures seeking to prevent abduction.**

Some orders and provisions are designed to make abduction more difficult to carry out. Examples include:

- Interim orders putting conditions or restrictions on access or requiring access to be supervised<sup>201</sup> or confined to the jurisdiction of the child's habitual residence.<sup>202</sup>
- Interim custody orders.<sup>203</sup>
- Orders aimed at preventing the removal of the child from a particular jurisdiction. Such orders may take various forms. Sometimes an order might restrict a child's right to leave a specific territory.<sup>204</sup> Alternatively, the order might restrict a parent's ability to travel unilaterally with the child for a specified period,<sup>205</sup> or require a parent's or a child's passport (and/or other travel documentation) to be surrendered to a designated authority or deposited with the court.<sup>206</sup> Where it is not an automatic requirement, an order may make it necessary to seek permission to obtain a passport for a child. Certain orders may impose an automatic limitation on the amount of time a child may be taken out of the jurisdiction by a lone parent.<sup>207</sup>
- Provisions to protect children during court proceedings: for example, it may be possible for the court, on the request of either parent, to make a temporary order prohibiting removal of the child from the jurisdiction for the duration of the proceedings.<sup>208</sup> It may also be possible to order that passports be withdrawn for the duration of proceedings.<sup>209</sup>

<sup>201</sup> See the responses of Canada, China (Hong Kong SAR), Denmark, Finland, Germany and Sweden to the Questionnaire. In Germany, where there is sufficiently convincing evidence that there is a probability of abduction, access may be disallowed, or only allowed in the presence of a third party. See the German Civil Code (BGB) at section 1684[3] and 1684[4]. See Germany's response to the Questionnaire.

<sup>202</sup> See the response of Germany to the Questionnaire.

<sup>203</sup> See the responses of Croatia and Denmark to the Questionnaire. See also, the Finnish Child Custody and Right of Access Act, Section 17.

<sup>204</sup> See the responses of Germany, Iceland, Israel, Malta, Panama, and Poland to the Questionnaire. However, in Slovakia for example, it is not possible to make such an order because there is no legislation that envisages the imposition of travel restrictions to prevent child abduction, and a court order to this effect (in the absence of relevant legislation providing the basis of such an order) would be unconstitutional as it would violate the fundamental right of a person's freedom to travel as provided for in the Slovak Constitution. Similarly Sweden, in its response to the Questionnaire, explains that it does not have the flexibility or discretion that common law jurisdictions enjoy, to order the surrender of passports. Swedish courts cannot order the submission of passports, except as a condition for contact/access.

<sup>205</sup> See the response of Malta to the Questionnaire where this measure is possible even if the threat of removal is not imminent. The order will still be served on authorities operating at border controls to prevent the potential abductor from leaving the State. This is also possible in Italy, see the response of Italy to the Questionnaire. See also, the Family Law Act 1986, s 35 in relation to the United Kingdom. Such orders can also be obtained in Canada, Estonia and Poland. In Switzerland the permission of the police may be needed before a parent is entitled to remove a child.

<sup>206</sup> See the responses of Canada, Finland, Germany, Israel, Malta and New Zealand to the Questionnaire. In Finland, the relevant legislative basis for this requirement is Section 9 of the Child Custody and Rights of Access Act. In New Zealand, it is Sections 77 and 118 of the Care of Children Act, 2004.

<sup>207</sup> For example, anyone with a Residence Order made under s 8 of the Children Act 1989 in the United Kingdom can remove a child from the jurisdiction for a period of one month. This legislation aims to facilitate parents taking holidays with their children, without the need to keep returning to court for further orders, while simultaneously placing some restriction on the length of time a child may be out of the jurisdiction.

<sup>208</sup> See Article 39, paragraph 1, of the Law in Respect of Children, (Article 35, para. 4, of the new Act No 76/2003), in relation to Iceland. See also the response of Poland to the Questionnaire.

<sup>209</sup> See the response of Israel to the Questionnaire.

Additionally, in one State, when a *decree nisi* is issued in a divorce, it is a standard term of the decree that a child of the family shall not be removed from the jurisdiction.<sup>210</sup>

- If there is a very real and imminent risk of abduction occurring, it may be possible to place the child under protective custody<sup>211</sup> or issue an emergency care order in respect of the child.<sup>212</sup>

Where appropriate, a court may stipulate that measures have temporary or provisional effect.<sup>213</sup>

### 3.2.2 Measures which may serve as a disincentive to abduction

- **Domestic legal provisions might provide a disincentive to abduction, such as, requiring a monetary guarantee against removal or specifying the punitive measures that would be imposed if abduction occurs.**

Examples of court orders which may serve as disincentives to abduction include:

- The requirement that a monetary guarantee against removal is provided,<sup>214</sup> or that a security or bond<sup>215</sup> be lodged with the court as a condition of contact/access which will be forfeited in the event that abduction occurs. (In some cases the money might then be used by the other parent to seek return).<sup>216</sup>
- Punitive measures which can be used against a parent who disobeys relevant orders or agreements.<sup>217</sup> One State has mentioned that where there is an indication to the court of potential non-compliance with an order, the court may give advance warning of the nature of any enforcement measure it will subsequently use, if its order is violated. That State has noted that giving such advance notice enables the relevant enforcement order to be imposed more swiftly.<sup>218</sup> However, it should also be borne in mind that advance notice of enforcement measures can give the potential abductor time to plan evasive action.

<sup>210</sup> This is the case in China (Hong Kong SAR) under Rule 56(1)(c) and Form 24 (1) of the Matrimonial Causes Rules (MCR) (Cap.179A). See the response of China (Hong Kong SAR) to the Questionnaire.

<sup>211</sup> In China (Hong Kong SAR), s. 48 of the Matrimonial Causes Ordinance permits the authorities to take a child into protective custody. See also the response of Argentina to the Questionnaire.

<sup>212</sup> See the responses of Finland and Israel to the Questionnaire. In Sweden a court may order that a child be immediately taken into care by the authorities, if there is no time to await a court order, the police can take the child into their care if necessary. See also the response of New Zealand to the Questionnaire, and Sections 77 and 118 of the New Zealand Care of Children Act, 2004.

<sup>213</sup> In emergency situations the family court in Germany can implement all possible preventive measures by interim injunction. See also the response of Malta to the Questionnaire.

<sup>214</sup> See the responses of Israel and Poland to the Questionnaire.

<sup>215</sup> For example, the Indiana Code 31-17-2.

<sup>216</sup> See Article 153 of the Code of Civil Procedure of Quebec, and The Child Custody Enforcement Act, R.S.M. 1987, c.C360 in relation to Manitoba and the Children's Law Act, 1997, c.C-8.2 in relation to Saskatchewan, in the response of Canada to the Questionnaire.

<sup>217</sup> In Quebec the civil courts are able to fine or imprison a person for not complying with an order of the court, Articles 49 and 51 of the Code of Civil Procedure of Quebec – See the response of Canada to the Questionnaire. In Germany, the courts can impose fines in order to enforce its orders, pursuant to section 33 subsection 1, first sentence, of the Act on Non-Contentious Matters. See the response of Germany to the Questionnaire.

<sup>218</sup> See the response of Germany to the Questionnaire.

### 3.2.3 Measures which grant powers to authorities and agencies

- Police officers and other relevant bodies and agencies should be given sufficient powers to enable them to provide appropriate assistance to prevent abductions.
- Authorities should be aware that in some States, but not all, a criminal allegation is required to empower police officers and other relevant bodies and agencies to act to prevent removal from a jurisdiction.

