

**WORKING PARTY ON MEDIATION  
 CONFERENCE CALL ON THURSDAY 30 JULY 2009**

**MEETING REPORT**

<b>Participants</b>	
AUSTRALIA	Ms Kathy LEIGH
CANADA	Ms Lillian THOMSEN <i>(Co-chair of the Working Party)</i>
EGYPT	Mr Amr Abd EL-MOATY
FRANCE	Ms Christine DA LUZ
GERMANY	Mr Eberhard CARL
INDIA	Mr Justice Vikramjit SEN
MALAYSIA	Mr Haji Mahamad Naser bin DISA
PAKISTAN	Mr Justice Tassaduq Hussain JILLANI <i>(Co-chair of the Working Party)</i>
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND	Mr Alan SHAW
UNITED STATES OF AMERICA	Ms Stefanie B. EYE
INDEPENDENT MEDIATION EXPERTS	Ms Denise CARTER (Reunite) Ms Lorraine FILION (AIFI)
PERMANENT BUREAU	Mr William DUNCAN
<b>Members of the Working Party not participating in the Conference call of 30 July 2009</b>	
JORDAN	
MOROCCO	
INDEPENDENT MEDIATION EXPERT	Mr Justice Saeeduzamman SIDDIQUI

The Working Party is co-chaired by Ms Thomsen (Canada) and Mr Jillani (Pakistan). However, in order to simplify the communication in the conference calls, Ms Thomsen and Mr Jillani have agreed to chair alternate conference calls; the first conference call on Thursday 30 July 2009 was chaired by Ms Thomsen.

The Chair welcomed all participants and started the conference call with a general introduction and a roll call. She explained that due to the language choices of participants for the conference call of 30 July 2009, there were no participants on the Arabic language line. She further explained that she would address the French language line first for interventions / comments / questions and then the English line. She explained that unless otherwise indicated, the order in which interventions were made within the different language lines would correspond to the order of the participants on the List of Participants circulated before the conference call.

The Chair opened the meeting and referred to Mr Duncan for a summary of the responses to the Questionnaire received by the Permanent Bureau from the participating States, as well as for a brief analysis of existing problems and gaps, as identified by the States.

Mr Duncan (Permanent Bureau) said that the Permanent Bureau had received responses to the Questionnaire from 11 of the 12 States involved in the Working Party and thanked the participants for these responses. He highlighted in his brief overview that the responses had shown that in many of the States mediation is available at least on a national level but that access and approaches to mediation differ immensely not only between States but also between regions and provinces inside certain States. Summarising the availability of mediation he said that in some States mediation is integrated within the courts' system, in some it is out-of-court, and in some it is a mixture of the two. Mediation can be provided by the State (through its administrative or legal services), or by local or international NGO (*e.g.* the International Social Service). Sometimes there is a mixture. With regard to international mediation it seems that specific structures, where they exist, are at an early stage of development, and this is true of both "Hague Convention" States and "non-Hague Convention" States. Many States acknowledge that they do not yet have a "structural" system of mediation for international cases. On the other hand, a few countries have begun to develop structures (*e.g.* Egypt through the Ministry of Justice and Germany through a joint enterprise involving two NGOs). He said that the responses had confirmed that one of the main obstacles to mediation in international family disputes involving children was the lack of structures for international family mediation, especially the lack of central entry points, difficulties in obtaining information on mediation possibilities and the foreign legal system, language problems, laborious or lengthy procedures; legal obstacles and high costs of available mediation services. Difficulties in locating children were also a problem. In regard to the agenda for the conference call, he suggested to begin by focusing on the agenda item of "contact points". He emphasised that such entry points would need to be clearly identified and easily accessible for those in need of assistance in a cross-border family dispute.

The Chair welcomed the highlighting of the importance of the next agenda item titled "contact points" and asked the participants for their first comments on that issue as well as for comments on Mr Duncan's analysis of the Questionnaire responses. The Chair addressed first the French and then the English speaking line.

