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1. GENERAL BACKGROUND

The United States of America (USA) as a Federal nation, comprises 50 States and the District of Columbia. All States, with the exception of Louisiana, follow common law principles. In the USA “each individual State is solely competent to decide cases involving problems of domestic relations, such as custody and visitation issues”.¹ To provide uniform rules of jurisdiction, the USA has implemented three important Acts, the Parental Kidnapping Prevention Act of 1980 (PKPA),² the Uniform Child Custody and Jurisdiction Act of 1968 (UCCJA),³ which was adopted in all 50 USA States, and the Uniform Child Custody Jurisdiction and Enforcement Act of 1997 (UCCJEA).⁴ This latter Act is a revision of the UCCJA, and as of 22 July 2002 30 States and the District of Columbia had adopted it.⁵

1.1 IMPLEMENTATION OF THE CONVENTION

The 1980 Hague Convention on the Civil Aspects of International Child Abduction is only the fourth Hague Convention and the first family law Convention to which the USA has become a party. The Convention came into force in the USA on 1 July 1988 following the implementation of the International Child Abduction Remedies Act of 1988 (ICARA).⁶ The USA was the 10th Contracting State to the Convention. Under USA law an international treaty is entitled to recognition as the “supreme law of the land”.⁷ Consequently, the Hague Convention takes precedence over any conflicting Federal or State laws other than the Constitution.

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¹ Spector, R. *International Child Custody Jurisdiction and the Uniform Child Custody and Enforcement Act* (2000) 33 N.Y.U.J. INT’L L. & POL. 251, p. 253.

² PKPA 1980, 28 USC § 1738A.

³ UCCJA 9 ULA at 123.

⁴ UCCJEA 9 ULA at 115.

⁵ See http://www.nccusl.org/nccusl/uniformact_factsheets/uniformacts-fs-uccjea.asp

⁶ ICARA P.L. 100-300, 42 USC § 11601-11610.

⁷ National Report of the United States of America. Presented at International Child Custody, A Common Law Judicial Conference, Washington, DC, 17-21 September 2000. (Hereafter ‘National Report of the United States of America’). See also Article VI clause 2 of the USA Constitution.

1.2 OTHER CONTRACTING STATES ACCEPTED BY USA

The USA, as a member State of the Hague Conference ratified the Convention and as with all other Contracting States the USA must accept all ratifications. Nevertheless, under Article 38, non-Member States may accede to the Convention and Contracting States are not obliged to accept accessions. Before 1998, the USA Government accepted all accessions to the Convention. However, in recent years, they have become more selective, stating that “not every country is able, or willing, to fulfil its obligations under the treaty”.⁸ Consequently, the USA Department of State now assesses States which have acceded to the Convention and decides whether the USA will accept the accession. This assessment is regularly reviewed and the Department of State endeavours to inform States as to the reasons why the USA is not accepting their accession, as well as helping local authorities to address these concerns.⁹ As of 1 January 2002 the USA had not accepted an accession since 1 November 1997 when it accepted that of South Africa.

For a full list of all States for whom the Convention is in force with the USA, and the dates that the Convention entered into force for the relevant States, see the Appendix.

1.3 BILATERAL AGREEMENTS WITH NON-CONVENTION STATES

The USA has not entered into any bilateral agreements with non-Convention States.

1.4 CONVENTION NOT APPLICABLE TO INTERNAL ABDUCTIONS

Abductions within the USA are not covered by the Convention, but fall under the provisions of the PKPA, the UCCJA and the UCCJEA.¹⁰ Although not all States have yet adopted the UCCJEA it is an important Act designed to “supersede the UCCJA, harmonise its provisions with the PKPA, and provide a single source of law to govern child custody jurisdiction issues ‘in the light of ... thirty years of contradictory case law’.”¹¹

2. ADMINISTRATIVE AND JUDICIAL BODIES DESIGNATED UNDER THE CONVENTION

2.1 CENTRAL AUTHORITY

ICARA, which implements the Convention in the USA, requires the President to designate a Federal agency as the Central Authority for administration of

⁸ See the USA response to the questionnaire concerning the practical operation of the Convention and views on possible recommendations, sent out by the Permanent Bureau of the Hague Conference prior to the Fourth Special Commission. (Hereafter ‘USA Response to Hague Questionnaire’).