A court order may be necessary to grant powers to authorities or agencies to act to prevent abduction and/or to trigger certain domestic preventive procedures.<sup>219</sup> According to one non-governmental organisation “[w]hile provisions within a court order and laws designed to set rules for parental behaviour may not prevent a determined abductor, they are crucial in providing a basis for the involvement of professionals early in the abduction”.<sup>220</sup>

Many different authorities and agencies may be involved at some stage in seeking to prevent wrongful removal or retention. In some States, and in some situations, authorities and agencies need to be granted particular powers in order to act. In response to the Questionnaire it was noted that legislation implementing the 1980 Convention includes sections granting specific powers to local police authorities and the administrative courts when dealing with Hague cases.<sup>221</sup> A questionnaire respondent noted that a court order is usually needed to take a child into the care of the authorities, but as this order cannot be obtained out-of-hours, the police are able to act immediately to take a child into their care where necessary.<sup>222</sup>

In some States a criminal allegation may be needed to grant the police the power to act,<sup>223</sup> including to prevent a child and/or an abductor from leaving the jurisdiction.<sup>224</sup> In the United States international child abduction legislation criminalises attempted abduction, permitting authorities to act when an abduction is in process.<sup>225</sup> In one State there has been discussion about aggravating the maximum punishment for the offence of child abduction as this would make all coercive powers available to the police.<sup>226</sup> In another State,<sup>227</sup> the failure to take measures to prevent a child from being abducted can be punished under the criminal law.<sup>228</sup> If the child has already been abducted into the State, it may be possible to prevent further removal.<sup>229</sup>

“[T]he institution of criminal proceedings is needed, in some countries for police action which could be vital in preventing a domestic abduction from becoming an international one (e.g. stopping of an aeroplane before take off) and in locating the child. In certain other countries, however, police action is allowed for in cases of parental child abduction under civil law and the institution of criminal proceedings is therefore not necessary for such action”.<sup>230</sup>

<sup>219</sup> For example, to operate a port alert in Australia or China (Hong Kong SAR). See *supra* at 3.2.3.

<sup>220</sup> See the response of ICMEC/NCMEC to the Questionnaire.

<sup>221</sup> See the response of Sweden to the Questionnaire.

<sup>222</sup> See the response of Sweden to the Questionnaire.

<sup>223</sup> See the response of Croatia to the Questionnaire. This is also the case in the United Kingdom with regard to instituting a port alert.

<sup>224</sup> According to the Central Authority of Quebec: “In many situations, turning to the justice system may help police in their search and to locate the child”.

<sup>225</sup> See the International Parental Kidnapping Crime Act, 18 USC 1204 (US Federal law).

<sup>226</sup> See the response of Finland to the Questionnaire.

<sup>227</sup> See the response of Malta to the Questionnaire.

<sup>228</sup> It is not clear whether in this situation, criminal culpability would relate solely to individuals or whether it could extend to authorities.

<sup>229</sup> See the response of Israel to the Questionnaire.

<sup>230</sup> See Report of the Third Special Commission, *supra* note 60, at para. 4.

In this respect it should be noted that a criminal allegation is not necessary to enlist the assistance of Interpol.<sup>231</sup>

While a criminal allegation may be necessary in some States to enlist the help of law enforcement to prevent a child leaving a State, it should be noted that criminal proceedings can hinder applications under the Convention.<sup>232</sup> The Conclusions and Recommendations of the Fourth Meeting of the Special Commission state that:

“The impact of a criminal prosecution for child abduction on the possibility of achieving a return of the child is a matter which should be capable of being taken into account in the exercise of any discretion which the prosecuting authorities have to initiate, suspend or withdraw charges”.<sup>233</sup>

### 3.3 ACCESS TO THE COURTS

- **Effective access to the courts is essential to enable either parent to obtain, modify or have recognised and enforced any necessary preventive order.**
- **Effective access to the courts includes, where appropriate, access to legal aid, translation of documents and interpretation.**
- **In emergency situations access to courts should be available expeditiously and, if necessary, out-of-hours.**
- **In emergency situations it may be advantageous to allow orders to be obtained *ex parte*.**
- **Relevant court orders should be acted upon and enforced without delay.**

Where there is a credible risk of abduction, it is essential that both parents have ready access to the courts to seek an order, modify an existing order, or seek recognition or enforcement of an order. Access to the courts includes the provision, where appropriate, of both legal aid and translations of relevant documents. In some situations it may be equally important that access to the courts is expedited and that orders can be obtained *ex parte* and/or out-of-hours.<sup>234</sup> In some circumstances it may be possible to seek interim orders out-of-hours,<sup>235</sup> which can be put on a more permanent basis when a court is able to sit.<sup>236</sup> In some States interim measures can be obtained in emergency situations without notice or with short notice.<sup>237</sup>

It is essential that relevant court orders, once obtained, are acted upon and enforced without delay.

<sup>231</sup> See Report of the Third Special Commission, *supra* note 60, at para. 5.

<sup>232</sup> See *Sonderup v. Tondelli* 2001 (1) SA 1171 (CC) INCADAT: HC/E/ZA 309; and *Re M. and J. (Abduction)* (International Judicial Collaboration) [1999] 3 FCR 721 INCADAT: HC/E/UKe 266.

<sup>233</sup> *Supra* note 4, at para. 5.2.

<sup>234</sup> Some States, including Denmark, Finland, Germany, Israel, Malta and New Zealand have stated in their responses to the Questionnaire that orders can be obtained *ex parte* and out-of-hours. Other States, including Argentina, Austria, Slovakia, Sweden, Switzerland, and the United Kingdom (Scotland) have stated that orders can be obtained *ex parte*, but not out-of-hours. Poland has stated that orders can be obtained out-of-hours but not *ex parte*. In Croatia, orders cannot be obtained either *ex parte* or out-of-hours.

<sup>235</sup> See the response of Denmark to the Questionnaire.

<sup>236</sup> For example in the United Kingdom it is possible for a judge to issue a stop order from his or her home in the evening, preventing removal from a jurisdiction, and the situation can then be considered more fully the following day in court.

<sup>237</sup> See the response of Canada to the Questionnaire.

## 4. PROVISION AND DISSEMINATION OF INFORMATION

- **Provision and dissemination of relevant information is in itself an important preventive measure.**

Providing information to parents, both potential abducting parents and potential left-behind parents is in itself an important preventive measure.<sup>238</sup> In the former case information on preventive measures and the harmful effect of abduction on the child may act as a deterrent, and in the latter case information may allow a parent to assess the vulnerability of his or her situation and to be prepared to take necessary action to seek to prevent abduction. Additionally, some measures will only come into operation on the request of a parent, and therefore parents need to be informed about what measures are available and how they can be implemented.

As well as providing information to parents, it is essential that professionals operating preventive measures are well informed and therefore able to act appropriately to seek to prevent abduction. (See below at chapter 5)

### 4.1 INFORMATION ON PROACTIVE MEASURES

Proactive measures seek to deter a parent from contemplating abduction. In order to have a deterrent effect such measures should be well publicised. Certainly, the statistical data collected by one non-governmental organisation suggests that some information on preventing abduction seems to make an impact as a deterrent.<sup>239</sup> Several States have noted that information relating to the existence and operation of the 1980 Convention has a deterrent effect. One Central Authority has stated that: “We have a feeling that the public awareness of the Convention and its summary return mechanism has had some preventive effect on potential abductors”.<sup>240</sup>

#### 4.1.1 *Raising awareness as to the dynamics and serious consequences of international child abduction*

- **General information should be provided to the public that unilateral removal of a child is usually wrongful.**
- **General information should be provided to the public highlighting the harmful effects of abduction on a child and the importance for the child of maintaining, as far as possible, meaningful relationships with both parents.**

Information publicising the nature of international parental child abduction is important. The term “abduction” is sometimes assumed to refer to kidnapping by strangers not by members of the child's family, and parents may not be aware that relocating with their own child or taking a child on holiday could be considered wrongful under both domestic and international

<sup>238</sup> In response to the Questionnaire, United Kingdom (Scotland) stated that it realises “the need for a greater emphasis to be placed on publicising prevention. We believe that education and publicity are interlinked and play a crucial part in preventing abduction”. United Kingdom (Scotland) also noted that “information for parents will not stop all child abductions but we believe it does help prevent some”.

<sup>239</sup> According to Reunite – International Child Abduction Centre, its advice line received calls relating to 274 cases, comprising 395 children in 2001 and 236 cases, comprising 343 children in 2002. While calls relating to actual abduction had dropped, the number of calls relating to advice and information on preventing abductions had risen between the two years. Information from meeting with Denise Carter, OBE, Director of Reunite – International Child Abduction Centre, London, March 2003.

<sup>240</sup> See the response of Finland to the Questionnaire. In its response to the Questionnaire United Kingdom (Scotland) noted that “There is anecdotal evidence from solicitors and NGO's to suggest that increased knowledge of the Hague Convention and the likelihood of the return of a child, acts as prevention in some instances”.



law. This may be particularly so where both the child and/or the abductor are nationals of the State of destination. It is therefore essential to raise awareness to prevent an initially innocent removal or retention becoming abduction.