The participants thanked Mr Duncan for the summary and analysis of existing problems. All participants agreed that a central entry point was of vital importance.

Mr Duncan (Permanent Bureau) asked the participants for their view on the specific tasks of such central entry points. He asked if, given that those entry points would serve as information giving bodies, they should provide the parties with information on how to access mediation only or if they should also advise parties on how and where to obtain relevant legal information. He further asked whether the entry points could also play a more active role and assist parties with mediation.

The Chair again addressed first the French and then the English speaking line.

Ms Da Luz (France) said that in her view the entry points should also provide legal information.

Ms Filion (Independent expert) pointed out that in Canada a central contact point was urgently needed. She said such a contact point should assist, firstly, parents in abduction situations, secondly, parents who have difficulties regarding contact with their children and should, thirdly, provide preventive services. She said that it was important to give general information on mediation services to both parents; also in an abduction situation, both parents, the left behind parent and the abducting parent, should have the same right to access information through the entry point. She said that the entry points should provide general information on mediation, as well as lists of mediators.

Mr Carl (Germany) explained that regarding child abduction cases the current practice in Germany differs between Hague cases and non-Hague cases. He explained that the Ministry of Justice and the Federal Office of Justice were the competent authorities for Hague cases, whereas non-Hague cases were dealt with by the Foreign Office. He explained that the Ministry of Justice and the Foreign Office were, in co-operation with the Family Ministry, currently looking into the possibility of establishing a non-governmental contact point. He agreed with Mme Filion regarding the three groups she had mentioned that an entry point would have to provide assistance for parents in abduction cases, contact cases and preventive services. He also agreed that abducting parents need to have the same access to information. Mr Carl explained that they were currently discussing the establishment of a telephone hotline for parents in international family disputes involving children.

Ms Leigh (Australia) pointed out that, as in Germany, there were different processes for Hague and for non-Hague cases in Australia. She said that for Hague cases the Attorney General's Department, *i.e.* the Ministry of Justice, would be competent, whereas non-Hague cases were dealt with by the Ministry of Foreign Affairs. She explained that if Australia was to establish a new central contact point, which would deal with Hague and non-Hague cases at the same time, they would need further clarification and guidelines. She said that in her view such a central contact point should not only provide information but also assistance.

The Chair explained that in Canada there was no central contact point to which parents in non-Hague cases could turn, but that such a contact point was urgently needed. She said, however, further domestic consultations would have to be undertaken.

Mr El-Moaty (Egypt) said that a central entry point was very important for parents as well as for governments. He said that such an entry point should not only provide information, but should also offer services, such as helping parents to locate the child. He emphasised that in addition to establishing such entry points, it was very important to, at the same time, raise awareness in the population regarding the existence of these central contact points. He pointed out that in Egypt a central contact point already existed. He further stated that it was

important to use modern technology in order to improve the accessibility of the contact points. As for the Egyptian contact point, he pointed out that they had established an internet site that would also offer parents the possibility of making online requests.

Ms Eye (United States of America) explained that in the United States of America they would differentiate between outgoing non-Hague and incoming non-Hague cases. Outgoing non-Hague cases, would, although not covered by the Convention, basically be dealt with by the authorities as if they were Hague cases, *i.e.* the left behind parent would receive assistance from the Central Authority under the Convention. For incoming non-Hague cases the NGO NCMEC would provide a certain amount of assistance. She pointed out that they would be happy to see a central contact point for all international family cases involving children. She said they were also in negotiations with various NGOs regarding the establishment of services of a more active kind.

Mr Sen (India) said that India as a non-Contracting State to the Hague Child Abduction Convention did not have a Central Authority that could deal with those cases, although, hopefully India will become a party to the Convention soon. He said that there would be a strong need for a central point, even for cases within India itself.

Mr Disa (Malaysia) said he agreed with the need for a central entry point and that such entry points should also play a more active role and assist left behind parents.