⁹ Ibid.

¹⁰ Although as stated ante at 1, not all States have signed up to this latter Act.

¹¹ See Hon. James D Garbolino *International Child Custody Cases: Handling Hague Convention Cases in US Courts* Third Edition. The National Judicial College 2000.

the treaty provisions within the USA.¹² By an Executive Order,¹³ the State Department's Office of Consular Affairs was designated as the USA Central Authority. More specifically, it is the Office of Children's Issues which fulfils the functions of the Central Authority. A Co-operative Agreement has been signed by the USA Central Authority and the National Center for Missing & Exploited Children (NCMEC) allowing NCMEC to process all "incoming" applications (i.e. applications seeking the return of children found in the USA). This took effect on 5 September 1995. To our knowledge, the USA is the only Contracting State to the Convention which has split the responsibility for incoming and outgoing applications between two separate bodies. NCMEC is a private non-profit organisation operating under a congressional mandate in co-operation with the USA Department of Justice.¹⁴ NCMEC is highly skilled in searching for missing children in the USA and this expertise is useful in Convention cases. The Office of Children's Issues in the State Department is still responsible for all outgoing applications.

In the State Department – Office of Children's Issues there are 14 members of staff dealing with Convention cases, these comprise one unit chief, 11 case officers, 1 intern and 1 secretary. No case officer is allowed to exceed a caseload of 75 cases.¹⁵ The office also deals with abduction cases which do not arise under the Hague Convention and other matters such as intercountry adoption.

The relevant Division of NCMEC that deals with incoming Convention cases is the International Division. In the International Division there are 10 staff members. The remit of the Division is broader than purely Convention abductions but all have at least some involvement in Convention cases. There are two lawyers in the Division: the Director and a Supervising Attorney. There is also a Family Services Advocate who helps with reunification of families. There is a Staff Assistant who seeks to find attorneys who will work on a reduced fee or pro bono basis, and an Investigative Analyst from the USA Secret Service, who is employed by the Secret Service and is primarily involved in locating children in difficult cases. There are also five case workers, two of whom have little involvement in incoming Convention cases. The contact details for the Central Authority are shown below and on the next page:

THE STATE DEPARTMENT

Office of Children's Issues (CA/OCS/CI)

USA Department of State

WASHINGTON, DC 20520-4818

United States of America

Tel: +1 (202) 736 7000

Fax: +1 (202) 312 9743

Auto fax: +1 (202) 647 3000

Web site: http://travel.state.gov/children's_issues.html

Out of office hours the Consular Affairs duty officer may be contacted on:

Tel: +1 (202) 647 5226

¹² ICARA § 11606(a).

¹³ Exec. Order No. 12648, 11 August 1988.

¹⁴ Hutchinson, A; Roberts, R and Setright, H. *International Parental Child Abduction Family Law* 1998, pp. 208-215.

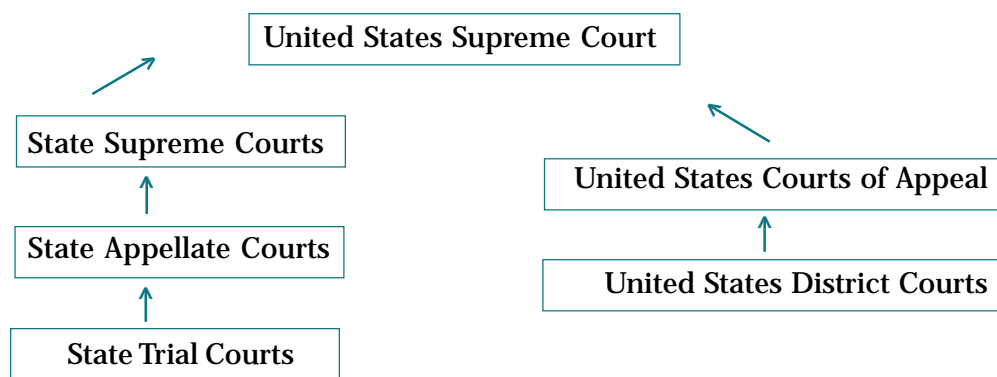
¹⁵ ICARA § 11608a (b).