In other situations a parent may be aware of the possibility that his or her actions will constitute abduction, but may nonetheless consider this to be in the best interests of the child. While a parent may feel that removing a child from another parent is ultimately beneficial for the child, it has become an almost universally accepted norm that in general it is in a child's best interests to maintain contact with both parents<sup>241</sup> even if this contact must be limited or supervised. Information which alerts the parent to the potential harm to the child which will result from abduction and the benefit to the child of maintaining contact with both parents may deter abduction. In this regard, a questionnaire respondent has noted the importance for preventing abduction, of providing information which helps a parent to recognise the situation from the perspective of the child.<sup>242</sup> New Zealand has introduced parenting programmes to provide education for separating parents. Attendance is voluntary and parents receive information on how separation affects their children, and on family law, the family courts process and networks for on-going support.

#### **4.1.2 Raising awareness of preventive measures**

- **Awareness of the risk of child abduction is a factor upon which the effectiveness of many other preventive measures depends. Members of the public should be provided with information highlighting the most effective means of preventing abduction.**
- **Contracting States are encouraged to promote awareness of the operation of the 1980 Convention.**
- **Parents who are separating, divorcing or discussing custody or contact/access issues, may benefit from information on the existence of preventive measures and authorities and agencies able to offer assistance.**

It is clear from the responses to the Questionnaire that awareness of the risk of child abduction and the preventive measures available to reduce such risk is in itself a factor upon which the effectiveness of many other preventive measures depends. Accordingly, it is crucial that members of the public are provided with information highlighting the most effective means of preventing abduction.

Parents who are separating have a particular need of information. Court orders or consent agreements reached during divorce, custody or contact/access proceedings may alter a parent's legal position *vis-à-vis* the exercise of rights of custody or contact/access. The consequence of formalising a previously informal arrangement may cause confusion and uncertainty as to what unilateral actions a parent may take in relation to a child. Their rights and responsibilities need to be made known to them so that they are able to act within the law. In one State a booklet is provided to parents who are divorcing detailing this information and that this may help to prevent abduction.<sup>243</sup> In another State there is a website on parenting after divorce.<sup>244</sup> A booklet like this could also provide contact details of agencies and authorities able to assist in providing further information. It could be used to help parents to decide whether to seek any precautionary pre-emptive measures, and/or could be kept for reference if there was a threat of abduction at a later date.

<sup>241</sup> See Article 10(2) of the *United Nations Convention on the Rights of the Child*.

<sup>242</sup> See the response of Switzerland to the Questionnaire.

<sup>243</sup> The Social Welfare Department in China (Hong Kong SAR) has produced a pamphlet entitled "Parents of a Lifetime" which can help divorced couples to handle custodial and access arrangements.

<sup>244</sup> < [www.canada.justice.gc.ca/en/ps/pad](http://www.canada.justice.gc.ca/en/ps/pad) >.

### 4.1.3 Raising awareness of protective measures

- Information should be provided on protective services available for parents and children in the State of habitual residence.

Some parents consider abduction as a means of protecting themselves or their child from a dangerous or damaging situation. In this regard, information available to parents on protective measures available in the State of habitual residence, as well as information about how legally to relocate, may reduce the incentive to abduct. Such information should be readily available and particularly could be distributed, for example, through family lawyers or mediators. Parents, especially those in a vulnerable situation, need to be aware of services which can offer them and their children protection. Knowledge of, and access to such services may reduce feelings of fear or desperation which could lead to abduction, and is also an essential element of any child protection policy.

## 4.2 INFORMATION ON REACTIVE MEASURES

- Information should be provided on preventive measures which can be put in place to respond to a credible risk of abduction.
- Parents should have ready access to information regarding preventive measures, in particular, concerning the legal processes and administrative procedures that should be followed to activate certain preventive measures.

Where there is a credible risk of abduction, a distressed parent needs access to clear and concise information to help him or her to seek relevant preventive measures. As many different authorities and agencies are involved in implementing and operating preventive measures the provision of information may be somewhat confused. In some States there is little information available from any relevant agency or authority. In other States, different authorities provide information on the particular preventive measures which they operate, resulting in a plethora of information circulating within the State. Both a lack of information and the provision of information in this fragmented way may cause problems for a distressed parent seeking to prevent abduction. In this regard, it has been noted that more comprehensive information is needed.<sup>245</sup>

### 4.2.1 A Prevention Document

- States may consider creating and disseminating a comprehensive prevention document for parents detailing preventive measures and providing contact information for agencies and authorities able to assist with particular measures.
- This document should highlight emergency procedures and practical steps, which can be taken by a parent who fears their child might be abducted. It should be available in relevant languages.

Provision of a generally applicable “Prevention Document”, compiling relevant concise information and contact details of agencies and authorities able to provide more detailed or

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<sup>245</sup> See the responses of Slovakia and the United Kingdom (Scotland) to the Questionnaire.

more specific information relevant to a particular situation, will be of great assistance to a parent seeking to prevent abduction.<sup>246</sup>

Information in a Prevention Document could include, *inter alia*, the need to seek any relevant court orders, and the existence of barriers to removal from a jurisdiction including information on the issuing or revocation of travel documentation. It may also include practical suggestions relating to collecting and safeguarding important documents and data relating to the child.<sup>247</sup> A prevention booklet available in one State advises that a parent fearing that his or her child is at risk of being abducted should store important documents such as passports and birth certificates in a safe place.<sup>248</sup> In addition, it is advised that photographs of the child and, if possible, the potential abductor should be taken and retained. A form is appended to the booklet, in which a concerned parent may note pertinent information relating to the child, including a detailed description of the child (listing special identifying features such as a birthmark, accent, eye colour) and including information about blood group, or any special medication taken by the child, and details of friends or relatives living abroad. These practical suggestions can greatly help not only to assist law enforcement officers and others seeking to prevent the child's removal if an abduction is attempted, but additionally to empower the parent to feel that they are being proactive and assisting in preventing the removal.

Information in a prevention document should also stress the importance of acting quickly and should prioritise emergency measures where abduction is imminent from general precautionary measures. Parents should also be informed that no single measure can absolutely guarantee prevention of abduction and that instituting one preventive measure or obtaining a court order is not necessarily sufficient.<sup>249</sup> Usually, several preventive measures will need to be sought in order to prevent a wrongful removal or retention.

#### 4.2.2 Specific information

- **Agencies and authorities operating specific preventive measures should provide information as to the operation of these measures in the relevant State.**

While one consolidated Prevention Document giving a picture of the full range of preventive measures is desirable, information on specific preventive measures may helpfully be provided by relevant authorities and agencies. This information could be linked to the general Prevention Document to ensure that it is complementary and not contradictory. Some Passport Authorities<sup>250</sup> provide information on dual nationality and/or rules and regulations relating to the issuing withdrawal and revocation of travel documentation. In some States country fliers have been produced detailing procedures and contacts in other States, so that a parent fearing abduction to a particular State can gain information on the legal system and procedure in that State and any relevant orders they should therefore seek.<sup>251</sup> Some port authorities or law enforcement bodies<sup>252</sup> also provide information leaflets or brochures on operating port alert systems or otherwise seeking to prevent removal. Additionally, some

<sup>246</sup> Several booklets and brochures on international child abduction list contact details of agencies and authorities in a State able to offer assistance. Equally, several websites offer links to related websites from other authorities and agencies.

<sup>247</sup> See the Reunite – International Child Abduction Centre, Prevention Packs.

<sup>248</sup> The booklet is published by the Irish Centre for Parentally Abducted Children, and was prepared using a model provided by Reunite.

<sup>249</sup> See the response of United Kingdom (Scotland) to the Questionnaire.

<sup>250</sup> For example, the United States Passport Authority – available at: < [www.travel.state.gov/passport/ppi/family/family\\_866.html](http://www.travel.state.gov/passport/ppi/family/family_866.html) >, and the Canadian Consular Affairs – information available at: < [www.voyage.gc.ca/main/pubs/dual\\_citizenship-en.asp](http://www.voyage.gc.ca/main/pubs/dual_citizenship-en.asp) >.

<sup>251</sup> Country fliers are produced by, *inter alia*, the United States and are available at: < [www.travel.state.gov/family/abduction\\_country.html](http://www.travel.state.gov/family/abduction_country.html) >.