Mr Jillani (Pakistan) explained that Pakistan, not being a party to the Hague Child Abduction Convention, did currently not have an official central contact point. However, he said that Pakistan had in the past, worked very closely with the United Kingdom regarding child abduction cases, and that an office for a Liaison Judge had been created at the Supreme Court, which – indirectly – could also be seen as a contact point at this stage. He furthermore pointed out that there are two NGOs in Pakistan that provide mediation services; these two NGOs could also be seen as contact points. He explained that he had been in contact with both NGOs in the past days and that both NGOs had assured their support for the Working Party and committed themselves to providing free mediation services for cases referred to them by the Working Party.

Mr Shaw (United Kingdom) explained that in the United Kingdom a two-fold approach was also followed. Hague child abduction cases were dealt with by the Central Authority under the Convention, whereas non-Hague cases were dealt with by the Foreign Ministry. He pointed out that unfortunately for non-Hague cases there was a certain imbalance, since non-Hague cases involving British nationals get much greater support than others. He said that it was important that non-Hague cases not involving British nationals were eligible for the same support. He further referred to the British NGO reunite, which offers assistance and mediation services in Hague and non-Hague cases. He pointed out that Liaison judges would play a very important role in international family cases involving children, but that a central contact point was needed in addition to a network of liaison judges.

Ms Carter (Independent expert) explained that the NGO reunite already worked, in a way, as a central contact point for parents in Hague cases and in non-Hague cases. She explained that reunite gave advice to parents on preventive measures, advice in abduction cases, in contact and in leave to remove cases in addition to offering mediation services in the United Kingdom. She highlighted that reunite did not restrict its activities to cases involving British nationals or

cases involving Great Britain. She explained that reunite had started an initiative with organisations and authorities in Egypt for co-operation in international child protection cases and that reunite was also active in Pakistan regarding a similar initiative.

The Chair concluded on point 3 of the agenda that there was an overall strong support for the establishment of central entry points and asked the participants to turn to item 4 on the agenda. She asked the participants to concentrate on issues in the list under item 4 of the agenda they considered as the most important for a further discussion and to point out items that the participants thought were missing in this list. Before turning to the participants in the French language group, the Chair asked Mr Duncan for some initial remarks.

Mr Duncan (Permanent Bureau) said that he would refrain from a long introduction; looking at the list on the agenda. However, he thought that it might be too early at this stage to discuss "mediation models" in depth, especially in view of the very different approaches to mediation that exist in the countries involved in the Working Party. He therefore asked the participants to deal with this agenda item in a rather general way in order to also give space to the other items in the list.

Ms Da Luz (France) explained that in her view the list in the agenda mirrored the most important issues in regard to mediation processes. She said that points of concern in her view were the costs for mediation, which could be quite high, the language used in mediation, and the enforceability of any mediated agreement.

Ms Fillion (Independent expert) explained that, being the President of the AIFI, an international organisation which brings together stakeholders working on both legal and psychosocial aspects of families separated by conflict, she found it very important that the Working Party would at some stage discuss the definition of "international family mediation". She said that she would agree that such a definition should not be too narrow and should leave space for different mediation models. She highlighted the importance of basic principles of mediation such as impartiality and confidentiality, as well as other ethical principles. She further pointed out that appropriate mediation training needs to be discussed, as well as how the needs of both parties and children can be reflected in the mediation. She referred to a publication of AIFI on ethics of mediators. In regard to the list on the agenda, she said that she considered the issues of costs as very important. She argued for a cost-free information session on mediation; there have been very good experiences with such free information sessions in Quebec. Turning back to the agenda list, she highlighted the special need for speed in abduction cases, as well as the importance of independent legal advice and the accessibility of mediation in the language of the parties. She said that as regards mediation models there should be flexibility and that mediation agreements needed to be turned into court orders in both countries shortly after the mediation.

