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# Overview of Mediation Dispute Resolution in Child Abduction Cases

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## Overview of Mediation Dispute Resolution in Child Abduction Case

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### Introduction

Mediation as a dispute resolution process is not appropriate for everyone or every case. Mediation is not the panacea for all ills and in respect of child abduction cases under the Hague Convention in some quarters it may be seen as an anathema to the process. It may be suited to some cases and then there are other cases which must be litigated. It becomes a matter of identifying which category a case falls into.

When I first delivered this paper in Singapore in 2012 it aroused healthy discussion and a clear divide amongst colleagues who advocate for mediation and highly regarded colleagues who find no place for mediation in Hague Convention cases. Understandably the Convention demands a process of stealth where the priority is to resolve the forum issue and return the child(ren) to the jurisdiction of their habitual residence where any parenting dispute can then be resolved. Time is of the essence. Traditional litigators see mediation as a potential road-block to the process that undermines the purpose of the Convention.

In many cases of wrongful removal / retention of children the abduction is only a symptom of an underlying parenting issue which is capable of resolution. Mediation provides an olive branch for many families to solve the source of the problem and provide a constructive outcome for the family moving forward. Mediation offers an opportunity to resolve the entire dispute or it may be engaged for more discrete aspects of a Convention / non Convention case such as negotiating the terms and conditions of a return of the child(ren) to the home State. In some cases however the level of antipathy between the parties (highly conflicted relationship and an intractable dispute) is such that mediation will not be on the table as a viable option to be contemplated.

The price for a family of an abduction or holding over can be devastating. Litigation can irreparably damage the family unit resulting in psychological issues for the children, incarceration for the abducting parent etc.

The concerns of the critics of the mediation process in Convention matters are to a certain extent allayed by the protocols suggested by the Hague Conference referred to later in this paper. The Guide contains sufficient safeguards, balancing the requirements of mediation with the expeditious hearing of the return application and the protection of the integrity of that process. For instance the Guide suggests the institution of Hague return proceedings before moving to mediation<sup>2</sup>:

*“Experience in several countries (e.g. Germany and the United Kingdom) has shown that the immediate initiation of return proceedings followed, where necessary, by a stay of these proceedings for mediation works well. This approach has several advantages:*

*a It may positively affect the taking parent’s motivation to engage in finding an amicable solution when otherwise faced with the concrete option of court proceedings.*

*b The court may be able to set a clear timeframe within which the mediation sessions must be held. Thus the misuse of mediation as a delaying tactic is avoided and the taking parent is not able to gain any advantages from the use of Article 12(2) of the 1980 Hague Child Abduction Convention.*

*c The court may take necessary protective measures to prevent the taking parent from taking the child to a third country or going into hiding.*

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<sup>2</sup> Guide to Good Practice Child Abduction Convention – Mediation pages 29-30

*d The left-behind parent's possible presence in the country to which the child was abducted to attend the Hague court hearing can be used to arrange for a short sequence of in-person mediation sessions without creating additional travel costs for the left-behind parent.*

*e The court seized could, depending on its competency in this matter, decide on provisional contact arrangements between the left-behind parent and the child, which prevents alienation and may have a positive effect on the mediation process itself.*

*f Funding for court-referred mediation may be available.*

*g Furthermore, the fact that the parties will most likely have specialist legal representation at this stage already helps to ensure that the parties have access to the relevant legal information in the course of mediation.*

*h Finally, the court can follow up the result of mediation and ensure that the agreement will have legal effect in the legal system to which the child was abducted, by turning the agreement into a court order or taking other measures. The court can also assist with ensuring that the agreement will have legal effect in the other relevant jurisdiction.*

Whilst the following passage compares the impact of enforcement of parenting orders with Contempt, I draw some useful analogies from the statement:

*The dichotomy of enforcing orders on the one hand and punishing a person for contempt of court on the other shows up in sec 112AD and 112AP and is repeated in the rule-making power. This dichotomy is emphasised in Report No. 35 of the Australian Law Reform Commission on Contempt published in 1987. It was this Report that was the background of and catalyst for the 1989 amendments that put Pt XIII A into the Act.*

*Nowhere in our court system is the difference between enforcement of orders and contempt so important as in the family law area. The vast majority of applications in this field of family law is in relation to orders made regarding the welfare of children, e.g. access, custody, abduction matters. The applications are made by one parent against another. One parent wants an order enforced by coercion. The order is not a one off property or monetary order as are the orders in other jurisdictions. The parents will remain such and hence have an ongoing relationship with each other irrespective of the coercive order made in the enforcement proceedings. This is the reason for the passage of sec 112AD(5) (counselling) which in all other respects is a contempt type section providing for punishment for disobedience of an order except for sec 112AD(2)(g) referring to an award of compensatory access.<sup>3</sup>*

Such are laudable sentiments when the best interests of the child, the future parent to parent relationship and future parent to child relationship are at stake. Mediation is a valid option to litigation towards a more constructive outcome for families. As to mediations application to international parental child abduction cases, there is a groundswell of discussion and support and some early engagement in the process. The concept is in its infancy.

The Hague Conference embraces the use of mediation where appropriate in the resolution of child abduction cases.

In relation to family disputes there are numerous cross border regulatory instruments. The Hague Conference on Private International Law has produced three relevant Conventions:

1. The Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children promotes the use of mediation with respect to matters that fall under the Convention (article 31)<sup>4</sup>;

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<sup>3</sup> Jackson and Fordham (1995) FLC 92-561 at 81,593

<sup>4</sup> “The Central Authority of a Contracting State, either directly or through public authorities or other bodies, shall take all appropriate steps to -

2. The Convention of 13 January 2000 on the International Protection of Adults reflects much of the 1996 Hague Convention in the context of vulnerable adults.
3. Finally the Convention of 25 October 1980 on Civil Aspects of International Child Abduction also makes indirect provision for mediation.

Article 7 of the 1980 Convention provides

*Article 7*

*Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.*

*In particular, either directly or through any intermediary, they shall take all appropriate measures -*

- a) .....*;
- b) .....*;
- c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;*

Article 10 of the 1980 Convention provides:

*Article 10*

*The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.*

### Example

The following extracts from the leading text "International and Comparative Mediation: legal perspectives" by Nadja Alexander recognizes the place of mediation in child abduction cases:

*"Global family: consider the case of Joe and Marie, refugees from Bosnia who together with their small child, Anton, start a new life in the United States. On an extended trip back home with their son, Marie falls in love with the Chilean Ambassador to Bosnia. She leaves her husband and she and Anton move in with her new partner, the Ambassador, who is about to begin his next term of office in Germany. Joe is beside himself and uncertain about how to reach his son. Joe's lawyer mentions something about international child abduction and the Hague Convention.....*

*In addition, parenting disputes increasingly cross national borders as the story of Joe and Marie – introduced earlier – illustrates. Here mediation offers a more personal and culturally adaptable conflict resolution process than litigation, one which is generally more suited to achieving innovative and practical solutions that are in the interests of the children.....*

*Returning to the global family introduced earlier, Joe is not much interested in the details of the Hague Convention on Child Abduction. Rather he is worried about his child's welfare and how he will be able to see him if Anton accompanies his mother to Germany. Mediation has the potential to provide a forum in which he and Marie can talk together to create*

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a) facilitate the communications and offer the assistance provided for in Articles 8 and 9 and in this Chapter;  
b) facilitate, by mediation, conciliation or similar means, agreed solutions for the protection of the person or property of the child in situations to which the Convention applies;

c) provide, on the request of a competent authority of another Contracting State, assistance in discovering the whereabouts of a child where it appears that the child may be present and in need of protection within the territory of the requested State. "

*an arrangement that works for them and Anton and also addresses the needs of Marie's new partner. The US German Mediation Project or one of the other organisations referred to earlier might be a useful starting point....*

*In the story of Joe and Marie outlined in chapter 1 the dispute relates to parenting issues across borders. Relevant laws in the mediation might include the Hague Convention and the Civil Aspects of International Child Abduction in addition to the applicable family law..."*

Further illustrations of the potential use of mediation in child abduction cases are cited in the Hague Conference's Guide<sup>5</sup>, as follows:

*Some typical factual situations may illustrate the usefulness of mediation in international family disputes concerning children under the 1980 Hague Child Abduction Convention.*

*a In the context of international child abduction, mediation between the left-behind parent and the taking parent may facilitate the voluntary return of the child or some other agreed outcome. Mediation may also contribute to a return order based on the consent of the parties or to some other settlement before the court.*

*b Mediation may also be helpful where, in a case of international child abduction, the left-behind parent is, in principle, willing to agree to a relocation of the child, provided that his / her contact rights are sufficiently secured. Here, an agreed solution can avoid the child being returned to the State of habitual residence prior to a possible subsequent relocation.*

*c In the course of Hague return proceedings, mediation may be used to establish a less conflictual framework and make it easier to facilitate contact between the left-behind parent and the child during the proceedings.*

*d Following a return order, mediation between the parents may assist in facilitating the speedy and safe return of the child.*

*e At a very early stage in a family dispute concerning children, mediation can be of assistance in preventing abduction. Where the relationship of the parents breaks down and one of the parents wishes to leave the country with the child, mediation can assist the parents in considering relocation and its alternatives, and help them to find an agreed solution.*

## Mediation

The Mediator Standards Board describes mediation as:

*... a process in which the participants, with the support of the mediator, identify issues, develop options, consider alternatives and make decisions about future actions and outcomes. The mediator acts as a third party to support participants to reach their own decision. Approval Standards November 2008.<sup>6</sup>*

Professor Laurence Boulle<sup>7</sup> defines mediation as:

*"A decision-making process in which the parties are assisted by a third party, the mediator [who] attempts to improve the process of decision making and to assist the parties reach an outcome to which they can assent."*

The UK College of Family Mediators Directory and Handbook (1997/8) defines mediation as:

*"A process in which an impartial third person assists those involved in a family breakdown,...to communicate better with one another and to reach their own agreed and informed decisions about some or all of the issues relating to or arising from the separation, divorce, children, finance or property."*

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<sup>5</sup> at page 20

<sup>6</sup> (<http://www.msb.org.au/about-mediation/what-mediation>)

<sup>7</sup> Mediation: Principles, process Practice (1996)



The Law Council of Australia, Ethical Guidelines for Mediators defines mediation as:

*"...a process in which an impartial person – a mediator – facilitates the resolution of a dispute by promoting uncoerced agreement by the parties to the dispute. A mediator facilitates communication, promotes understanding, assists the parties to identify their needs and interests, and uses creative problem solving techniques to enable the parties to reach their own agreement."*

Article 3 (b) of *Mediation Directive*:

*"a structured process...whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator"*

Nadja Alexander defines mediation as follows:

*"For the purposes of this book mediation is conceptually defined as an assisted decision – making progress, which typically – but not invariably takes the form of a facilitated negotiation or dialogue. The mediator assists parties to make decisions about the issues in dispute between them and about appropriate norms for the regulation of future relationship. Generally mediation is based on principles such as party autonomy, client centredness and choice, confidentiality and a focus on interests and needs rather than rights and positions. The process is voluntary in so far as parties are not required to make any decisions or to reach agreement. In so far as decisions are made, they are said to reflect the parties' choices and priorities. This conceptual definition corresponds to the facilitative model of mediation"*

Mediation comes in many forms and there are multiple definitions which of itself can be problematic in cross border disputes.