<sup>252</sup> For example, the port police in the United Kingdom have produced a booklet on international child abduction, entitled, "Child Abduction A Practical Guide for Police Officers" published by The National Ports Office.

family courts<sup>253</sup> provide information on relevant orders or legislative provisions which a parent may wish to obtain, and information on access to the courts. Central Authorities<sup>254</sup> and/or non-governmental organisations<sup>255</sup> are another highly important source for the provision of information.

### 4.3 DISSEMINATION

- **General information on preventive measures operating in a State should be disseminated broadly.**

To be effective in preventing abduction, information should be disseminated broadly.<sup>256</sup>

#### 4.3.1 The media

- **The media provide the means of disseminating general information on abduction to a large number of people.**
- **Where the media are seeking information in relation to a specific case, authorities may direct attention to preventive measures and the aims of the 1980 Convention.**

In some States the media are used to disseminate general information on preventing abduction.<sup>257</sup> State authorities may consider proactively using the media to raise awareness of preventive measures. One State has reported a 26% drop in the number of abduction cases between 2001 and 2002 and in part this is attributed to media coverage of abduction cases. It has been stated that, “the country’s small population means that any publicity surrounding a return receives a degree of coverage which would not occur in many other Contracting States”.<sup>258</sup> It is suggested that this creates a deterrent to abduction.

Conversely, one non-governmental organisation has warned that the increase in media coverage of child abductions brings with it the risk of portraying a “false image”.<sup>259</sup> Another non-governmental organisation noted that, in its experience, television programmes, newspapers and magazines requesting information or an interview may “have a certain angle they want to cover and it can be very difficult to have them publish more basic and helpful information”.<sup>260</sup> This organisation typically sends an information pack when contacted by the media, in an effort to ensure informed and accurate reporting of relevant issues. In response to the Questionnaire it was suggested that “[c]onsideration should be given to the idea of whether co-operating with the media might not serve to inform them better regarding the legalities involved and therefore evoke greater understanding for the left-behind parent and

<sup>253</sup> For example, the family court of New Zealand provides some relevant information available at: < [www.justice.govt.nz/family/children/hagueconvention.html](http://www.justice.govt.nz/family/children/hagueconvention.html) >.

<sup>254</sup> Several Central Authorities and governmental departments provide this information, including, *inter alia*, in Argentina, Belgium, Canada, China (Hong Kong SAR), Denmark, Estonia, Finland, Germany, Malta, New Zealand, Slovakia, Sweden, Switzerland, the United Kingdom, and the United States.

<sup>255</sup> Reunite – International Child Abduction Centre, has produced Prevention Packs for parents. Currently there is a pack for England and Wales, Scotland, Northern Ireland, Greece and Spain. Some of these packs are available in other languages and this is particularly important considering the international nature of the subject. For more information see < [www.reunite.org](http://www.reunite.org) >. Non-governmental organisations in other States, including, *inter alia*, Belgium and Canada have also provided information on prevention.

<sup>256</sup> In the response of United Kingdom (Scotland) to the Questionnaire it is noted that information on preventive measures must be widely available.

<sup>257</sup> See the responses of Germany, Panama, Slovakia, and Sweden to the Questionnaire.

<sup>258</sup> Email from the New Zealand Central Authority to Sarah Armstrong received 7 March 2003. See also the response of New Zealand to the Questionnaire.

<sup>259</sup> See the response of Child Focus to the Questionnaire. See also the response of Germany to the Questionnaire.

<sup>260</sup> See the response of ICMEC/NCMEC to the Questionnaire.

the activities of the Central Authority”.<sup>261</sup>

In addition to disseminating general information, the media are likely to report some individual cases, especially those which may be difficult or sensational. Some cases may illustrate the failure of preventive measures,<sup>262</sup> which could create negative publicity for preventive measures. On the other hand, according to one Central Authority “[n]ews on individual abduction or return cases [in the] media may have a [preventive] effect”.<sup>263</sup> In all cases, Central Authorities and others who may be interviewed should encourage the media to give some attention to general measures seeking to prevent and control abduction.<sup>264</sup>

### 4.3.2 The Internet

- **The Internet is an important medium for disseminating information on preventive measures as it is accessible across international borders and time zones.**
- **To increase accessibility, information should be provided and disseminated in different languages.**
- **Websites providing information on preventing abductions might contain links to other websites operating in the State or in other States which offer relevant advice and information, including a link to the website of the Hague Conference.**
- **Information provided by way of the Internet should be monitored and kept up-to-date.**
- **A State’s Prevention Document should be available on the Internet.**

Use of the Internet for disseminating information is particularly beneficial as it crosses borders and can therefore provide information on preventive measures operating in other States.<sup>265</sup> Information on the Internet is also accessible 24 hours a day, benefiting a parent who is seeking information out-of-hours or from a State working in a different time zone. Access to information is also instantaneous, which is crucial where a rapid response is needed to seek to prevent abduction.

As information on the Internet can be accessed from across the globe, it is useful for this information to be available in more than one language. Particularly where a State has a strong connection with another State or there are many abductions between two particular States, information should, where possible, be available in both or all the languages of the relevant States.<sup>266</sup> Many Central Authorities and non-governmental organisations maintain websites several of which are accessible via the Hague Conference site.<sup>267</sup> In some cases these sites contain links to each other and they are therefore easy for a parent to navigate in order to get as much information as possible.<sup>268</sup> It has been noted that websites relating to

<sup>261</sup> See the response of Germany to the Questionnaire.

<sup>262</sup> See the responses of Child Focus and ICMEC/NCMEC to the Questionnaire.

<sup>263</sup> See the response of Finland to the Questionnaire.

<sup>264</sup> In its response to the Questionnaire, ICMEC/NCMEC states that when contacted for interviews, it actively encourages the media to include broader information (such as prevention tips) in its reports.

<sup>265</sup> According to Canada’s response to the Questionnaire “[e]very effort should be made to make full use of this medium [the Internet] for communicating prevention information”.

<sup>266</sup> Information provided by, *inter alia*, Argentina, Denmark, Finland and Germany is also available in English. Some information provided by the United States is available in Spanish.

<sup>267</sup> A list of websites is available at < [www.hcch.net](http://www.hcch.net) > → Child Abduction Homepage → Links to Related Websites.

<sup>268</sup> A list of useful websites is available at Appendix 7 of the Guide to Good Practice - Central Authority Practice, *supra* note 5. See *also* the Child Abduction homepage on the Hague Conference website available at < [www.hcch.net](http://www.hcch.net) >.

child abduction are easily found when conducting Internet searches.<sup>269</sup> Information on websites should also be maintained and updated to ensure that it is accurate and beneficial to parents.

A State's Prevention Document should be posted on the Internet. (See above at 4.2.1)

### 4.3.3 Printed information

- To ensure broad dissemination, information should be provided in printed form as well as through the Internet.
- Printed information should be readily available in relevant public places.
- Printed information should be kept up-to-date, if necessary by the addition of inserts.
- A State's Prevention Document should be available in printed form.

In many States information provided by Central Authorities, non-governmental organisations and other relevant authorities is available in printed form.<sup>270</sup> In some cases this information mirrors that which is available on the Internet.<sup>271</sup> In other States, the information is only available through one medium and would benefit from being reproduced both on the Internet and in printed form.

Printed information can be disseminated at relevant places of public interest such as, *inter alia*, family welfare centres, family courts, passport and Consular Offices, community centres and doctors' surgeries. Additionally, this information should be available to be sent to a parent on request. As with information on the Internet, every effort should be made to ensure that information is available in relevant languages and free of charge. While information on the Internet can be regularly updated and amended, it may be harder to achieve this where information is available in printed form. Nevertheless amendments by way of inserts can be added and those producing the information should ensure that it is updated and accurate.

A State's Prevention Document should be available in printed form. (See above at 4.2.1.)

### 4.3.4 Presentation of information

- Information on preventing abduction should be presented clearly and concisely so as to be easily understood by distressed parents.
- Information on emergency procedures should be highlighted and separated from other more general information in order to be easily accessible.

Parents seeking information relating to preventing abduction are often distressed and in need of practical and reassuring advice. Written information provided by way of the Internet or in printed form should be easily accessible in terms of the style, format and general presentation. This is particularly important where there is an immediate risk that a child may be removed from a jurisdiction. In such circumstances the general body of information may

<sup>269</sup> See the response of Germany to the Questionnaire.