Mr Carl (Germany) highlighted the item "timeframe" on the list and said that it was important that a good structure for mediation existed and that child abduction cases would be dealt with speedily in mediation. He explained that there were many measures one could take to speed up proceedings and mentioned in particular the handing out of questionnaires to the mediation parties before the mediation to gather relevant information, as is current practice for the mediation by the NGO MIKK in Germany. He agreed that language was a very important issue and that each party should be able to speak in his / her mother tongue during the mediation; ideally the mediators should be fluent in the relevant languages, as an auxiliary solution an interpreter could be involved. He said that the enforceability of the mediation agreement was very important in both countries involved. He pointed out that it was very important to have mirror orders in those cases and referred to a recent abduction case in which an order by the Israeli court was mirrored by a German court. As regards the mediation models, he agreed that flexibility was needed in this regard. However, he explained that further precision as to appropriate models would be needed. He then referred to the German approach as used in some of the bi-national mediation projects Germany was / is involved in. He explained that in these international mediation projects bi-national co-mediation was undertaken by two mediators, who would fulfil the following conditions: one would be male, one female, one

would come from the home country of one party, the other from the home country of the other party and finally one would have a legal background and one a psychological / pedagogical background.

Ms Leigh (Australia) pointed out that in addition to the agenda items on the list locating the child was one of the most important issues. In regard to mediation procedures she highlighted the importance of acting quickly in cases that involved children. She said that she agreed with Mr Duncan as to the need for flexibility concerning mediation models. She identified enforceability as an issue of very high importance and pointed out that in Australia there was legislation in place that made it possible to turn mediation agreements into court orders.

The Chair said that she would like to concentrate on mediation models and the enforceability of mediation agreements. She said that enforceability was of key importance to her and that she was looking forward to exploring this topic further.

Mr El-Moaty (Egypt) said that, regarding the mediation process, four points would be of special importance. The first was the appropriate place of mediation, whose determination might be difficult because of the great geographical distance of the parties, visa issues and high travel costs. He therefore also referred to possible long distance mediation with the help of modern technology. Secondly, he referred to the need for knowledge of the cultural and legal background in international mediation and that mediators in those cases would quite probably have to be highly paid experts. Thirdly, he highlighted that the enforceability of the mediation outcome was of utmost importance and that therefore there was a need for the Working Party to explore the mediation process and the relevant rules in the national legal systems. Fourthly, he referred to mediation models and said that it would be good to start from the current structures that are already successfully working and to develop these further to make them useable for the international family mediation as envisaged by the Working Party.

Ms Eye (United States of America) explained that in view of the many different legal systems in the United States of America, as well as the different cultural and language background of the US population, it was very difficult to make general statements regarding the items on the agenda. She said that they will first have to consult further internally before being able to comment. She pointed out that they had started internal consultation and that they hope to be helped in this endeavour by the American Bar Association and other NGOs. She explained that in any case she would consider the enforceability of mediation agreements as crucial and a very important point for the future discussion. She stated that in the United States of America it would generally be possible to turn agreements into court orders, unless the agreement was in breach of law. She said that since the enforceability of agreements in the United States of America would thus not be problematic they would be specifically interested in reciprocal enforceability.

Mr Sen (India) explained that the way mediation currently works at the New Delhi High Court parties would not be able to access mediation before first having seized the court, which, of course, was unsatisfactory. He further stated that mediation costs were an issue. He explained that, since mediation in New Delhi was currently provided by lawyers, the access to legal advice would not be problematic. He said that in his view the mediation models should be unified. He explained that he would not envisage big language problems, since mediation would be available in English. As regards the point on enforceability, he explained that, since mediation was court-annexed in India, mediation agreements could easily be turned into court orders. He said that in his view the biggest problem in India was locating the child.

Mr Disa (Malaysia) expressed his interest in mediation models, mentioning different systems of in and out of court mediation. In regard to mediation in Malaysia he referred to the responses given by Malaysia to the Questionnaire. He said that the religion of the parents and the child would play a very important role.

Mr Jillani (Pakistan) expressed his agreement with the items on the list on the agenda. He explained again that so far the only mediation possibility in Pakistan was provided by the two existing mediation centres he had referred to earlier. He further noted that court-annexed mediation might provide greater credibility; the court could appoint the mediator.