Mediation and negotiations are closely related processes and mediation can be described as facilitated negotiation. Despite their similarities, mediation and negotiation can be distinguished from each other in 3 ways:

1. In mediation, a third party enters the negotiations to assist the parties, move through the negotiation process, while leaving the outcome of the negotiations ultimately up to them; in negotiation there is no independent dispute resolution practitioner assisting the parties to move towards their outcome.
2. The phases of a mediation process are generally more structured and explicit than those of a negotiation.
3. Courts in a number of jurisdictions including Australia, the United States, the United Kingdom, Sweden and France have held that agreements to mediate can be enforceable where the process is set out with sufficient certainty, whereas agreements to negotiate generally are not enforceable.<sup>8</sup>

Hon Brian Jordan and Peter Sheehy summarise some of the available options as follows<sup>9</sup>

*"Within the mediation model, there are numerous styles and practices from the therapeutic, the facilitative and the evaluative to what is described by Professor John Wade of Bond University as the settlement model."*

*The classic approach to mediation is best illustrated in the facilitative model. This style of mediation has at its core the concept that the process should be one that enables and empowers parties, with the assistance of an objective third party, to identify their issues in the dispute and find their own solutions to those problems. The mediator's role is that of a facilitator. He/she need not have any expertise in the area of the dispute and should not suggest outcomes or offer opinions as to merits.*

*The evaluative model is one where the mediator retained does have some expertise in the field the subject of the substantive dispute. Whilst the mediator will necessarily continue to manage the process and facilitate*

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<sup>8</sup> Nadja Alexander, page 25

<sup>9</sup> Hon. Brian Jordan and Peter Sheehy, "Mediation in Property Matters – Practice and Reform", TEN 4<sup>th</sup> Annual Family Law Conference Gold Coast Queensland July 2010

*discussion, he/she may be called upon to undertake some evaluation of the merits of the cases and either express some direct opinion as to the likely outcome of the litigation or express some view about the merits of competing claims or proposals.*

*Finally, the so-called settlement model has a much narrower focus. The process in such matters is likely to be largely conducted in the traditional way with negotiations primarily between legal practitioners on instructions from their respective clients. In turn, those instructions are likely to be heavily influenced by advice from the legal representatives. In many ways, the mediator could be viewed as by largely superfluous.*

*In Queensland, the bulk of the mediators and practitioners regularly participating in the mediation appear to favour an approach which embraces features of the three models described. Professor Wade would disagree with that proposition because it is unlikely that he would concede that there is any real evidence of features of the facilitative model in the Queensland practice. However, the most common approaches used locally seem to follow a pattern where the mediator at least commences the process by carefully ensuring all statements are entirely neutral and limits his/her role to one of management of the exercise. The bulk of mediations are conducted on a shuttle basis with the parties not being brought together. After dealing with the preliminaries and setting an agenda, the mediator will encourage the parties to embark upon a negotiation process which he/she will oversee. Most often the mediator will withhold any evaluative observations until he/she is called upon to provide them or until such time as he/she perceives it necessary or helpful to express opinions. Thereafter, the process usually narrows further to what are essentially settlement negotiations with the mediator intervening if the negotiations appear to be breaking down using a variety of techniques designed to re-manoeuvre the discussions."*

## A to Z about mediation

Nadja Alexander provides the following overview of the practicalities of mediation<sup>10</sup>

1. Who participates? Parties, legal or other professional representative (optional), mediator, other stakeholders with parties' consent.
2. Who decides outcome? Parties reach agreement on some or all of the issues with the assistance of the mediator.
3. Role and selection of dispute resolution practitioner: The role is generally facilitative and may contain advisory elements. Specifically a mediator encourages candor, highlights common and competing party interests, sets agenda for discussion, assists parties to explore options for settlement, encourages concessions, assists parties to reach and document agreement. Mediators are selected by parties, or if they cannot agree, by a nominated authority such as the President of the Mediation Organisation.

*"Selecting a mediator may not seem to be a task fraught with regulatory issues. However important legal consequences can flow from the selection of a particular mediator, such as the nature and extent of mediator liability, the scope of confidentiality and the level of enforceability attaching to mediated settlements. This section shows that in the absence of an internationally recognised system for mediator recognition, a minefield of potential legal risks awaits clients, lawyers and mediators. Chapter 2 introduced readers to a range of regulatory mechanisms including standard setting instruments that deal with mediator recognition and performance. Here recognition extends to various standard of formal approval of persons to practice as mediators. It includes registration, certification, qualifications, accreditation, credentialing, licensing and other recognition procedures."*

4. Format of proceedings: The process is flexible and usually consists of parties participating in a series of joint and separate meetings with the mediator. Generally the process is structured by the mediator in accordance with applicable law, rules and standards. Mediation may be administered on an ad hoc basis or institutionally. No formal documentation of process. In some jurisdictions mediator's notes are destroyed as a matter of practice.

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<sup>10</sup> Nadja Alexander, pages 29-38

5. Level of formality: Can range from informal to formal discussions.
6. Levels of privacy and confidentiality: Private forum. Generally conducted on a confidential and without prejudice basis but could have public elements.
7. Criteria relevant to decision making: Criteria may include a combination of needs and interests relevant to the parties and their respective legal rights.
8. Nature of outcome: Mutually acceptable agreement on all or some of the issues in dispute. If no agreement, parties walk away from the process or it is determined by Court or tribunal.
9. Legal consequences of outcome: Where agreements take the form of a binding contract, the general law of contract applies – unless specific provisions relating to mediated agreements apply. In the absence of specific agreements to the contrary, attempts to set aside the agreement and breach of agreement issues will be subject to the principles of contract law.
10. International recognition of outcome: May be difficult. Subject to the laws of jurisdiction where recognition is sought.
11. Time frame for process: In ad hoc mediations, timeframes are set by the parties and their professional advisors in consultation with the mediator. In institutional mediations, guidelines to timeframes may be indicated by organisational guidelines. Where mediation has been initiated as part of a dispute resolution clause, the clause may set time frames. In court referred mediation time frames may be set by the Court.
12. Costs involved in process (apart from incidental expenses): Fees for professional advisors, mediators, institution administering the mediation, experts consulted in the course of the mediation. Note with the exception of the costs of one's own professional advisors, these costs are generally divided as agreed between the parties.
13. Circumstances where dispute resolution forum is appropriate: Continuance of a good relationship is important. Parties have reached an impasse. Parties level of hostility makes negotiation difficult and the presence of the mediator enables them to save face. The parties seeking remedy that the Court cannot order. The parties require a forum to encourage clarification and better understanding of the issues. Need for speedy resolution. Confidentiality desirable. Costs of other dispute resolution processes such as arbitration and litigation outweighs the value of the dispute.
14. Circumstances where procedure is inappropriate: Remedies sought is required urgently and must come from Court, e.g. injunction. Mediator unable to address issues of power and balance between parties. Mediator unable to assist the parties resolve deadlock. Repeat player party (e.g. insurance company) seeking a precedent/ruling. Delay may result in forfeiture of legal rights. Issues of public importance may require precedent from Courts.
15. Mediation laws that regulate the interface between mediation and other proceedings, can be distinguished from those which focus solely on procedural aspects of mediation. The distinction highlights the role of mediation in the legal system and the fact that mediation does not and cannot exist in a legal vacuum.

## Why mediate?

I highlight the following statement<sup>11</sup> as a useful reminder of the risks and limitations of our court systems and the benefits of the parties reaching their own solution to their problem:

*"It is often impossible to predict the outcome of litigation with a high degree of confidence. Disagreements on the law occur even in the High Court. An apparently strong case can be lost if evidence is not accepted, and it is often difficult to forecast how a witness will act in the witness-box. Many steps in the curial process involve*

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<sup>11</sup> Studer v Boettcher [2000] NSWCA 263



*value judgments, discretionary decisions and other subjective determinations which are inherently unpredictable. Even well-organised, efficient courts cannot routinely produce quick decisions, and appeals further delay finality. Factors personal to a client and any inequality between the client and other parties to the dispute are also potentially material. Litigation is highly stressful for most people and notoriously expensive. An obligation on a litigant to pay the costs of another party in addition to his or her own costs can be financially ruinous. Further, time spent by parties and witnesses in connection with litigation cannot be devoted to other, productive activities. Consideration of a range of competing factors such as these can reasonably lead rational people to different conclusions concerning the best course to follow."*

The process of litigation can be:

- (a) Costly: parties can expect to spend at least \$100,000 to \$200,000 each in legal costs and disbursements if they were to continue to litigate all issues to trial. The costs associated with running a Hague Convention matter for incoming applications under the Convention (i.e. where a child has been brought to Australia or retained in Australia) are fully paid by the Australian Government. In relation to outgoing applications (i.e. where a child has been taken from Australia or wrongfully retained overseas) the level of financial and legal support varies significantly. The resulting financial burden on the left behind parent in Australia can be immense;
- (b) Time consuming: parties can expect to spend at least 12 – 18 months in the Federal Magistrates Court and / or the Family Court of Australia. The Family Court of Australia has put in place strategies to deal with Hague Convention matters expeditiously, and it is often no more than 3 months from the time of filing to the time of trial. This helps to ensure that Australia's obligation under the Convention to act expeditiously is met. The Family Court has also given priority to the hearing of appeals against Hague Convention decisions
- (c) Emotionally draining;
- (d) Disappointing in terms of outcomes: experience indicates litigants are often left disappointed with the court process. It may not address their agendas. The parties are subjected to the idiosyncrasies of the trial judge, who may not deliver a satisfactory judgment vis-a-viz` the efforts poured into getting the case to trial. The parties are left to ponder appealing the decision at further cost and delay. Further there is a risk for the unsuccessful litigant of having to meet a cost order. Generally however each party does bear their own legal costs.
- (e) Lacking in control over the outcome. The court process serves a purpose where the parties cannot come to an agreement for whatever reason. The judge then steps in to make a decision for the parties. As indicated above either or both of the parties may not be happy with the decision. Experience indicates that most people want to retain control over the outcome of their matter. Further an agreement struck between the parties has more likelihood of acceptance between the parties than a court imposed order.
- (f) Delay parties getting on with their lives and can have long lasting detrimental effects on the parties and their children.
- (g) Have an adverse impact on the children and the parents' relationship with the children causing irreparable damage.
- (h) There are other factors that warrant consideration including the human factor of a dispute particularly in Child Abduction / Hague Convention matters requiring support and at times a solution outside a court room.

*"Our members also note that there is an absence of a support service that offers emotional support to parents who have experienced child abduction or are trying to manage a child on return. The lawyers and the staff at the Attorney General's Department involved in discharging convention obligations are focused on the law and the process of securing the return of children. They are not qualified to provide the required emotional support to*

*distraught parents and dislocated children. Such support has been identified by parents who have been involved in the convention process as something that would have been "incredibly helpful and reassuring"*<sup>12</sup>

I suspect the above is a universal theme.

*"A commonly held view is that ADR refers to a range of dispute resolution processes that provide an alternative to litigation through the Courts. Baruch Bush challenges the ADR/litigation dichotomy as misleading for a number of reasons. First, much ADR occurs in, or in the context of, Courts rather than separate from them and a growing number of Court procedures involve elements of ADR processes. It can therefore be difficult to separate the courts from ADR. Moreover, the ADR/litigation distinction masks the great variety of different ADR processes that exist, some of which – arbitration, for example – have more in common with Court adjudication than with mediation. Gathering all ADR processes under one umbrella as a contrast to Court adjudication, suggest that they all share common values, which is not the case."*<sup>13</sup> (R Baruch Bush "Defining quality in dispute resolution taxonomies and anti-taxonomies of quality arguments" (1989) 66 Denver Law Review 335 at 343.

### The advantages of mediation

The advantages of mediation over litigation are many including:

- (a) Mediation offers an informal means of resolving disputes, without the need for preparation of expensive documents and without the need for attendance at court events: avoids adversarial and costly legal battles.
- (b) Mediations take place at a time and location to suit the parties and the mediator.
- (c) Mediation offers an opportunity for parties to tailor the resolution of their dispute to suit their circumstances: allows for creative solutions.
- (d) Mediation is private and allows parties to retain control over the outcome.
- (e) Mediation usually costs much less for a family than litigation with the result that more of the family's property is available to the parties and their children.
- (f) As the Hon. Brian Jordan and Peter Sheehy stated in relation to mediation in Australia:

*The ADR Revolution in Australia has been 30 years in the making. There have been many false dawns in that time but there can no longer be any doubt that ADR has arrived as an integral and expanding component of all areas of practice in the law including and perhaps particularly in practice in family law. Courts and Governments throughout the country are embracing various forms of alternate interventions as a result of addressing the communities concerns about the costs and delays associated with litigation and more particularly the adverse impacts of the adversarial systems upon families.*<sup>14</sup>

- (g) Further the Hon. Brian Jordan offers:

*Of course, litigation will always remain an essential part of the landscape in family law. There are categories of cases and perhaps categories of clients in need of judicial determinations. Although only 5% of cases filed proceed to Judgment, many of the remainder would not move towards settlement without the reality or spectre of legal compulsion available in litigation processes. However, my long experience on the Bench causes me to strongly observe that, notwithstanding the eventually high settlement rate, there are nevertheless an*

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<sup>12</sup> International Social Service Australian branch and the Commonwealth Attorney Generals Department, "Living In Limbo – the experience of International Parental Child Abduction", February 2005, page 24.

<sup>13</sup> Nadja Alexander page 9

<sup>14</sup> Hon. Brian Jordan and Peter Sheehy, "Mediation in Property Matters – Practice and Reform", TEN 4<sup>th</sup> Annual Family Law Conference Gold Coast Queensland July 2010



*alarmingly high percentage of cases filed, that either should have never entered upon the litigation pathway or, alternatively, should not have remained there for so long. Indeed, in my view, a significant portion of the so-called intractable 5% that entered my trial lists remained entirely susceptible to resolution between the parties as was evidenced by the perplexing number of cases which settled at the door of the court or during the course of the trial..... The legal profession needs to be pro-active in exploring more appropriate ways of addressing their clients' relationship issues. In most cases, mediation/ADR provides a proper and preferred avenue towards resolution. The use of these options in a timely fashion is likely to provide a better, less costly and more timely outcome for your clients and, at the same time, contribute to the reduction of the pressure upon both our court systems and upon our governments to increasingly look beyond the profession in family law.*

Judge Robert W. Wooldridge Jr. (ret.) in a paper he delivered "Mediation of Family Law Cases" at the IAML USA and Canadian chapters meeting at San Juan, Puerto Rico in February 2010, identified the following advantages of mediation in family law:

- (a) It allows parties to speak and be heard in a cathartic manner;
- (b) A mediator can help temper a client's unrealistic expectations;
- (c) The parties retain decision-making power
- (d) Mediation is cost effective;
- (e) Creative solutions are available;
- (f) Resolutions outside the courtroom help preserve relationships;
- (g) Mediation can be empowering
- (h) Best interests of the child: *if custody is at issue, a mediator can help impress upon the parties that the "best interests of the child" is the guiding principle that courts will follow. A mediator can help them understand that the court will look to what is in the child's best interest, not theirs.*

Mediation affords parties to privately order their arrangements without further judicial intervention other than approving the terms of any agreement reached. Agreement may be reached through mediation:

- (a) On terms for the orderly return of the child(ren) on the giving of undertakings<sup>15</sup> and avoiding prosecution; or
- (b) To vary the substantive parenting orders to facilitate the relocation of the child(ren) to the new country and provide the left behind parent with contact with the child(ren). Such agreements usually contain extensive provisions including mirror orders.