<sup>270</sup> See, for example, booklets produced by the Central Authorities or government departments, in *inter alia*, Australia, Belgium, Canada and the United Kingdom.

<sup>271</sup> Attention should be drawn to the Conclusions and Recommendations of the Fourth Special Commission, *supra* note 4, which state at para. 1.8 that: "It is recommended that each Central Authority should publish, on its website if possible and/or by other means, such as a brochure or flyer (the precise format being a matter for the Central Authority), information concerning at least the following matters: ...".

no longer be helpful and instead parents need precise information on emergency procedures. In some prevention documents this information is separated out so that it is more easily accessible and understood. Some websites maintain links to information for emergency situations<sup>272</sup> and some printed documents highlight on a separate page, information which is of use in emergencies.<sup>273</sup> Some booklets or brochures contain a flow diagram showing the priority order for seeking particular measures.<sup>274</sup> This can help parents to understand the information and to ensure that they are aware of all their options. Additionally, the language used should be simple and clear, bearing in mind that readers may be in a distressed state and may be viewing the information in their second or third language.

#### **4.3.5 Publicity campaigns**

- **Consideration should be given to initiating a poster or other publicity campaign to disseminate information about international child abduction.**

It has been suggested that providing information by means of a publicity campaign can be useful in raising awareness of general issues.<sup>275</sup> One Central Authority stated that it makes use of public places such as shopping centres and fast food outlets to provide information to the general public.<sup>276</sup> One non-governmental organisation is using a poster campaign to draw attention to preventive measures,<sup>277</sup> and this may be a useful practice for Central Authorities in order to draw attention to their services. Posters offering a contact number and/or Internet address for anyone wishing to obtain further advice and information could be useful in increasing awareness.

#### **4.3.6 A central point for information**

- **There should be a central point for the provision and dissemination of information within the State in relation to preventing child abduction. This might be the Central Authority or another body.**
- **Agencies and authorities able to provide information and advice on preventive measures should be easily contactable. Particular attention should be paid to the provision of contact details, in particular, where appropriate, modern rapid means of communication.**
- **Agencies and authorities operating telephone hotlines should ensure personnel are well trained to provide appropriate information to the caller.**

To aid dissemination of information coherently within a State, it may be beneficial to have one body which acts as a central point for the provision and dissemination of information. In States Parties to the 1980 Convention, Central Authorities may be well positioned to take on this role. Indeed Central Authorities by Article 7 of the Convention are required to take all appropriate measures to “provide information of a general character as to the law of their State in connection with the application of the Convention”.<sup>278</sup> Central Authorities are in an

<sup>272</sup> See the child abduction websites maintained by Australia < [www.ag.gov.au/www/childabduction.nsf](http://www.ag.gov.au/www/childabduction.nsf) >.

<sup>273</sup> See, for example, “Guidelines for the Prevention of Child Abduction” produced by the Irish Centre for Parentally Abducted Children and the Reunite Prevention Packs for the United Kingdom, which highlight procedure for implementing port alert systems if there is an imminent threat of removal.

<sup>274</sup> For example, the booklet produced by the Central Authority for United Kingdom (Scotland).

<sup>275</sup> Information obtained for a meeting with Véronique Chauveau, Paris, April 2003.

<sup>276</sup> See the response of Canada to the Questionnaire.

<sup>277</sup> Reunite – International Child Abduction Centre, < [www.reunite.org](http://www.reunite.org) >.

<sup>278</sup> See Article 7(2)(e). See also the Pérez-Vera Explanatory Report *Supra* note 17, at para. 94.

ideal position to act as a clearinghouse for the provision of information to parents and to other authorities within their respective States. Central Authorities should therefore, as far as possible, maintain information from other agencies and authorities including contact details so that they are able to direct parents to necessary prevention information. Another body such as a specialist non-governmental organisation may equally be a good central co-ordination point for the provision of prevention information. The advantage of a central body able to provide information is that parents have only one agency with which to communicate.

All agencies and authorities operating preventive measures, but especially a body acting as a central point for information, should be easily accessible. Where possible such authorities should maintain an Internet site with email access, telephone and fax numbers and a postal address. Particular attention should be paid to the provision of contact details, in particular, where appropriate, modern rapid means of communication.<sup>279</sup>

Some organisations and Central Authorities operate information hotlines. These may be available during office hours<sup>280</sup> or even 24 hours a day.<sup>281</sup> Personnel operating advice lines need to be adequately trained to be able to disseminate appropriate information. This is particularly important as in some situations provision of information can unfortunately precipitate an abduction.<sup>282</sup> In this regard, it is important that personnel are trained to be able to recognise a potential abductor who may in fact be seeking information to aid abduction. (See below at chapter 5)

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<sup>279</sup> See the Conclusions and Recommendations of the Fourth Special Commission, *supra* note 4, which state at para. 1.4, “Central Authorities should, as far as possible, use modern rapid means of communication in order to expedite proceedings, bearing in mind the requirements of confidentiality”.

<sup>280</sup> See the response of Sweden to the Questionnaire. Additionally, Reunite and NCMEC operate a telephone advice line.

<sup>281</sup> See, for example, the response of Denmark to the Questionnaire.

<sup>282</sup> See Prevention Packs provided by Reunite – International Child Abduction Centre, which begin with the proviso that: “The following guidelines will **not** apply to each and every case – indeed, in some cases certain steps may precipitate a reaction that leads to rather than prevents an abduction”. Information obtained at meetings in Paris, April 2003, also highlighted this potential problem.



## 5. TRAINING AND CO-OPERATION

- **Appropriate training of professionals is a key factor in any scheme of prevention.**
- **Preventing abduction requires co-operation between different agencies and authorities within a jurisdiction and in different jurisdictions.**

To ensure efficient implementation and operation of preventive measures, and dissemination of useful information, professionals should be well trained<sup>283</sup> and should co-operate together, both internally within a State and externally across frontiers. Indeed it has been stated that, “[t]raining is an absolute necessity”,<sup>284</sup> and that “[t]raining is the key to ensuring that police, lawyers, and other professionals are aware of and using the legal and other tools available to them.”<sup>285</sup> In response to the Questionnaire, it was noted that:

“The value of having professionals and front-line officers understand, and then share with parents and others, the various prevention techniques cannot be understated. In other words, the more emphasis there is in training of professionals on prevention, the better”.<sup>286</sup>

In some States, formal and informal networks have been established comprising representatives from different authorities that deal with international child abduction issues.<sup>287</sup> Co-operation is equally important between agencies and authorities at the international level.<sup>288</sup> In response to the Questionnaire, it has been noted that co-operation and agreements would be welcomed.<sup>289</sup>

### 5.1 THE 1980 CONVENTION

#### 5.1.1 *Review meetings*

- **Contracting States are encouraged to continue to participate fully in Special Commission meetings to review the operation of the 1980 Convention, including participation in consultation and responding to questionnaires.**
- **Attendance at Special Commission meetings is beneficial for developing relationships with colleagues from other States, which can increase co-operation.**

The deterrent effect of the 1980 Convention will be increased where it is operating well, both within and between Contracting States. Special Commission meetings to review the operation of the 1980 Convention are held in The Hague about every four years on the

<sup>283</sup> In its response to the Questionnaire, Croatia emphasised the importance of training judges to ensure consistency in the application of the Convention. Estonia in its response to the Questionnaire has highlighted that the training of child welfare officers has proven to be of particular use, as many parents are being referred by such officers to the Estonian Central Authority for assistance and information relating to abduction. Switzerland has highlighted in its response to the Questionnaire, that training for police officers in addition to lawyers and counsellors is useful. Moreover, Switzerland suggests that parents should also receive training, so that they are clear about their obligations to their children as parents, irrespective of marital status. ICMEC/NCMEC in its response to the Questionnaire commented that: “As with all laws, training law enforcement and other public officials as to their ability to act under the law is crucial to the law’s success.”

<sup>284</sup> See the response of Child Focus to the Questionnaire.

<sup>285</sup> See the response of ICMEC/NCMEC to the Questionnaire.

<sup>286</sup> See the response of Canada to the Questionnaire.

<sup>287</sup> See the responses of Finland and Sweden to the Questionnaire.