Mr Shaw (United Kingdom) said that it was important to keep in mind in the discussions on mediation that all participating States were starting at different points. He pointed out that it was important to agree on what the Working Party should aim for. He stated that, in his view, enforceability was of great importance, as was the need to agree on training standards for mediators and to discuss regulation of mediators.

Ms Carter (Independent expert) said that she was in favour of a flexible approach to mediation models as suggested by Mr Duncan. She highlighted as crucial issues on the list enforceability and costs. She further said that it was important to monitor mediation standards, as well as the quality of mediation for which appropriate training of mediators was needed. She pointed out that it was important to follow up cases after the mediation. As regards the time frame for mediation, she explained that the experiences at reunite have shown that mediation in Hague cases is done under a very tight time frame, whereas mediation on non-Hague cases may be quite lengthy due to the lack of legal structures and a connected insecurity on the part of the parties. She suggested that the Working Party look at case histories of non-Hague cases that have been mediated in the past. She said that reunite had received funding for a study on old cases mediated by reunite and that she would be happy to share the future results of that study with the Working Party.

The Chair thanked the participants for the very useful discussion and concluded that there had been an overall agreement on the need to have access to mediation through a central entry point. She said that the discussion had shown that more work needs to be done on the topic of mediation models. Finally, she highlighted the issue of enforceability as one of the items identified as most crucial by the participants. She explained that a Meeting Report of the discussion would be circulated among the participants for comments and corrections followed by the final version of that report. She further asked the participants to reconsider the Questionnaire answers given by the participants in the light of the discussion and to send possible additions or clarifications to the Permanent Bureau. She said a further meeting would be prepared for early autumn. She asked Mr Duncan to give his thoughts before the last comments by the participants.

Mr Duncan (Permanent Bureau) thanked the Working Party for the very fruitful discussion and suggested that the final version of the Meeting Report be circulated to the other Malta Conference participants and Members of the Hague Conference in order to keep them informed about the developments. He further suggested that information from the participants be collected on the issue of enforcement, as well as case histories of mediated non-Hague cases where available.

Ms Da Luz (France) assured the Working Party of her full support with gathering the necessary information.

Ms Filion (Independent expert) said she could provide the Working Party with responses to a questionnaire the AIFI had circulated to different mediation organisations. She said she would also make the AIFI Guide to Good Practice available, as well as case histories of cases in which the mediation service linked to the Montreal Superior Court was involved (abduction cases and transfrontier contact cases).

Mr Carl (Germany) welcomed the idea of collecting further information on the crucial issue of enforceability. He said it was important to also further look into mediation models and common standards for mediation, as well as mediator training. He said that post-mediation monitoring was an important issue and that he would contact the NGOs providing mediation in Germany to retrieve case histories of mediated non-Hague cases.

Ms Leigh (Australia) thanked the Chair and the other participants for the fruitful meeting.

The Chair expressed her agreement with the circulation of the meeting report to other Malta Conference participants and Member States of the Hague Conference.

Mr El-Moaty (Egypt) also expressed his agreement with the circulation. He said that the further examination of the enforceability of mediation agreements, as well as the collection of case histories, was very important.

Ms Eye (United States of America) thanked the Chair and the other participants and promised to provide the necessary information.

Mr Sen (India) thanked the Chair and the other participants for the meeting.

Mr Disa (Malaysia) thanked the Chair and the other participants and said he was looking forward to further exploring the different mediation models.

Mr Shaw (United Kingdom) thanked the Chair and the other participants for the effective meeting.

Ms Carter (Independent expert) thanked the Chair and the other participants and asked the participants when collecting the case histories to also collect the mediated agreements and note to what extent enforceability has been considered in the mediation process.

The Chair thanked everyone involved in the conference call and in organising it and concluded the meeting.

A note from the Permanent Bureau: Appreciation is expressed to the Canadian authorities for organising and financing the conference call.