Mediation is qualified – not every case can or ought to be mediated (e.g. where there is serious power imbalance in a highly dysfunctional relationship, mental illness, adjustive dissonance (negative intimacy), where there are allegations of family violence or child abuse: then you would be cautious about engaging in mediation). Mediation in international parental child abduction cases *usually arises out of a complex and extreme breakdown in the relationship between parents and frequently causes acute emotional distress to both parents involved, and most importantly to the abducted children.*<sup>16</sup> The recent series of *Garning* cases<sup>17</sup> in Australia involving a mother and the children based in Brisbane and

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<sup>15</sup> The Australian Government has agreed to introduce new legislation providing the Commonwealth Director of Public Prosecutions with the ability to give an undertaking that prosecution for IPCA offences under the Family Law Act will not be pursued if a child is returned to Australia under the Hague Convention. It is envisaged the legislation dealing with the function to give an undertaking not to prosecute will list the criteria to be considered in making that decision, including a recommendation from the Commonwealth Central Authority relating to the offence in light of Australia's obligations under the Hague Convention.

<sup>16</sup> Denise Carter OBE "The use of mediation in relocation cases"

<sup>17</sup> Department of Communities (Child Safety Services) & Garning [2011] FamCA 485

the left behind father in Italy has played out the extreme emotions with allegations of abuse leveled at the father, the children running away from their mother and the eldest daughter allegedly having suicidal ideations in response to orders requiring the children to return to the home state of Italy (Florence); all under the scrutiny of the Australian public as it is the subject of intense scrutiny of a media driven circus. I understand at a stage in those proceedings mediation was contemplated.

Further the existence of a legal system and court process regarding international parental child abduction is important to the mediation process. Parties in mediation do not conduct themselves in a vacuum rather they negotiate in the shadow of the law. The law provides an impetus for the parties to reach agreement at mediation. Mediation complements and operates within the structure of a legal system. Importantly the legal system provides the framework and regulation of the mediation process. In child abduction cases, a preliminary ruling is often given by the court prior to the parties attempting mediation (e.g. The Netherlands, New Zealand and Sweden). Where mediation is unsuccessful then parties can readily access the court process to continue and resolve the problem.

Agreements reached in mediation per se are not legally binding. Parties require the legal system to give full force and effect to the agreement reached. This can be achieved with court order (and it is suggested where possible mirror orders be taken out in the competing jurisdictions). To facilitate an expeditious resolution of the matter across both jurisdictions it may be possible with the co-operation of the network of liaison judges in Hague matters from country to country to achieve this. Where the two jurisdictions recognize, enforce and register agreements then entering an agreement / parenting plan may be an option.

#### Issues in having a universal approach to international mediation?

International family mediations confront some significant obstacles (esoteric and practical) between jurisdictions, for instance:

1. *Notions of law differ. Glenn points out that law may attach to a particular territory (for example, a country in a civil or common law jurisdiction) or it may be personal, attaching to people of a certain religion (for example, Shari`a Law) or tribal (for example, chthonic or customary law in indigenous societies throughout the world). It may attach to both people and territory, for example in socialist countries where movement beyond the jurisdiction is substantially restricted. Sources of law are varied and include case law, legislation, international customary law, lex mercatoria, notions of natural law and religious law and chthonic understandings on shared information on how to live a life.<sup>18</sup>*
2. *"Diversity – consistency and the art of regulation: Mediation is a highly flexible and adaptable process – a factor which can create challenges for regulators. Despite many policy debates on the suitability of regulating mediation, policy and law makers have managed to promulgate thousands of laws, codes and standards on the significant yet elusive subject of mediation. ....The diversity – consistency dilemma refers to tensions between two motivations (to embrace on one hand, diversity in practice through flexibility and innovation, and the pressure, on the other, to establish consistent and reliable measures of quality in mediation practice through regulation. The debate begins with the issue of definitional consistency and the risks of excluding certain mediation practices in the search for uniformity; it extends to concerns that rule consistency may stifle the growth of mediation, inhibit its opportunities for innovative development and lead it down the highly legalised path that arbitration has travelled."<sup>19</sup>*

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Garning & Director –General, Department of Communities (Child Safety Services) [2012] FamCAFC 35; Director –General, Department of Communities (Child Safety Services) & Garning [2012] FamCA 342; Director –General, Department of Communities (Child Safety Services) No. 2 & Garning [2012] FamCA 353; Garning & Director –General, Department of Communities, Child Safety & Disability Services [2012] FamCA 354; Garning & Director –General, Department of Communities, Child Safety & Disability Services [2012] FamCA 482; Garning & Director –General, Department of Communities, Child Safety & Disability Services (Discharge of return order) [2012] FamCA 565; RCB as Litigation Guardian of EKV, CEV, CIV and LRV v the Honourable Justice Colin James Forrest, One of the Judges of the Family Court of Australia & Ors [2012] HCATrans 178;

<sup>18</sup> Nadja Alexander, page 17

<sup>19</sup> Nadja Alexander, page 74-5



3. *Regulatory reforms do not operate in isolation but are bundled together in various ways depending on factors such as government policy, legal tradition and local culture. From a global perspective the various forms of mediation regulation can be categorised in 4 primary approaches:*
  - a. *Market contract regulation;*
  - b. *Self regulation;*
  - c. *Formal regulatory frame work; and*
  - d. *Formal legislative regulation.*<sup>20</sup>
  
4. *"Family mediation is one area that is likely to have stricter and more formal regulatory control than mediation generally. In addition to the Hague Convention and EU provisions relating to family mediation, a number of countries including Australia, Austria and France have formal standards set out by legislation in relation to recognition of family mediators. ....[footnote] In Australia the family dispute resolution practitioners accreditation system is regulated under the Family Law Act 1975 (Cth) and the Family Law Regulations 1984 (Cth). In France, see the Law of 26 May 2004 Relating to Family Mediation and Decree number 2003 – 1166 of 2 December 2003 ...which established State Diploma in Family Mediation and the Order of 12 February 2004 relating to Degree of State Family Mediator ...which deals with training and certification issues. In Austria see the Marriage Law Reform and Children's Law Reform.<sup>21</sup> " [Now see also Hong Kong's regulations]*

It needs to be clearly understood that there is a clear delineation between the process of mediation in an ordinary family dispute and the process required for child abductions particularly under the 1980 Hague Child Abduction Convention. It is an acute discrete form of mediation demanding specialist care and emergency treatment.

At points 51-2 of the Hague Conference Guide<sup>22</sup>, the differentiation is highlighted as follows:

*It cannot be emphasised enough that there is a difference between national family mediation and international family mediation. Mediation in international family disputes is much more complex and requires mediators to have relevant additional training. The interplay of two different legal systems, different cultures and languages makes mediation much more difficult in such cases. At the same time, the risks that come with the parties relying on mediated agreements which do not take into account the legal situation and have no legal effect in the jurisdictions concerned are much higher. The parties might not be aware that the cross-border movement of persons or goods, to which they have agreed, will result in a change of their legal situation. When it comes to rights of custody or contact, for example, habitual residence is a widely used 'connecting factor' in private international law. Hence the change of the child's habitual residence from one country to another following the implementation of a parental agreement may affect jurisdiction and applicable law regarding custody and contact, and may thus affect the legal evaluation of the parties' rights and duties.*

*International child abduction cases characteristically involve high levels of tension between the parties. The left-behind parent, often in shock as a result of the sudden loss, may be driven by the fear of never seeing his / her child again while the taking parent, once realising the full consequences of his / her action, may be in fear of legal proceedings, a forced return and a possible negative impact on custody proceedings. Besides the practical difficulties of how to engage the parents in a constructive mediation process, there is the all-encompassing need for expeditious action. Additional difficulties might arise from criminal proceedings brought against the taking parent in the country of the child's habitual residence, as well as from visa and immigration issues.*

### International family mediation in Australia

For the past 16 years, mediations have been part of my day-to-day practice as a family lawyer out of Brisbane, Queensland. Indeed for the past 7 years parties in family law proceedings (both financial and parenting disputes) are

<sup>20</sup> Nadja Alexander, page 78

<sup>21</sup> Nadja Alexander, page 98 and footnote 40

<sup>22</sup> Pages 26-7



required save in limited circumstances to undertake pre-action procedures including attempting to settle their matter via an ADR process. The *Family Law Act 1975* (Cwth) provides for Primary Dispute Resolution under Part III. Typically mediation is the preferred option pursued by most parties. By dint I have been involved in more mediations over that time than contested trials. From 1 July 2007, in all parenting disputes in Australia the parties are required to undertake compulsory family dispute resolution mediation with an accredited FDR practitioner prior to instituting proceedings for parenting orders in court. Parties must obtain a section 60I certificate from the FDR practitioner at the conclusion of the mediation for filing with their application.

Jill Howieson of the University of Western Australia in her study in *Family Law Dispute Resolution: procedural justice and Lawyer-Client Interaction*<sup>23</sup> reported:

*Australian family lawyers belong to a cohesive legal culture and predominately take a conciliatory and constructive approach to practice...Family law clients prefer the conciliatory and constructive family lawyer to the adversarial type of family lawyer....the manner in which the clients view the quality of treatment and quality of decision making from the lawyer is integral to how the clients rate the fairness of, and their satisfaction with, the lawyering experience...Lawyers practicing in Queensland had a significantly lower adversarial orientation than those lawyers practicing in South Australia and Victoria. Lawyers practicing in Queensland reported using problem solving negotiating behaviours significantly more often than those lawyers practicing in Victoria, Western Australia and South Australia; and Victorian lawyers displayed a greater adversarial orientation and take more matters to trial than lawyers do in other states of Australia, and in particular, more than those in New South Wales and South Australia (this result is in part explained by the number of Victorian barristers who responded to the survey...*

Having said so, I must show my hand and disclaim having undertaken any mediation in child abduction or Hague convention matters. Indeed generally it has not been the practice of Central Authorities in Australia (CCA and SCAs) and litigants in Hague Convention matters and litigants in other child abduction matters to pursue mediation as a means of resolving the dispute, at least until recent times. I will shortly address the establishment of international family mediation services by the ISS in Australia.

I have canvassed a number of my peers in Brisbane with profile in Hague Convention matters and mediation generally regarding their experience in international family mediation for child abduction matters. The responses I received were as follows:

(a) Helen Tooth, Team Leader, Department of Communities, Child Safety and Disability Services (Central Authority) (Brisbane, Qld): *"I probably don't have much to contribute as we do not necessarily look at mediation in the first instance when dealing with Hague applications..."* Helen was entirely au fait with international family mediations and was able to provide some important resources to me. Helen subsequently spoke with me about the mediation of child abduction matters and the work of the ISS in Australia (which I refer to below) and the good work of Anne-Marie Hutchinson and Reunite in the UK. Helen highlighted some of the fundamental issues concerning such mediation at the grass roots level. Helen notes there are two schools of approach to mediation of child abduction matters:

(i) The purist school hold fast to the purpose of the Hague Convention and its jurisdictional function only to ensure the correct forum determines the underlying parenting dispute. Fundamental to their position is steadfastly holding to the Convention's purpose to facilitate the child's return to the jurisdiction deemed to be the one most appropriate to determine parenting arrangements (and not the determination of parenting arrangements per se which the Convention assumes the courts in the child's country of habitual residence are best able to make decisions about the best interests of the child). For obvious reasons it is premature to be determining the parenting issue and undermines Hague proceedings possibly giving rise to acquiescence (at least an argument). Mediation is the anathema to a strict approach to a Hague proceeding. This school tends to adopt an adversarial approach and it is the position which the Central Authority (at least in Queensland) is more aligned to; and

(ii) The broader more holistic school that recognizes mediation at an early intervention point may be able to address and solve the source of the parenting problem that has led to the international movement of the child

<sup>23</sup> Faculty of Law University of Western Australia, Nov 2009

and institution of proceedings. This school is more likely to embrace international family mediation as a process of attempting to resolve the dispute.

Arguably in respect of both schools *never the twain will meet*.

Helen recognized the international perception that Australian courts were weakening the application of the strict / purist approach to the Hague Convention, which understandably is cause for consternation within the international family law community.

Helen identified the Chief Justice of the Family Court of Australia, Diana Bryant as an advocate for the mediation process in these circumstances, particularly in cases where mothers take flight from the children's habitual residence to return to the mother's country of birth and extended family upon a separation. This time last year the Chief Justice when addressing the Queensland Law Society Annual Family Law Residential on the Gold Coast spoke of the development of mediation in Hague and other child abduction matters. The Chief Justice stated that two people are currently receiving training to become specialist international family mediators.