<sup>288</sup> The importance of co-operation was emphasised by Malta in its response to the Questionnaire. It has suggested that from the cases experienced to date, “co-operation is the key ingredient for success when dealing with cases of abduction”.

<sup>289</sup> See the responses of Poland and Slovakia to the Questionnaire.

invitation of the Secretary General,<sup>290</sup> and Member States of the Hague Conference, Contracting States to the Convention, certain other States, and relevant international governmental and non-governmental organisations are invited to participate. It has been commented that “the conferences [are] quite effective as a means of raising awareness of the Hague Convention (which in itself can act as a preventive measure) as well as methods of prevention”.<sup>291</sup> Another comment in response to the Questionnaire is that, “international meetings held in respect of the Convention are useful opportunities for Central Authority personnel to get to know colleagues from other States and to make co-operation more fruitful”.<sup>292</sup>

These meetings provide a forum for professionals to share ideas and experiences to seek to improve the operation of the Convention. The success of these meetings is also greatly enhanced where States participate fully, not only during the meetings, but equally, during prior consultation, usually by way of responding to questionnaires.

### 5.1.2 *Post-Convention services*

- **Attention should be drawn to the post-Convention services provided and facilitated by the Permanent Bureau of the Hague Conference which help to educate and train professionals operating the 1980 Convention, including with regard to preventive measures.**

The Permanent Bureau of the Hague Conference assists States in implementing and operating the 1980 Convention by providing and facilitating many post-Convention services. These services are highlighted on the Internet via the Child Abduction Homepage (< [www.hcch.net](http://www.hcch.net) >) and include, *inter alia*, the Judges’ Newsletter,<sup>293</sup> the International Child Abduction Database (INCADAT),<sup>294</sup> the organisation of and participation in judicial and other conferences,<sup>295</sup> and the development of the Guide to Good Practice. These services may assist in training and educating professionals to ensure that preventive measures are, as far as possible, operating effectively in their States.

The Permanent Bureau is also involved in meetings both international and regional with States not yet Party to the 1980 Convention. These meetings also promote the goal of prevention. Such meetings increase co-operation and understanding with regard to difficulties and issues relevant to particular cultures or legal systems.<sup>296</sup>

### 5.1.3 *Central Authorities*

- **Central Authorities operating the 1980 Convention are required to co-operate with each other and to promote co-operation amongst competent authorities in their own States.**

<sup>290</sup> Additionally with regard to the 1980 Convention an extra Special Commission was convened in September/October 2002 to review the operation of the Convention at which the main focus was the Guide to Good Practice. It was at this meeting that the subject of prevention was considered as a topic for a future section of this Guide.

<sup>291</sup> See the response of United Kingdom (Scotland) to the Questionnaire.

<sup>292</sup> See the response of Finland to the Questionnaire.

<sup>293</sup> All editions of the Judges’ Newsletter are available via the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > → Child Abduction Homepage → The Judges’ Newsletter.

<sup>294</sup> Available at < [www.incadat.com](http://www.incadat.com) >.

<sup>295</sup> For information see < [www.hcch.net](http://www.hcch.net) >. In this regard, see *also*, the Proposal for a Hague International Legal Training Institute, submitted by the Permanent Bureau to the Special Commission on General Affairs and Policy, Preliminary Document No 6 of March 2003.

<sup>296</sup> One such judicial conference on Cross-Frontier Family Law Issues held in March 2004 in Malta brought together high level judges and government officials from Algeria, Belgium, Egypt, Germany, Italy, Lebanon, Malta, Morocco, The Netherlands, Spain, Sweden, Tunisia and the United Kingdom. For more details see the Child Abduction Homepage on the website of the Hague Conference at < [www.hcch.net](http://www.hcch.net) >.

- **Central Authorities should be given sufficient powers, qualified personnel, and adequate material resources to enable them to draw up strategies for implementing preventive measures and to review their operation.**
- **Central Authorities are urged to compile a procedural manual for use in training new staff and as a reference for existing staff. This manual should contain a section on implementing and operating preventive measures.**
- **Central Authorities should actively encourage co-operation between professionals working to prevent child abduction, in order to ensure a coherent and co-ordinated prevention strategy.**

Central Authorities established under the 1980 Convention are required to “co-operate with each other and promote co-operation amongst the competent authorities in their respective State to secure the prompt return of children and to achieve the other objects<sup>297</sup> of this Convention”.<sup>298</sup> Certainly, co-operation between Central Authorities is vital to ensure the efficient application of the Convention in relation to individual cases and one questionnaire respondent has indicated that, “[f]rom the cases dealt with so far by the ... Central Authority, it can be safely stated that co-operation is the key ingredient for success when dealing with cases of abduction”.<sup>299</sup> Co-operation in respect of individual cases should include the fact that Central Authorities are readily contactable and pass on relevant information to one another.<sup>300</sup> In this regard Central Authorities should be adequately trained and resourced to be able to undertake their responsibilities effectively. The efficiency of Central Authorities greatly enhances the efficiency of the Convention’s operation and therefore its deterrent effect.

In addition to co-operation in individual cases, general co-operation may be beneficial both to improve the operation of the Convention and to speed provision and dissemination of useful information relating to prevention. Continuity in the training of staff in Central Authorities is also crucial,<sup>301</sup> particularly where there is a quick staff turnover. The Guide to Good Practice on Central Authority Practice suggests the compilation of a procedural manual for Central Authority staff so that they can receive training.<sup>302</sup> This manual should have a section on operating preventive measures. In this regard it should be noted that the United States Central Authority in the Office of Children’s Issues in the State Department has established a Prevention Unit. Twinning arrangements between Central Authorities to offer exchange of information and experience as well as potential personnel exchange, also help to improve co-operation between Central Authorities and assist in training.<sup>303</sup>

## 5.2 TRAINING TO ACT PROACTIVELY

- **Training for legal practitioners involved with divorce, custody or contact/access issues should highlight the importance of considering proactive preventive measures to deter or discourage abduction.**

<sup>297</sup> As noted *supra* at 1.1.1, the prevention of abduction is an aim of the 1980 Convention.

<sup>298</sup> See Article 7 of the Convention.

<sup>299</sup> See the response of Malta to the Questionnaire.

<sup>300</sup> See Guide to Good Practice – Central Authority Practice. *Supra* note 5.

<sup>301</sup> See *ibid* which particularly notes the importance of training and education as a means of preventing abduction at paras. 6.2 and 6.7.2.

<sup>302</sup> See *ibid* specifically at para. 1.1.

<sup>303</sup> See *ibid* specifically at para. 6.5. As an example, of this type of co-operation, the Argentine Central Authority sent a member of its personnel to the Peruvian Central Authority to share experience with the Peruvian Central Authority and to assist with training.

- **Training of the relevant professionals should include raising awareness of the serious consequences of international child abduction.**

Judges, lawyers, mediators, social workers or others who encounter parents seeking divorce, separation, custody, contact/access or relocation orders, at a stage where neither parent is actively considering abduction need adequate training to be aware, nonetheless, of the potential for abduction. Lawyers and mediators should be aware of domestic procedures and relevant provisions which can be included in court orders or consent agreements restricting the ability of one parent to remove unilaterally a child from a jurisdiction, or to retain a child in another jurisdiction. In this respect knowledge of the Convention can prompt judges and lawyers in family courts to be aware of the potential for abduction when dealing with domestic divorce, custody or contact/access cases.<sup>304</sup>

Training for professionals will often need to include general training as to the nature of abduction. It has been suggested that some professionals who could be involved in operating preventive measures, fail to implement such measures, as they do not consider removal or retention by a parent to be wrongful. In particular, one expert has commented that in some cases, where a potential criminal offence is imminent police officers may be reticent to intervene pre-emptively to prevent parental child abduction because they consider the dispute to be a private domestic issue not requiring State intervention.<sup>305</sup> Training should begin with raising awareness as to the dynamics and serious consequences of international child abduction.

### 5.3 TRAINING TO IMPLEMENT AND OPERATE REACTIVE MEASURES

- **Training should emphasise the need for expeditious action in order to prevent abduction.**
- **Training should emphasise the need to understand the complementary roles of the different agencies and professionals.**
- **Professionals should as appropriate be trained to be able to spot an imminent abduction and implement appropriate preventive measures.**

A parent seeking to prevent an imminent abduction requires expeditious action by agencies and authorities. In this respect it has been noted that the “[e]fficiency of the measures undertaken principally depends on their prompt realisation by the relevant services”.<sup>306</sup> Training for personnel operating preventive measures should include recognition of the need to act expeditiously.