Helen also identified factors that possibly distinguish the prospects of success of international family mediations in Australia and New Zealand from Europe for instance. When discussing the success of mediations in the United Kingdom under Reunite, Helen noted an important distinguishing feature between Australia / New Zealand and Europe is the geographical isolation. In Europe it may be possible to address Hague and child abductions more successfully in mediation due to the close proximity of the subject States. In Australia those matters are akin to relocation cases between states within Australia and between Australia and New Zealand. However when cases involve Australia and a European State or the United States or one of our closer Asian neighbours (e.g. Japan) with the tyranny of distance, then the stakes are high (including the prospect of prosecution, jail, fines or variation of the parenting order for offenders) and arguably makes the mediation process more difficult (or unattractive to the parties).

In Australia it is an offence to take a child out of the Commonwealth of Australia in the face of an extant parenting order without the consent of the other parent or order of the court.<sup>24</sup>

Helen also highlights the problem with the selection of mediator in such mediations. Helen questions the merit of engaging a mediator from the State where the children have been taken. Helen's view is that it is preferable to engage a mediator in the home State where the absent or left behind parent is situated. Further Helen acknowledged the co-mediation approach and noted this is being promoted by ISS but considered it also has potential shortcomings including where communication and translation between the mediators can break down and where each mediator holds a different concept of the mediation model.

(b) Professor John Wade, internationally renowned and respected mediator and a pioneer of mediation in Australia (Gold Coast, Queensland): *"I am not much assistance on the mediation of abduction cases. I have mediated a few – all where the child(ren) has already been brought back to Oz. In one sense, they are no different to any other problem solving analysis except for the tears:-*

(i) *develop a relationship with each of the parents, and with older child (over the phone with the older child);*

(ii) *draft a standard list of problem solving questions*

(A) *(e.g. in which country should the children live? –*

(1) *in the short term?*

(2) *In the long term?*

(B) *What contact with the absent parent?*

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<sup>24</sup> sections 65Y and 65Z of the *Family Law Act*



- (C) *What arrangements for visits each way to the absent parent and other country?*
- (D) *How will these be paid for?*
- (E) *How often will agreed arrangements be reviewed?*
- (F) *By what process should discussions take place when there are problems and bumps?*
- (G) *At what age will each child be able to make residential choices? Etc*

*In each of these cases, there were tense settlements reached. However, in each of the cases, the older children voted with their feet and changed the residential arrangements within the following two years."*

- (c) Hon. Brian Jordan, retired Family Court judge and mediator (Brisbane, Qld). During his time on the bench Brian heard and determined many prominent Hague Convention cases<sup>25</sup>. Despite his experience as a mediator and a likely candidate to undertake international family mediation, to date Brian has not undertaken any such mediation. Brian however recognized the utility of international family mediations for child abduction matters and probably based upon he being at the coalface in many contested Hague proceedings.
- (d) Geoff Sinclair (Solicitor, Barry.Nilsson, Brisbane Qld, Fellow of the IAML and Past Chair of the Family Law Section of the Law Council of Australia) who has been involved in many Hague convention cases indicates that he has not undertaken a mediation in international parental child abduction matters but is aware that Ian Kennedy AM has undertaken at least one mediation.
- (e) Damien Greer (Solicitor, Damien Greer Lawyers Brisbane and fellow of the IAML) who likewise has been involved in many Hague cases responded "*It has not been raised by anyone...*"
- (f) Peter Sheehy (solicitor and mediator, Peter J. Sheehy Solicitor Brisbane) responded "*Nothing from me..I have heard of debate whether Hague matters can be mediated and which parties / organisations would need to participate but nothing apart from that. With the recent Italian case in Brisbane I understand there was "talk" of whether mediation might be suggested...for my part I believe nothing would stop mediation in this area however it would be critical to ensure all stakeholders would be present...*"

In Australia there was initially a resistance to embrace mediation as an acceptable mode of resolving disputes in family law matters. The lead in time to take up mediation was significant. However once the momentum kicked in and both government and the court required parties to undergo ADR before litigating as a last resort, mediation has become entrenched as a part of any family law dispute in Australia. With that in mind, the Government's resourcing of ISS for international family mediation, the training of specialist international family mediators and the Chief Justice's support - the more specialized international family mediation is an emerging practice. I anticipate it will eventually become part of the culture or framework of practice in some (not all) child abduction matters in Australia.

### *State Central Authority & Camden*

Bennet J, 12 August 2011<sup>26</sup>

Finn, Strickland and Forrest JJ, 22 March 2012<sup>27</sup>

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<sup>25</sup> Panayotides & Panayotides [1997] FLC 92-733, Emmett [1995] FamCA 77, State Central Authority & Uurainen (No.2) [2008] FamCA 1046, Department of Child Safety & Butler [2009] FamCA 740, Merrell & Department of Child Safety [2009] FamCA 290; Department of Child Safety & Jarrett and Anor [2009] FamCA 283; Department of Child Safety & Hunter [2009] FamCA 263; Richards & Director-General, Department of Child Safety [2007] FamCA 65; Central Authority and Perry; Attorney-General for the Commonwealth (Intervener) [1996] 20 Fam. L.R. 380; Department of Child Safety & Downs-Hopman [2009] FamCA 808; Department of Child Safety & Herd [2008] FamCA 989; Department of Child Safety & Starky [2009] FamCA 774;

<sup>26</sup> [2011] FamCA 666

<sup>27</sup> [2012] FamCAFC 45

*Case overview*

*Camden*, a Hague Convention case, provides guidance on the legal test for habitual residence under the *Family Law (Child Abduction Convention) Regulations 1986* (Cth) (“the regulations”). Factually, the issue in this case was whether the parties had taken up habitual residence in the United Kingdom (“UK”), given that they had only emigrated from Australia a mere 10 months earlier.

The mother was an Australian citizen by birth and the father a permanent resident, having moved to Australia from the UK. In April 2006, the parties were wed in Australia, where they remained for a further four years. The two children of the marriage were born in Australia during this time. On 20 July 2010, the family migrated to the UK so that the children could get to know the father’s parents and extended family. The first instance judge found that the mother had difficulties after the move and it was doubtful the mother had integrated into life in the UK. Her Honour also found that the family had trouble establishing a stable financial foothold in their new country. On Monday 9 May 2011, the father revealed that he wanted a divorce. Three days later, on Thursday 12 May 2011, the mother left for Australia with the children. The father, via the State Central Authority, sought the return of the children to the UK for the purposes of having the parenting dispute resolved in that country.

The first instance judge held that the parties had not established habitual residence in the UK, and therefore the regulations did not require the return of the children because their removal to Australia was not wrongful. The State Central Authority appealed.

On appeal, the Full Court of the Family Court (Finn, Strickland and Forrest JJ) observed that the High Court authoritatively settled the principles governing an assessment of habitual residence in the decision of *LK v Director-General, Department of Community Services* (2009) FLC 93-397. The Full Court clarified that *Zotkiewicz & Commissioner of Police (No 2)* (2011) FLC 93-472 did not establish a new, two-limbed test in place of that enunciated in *LK*, and to the extent that *Zotkiewicz* applied a “twofold” analysis, it was an analytical methodology factually confined to that case only [at [53]]. What *LK* required was a “broad factual enquiry” [at [57]] directed to whether there is a connection between the child and the alleged country of habitual residence [at [22]].

As the judge had approached the question of habitual residence in two stages, the Full Court held that her Honour had fallen into error. The Full Court found that after making the “very significant” finding that the parties had a settled, shared intention to make a new life in the UK, her Honour then focussed “in an apparently singularly determinative manner” on the mother’s social integration and the couple’s financial viability in the UK [at [54]]. In this way, her Honour erred in attributing excess weight to two discrete factors and insufficient weight to other relevant findings, such as the shared intention, the mother’s full-time employment in the UK and the purchase of a car and household goods for the parties’ UK residence.

The Full Court allowed the appeal and remitted the matter for rehearing.

*Mediation in this case*

At first instance the trial judge, Justice Victoria Bennett (who is one of the two Australian judges on the International Hague Network of Judges) made the following statements about mediation in the context of this case:

*I also asked the parties to consider mediation or conciliation and, specifically, that the applicant SCA raise mediation of the entire family dispute with the father through the appropriate channels of communication. Unlike the 1996 Convention[1], mediation is not mandatory in matters arising under the 1980 Convention and/or the Regulations. Nonetheless, in my view it would have been to the benefit of the parents and the children to mediate or conciliate not only the issues that arise under this application for immediate return but also the future parenting arrangements, including where and with whom the children will live and how frequently and under what conditions they will spend time and communicate with whom they do not reside.*

*It was subsequently confirmed that the parents were both willing to enter into meditation.*

*In the course of preparing for the hearing, including making arrangements for evidence by video link from the United Kingdom, the SCA informed the court that the father would travel to Melbourne to give evidence. That was solely his decision. The earliest indications were that the father was not seeking to spend much time with the children. I was concerned that there may have been some miscommunication and ordered that the parents*





*attend upon Ms W, Family Consultant, on the day after the father’s scheduled arrival to discuss what time T and J would spend with the father. The issue of the children’s time with the father was resolved between the parties, although the mother subsequently withdrew her agreement that the children spend the following Saturday night with the father.*

*I indicated to the parties that the court would do all it could to facilitate that mediation or conciliation as a parallel process to these proceedings, providing that the final determination was not delayed. This would be for the purpose of conciliating all parenting issues, not only those pertaining to the 1980 Convention. Previously, the parties to Hague proceedings before me have been fortunate to have mediation services provided, on little notice, free of charge and with a very experienced conciliator, through M Mediators. Unfortunately, that could not be achieved in this case. Upon being so notified, I required the SCA to make enquiries about its telephone dispute resolution service even though both parents were in Melbourne. On 20 July 2011 the court was informed that there was a delay of two or so months in the allocation of any telephone dispute resolution service. Yet, by correspondence dated 26 July 2011, the solicitor for the SCA notified all parties and the court that telephone mediation could take place on the Friday or Saturday prior to the commencement of the trial. So on the Friday prior to the commencement of the trial, the parents had a two hour mediation session, over the telephone, with a mediator who was located interstate. The matter did not resolve.*

### A More Global Perspective

*There is much enthusiasm surrounding the development of mediation to handle cross border disputes concerning children, but little practice. (Sarah Vigers [2010])<sup>28</sup>*

I set out in the table below a summary of the papers on the topic of “*Is mediation suitable for international cases?*” presented at the IAML 25<sup>th</sup> Anniversary meeting at Harrogate in September 2011 highlighting where international family mediation for child abduction matters is being conducted:

Country	Author and paper	International family mediation is undertaken in child abduction matters: yes/no: & author’s comment
Hong Kong	Robin Egerton, <i>Mediation and other forms of ADR in cross-border matters under Hong Kong Law</i>	<i>Not as yet.....A Mediation Bill is to be put before LEGCO by March 2012.  (Note I understand from Robin that there is now legislation in Hong Kong)</i>
Canada (Ontario)	Stephen Grant, <i>Mediation and other forms of ADR in cross-border matters under Canadian Law (in Ontario, at least)</i>	<i>We use these forms of ADR in any type of case including relocation (“mobility”)....There is no specific statute or legislation dealing with mediation.</i>
South Africa	Jacqueline Julyan SC, <i>Mediation and other forms of ADR in cross-border matters under South</i>	<i>There is no peremptory mediation (in cases of child abduction), and indeed in Hague Convention cases the Family Advocate is the Central Authority. This creates ambiguity in that the Family Advocate plays a mediatory role in domestic cases, but an adversarial role in child abduction disputes....there is no effective formal framework in place for mediation and it is voluntary, not prescribed, other than in the barely</i>

<sup>28</sup> Mediating Cross –border Disputes Concerning Children, [2010] IFL 118



	<i>African Law</i>	<i>comprehensible provisions of the Children's Act.</i>
Australia	Ian Kennedy, <i>Mediation and other forms of ADR in cross-border matters under Australian Law</i>	<p><i>The role of the Court in Hague matters is essentially to determine whether the child should be returned to the jurisdiction from which it has been taken so that the Courts there can determine the issues relating to its welfare. However mediation may be encouraged to see whether parents can reach an agreement either for a structured return, or for the child to remain in the new jurisdiction rather than be sent back only to have the Court in the originating jurisdiction give permission for removal in any event.</i></p> <p><i>Non-Hague cases are slightly different in that the Australian courts prima facie have jurisdiction and must consider the best interests of the child in deciding whether the foreign forum should be left to determine custody. Again, mediation may be a useful tool in assisting parties to come to agreed arrangements which give the best effect to the child's interests.</i></p> <p><i>Mediation, arbitration and family dispute resolution in Australia are governed by the provisions of the Family Law Act (as amended) and associated Statutory Regulations and Rules of Court.</i></p>
Austria	Dr Alfred Kriegler, <i>Mediation and other forms of ADR in cross-border matters under Austrian Law</i>	<i>There is no relevant experience in Austria about cross-border mediation and other forms of ADR according to my knowledge....In May 2004.. § 99EheG has been replaced with the ...civil mediation code [Federal Act on Mediation in Civil Matters]</i>
England and Wales	Angela Lake-Carroll, <i>Is mediation suitable for international cases?</i>	<p><i>Reunite offers a specialist mediation service where parents are able to make informed decisions and reach workable solutions that are acceptable to them both and which are focused on the best interests of their child.</i></p> <p><i>Typically, mediation s offered in cases of:</i></p> <ul style="list-style-type: none"> <li>• <i>International parental child abduction / wrongful retention – involving both Member States of the 1980 Hague Convention and non-Hague Convention States.</i></li> <li>• <i>Prevention of abduction – where a family is separating and there are links with another country</i></li> <li>• <i>Contact across international borders</i></li> <li>• <i>Relocation where one parent wishes to reside with their child in a different country.</i></li> </ul> <p><i>Matters considered within mediation are:</i></p> <ul style="list-style-type: none"> <li>• <i>The emotional needs of the child</i></li> <li>• <i>Country of habitual residence</i></li> <li>• <i>Parental responsibility</i></li> </ul>

		<ul style="list-style-type: none"> <li>• <i>A schedule for contact between the child and non-resident parent</i></li> <li>• <i>Travel arrangements for contact</i></li> <li>• <i>Exchange of information regarding the child's education and wellbeing</i></li> </ul> <p><i>The mediation model was devised for co-mediation due to the complexity of cases of international parental child abduction and the required speed of the mediation process to conform with the timing of the Hague proceedings.</i></p> <p><i>The fee for mediation is £1,500 for up to three 3 hour mediation sessions - £750 to be paid by each parent. However, Reunite holds a full Public Funding Franchise from the Legal Services Commission, and so if a parent is eligible for legal aid then there will be no cost to the eligible parent/s for mediation.</i></p> <p><i>Family mediation in England and Wales is primarily an informal out of court practice in private family law matters. ...From 6<sup>th</sup> April 2011, a new pre-Application Protocol was issued requiring all potential applicants for a court order ...to consider with a mediator whether the dispute may be capable of being resolved through mediation.</i></p>
European Parliament	Sir Peter Singer, <i>The EC Mediation Directive Strikes Back</i>	Sir Peter Singer highlighted an <i>elephant trap</i> in Article 7 of the EC Mediation Directive <sup>29</sup> which exports throughout Europe and arguably elsewhere when there is a cross border dispute involving a party domiciled or habitually resident e.g. in England, <i>an invasion of the quasi-confessional principles of mediation privilege</i> where it is necessary for overriding considerations of public policy or disclosure is required to enforce the agreement.

Further Lisa Parkinson in Chapter 14 of her text, "Family Mediation: Appropriate Dispute Resolution in a new family justice system" addresses international family mediations and future directions amongst a number of European states. In her work the following is identified in relation to mediation of child abduction matters:

Country / State	International family mediation is undertaken in child abduction matters
Switzerland	<i>The Federal Code [of Civil Procedure introduced on 1 January 2011] also recognizes that mediation has an important preventative role in reducing risks of parental child abduction in international cases. Under the Swiss Federal Act on International Child Abduction of 1 July 2009, mediation is compulsory when application is made for the return of a child abducted into Switzerland from a Hague Convention member state (see arts 4 and 8). A central Swiss authority is responsible for establishing a network of experts and institutions that are capable of acting expeditiously in giving advice, undertaking mediation and representing individual children. The Swiss measures could be incorporated in amendments to the Hague Convention and adopted at multilateral level, serving as a model for other States wishing to improve their practice in parental child abduction cases.<sup>30</sup></i>

<sup>29</sup> Directive 2008/52/EC of the European Parliament and the Council of 21 May 2008 which came into force throughout the European Union (other than Denmark)

<sup>30</sup> Chapter 14, 14.1.12

The honourable Lord Justice Thorpe in *Al-Khatib v Masy*<sup>31</sup> held<sup>32</sup>:

*There is no case, however conflicted, which is not potentially open to successful mediation, even if mediation has not been attempted or has failed during the trial process.*

Mediation in child abduction matters has proceeded in two different ways:

1. Single-state mediation where the mediation take place in the State of refuge under the procedures of that State (which begs the issue and controversy of which State is the appropriate state, some suggest it should be the home State):
  - a. *'Although there have been concerns expressed that parties may feel that the mediator from their country will be in favour of an individual from their own country (Zawid p39), it is also very possible that, in providing this type of balance of nationality, culture, psychological and legal backgrounds, gender, and language, the parties may feel a greater sense of comfort and familiarity. This could meet the needs of the party who highly values impartiality (no conflict of interest, no pre-existing relationship) and the party who desires familiarity (commonality of culture)'*<sup>33</sup>; and
2. Bi-national co-mediation where mediation occurs across the two different states using two mediators, one from each State (which raises the issue and concern as to whether the mediators are following the same process).

Importantly in child abduction cases it is suggested best practice to ensure that the child has a voice in the process (whether the mediation is child focused (indirectly engaged) or child inclusive (directly engaged)). The Child focused approach seems to be dominant.

Also in international family mediations it is also important to “*acknowledge the importance of extended family in collective cultures...if there is also a power distance within the family, the family member with higher power than the abducting parent may be an effective participant in mediation to place pressure on the abducting parent to follow the agreement...in choosing a mediator in international child abduction cases, it is important to consider the power distance values within the two cultures...Cultural sensitivity must be a paramount consideration in international abduction cases...In developing mediation protocols for dealing with international abduction cases, cultural awareness and understanding will be a key to the effectiveness and the credibility of any program and mediator.*”<sup>34</sup>

Whilst ultimately the choice of mediation approach remains a matter for the parties to determine the important issue for the parties and mediators should not lose sight of is: it is the procedural rules rather than substantive laws which are engaged.

Sarah Vigers highlights that mediation is being addressed in a number of international meetings, cross border instruments concerning children drafted recently and on the agenda of related international organisations including the Hague Conference on Private International Law and the Council of Europe and the European Community.

However as noted above it seems apart from the United Kingdom and Switzerland there is little if any mediation activity in international parental child abduction matters.

Sarah Vigers identifies 3 broad areas explaining the possible difference between widespread discussion and support of international family mediation and its limited use:

1. disparity in the definition of “mediation” across jurisdictions:

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<sup>31</sup> [2004] EWCA Civ 1353

<sup>32</sup> at para [17]

<sup>33</sup> Meierding, Nina, article “Mediating across cultures: Cross-Cultural Issues to consider in the Mediation of International Child Abduction Cases”, published in The Judges’ Newsletter, Special Edition No.1, 2010, p 80

<sup>34</sup> Meierding, supra p80

- a. "mediation" is not necessarily well understood.
  - b. "mediation" is defined in various pieces of legislation and codes across different jurisdictions with similar but not exactly the same text, which lends itself to different forms of mediation.
  - c. Mediation is used in different contexts: *"both broadly to describe any process which promotes agreement between parties with the assistance of a third party and narrowly to refer to one specific dispute resolution process"*<sup>35</sup> [cf collaborative practice, conciliation etc.]. Legislation and cross border instruments tend to focus on the agreement more than the process.
  - d. The narrow use of the term mediation is featured by different practices and methodologies within and across jurisdictions.
  - e. Note Vigers also refers to substantive differences in each jurisdiction such as the position with respect to confidentiality and the application of privilege to the mediation process, which can create an imbalance and undermine the utility and prospects of success in mediation. This ought to be overcome with confidentiality clauses in agreements but care ought to be taken as to jurisdictions where such clauses cannot oust the contrary law.
2. the added value of mediation needs further research:
- a. *the value of facilitating agreement, promoting party autonomy and encouraging private ordering in disputes concerning children is generally accepted.*<sup>36</sup>
  - b. *It is considered that where the parties intend to have some form of ongoing relationship there is benefit in a discipline which seeks to assist parties to negotiate an agreed outcome rather than the adversarial process which can result in the perception of a "winner" and a "loser".* I suggest that in most cases this will apply. Notwithstanding the parties may be at their lowest ebb with each other following an international parental child abduction, the reality remains for them that they need to maintain a relationship of sorts to deal with each other concerning issues arising regarding the care, welfare and development of their children at least until those children attain majority (and beyond e.g. dealing with their adult children and grandchildren). Mediation has the prospect of restoring a modicum of civility and dignity to that relationship whereas litigation can irreparable damage the parent-parent and parent-child relationship.
  - c. *Research has shown that family mediation can improve parental communication and reduce conflict as well as promoting ongoing contact between a child and non-resident parent. There is evidence that having reached agreement parents are more likely to be able to continue to reach agreement in the future without the need for further intervention.*<sup>37</sup> Indeed these are the mantras we use in Australia to justify mediation to clients.
  - d. Vigers recognizes the research to date is limited and whilst the benefits obvious on a domestic level are assumed to apply to cross-border matters where hostility is intensified and geographic proximity presents challenges and there is an added layer of complexity dealing with two competing jurisdictions and forums: *"There is to date very little empirical research in England in the context of child abduction cases in England. Further research is needed regarding when and how mediation might be a beneficial alternative to the court process."*<sup>38</sup>
3. there are issues raised by the use of mediation in a cross-border context which have yet to be fully discussed at the international level:

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<sup>35</sup> supra p118

<sup>36</sup> supra p119

<sup>37</sup> supra pp 119-20

<sup>38</sup> supra, p120

- a. Vigers suggests *cross-border mediation should where possible be established under special structures and should not rely on the domestic family mediation system.*<sup>39</sup>
- b. There is a benefit in concentrating the practice in a limited number of specialists (mediators) and learning from established good practice in cross –border dispute resolution. Such benefits include:
  - i. *The development of expertise as a smaller number of practitioners are involved;*
  - ii. *The ability to introduce special rules in the cross-border context without prejudice to domestic family mediation systems; and*
  - iii. *The ability to move forward with cross-border mediation notwithstanding diversity and lack of harmony currently existing in domestic systems.*<sup>40</sup>
- c. Vigers also calls for specialist training of mediators involved in international family mediations concerning child abduction:
  - i. *Mediators must be knowledgeable regarding the particular international legal context in which the dispute is taking place;*
  - ii. *Cross border mediators must receive training with regard to mediating in the cross cultural setting.*<sup>41</sup>

Sarah Vigers concludes there is a need for a formal definition of mediation. This is important in international family mediation to ensure parties understand the process they embark upon and for instance in co-mediation the mediators are “singing from the same hymn sheet” practicing the same process in their different States to be effective.

It seems the beacon of hope for international family mediation is the reunite experience:

*Since 2002 reunite has been offering a mediation service in cases of cross-border family disputes involving children, where cross-border is defined as where parents have, or are about to have, their normal residences in different countries. Typically we offer mediation in cases of international parental child abduction, prevention of abduction, contact across international borders, and leave to remove a child from one legal jurisdiction. The mediation focuses on the best interests of the child, ensuring that the child continues to have a positive relationship with both parents and their extended family. To date we have mediated in approximately 100 cases, the majority of which have involved the 1980 Hague Convention, but we are now mediating in an increasing number of non-Hague Convention cases involving countries such as Egypt, Pakistan, Algeria, Dubai and India.....From feedback received from parents who participate in mediation, the most important consideration for them is the professionalism, neutrality, confidentiality and expertise of the mediators.....Mediation is still a relatively new concept in cases of international parental child abduction and it is important that cases mediated are monitored and evaluated to consider the long-term effectiveness of the successes or failures of the mediated agreements. We also need to have a central entry point for these cases so that they can be tracked. We need to ensure that there is uniformity in the use of mediation in cross-border family disputes and that such information is fed into the Permanent Bureau so it can be cascaded out to the Member States of the Hague Convention.*<sup>42</sup>

ISS

The ISS was founded in 1924:

<sup>39</sup> supra p120

<sup>40</sup> supra p120

<sup>41</sup> supra p123

<sup>42</sup> Denise Carter OBE, article “The use of mediation in relocation Cases”, The Judges’ Newsletter, Special Edition No.1, 2010





*Cases of child abduction are core business activities for ISS social workers throughout the world. The ISS approach when handling such cases is mainly to avoid a complete interruption of relations and maintain direct dialogue between parents and relatives.*

*The place progressively given to mediation and alternative modes of conflict resolution in the operating framework of the 1980 Hague Convention on child abduction and the 1996 Convention on international child protection is a big breakthrough, creating space for legal procedures and processes bringing forth negotiated settlements to complement in the best interests of all actors involved in cross-border family conflicts: the families & children, administrative authorities, the judiciary and social workers.*

*The added value of introducing mediation in Hague procedures is clearly threefold:*

*(i) It helps dealing with the reality of the family context (relational, social and financial) which needs to be considered if the sustainability of agreements is expected*

*(ii) It helps families save a lot of money and enables administrative & legal bodies lessen human and financial resources over long periods of time;*