A parent fearing abduction may turn to any one of a number of different authorities or agencies for assistance. These authorities and agencies should therefore be aware of not only the role that they can play to seek to prevent abduction, but also, the complementary roles of other agencies and authorities in the State and in other States so that they are able to advise the parent appropriately. Indeed, as one questionnaire respondent has commented:

“[p]revention is not about having one measure which guarantees a child will not be removed or retained, but rather is about putting in place a series of obstacles which together make child abduction more difficult. This means that co-operation between agencies of a State is essential”.<sup>307</sup>

<sup>304</sup> See the response of Switzerland to the Questionnaire.

<sup>305</sup> Information obtained from a meeting with Véronique Chauveau, Paris, April 2003.

<sup>306</sup> See the response of Poland to the Questionnaire.

<sup>307</sup> See the response of United Kingdom (Scotland) to the Questionnaire.

Even where no report of an imminent abduction has been made or received, a professional who is well trained may be able to spot characteristic signs.<sup>308</sup> In this respect, police officers working at airports have noted that there may be certain situations which invoke suspicion of abduction, such as where a parent is at an airport with a child in his or her school uniform, carrying minimal luggage. If border guards or check-in staff are alert to the potential for abduction they may be able to intervene to prevent it from occurring.

## 5.4 IN-HOUSE TRAINING

- **Agencies and authorities with responsibility for operating preventive measures should ensure that training in how to operate these measures is included in the general training curriculum.**
- **Agencies and authorities should ensure that procedural manuals are available to staff as a reference for how to operate preventive measures. Information relating to emergency measures should be separated out for easy access.**
- **Members of a profession who develop a particular expertise in handling child abduction issues should share this expertise with other colleagues and ensure that colleagues are kept up-to-date with relevant issues.**

Training in preventing abduction for some authorities is done in-house as part of the general training curriculum. Additionally, or alternatively, some agencies produce a procedural manual on how they can seek to prevent abduction.<sup>309</sup> This type of documentation is particularly useful where a particular agency or authority is not likely to encounter many abductions and is therefore not likely to have much practical experience. In one jurisdiction, the small number of cases was one of the incentives behind producing a booklet for all police forces in the State to ensure that, if faced with a situation of attempted abduction, they would have a reference on how to respond.<sup>310</sup> In another State there is an *aide-mémoire* to assist police authorities in operating preventive measures.<sup>311</sup> Such documents are useful in alerting the necessary authority or agency to any preventive measures they can themselves implement. A professional procedural manual or *aide-mémoire* should include a specific section on emergency procedures so that a professional can act quickly where a suspected abduction is imminent. This information should also include contact details of other agencies and authorities able to act, including out-of-hours contact details.

In some professions, there will be a certain number of colleagues who have attained a degree of expertise in dealing with international child abduction issues including prevention. These individuals or groups of individuals can be used to train other members of the profession. In some States, for example, there are a limited number of legal practitioners and judges competent to deal with applications under the 1980 Convention. These specialists as well as developing expertise may have access to useful information, or to other authorities able to assist. This information can be passed on to other members of the profession who although not directly involved in handling abduction cases, may have an important role to play in implementing precautionary pre-emptive measures.

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<sup>308</sup> Meeting with Child Abduction Unit at Heathrow airport, London, March 2003.

<sup>309</sup> For example, there are police booklets for Australia, United Kingdom (England and Wales), United Kingdom (Scotland) and the United States.

<sup>310</sup> The police booklet for Scotland.

<sup>311</sup> See the response of Switzerland to the Questionnaire.

## 5.5 INTERAGENCY TRAINING

- Agencies and authorities working within a State should co-operate and undertake interagency training in order to be aware of the roles of other authorities.
- The establishment of interagency groups can be beneficial for sharing knowledge across different agencies and to act as a forum for discussion and action to improve the implementation and operation of preventive measures.

In addition to education and training provided by agencies for their own members, it is important that training and education traverses different agencies and authorities. This type of training allows professionals to see the bigger picture and to be aware of the complementary roles of other authorities to which they may need to refer a concerned parent. Combined training is also useful for improving interagency co-operation and providing opportunity for contacts to be made which could create better networks for future work.<sup>312</sup> It has been noted in response to the Questionnaire, that training often develops by way of contacts made at previous meetings,<sup>313</sup> and interagency meetings have been found to be a useful means of sharing knowledge.<sup>314</sup> Additionally, interagency training may be beneficial in producing a general comprehensive Prevention Document to ensure that the same information is being disseminated (see above at 4.2.1) regardless of which authority a parent may contact.<sup>315</sup>

In some States, professionals in different agencies and authorities have visited each other to seek to understand their complementary roles.<sup>316</sup> Additionally, in some States, Central Authorities are involved in training including for judges and legal practitioners within their States.<sup>317</sup> One Central Authority in response to the Questionnaire noted that personnel “have found regular face to face meetings with other Departments extremely beneficial in providing contacts and general information about the various roles of Departments.”<sup>318</sup> As several preventive measures are likely to be needed in each situation, collaboration and sharing of information relevant to individual cases is also important.<sup>319</sup> In some States there are systems in place to ensure the direct flow of information and assistance from one authority to another.<sup>320</sup>

In several States specific interagency groups have been formed, linking personnel from different agencies and authorities.<sup>321</sup> These groups have been used to change policy<sup>322</sup> and to improve the chances of preventing international abduction. In one State, the Central Authority has commented that there is better practical co-operation in respect of individual

<sup>312</sup> See the response of Canada to the Questionnaire.

<sup>313</sup> See the response of Switzerland to the Questionnaire.

<sup>314</sup> See the response of Sweden to the Questionnaire.

<sup>315</sup> Croatia, in response to the Questionnaire, noted that information provided both by the Central Authority and the police is identical. Equally, in Switzerland, information given by the International Social Service incorporates the recommendations of the Central Authority.

<sup>316</sup> Judges in the United Kingdom have visited the Child Abduction Unit at Heathrow Airport, and police officers from the Unit have in turn visited the High Court. Information obtained from a meeting with Lord Justice Thorpe, London, March 2003.

<sup>317</sup> See the responses of Estonia, Finland, Panama and Slovakia to the Questionnaire.

<sup>318</sup> See the response of United Kingdom (Scotland) to the Questionnaire.

<sup>319</sup> See the response of Malta to the Questionnaire.

<sup>320</sup> The Deputy Minister in the Department of Justice, Manitoba has directed that counsel be available to provide advice to law enforcement 24 hours a day. See the response of Canada to the Questionnaire. See also the response of Argentina to the Questionnaire.

<sup>321</sup> For example, in Canada, Finland, Denmark, and the United Kingdom. The Child Abduction Co-ordinating Group in the United Kingdom was formed in 1994 by Reunite and the Greater Manchester Police. This brings together different agencies and authorities “to address the issue of international child abduction and identify means of preventing abduction. The issues being addressed presently include the continued development of prevention guidelines, embarkation controls and legal aid.” See < [www.reunite.org](http://www.reunite.org) >.