*(iii) It enhances the well-being of the family and the children.*

*Mediation should also be developed as a means of child abduction prevention; yet a mediation process may accompany the whole legal procedure, with a careful look at some of its critical moments, to avoid abuse of process by one of the parties, last but not least, mediation is a very strong support for the follow up of international situations, after the court's decisions.*

*ISS advocates for a facilitated recourse to mediation in the framework of 1980 and 1996 Hague procedures, as well as for the establishment of mediation services for cases involving countries that are not signatory to these conventions.<sup>43</sup>*

*"Practitioners should be aware of the services provided by International Social Service (an international network of services involving more than 150 countries with a General Secretariat in Geneva) which provides a range of services in relation to international parental child abduction including international mediation."<sup>44</sup>*

ISS (Australia):

*"International Social Service (Australian Branch) (ISS) is a national non-government organization delivering social work programs to children and families requiring interventions across national borders. It is part of an international network of ISS branches, units and correspondents spanning over 140 countries with overall administration in Geneva, Switzerland. ISS units across the network work collaboratively, with case work staff liaising with colleagues within the network in order to meet client needs which may span two or more countries...ISS was awarded funding by the Australian Commonwealth attorney-General's Department to offer services to parents and families affected by IPCA..."*

*Abduction...As well as crisis counseling and emotional support, parents (whose child is abducted) are offered the opportunity to engage in contact with their child and/or the other parent via the co-operation and assistance of ISS colleagues in the relevant country. Sometimes, the informal mediation of temporary contact arrangements between the child and parent is possible, until a return order is made or parenting arrangements can be determined. Working with ISS colleagues internationally, any welfare concerns an Australian parent may have regarding their child in the care of the other parent can be investigated. Conversely, through ISS overseas network, ISS Australia receives referrals on behalf of parents in other countries, requesting that ISS Australia attempts to engage a parent suspected of abducting a child to Australia. In these instances, informally mediated contact arrangements or welfare checks are also offered depending on the engagement of*

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<sup>43</sup> <http://www.iss-ssi.org>

<sup>44</sup> Ian Kennedy, "Mediation and other forms of ADR in cross-border matters under Australian Law", paper delivered to IAML 25<sup>th</sup> Anniversary annual meeting, Harrogate

*the parent in Australia with ISS. If a parent is ordered to return a child abducted to Australia, ISS Australia case workers can assist the parent to plan the return process, including sourcing options for accommodation and financial support. Again, overseas network colleagues are a great source of support, with their knowledge of appropriate referrals to accommodation and other material aid and domestic violence support services as required by the returning parent.*"<sup>45</sup>

I have attached to this paper, relevant pages from the ISS Australia website<sup>46</sup> about services offered.

In March 2012 the Australian Government delivered its response to the Senate Legal and Constitutional Affairs References Committee Report on *International Parental Child Abduction to and from Australia*. The terms of reference of the Senate regarding the incidence of international child abduction to and from Australia included:

- (a) The costs, terms and conditions of legal and departmental assistance for parents whose child has been abducted overseas;*
- (b) The effectiveness of the Hague Convention in returning children who were wrongly removed or retained, to their country of habitual residence;*
- (c) the roles of various Commonwealth departments involved in returning children who were wrongly removed or retained, to their country of habitual residence;*
- (d) Policies, practices and strategies that could be introduced to streamline the return of abducted children; and*
- (e) Any other related matters.*

Within the report<sup>47</sup> the government accepted the recommendation that the Australian Government should, in consultation with relevant stakeholders such as ISS Australia, investigate strategies to improve the availability and coordinated delivery of support services in international parental child abduction (IPCA) cases, including post-return services:

*The Australian Government agrees that additional resources should be provided to deliver nationally consistent support services for families in Australia in IPCA matters.*

*To date most applications received by the Commonwealth Central Authority under the Hague Convention have been prepared with the assistance of the State Central Authorities. However such assistance has not been available nationally, with applicants in Western Australia, the Northern Territory and the Australian Capital Territory required to seek assistance through Legal Aid Commission or private lawyers. Additionally, all costs for SCAs to provide assistance to left behind parents, including for both preparing the application and ongoing case management/communication, have been met by the Australian Government. This has resulted in duplication of costs of services to Convention applicants.*

*To provide a nationally consistent service to left behind parents, the Australian Government has decided to establish a centralized national assistance service for left behind parents dealing with IPCA. For a number of years the Government has provided funding to ISS to provide counseling and mediation support to families dealing with IPCA. From January 2012 ISS will also receive funding to provide a national service for legal assistance to assist left behind parents to prepare outgoing applications and documentation under the Hague Convention. Left behind parents will thus be able to access legal assistance to prepare their Hague Convention applications and targeted counseling and social support from one service provider. Ongoing case management will be provided directly between the Commonwealth Central Authority and applicants.*

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<sup>45</sup> Helen Freris, IPCA Service Coordinator, paper "Hague Children's Conventions: the Need for an Advocacy Response to Protect Children in the Context of International Parental Child Abduction" August 2009

<sup>46</sup> <http://www.iss.org.au>

<sup>47</sup> pages 8-9

*Post return services are available through Australian Government funded post separation services such as Family Relationship Centres.*

## Guide to Good Practice Part V - Mediation

*It is in the context of the Hague Child Abduction Convention that there has been most mediation practice and there is enthusiasm to continue to progress Convention mediation. Indeed the Permanent Bureau of the Hague Conference has been invited to draw up a Guide to Good Practice on the subject and Members of the Organisation have decided to follow progress in the child abduction field in order to inform the debate on the development of cross-border family mediation more generally.<sup>48</sup>*

I suggested in Singapore I could readily address this topic by simply handing out the Hague Conference's Guide to Good Practice – Mediation. The Guide presents more as a code to international family mediation in child abduction cases than a guide. It has been carefully researched and crafted by leading international mediation practitioners.

I have attached to this paper extracts from the Guide to Good Practice (Part V – Mediation) under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, published by the Hague Conference on Private International Law in 2012.

Professor John Wade forever the devil's advocate sounds a warning about the place and use of codes as follows:

*"I am not a fan of codes, as*

*1. "good" codes necessarily reflect tensions between two opposing ideas--eg confidentiality, but sometimes not; balance power, but sometimes not; use lawyers, but sometimes not; withdraw from one sided agreements, but sometimes not; etc. Codes which attempt to avoid complexity are usually unhelpful to practising mediators; but stating complexity gives no guidance to junior mediators and top-down cultures. There may be absolutes on some behaviours--eg no contingent fees--but even that will lead to some debate.*

*2. Americans and Australians are in favour of free enterprise--ie the market will determine who to hire and self interest will be the dominant code; other cultures despise this, and want lists to govern mediator selection, and insist on top down governance before a mediation profession can be "allowed".*

*3. Again Chinese want relatives as mediators and will not use tribal "outsiders" etc--ie Westerners can be very ethnocentric and use western concepts for international practice. See the excellent starting chapter on cross cultural negotiations in Lewicki et al, Negotiation--Chris Moore has recently published a book on cross cultural negotiation/mediation which should be excellent as he was the Colorado mediation guru before going international.*

*4. There is also the challenge that as a code is translated into French, Mandarin etc, the words change meaning ---some commentary should occur on that.*

*5. Whatever code is suggested should be subject to say 3 yearly revision and should meanwhile have a footnote system so that commentary and examples can be readily added by some blog method by anyone interested.*

*6. You definitely need some intro on which of the 5 historic schools of ethics are reflected in the code---see Lewicki's helpful chapter on Ethics. The word ethics is often used pompously with little attempt to define historic schools in simple language?"*

Principles for the establishment of mediation structures in the context of the Malta process:

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<sup>48</sup> Sarah Vigers at 118

The following principles were settled and published by the Hague Conference in relation to the establishment of Central Contact Points for international family mediation in signatory States.

#### A. CENTRAL CONTACT POINT

States should establish / designate a Central Contact Point for international family mediation which should undertake, either directly or through an intermediary, the following tasks,

1. Serve as contact point for individuals and at the same time as network point for mediators working in cross-border family disputes.
2. Provide information about family mediation services available in that country, such as:
  - a. List of family mediators, including contact details and information about their training, language skills and experiences;
  - b. List of organisations providing mediation services in international family disputes;
  - c. Information on costs of mediation;
  - d. Information on the mediation models used / available; and
  - e. Information on how mediation is conducted and what topics may be covered in mediation.
3. Provide information to assist with locating the other parent / the child within the country concerned.
4. Provide information on where to obtain advice on family law and legal procedures.
5. Provide information on how to give the mediated agreement binding effect.
6. Provide information on the enforcement of the mediated agreement.
7. Provide information about any support available to ensure the long-term viability of the mediated agreement
8. Promote cooperation between various experts by promoting networking, training programmes and the exchange of best practices.
9. Subject to the principle of confidentiality, gather and make publicly available on a periodic basis information on the number and nature of cases dealt with by central contact points, actions taken and outcomes including results of mediation where known.

The information should be provided in the official language of that State as well as in either English or French.

The Permanent Bureau of the Hague Conference should be informed of the relevant contact details of the Central Contact Point, including postal address, telephone-number, e-mail address and names of responsible person(s) as well as information on what languages they speak.

Requests for information or assistance addressed to the Central Contact Point should be processed expeditiously.

Where feasible, the Central Contact Point should display relevant information on mediation services on a website in the official language and in either English or French. Where a Contact Point cannot provide this service, the Permanent Bureau could make the information received by the Central Contact Point available online.

#### B. MEDIATION



## 1. Characteristics of Mediators / Mediation Organisations identified by Central Contact Points

The following are among the characteristics the Central Contact Point should take into account when identifying and listing international family mediators or mediation organisations:

1. A professional approach to and suitable training in family mediation (including international family mediation).
2. Significant experience in cross-cultural international family disputes.
3. Knowledge and understanding of relevant international and regional legal instruments.
4. Access to a relevant network of contacts (both domestic and international).
5. Knowledge of various legal systems and how mediated agreements can be made enforceable or binding in the relevant jurisdictions.
6. Access to administrative and professional support.
7. A structured and professional approach to administration, record keeping, and evaluation of services.
8. Access to the relevant resources (material / communications, etc) in the context of international family mediation.
9. The mediation service is legally recognized by the State in which it operates, *i.e.* if there is such a system.
10. Language competency.

It is recognized that, in States where the development of international mediation services is at an early stage, many of the characteristics listed above are aspirational and can not, at this point, be realistically insisted upon.

## 2. Mediation Process

It is recognised that a great variety of procedures and methodology are used in different countries in family mediation. However, there are general principles, which, subject to the laws applicable to the mediation process, should inform mediation:

1. Screening for suitability of mediation in the particular case
2. Informed consent
3. Voluntary participation
4. Helping the parents to reach agreement that takes into consideration the interests and welfare of the child
5. Neutrality
6. Fairness
7. Use of mother tongue or language(s) with which the participants are comfortable
8. Confidentiality
9. Impartiality

10. Intercultural competence
11. Informed decision making and appropriate access to legal advice

### 3. Mediated Agreement

When assisting the drafting of the agreements the mediators in cross-border family disputes, should always have the actual exercise of the agreement in mind. The agreement needs to be compatible with the relevant legal systems. Agreements concerning custody and contact should be as concrete as possible and take into consideration the relevant practicalities. Where the agreement is connected to two jurisdictions with different languages, the agreement should be drafted in the two languages, if that simplifies the process of rendering it legally binding.

#### C. RENDERING MEDIATED AGREEMENT BINDING

Mediators dealing with international family disputes over custody and contact should work closely together with the legal representatives of the parties.

Before starting the implementation of the agreement, the agreement should be made enforceable or binding in the relevant jurisdictions.

The Central Contact Points in the jurisdictions concerned should assist the parties with information on the relevant procedures.

Where needed, countries may examine the desirability of introducing regulatory or legislative provisions for the enforcement of mediated agreements.

#### Central Contact Points for international family mediation

The following are the established Central Contact Points as published by the hcch:

##### **AUSTRALIA**

FOR THE COMMONWEALTH CENTRAL AUTHORITY

The Director - International Family Law Section  
Family Law Branch  
Commonwealth Attorney-General's Department  
3-5 National Circuit  
BARTON, ACT 2600  
Australia  
telephone number: +61 (2) 6141 3100  
telefax number: +61 (2) 6141 3246  
email: [australiancentralauthority@ag.gov.au](mailto:australiancentralauthority@ag.gov.au)  
Internet: [www.ag.gov.au/childabduction](http://www.ag.gov.au/childabduction)

*persons to contact:*

Ms Susan Cochrane  
Director  
Tel: +61 (2) 6141 3171  
Fax: +61 (2) 6141 3246  
Email: [CentralAuthority@ag.gov.au](mailto:CentralAuthority@ag.gov.au)

Ms Toni Pirani  
Assistant Secretary  
Family Law Branch

Attorney-General's Department  
Tel.: +61 (2) 6141 3158  
Fax: +61 (2) 6141 3248  
Email: [toni.pirani@ag.gov.au](mailto:toni.pirani@ag.gov.au)

#### FRANCE

Ministère de la Justice  
Direction des Affaires Civiles et du Sceau  
Bureau de l'entraide civile et commerciale internationale (D3)  
13, Place Vendôme  
75042 PARIS Cedex 01  
France  
messagerie/E-mail : [entraide-civile-internationale@justice.gouv.fr](mailto:entraide-civile-internationale@justice.gouv.fr)  
Sites Internet : <http://www.justice.gouv.fr/>

*person to contact:*

Mme Alice COTTE  
Magistrat  
Adjointe du bureau de l'entraide civile internationale  
(langues de communication / languages of communication: français, anglais, allemand / French, English, German)  
tel.: +33 (1) 44 77 65 48

#### GERMANY

Internationaler Sozialdienst (ISD)  
The German Branch of International Social Service (ISD) im Deutschen Verein für öffentliche und private Fürsorge e.V.  
Michaelkirchstr. 17-18  
10179 Berlin-Mitte

Telefon: +49 (0)30/62 980-403  
Telefax: +49 (0)30/62 980-450

E-mail: [isd@iss-ger.de](mailto:isd@iss-ger.de); [info@ZAnK.de](mailto:info@ZAnK.de)  
Web: [www.iss-ger.de](http://www.iss-ger.de); [www.ZAnK.de](http://www.ZAnK.de)

#### PAKISTAN

Office of international cooperation of international family law  
Room No 313 "S" Block  
M/o Law, Justice and Parliamentary Affairs,  
Pak Secretariat,  
Islamabad  
Pakistan  
Tel.: 051-9203053  
[contact@molaw.gov.pk](mailto:contact@molaw.gov.pk)

#### SLOVAK REPUBLIC

Centrum pre medzinárodnoprávnu ochranu detí a mládeže (Centre for International Legal Protection of Children and Youth)  
Špitálska 8  
P.O. Box 57



814 99 Bratislava

Tel.: +421 (2) 2046 3208

Fax: +421 (2) 5975 3258

E-mail: [cipc@cipc.gov.sk](mailto:cipc@cipc.gov.sk)

Internet: <http://www.cipc.sk/>

person to contact: Ms JUDr. Andrea Císarová (the director)

languages of communication: English (preferred), French

#### UNITED STATES

Beth H. Cooper

Branch Chief, Incoming Abductions

Office of Children's Issues

U.S. Central Authority for the Hague Abduction Convention

U.S. Department of State

202-663-2928

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Appendix: Summary of Guide to Good Practice Child Abduction Convention - Mediation

Section	Topic	Guide
1.	The general importance of promoting agreements in cross border family disputes over custody and contact	
1.1	Advantages of agreed solutions	All appropriate steps should be taken to encourage the parties to a cross border family dispute concerning children to find an agreed solution to their dispute.
1.2	Limits, risks and safeguards	Safeguards and guarantees should be put in place to prevent engagement in mediation from resulting in any disadvantage for either of the parties.
1.3	General importance of linkage with relevant legal procedures	<ul style="list-style-type: none"> <li>• Mediation and other processes to bring about agreed solutions of family disputes should generally be seen as a complement to legal procedures, not as a substitute.</li> <li>• Access to judicial proceedings should not be restricted.</li> <li>• Mediation in international family disputes needs to take account of relevant national and international laws, to prepare the ground for a mediated agreement that is compatible with the relevant laws.</li> <li>• Legal procedures should be available to give legal effect to the mediated agreement.</li> </ul>
2	The use of mediation in the framework of the 1980 Hague Child Abduction Convention – An Overview of Specific Challenges	
2.1	Timeframes – expeditious procedures	<ul style="list-style-type: none"> <li>• Mediation in international child abduction cases has to be dealt with expeditiously.</li> <li>• Mediation should not lead to delays in the Hague return proceedings.</li> <li>• The parties should be informed about the availability of mediation as early as possible.</li> <li>• The suitability of mediation should be assessed in the particular case.</li> <li>• Mediation services used in international child abduction cases need to provide for the scheduling of mediation sessions on short notice.</li> <li>• Initiating return proceedings before commencing mediation should be considered.</li> </ul>
2.2	Close co-operation with administrative/judicial authorities	Mediators and bodies offering mediation in international child abduction cases should co-operate closely with the Central Authorities and Courts.
2.3	More than one legal system involved; enforceability of the agreement in both (all) jurisdiction concerned.	<ul style="list-style-type: none"> <li>• Mediators need to be aware that mediation in international child abduction cases has to take place against the background of interaction between two or more legal systems and of the</li> </ul>



Section	Topic	Guide
		<p>applicable international framework.</p> <ul style="list-style-type: none"> <li>The parties need to have access to relevant legal information.</li> </ul>
2.4	Different cultural and religious backgrounds	Mediation in international family disputes should take due consideration of the possibly different cultural and religious backgrounds of the parties.
2.5	Language difficulties	In mediation each party should, as far as possible, have the opportunity to speak a language with which he or she feels comfortable.
2.6	Distance	The geographical distance between the parties to the dispute needs to be taken into account when it comes to making arrangements for a mediation meeting, as well as in relation to the modalities agreed on in the mediated agreement.
2.7	Visa and immigration issues	<ul style="list-style-type: none"> <li>All appropriate measures should be taken to facilitate the provision of necessary travel documents such as a visa, to a parent wishing to attend an in person mediation meeting in another State.</li> <li>All appropriate measures should be taken to facilitate the provision of necessary travel documents, such as a visa, to any parent needing to enter another country to exercise his/her custody or contact rights with his/her child.</li> <li>The Central Authorities should take all appropriate steps to assist the parents with obtaining the necessary documents through provision of information and advice, or by facilitating specific services.</li> </ul>
2.8	Criminal proceedings against the taking parent	<ul style="list-style-type: none"> <li>Mediation in international child abduction cases needs to take into consideration possible criminal proceedings initiated against the taking parent in the country from which the child was abducted.</li> <li>Where criminal proceedings were initiated, the issue needs to be addressed in mediation. Close co-operation among the relevant judicial and administrative authorities may be needed to help ensure that any agreement reached in mediation is not frustrated by ongoing criminal proceedings.</li> </ul>
3	Specialised training for mediation in international abduction cases/safeguarding the quality of mediation	
3.1	Mediator training – existing rules and standards	
3.2	Specific training for mediation in international child abduction cases	<ul style="list-style-type: none"> <li>Mediation in international child abduction cases should only be conducted by experienced family mediators who preferably should have undergone specific training for mediation in international child abduction cases.</li> <li>Mediators working in this field need continuing training to maintain their professional competence.</li> <li>States should support the establishment of training programs and standards for cross border</li> </ul>



Section	Topic	Guide
	The Hague Symposium Business Plan 2013	family mediation and mediation in international child abduction cases.
3.3	Establishment of mediator lists	States should consider supporting the establishment of publicly available family mediator lists through which specialist mediators can be identified.
3.4	Safeguarding the quality of mediation	<ul style="list-style-type: none"> <li>• Mediation services used in cross border family disputes should be monitored and evaluated, preferably by a neutral body.</li> <li>• States are encouraged to support the establishment of common standards for the evaluation of mediation services.</li> </ul>
4	Access to mediation	<ul style="list-style-type: none"> <li>• Information on available mediation services for international child abduction cases as well as other related information, such as mediation costs, should be provided through the Central Authority or a Central Contact Point for international family mediation.</li> <li>• Contracting States to the 1980 Hague Child Abduction Convention and other relevant Hague Conventions are encouraged to establish a Central Contact Point for international family mediation to facilitate access to information on available mediation services and related issues for cross border family disputes involving children, or to entrust this task to their Central Authorities.</li> </ul>
4.1	Availability of mediation – Stage of Hague return proceedings; referral/self referral to mediation	<ul style="list-style-type: none"> <li>• The possibility of using mediation or other processes to bring about agreed solutions should be introduced as early as possible to the parties to an international family dispute concerning children.</li> <li>• Access to mediation and other processes to bring about agreed solutions should not be restricted to the pre-trial stage, but should be available throughout the proceedings, including at the enforcement stage.</li> </ul>
4.1.1	Role of the Central Authority	<ul style="list-style-type: none"> <li>• Central Authorities shall, either directly or through any intermediary, take all appropriate measures to bring about an amicable resolution of the dispute.</li> <li>• When receiving a return application, the Central Authority in the requested State should facilitate the provision of information on mediation services appropriate for cross border child abduction cases within the scope of the 1980 Hague Child Abduction Convention where available in that jurisdiction.</li> <li>• States should include information on mediation and similar processes and their possible combination in the training of their Central Authority staff.</li> </ul>
4.1.2	Role of the judge(s)/courts	<ul style="list-style-type: none"> <li>• The judge(s) seized in an international child abduction case should consider whether a referral to mediation is feasible in the case before him/her, provided that mediation services appropriate for cross border child abduction cases within the scope of the 1980 Hague Child Abduction Convention are available in that jurisdiction. The same applies for other available processes to bring about agreed solutions.</li> <li>• States are encouraged to include information on mediation and similar processes and their</li> </ul>



Section	Topic	Guide
		possible combination with judicial proceedings in the training of judges.
4.1.3	Role of lawyers and other professionals	<ul style="list-style-type: none"> <li>Information on mediation and similar processes should be included in the training of lawyers.</li> <li>Lawyers and other professionals dealing with the parties to an international family dispute should, where possible, encourage the amicable resolution of the dispute.</li> <li>Where the parties to an international family dispute decide to attempt mediation, the legal representatives should support the parties by providing the legal information needed for the parties to make an informed decision. Furthermore, the legal representatives need to support the parties in giving legal effect to the mediated agreement in both (all) legal systems involved in the case.</li> </ul>
4.2	Assessment of suitability for mediation	Initial screening should take place to assess the suitability of the individual case for mediation.
4.3	Costs of mediation	<ul style="list-style-type: none"> <li>All appropriate efforts should be made to avoid a situation in which the costs of mediation become an obstacle or a deterrent to the use of mediation.</li> <li>States should consider making legal aid available for mediation in international child abduction cases.</li> <li>Information on costs for mediation services and possible further cost implications, as well as the inter play with costs for Hague return proceedings, should be made available in a transparent way.</li> </ul>
4.4	Place of mediation	<ul style="list-style-type: none"> <li>The views and concerns of both parents need to be taken into consideration when determining in which State an in-person mediation session should be convened.</li> <li>The venue chosen for the in-person mediation sessions needs to be neutral and appropriate for mediation in the individual case.</li> <li>Where the physical presence of both parties in a mediation session is not appropriate or feasible, long distance and indirect mediation should be considered.</li> </ul>
4.5	The contract to mediate – informed consent to mediation	<ul style="list-style-type: none"> <li>To ensure that the parties are well informed about the terms and conditions of the mediation service, it can be advisable to establish a contract between the mediator and the parties (contract to mediate).</li> <li>The contract to mediate should be clear and provide the necessary information on the mediation process, including detailed information on possible costs.</li> <li>Where no such contract to mediate is established, it must be ensured that the parties are otherwise well informed about the terms and conditions of the mediation service before entering into mediation.</li> </ul>
5	Scope of mediation in international child abduction cases	
5.1	Focus on the issues of urgency	<ul style="list-style-type: none"> <li>Mediation in international child abduction cases under the 1980 Hague Child Abduction Convention has to comply with very rigid time requirements and may therefore need to be</li> </ul>



Section	Topic	Guide
		<p>limited in scope.</p> <ul style="list-style-type: none"> <li>• A good balance needs to be struck between including the topics necessary to work out a sustainable agreed solution and complying with the strict time requirements.</li> </ul>
5.2	Importance of jurisdiction and applicable law regarding parental responsibility and other subjects dealt with in the mediated agreement	In international family mediation, the interrelation between the subjects covered in mediation and aspects of jurisdiction and applicable law need to be taken into account.
6	Mediation principles/models/methods	
6.1	Mediation principles – international standards	
6.1.1	Voluntary nature of mediation	<ul style="list-style-type: none"> <li>• Mediation is a voluntary process.</li> <li>• The commencement of Hague return proceedings should not be made contingent upon attendance at mediation or at a mediation information session.</li> <li>• The willingness or lack thereof to enter into mediation should not influence Hague return proceedings.</li> </ul>
6.1.2	Informed consent	The parties' decision to enter into mediation should be based on informed consent.
6.1.3	Assessment of suitability for mediation	A screening process should be applied to assess the suitability of mediation for the particular case.
6.1.4	Neutrality, independence, impartiality and fairness	The general principles of neutrality, independence, impartiality and fairness are indispensable for mediation; they need to be safeguarded.
6.1.5	Confidentiality	<ul style="list-style-type: none"> <li>• States should ensure that appropriate safeguards are in place to support the confidentiality of mediation.</li> <li>• States should consider the introduction of rules ensuring that the mediator and others involved in the mediation may not be compelled to give evidence on communications related to the mediation in civil or commercial proceedings unless certain exceptions apply.</li> <li>• In international family mediation, the parties need to be fully informed about the rules applicable to confidentiality in the different jurisdictions concerned.</li> </ul>
6.1.6	Consideration of the interests and welfare of the child	<ul style="list-style-type: none"> <li>• Mediation in international child abduction cases needs to take the interests and welfare of the child concerned into consideration.</li> <li>• The mediator should encourage parents to focus on the needs of the children and remind them of their prime responsibility for their children's welfare, and of the need for them to inform and consult their children.</li> </ul>
6.1.7	Informed decision making and appropriate access to legal advice	<ul style="list-style-type: none"> <li>• A mediator conducting mediation in international child abduction cases needs to draw the parties' attention to the importance of considering the legal situation in both (all) legal systems concerned.</li> </ul>