<sup>322</sup> The Parliamentary All Party Group on Child Abduction in the United Kingdom was influential in changing passport regulations in the United Kingdom requiring children to have their own passport. See < [www.reunite.org](http://www.reunite.org) >.

cases and better knowledge sharing as a result of an interagency group.<sup>323</sup> In another State a report produced by an interagency task group on international child abduction formed the basis for decisions on how to improve services and facilities within that State.<sup>324</sup>

A questionnaire respondent noted that training of child welfare officers has proved useful. As a result of this training, when a parent is concerned about abduction issues and contacts a child welfare officer, the parent is advised to contact the Central Authority.<sup>325</sup>

Where such co-operation does not exist it can hinder efforts to prevent abduction.<sup>326</sup> In some States a court order prohibiting removal of a child from a jurisdiction is automatically served on relevant authorities operating border controls. This co-operation increases the efficiency of these measures.<sup>327</sup> In other States it is up to the individual parent to ensure that the order is served on the necessary authorities. If the parent is not aware of this, delays or even inaction are likely to follow. Co-operation between personnel operating border controls is essential. In one State it has been noted<sup>328</sup> that immigration officers and security guards can access the relevant information but only the police can actually act to prevent the removal. Therefore co-operation between these authorities is vital to prevent a child leaving the country. (See above at 1.2.3 and 3.1.2)

## 5.6 TRAINING AT THE INTERNATIONAL LEVEL

- **Cross border training and co-operation enhance prevention.**
- **Training at the international or regional level should draw upon the expertise of relevant international or regional organisations, such as, *inter alia*, non-governmental organisations, the International Social Service (ISS) and Interpol.**
- **Professionals working to prevent child abduction should establish and develop networks with their counterparts in other jurisdictions.**

Training and co-operation across international borders is of great value. As previously stated, Central Authorities are required to co-operate with each other. The Special Commissions to review the operation of the Convention held in The Hague are a useful forum to improve co-operation (see above at 5.1.1). In response to the Questionnaire, it was commented that, “[i]t is of strategic importance for the processing of child abduction cases that networks are continually developed and extended”.<sup>329</sup> Attention should be drawn to a network of liaison judges appointed formally, or informally, who are able to disseminate information to judges in their own States’ and to co-operate with liaison judges in other States.<sup>330</sup>

Many regional and international meetings relating to international child abduction have been held including judicial and interagency conferences.<sup>331</sup> Some States have organised and funded training sessions for colleagues in other States to aid co-operation and to share experience.<sup>332</sup> Additionally, some training of officers working at mutual land borders is

<sup>323</sup> See the response of Finland to the Questionnaire.

<sup>324</sup> See the response of Denmark to the Questionnaire.

<sup>325</sup> See the response of Estonia to the Questionnaire.

<sup>326</sup> According to Child Focus, “co-operation is far from sufficient. There’s no exchange of information, no education, no confidence between the actors in the field”.

<sup>327</sup> See the responses of Estonia, Malta and Poland to the Questionnaire.

<sup>328</sup> Information obtained from meetings in London, March 2003.

<sup>329</sup> See the response of Sweden to the Questionnaire.

<sup>330</sup> For up-to-date information on the network of liaison judges, please refer to the *Judges’ Newsletter on International Child Protection*, *supra* note 293.

<sup>331</sup> For more information, see < [www.hcch.net](http://www.hcch.net) > → Child Abduction Homepage → Judicial Seminars on the International Protection of Children.

<sup>332</sup> Canada has sponsored a training conference for law enforcement officers in Eastern Europe through their Consulate in Poland. A German Foundation “*Deutsche Stiftung für internationale rechtliche Zusammenarbeit E.V.*” has also sponsored

combined so that officers on both sides of the border receive the same training and in some cases are even given access to each other's computer databases in order to spot and stop potential abductions.<sup>333</sup> Some specialist non-governmental organisations working in this field also co-operate together to facilitate information exchange and to assist each other.<sup>334</sup>

Often abductors and children pass through one State *en route* to the final destination. A transit State may be able to institute preventive measures to prevent further onward travel.<sup>335</sup> Additionally, a transit State may be a Contracting State to the 1980 Convention while the destination State may not. In such cases, provided authorities work quickly and with good co-operation, an application may be made under the 1980 Convention to the transit State to secure the return of the child back to the State of habitual residence before onward travel. Other preventive measures such as petitioning both the transit State and the destination State to deny entry to the abductor and child have been used successfully thanks to good co-operation between embassy and consular staff in different States.<sup>336</sup>

Some Consular Offices and Embassies also co-operate to exchange information in relation to children with dual nationality and in certain situations agree to inform authorities in another State if a passport or a visa is requested for a particular child. It is also helpful if State agencies work together with international or regional organisations and bodies able to assist and able to offer an international or regional perspective. Such agencies include Interpol<sup>337</sup> and the International Social Service (ISS).<sup>338</sup>

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training conferences in Bosnia Herzegovina, Bulgaria, Croatia, Latvia and Romania. The Argentine Central Authority has also provided training for authorities in Peru, *see supra* note 303.

<sup>333</sup> For example, border control officers working at the United States / Canadian border.

<sup>334</sup> Notably the European Network on Parental Child Abduction, and the European Federation for Missing and Sexually Exploited Children. In this regard it should be noted that Reunite – International Child Abduction Centre based in the United Kingdom has also produced Prevention Packs to seek to prevent abductions from Spain and Greece. Information is available at: < [www.reunite.org](http://www.reunite.org) >. These Packs are available in Spanish and Greek respectively.

<sup>335</sup> This again highlights the benefits of multilateral instruments as opposed to bilateral instruments. *See supra* at 1.1.2 and 1.1.3.

<sup>336</sup> *See* "Abduction in Progress! A Success Story" in 'For the Parents' May 2004 Volume 1 Issue 2, United States Office of Children's Issues Overseas Citizen Services Bureau of Consular Affairs.

<sup>337</sup> In New Zealand Interpol and police co-operate together to register a child on the customs computer. *See* the response of New Zealand to the Questionnaire.

<sup>338</sup> The International Social Service has commented that: "Most ISS branches are very active in this field, hence ISS sees itself as a valuable potential resource in this area, even more so as ISS intends, in its strategic development, to strengthen further its abilities and capacity in cross-border conciliation / mediation – in the light of child-related Hague Conventions (1980, 1996) – and make such services available to the stakeholders concerned, in particular the Central Authorities".



**[For a list of publications and websites relating to prevention issues see the Guide to Good Practice Part I – Central Authority Practice at Appendix 7. For up-to-date information on prevention issues, including links to relevant websites, please refer to the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > → Child Abduction Homepage → The Hague Project on Preventive Measures.]**



# **APPENDIX**

## **DEVELOPING A PREVENTION STRATEGY**

## **APPENDIX – DEVELOPING A PREVENTION STRATEGY**

States are encouraged to formulate a co-ordinated prevention strategy to improve preventive measures which are already in operation, to implement new measures where appropriate, and to encourage co-operation and training between the various professionals in the field. A prevention strategy should be continuously reviewed and developed in the light of increased experience and changes in the patterns of child abductions. The following is a brief overview which may be beneficial to States seeking to formulate and operate a prevention strategy.

### **WHY A PREVENTION STRATEGY?**

- A prevention strategy will help to ensure that a comprehensive system is in place to seek to prevent abductions.
- A prevention strategy will recognise where the gaps are and what needs to be done to close the gaps.
- A continuing strategy on preventive measures helps to ensure that expertise and momentum will not be lost where there is high staff turnover.
- A prevention strategy will highlight what training is needed and help to build communication between agencies and authorities both domestically and at the international level.

### **WHO DOES WHAT?**

- Assess which authorities, agencies and persons have a role to play in preventing abductions, for example, Central Authorities operating the 1980 Convention, judges, lawyers, non-governmental organisations, police officers, border control officers, Passport Agencies, Consular Offices, Embassies, social workers, parents.
- Assess what these bodies are currently doing and ensure that roles are well defined.
- Ensure that agencies and authorities are aware of their powers and responsibilities.

### **ADEQUACY OF PREVENTIVE MEASURES?**

- Assess what preventive measures are currently in operation in the State and whether there are any noticeable gaps.
- Assess which, if any, additional measures might be usefully implemented in the State and whether these require legislation, regulations, co-operative arrangements etc.
- Assess which agency or authority is best suited to operate these measures and ensure they are sufficiently trained and resourced.

## **SUFFICIENT NETWORKING AT HOME AND ABROAD?**

- Assess whether domestic agencies and authorities have good communication and working relationships with one another.
- Encourage domestic agencies and authorities to meet together to exchange ideas and build communication.
- Assess whether agencies and authorities have good communications or working relationships with counterparts in other jurisdictions.
- Recognise, which other States are most often involved in child abductions into and out of the State and ensure that there are sufficient preventive measures operating in relation to these particular States. This should include building relationships with personnel in the other States and providing information both for professionals and parents in the relevant languages.
- Encourage participation in relevant international meetings where appropriate.

## **WHEN AND HOW?**

- A prevention strategy should be ongoing. Assess what changes and improvements can be made immediately, which will require short term planning and which might require longer term planning.
- Prioritise implementation of new measures which are considered the most essential.
- Preparing and maintaining a prevention strategy should involve continuing consultation with relevant professionals.
- A prevention strategy should include provision for training for those operating preventive measures.
- A prevention strategy should also include provision of information to parents.