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		<ul style="list-style-type: none"> <li>The parties need to have access to the relevant legal information.</li> </ul>
6.1.8	Intercultural competence	Mediation in international family disputes needs to be conducted by mediators with intercultural competence.
6.1.9	Qualification of mediators or mediation entities – minimum standards for training	Mediation in international child abduction cases needs to be conducted by experienced family mediators specifically trained for this kind of mediation.
6.2	Mediation models and methods	
6.2.1	Direct or indirect mediation	Whether direct or indirect mediation is most appropriate in the individual case will depend on the circumstances of the case.
6.2.2	Single or co-mediation	In highly conflictual international child abduction cases the use of co-mediation should be encouraged where feasible.
6.2.3	Concept of bicultural, bilingual mediation	<ul style="list-style-type: none"> <li>Where appropriate and feasible, the use of bicultural, bilingual co-mediation should be encouraged in cross border child abduction cases.</li> <li>Information about the possible mediation models and procedures should be made available to interested parties through the Central Authority or a Central Contact Point for international family mediation.</li> </ul>
7	Involvement of the child	
7.1	Involvement of the child in Hague return proceedings and family law proceedings	
7.2	The voice of the child in mediation	<ul style="list-style-type: none"> <li>The child's views should be considered in mediation in accordance with the child's age and maturity.</li> <li>How the child's views can be introduced into the mediation and whether the child should be involved directly or indirectly must be given careful consideration and depend on the circumstances of the individual case.</li> </ul>
8	Possible involvement of third persons	Where the parties to the conflict agree, and where the mediator considers it feasible and appropriate, mediation can be open to the involvement of third persons whose presence might be of assistance in finding an agreed solution.
9	Arranging for contact between the left behind parent and child during the mediation process	
9.1	Safeguard/avoiding re-abduction	<p>Safeguards may need to be put in place to ensure respect for the terms and conditions of interim contact arrangements and to eliminate any risk of re-abduction. Such safeguards may include:</p> <ul style="list-style-type: none"> <li>The surrender of passport or travel documents, requesting that foreign consulates/embassies should not issue new passports/travel documents for the child;</li> </ul>



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		<ul style="list-style-type: none"> <li>• Requiring the requesting parent to report regularly to the police or some other authority during a period of contact;</li> <li>• The deposit of monetary bond or surety;</li> <li>• Supervision of contact by a professional or a family member;</li> <li>• Restricting the locations where visitation may occur etc.</li> </ul>
9.2	Close co-operation with Central Authorities and administrative and judicial authorities	When arranging for contact between the left behind parent and abducted child in the course of the mediation process, co-operation with the authorities may be necessary to eliminate any risk for the child, including re-abduction.
10	Mediation and accusations of domestic violence	
10.1	Treatment of domestic violence in Hague return proceedings	
10.2	Safeguards in mediation/protection of the vulnerable party	<ul style="list-style-type: none"> <li>• The use of mediation in cases where there is an issue of domestic violence should be considered carefully. Adequate training in assessing the suitability of a case for mediation is necessary.</li> <li>• Mediation must not put the life or safety of any person at risk, especially those of the victim of domestic violence, family members or the mediator. The choice between direct and indirect mediation, the mediation venue and the mediation model and method must be adapted to the circumstances of the case.</li> <li>• Where mediation is considered suitable in a case involving an issue of domestic violence, it needs to be conducted by experienced mediators specially trained to mediate in such circumstances.</li> </ul>
10.3	Information on protective measures	Information should be available regarding the possible protective measures for the parent and child in the jurisdictions concerned.
11	The terms of the mediated agreement – reality check	The terms of the mediated agreement need to be drafted realistically and to take into consideration all related practical issues, especially concerning the arrangement of contact and visitation.
12	Rendering the agreement legally binding and enforceable	<ul style="list-style-type: none"> <li>• The terms of the mediated agreement need to be drafted in such a manner as to allow for the agreement to obtain legal effect and become enforceable in the relevant jurisdictions.</li> <li>• It is highly recommended that, before the agreement is finalised, a limited time for reflection be given to the parties to enable them to obtain specialist legal advice on the full legal consequences and on whether the content of their “provisional agreement” complies with the law applicable in the different legal systems concerned.</li> <li>• The measures necessary to give legal effect to the agreement and render it enforceable in the relevant jurisdictions should be taken with due speed and before the agreement’s implementation.</li> <li>• Access to information on the relevant procedures in the jurisdictions concerned should be facilitated by Central Authorities or Central Contact Points for international family mediation.</li> </ul>



Section	Topic	Guide
		<ul style="list-style-type: none"> <li>• Cooperation among administrative/judicial authorities may be needed to help facilitate the enforceability of the agreement in all the States concerned.</li> <li>• Courts are encouraged to make use of national, regional and international judicial networks, such as the International Hague Network of Judges, and to seek the assistance of Central Authorities where appropriate.</li> <li>• States should, where necessary, examine the desirability of introducing regulatory or legislative provisions to facilitate procedures for rendering mediated agreements enforceable.</li> </ul>
13	Issues of jurisdiction and applicable law rules	<ul style="list-style-type: none"> <li>• Issues of jurisdiction and applicable law need to be taken into consideration when drawing up the mediated agreement.</li> <li>• The judicial and administrative authorities of the requested State and the requesting State should co-operate with each other as far as possible to overcome possible difficulties in rendering an agreement that amicably settles an international child abduction dispute legally binding and enforceable in both States. The use of direct judicial communications may be particularly helpful in this regard.</li> </ul>
14	The use of mediation to prevent child abductions	<ul style="list-style-type: none"> <li>• Promoting voluntary agreements and facilitating mediation in relation to issues of custody or contact/access may help to prevent subsequent abductions.</li> <li>• The advantages of providing specialist mediation for couples in cross-cultural relationships may be considered.</li> </ul>
15	Other processes to bring about agreed solutions	<ul style="list-style-type: none"> <li>• Aside from mediation, the use of other processes to bring about agreed solutions should be encouraged in international family disputes concerning children.</li> <li>• Processes to bring about agreed solutions available for national cases should only be considered for use in international family disputes if adaptation to the special needs of international disputes is possible.</li> <li>• States should provide information on the processes to bring about agreed solutions which are available in their jurisdiction for international child abduction cases.</li> </ul>
16	The use of mediation and similar processes to bring about an agreed resolution in non-Hague Convention cases	<ul style="list-style-type: none"> <li>• The use of mediation and similar processes to bring about agreed solutions should also be encouraged in international family disputes concerning children, and especially cases of child abductions to which the 1980 Hague Child Abduction Convention or other equivalent instruments do not apply.</li> <li>• States should promote the establishment of mediation structures for such cases, as set out in the Principles for the Establishment of Mediation Structures in the context of the Malta Process. In particular, States should consider the designation of Central Contact Points for international family mediation to facilitate the dissemination of information on available mediation and other related services, on the promotion of good practices regarding specialised training for international family mediation, and on the process of international mediation. At the same time, assistance with rendering mediated agreements binding in the legal systems concerned should</li> </ul>



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	The Hague Symposium Business Arbitration 2013	be provided. <ul style="list-style-type: none"><li>• Where needed, countries should “examine the desirability of introducing regulatory or legislative provisions for the enforcement of mediated agreements”.</li></ul>

## Bibliography

Aiflam; [www.aiflam.org.au](http://www.aiflam.org.au);

Alexander, Nadja “*International and Comparative Mediation: legal perspectives*” textbook published by Wolters Kluwer 2009

Australian Government, Attorney-General Department; “About international parental child abduction”, [www.ag.gov.au/Families/Pages/International\\_familylaw](http://www.ag.gov.au/Families/Pages/International_familylaw);

Australian Government, “Government Response to the Senate Legal and Constitutional Affairs References Committees Report: International Parental Child Abduction to and from Australia”, March 2012;

Australian Mediation Association, [www.ama.asn.au/family-law-mediation](http://www.ama.asn.au/family-law-mediation);

Carter OBE, Denise, article, “The Use of Mediation in relocation Cases”, published in The (Hague) Judges’ Newsletter, Special Edition No.1, 2010;

Egerton, Robin, *Mediation and other forms of ADR in cross-border matters under Hong Kong Law*, paper delivered to 25<sup>th</sup> Anniversary IAML Annual Meeting Harrogate, September 2011

Freris, Helen (IPCA Service Coordinator): article “Hague Children’s Conventions: the Need for an Advocacy Response to Protect Children in the Context of International Parental Child Abduction”; August 2009;

Grant, Stephen, *Mediation and other forms of ADR in cross-border matters under Canadian Law (in Ontario, at least)*, paper delivered to 25<sup>th</sup> Anniversary IAML Annual Meeting Harrogate, September 2011

Hague Conference on Private International Law, Guide to Good Practice Part V – Mediation ;

International Social Service Australia, [www.iss.org.au](http://www.iss.org.au)

ISS, article, “IFM & Child Abduction” [www.iss-ssi.org/2009/index.php?id=178](http://www.iss-ssi.org/2009/index.php?id=178)

Jordan, Hon. Brian and Sheehy, Peter, “Mediation in Property Matters – Practice and Reform”, paper delivered to TEN 4<sup>th</sup> Annual Family Law Conference Gold Coast Queensland July 2010

Julyan SC, Jacqueline, *Mediation and other forms of ADR in cross-border matters under South African Law*, paper delivered to 25<sup>th</sup> Anniversary IAML Annual Meeting Harrogate, September 2011

Kennedy AM, Ian, “Mediating Family Law Cases” presentation delivered to IAML USA Chapter meeting, San Juan, February 2010;

Kennedy AM, Ian, *Mediation and other forms of ADR in cross-border matters under Australian Law*, paper delivered to 25<sup>th</sup> Anniversary IAML Annual Meeting Harrogate, September 2011;

Kriegler, Dr Alfred, *Mediation and other forms of ADR in cross-border matters under Austrian Law*, paper delivered to 25<sup>th</sup> Anniversary IAML Annual Meeting Harrogate, September 2011;

Lake-Carroll, Angela, *Is mediation suitable for international cases?* paper delivered to 25<sup>th</sup> Anniversary IAML Annual Meeting Harrogate, September 2011;

Legal news, article, “International Child Abduction – support for Parents Left behind”, 26.03.12  
[www.culshawmiller.com.au/international-child-abduction-support](http://www.culshawmiller.com.au/international-child-abduction-support) for-parents-



Meierding, Nina, article "Mediating across cultures: Cross-Cultural Issues to consider in the Mediation of International Child Abduction Cases", published in The Judges' Newsletter, Special Edition No.1, 2010;

Parkinson, Lisa, "Family Mediation" published by Family Law (Jordan Publishing Limited) 2011 (Chapter 14, International Family Mediation and Future Directions);

Sheehy, Peter, "The Changing Face of Mediation under the family Law Act" paper delivered to the LexisNexis 9<sup>th</sup> Annual Family Law Summit, Brisbane July 2012;

Singer, Sir Peter Singer, *The EC Mediation Directive Strikes Back*, paper delivered to 25<sup>th</sup> Anniversary IAML Annual Meeting Harrogate, September 2011;

Vigers, Sarah, article, "Mediating Cross-border Disputes Concerning Children" March [2010] IFL 118;

Wade, Professor John, "Tools from a Mediator's tool-box; Reflections on matrimonial Property Disputes"

Wooldrige, Jr, Judge Robert W., "Mediation of Family Law Cases" paper presented to IAML USA Chapter meeting, San Juan, February 2010.

**Note also the following publications available from the hcch on Cross border family mediation:**

Central Contact Points for international family mediation	
Revised draft Guide to Good Practice under the Hague Child Abduction Convention, Part V - Mediation	2012
Draft Guide to Good Practice under the Hague Child Abduction Convention, Part V - Mediation (Prel. Doc. No 5 of May 2011)	2011
Working Party on Mediation - Principles for the establishment of mediation structures in the context of the Malta Process	2010
Working Party on Mediation - Explanatory Memorandum on the Principles for the establishment of mediation structures in the context of the Malta Process	2010
Preliminary Outline of the Guide to Good Practice on Mediation under the 1980 Hague Child Abduction Convention <i>(for consultation with the expert group)</i>	2010
Working Party on Mediation - conference call of 29 October 2009 - meeting report	2009
Working Party on Mediation in the Context of the Malta Process - Questionnaire II + responses	2009
Working Party on Mediation - conference call of 30 July 2009 - meeting report	2009
Working Party on Mediation in the Context of the Malta Process - Questionnaire I + responses	
Principles for the Establishment of Mediation Structures in the context of the Malta Process [Arabic]	
<a href="#">Explanatory Memorandum</a> on the Principles for the Establishment of Mediation Structures in the context of the Malta Process [ <a href="#">Arabic</a> ]	

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