Due to the current concerns about anthrax, incoming mail to the State Department is delayed and consequently they recommend the use of a courier service:

Courier Services (for deliveries)
Office of Children's Issues
Department of State
Suite 2100
1800 G Street N.W.
Washington, DC 20006

NCMEC
International Division-NCMEC
Charles B. Wang International Children's Building
699 Prince Street
Alexandria, VA 22314-3175
United States of America
24-hour Tel: +1 (800) 843 5678 - for Mexico / Canada
24-hour Tel: +1 (703) 235 3900 - for the rest of the world
Web site: <http://www.missingkids.com>

2.2 COURTS AND JUDGES EMPOWERED TO HEAR CONVENTION CASES



In the USA there are two separate court systems, Federal courts and State courts. Federal courts are established by the USA Government and approximately 1 million cases are heard in the Federal courts every year.

State courts are established by State law. Excluding traffic and parking violations there are over 27 million cases heard in the State courts each year. Only State courts can hear legal separation, divorce, guardianship and related family matters.

While family matters are usually heard in State courts, jurisdiction to hear incoming applications for return under the Convention, is given to both the State and Federal courts. The implementing legislation provides that, “[t]he courts of the States and the United States district courts shall have concurrent original jurisdiction of actions arising under the Convention”.¹⁶ Neither forum has priority in Convention cases though cases pending in State courts may be subject to removal to Federal court under the Federal removal statute.¹⁷

¹⁶ ICARA § 11603(a).

¹⁷ 28 USC § 1441(a). See also *Matter of Mahmoud* 1997WL 43524 (E.D.N.Y. 1997).

Many State courts have two levels of appeal, an intermediate level and a final level. The latter court is generally referred to as the State Supreme Court with the notable exception of New York State where the trial court of original jurisdiction is referred to as the New York Supreme Court, and the final appeal court is the New York Court of Appeals. In the Federal system, appeals from District Courts are made to the Federal Circuit Courts of Appeal. There are 13 Circuit Courts of Appeal which cover all 50 States as well as the District of Columbia, the USA Virgin Islands and entities such as Puerto Rico.¹⁸

The President of the USA appoints Federal judges. Once appointed they can only be removed by impeachment by the USA Senate. State judges are elected or appointed. Each State has its own selection and retention procedure. Given that there are almost 30,000 State Court Judges and just under 1,500 Federal Court Judges, an astonishing 30,849 judges can hear a Convention Case.¹⁹ Approximately 2,000 judges can hear appeals.²⁰ California is considering limiting the jurisdiction of courts to hear Convention cases.²¹

3. OPERATING THE CONVENTION – INCOMING APPLICATIONS FOR RETURN

3.1 LOCATING THE CHILD

The implementing legislation (ICARA) gives the USA Central Authority power of access to certain American records, which may have information regarding the location of the child or the abductor.²² If criminal charges have been issued against the abductor, the local police can contact INTERPOL for assistance in locating the abductor and child. NCMEC acts as a liaison with INTERPOL for cases involving missing children.²³

The NCMEC web site²⁴ contains information which gives guidance to a parent on how they may search for an abductor and child. There are also 50 State clearinghouses which operate as missing children's registries. They co-ordinate law enforcement agencies and collect and distribute information on missing children.

3.2 CENTRAL AUTHORITY PROCEDURE

The USA made a reservation pursuant to Article 24 (2) stating that all applications must be accompanied by a translation into English.²⁵ The USA does not offer funding to pay for these translations.

NCMEC acts on behalf of the Central Authority in all incoming applications to the USA. They will check the application and, if appropriate, send a letter to the

¹⁸ Information in this paragraph taken from National Report of the United States of America, op. cit., n. 7.

¹⁹ Ibid.

²⁰ See USA Response to Hague Questionnaire, op. cit., n. 8.

²¹ Ibid., p. 5.

²² ICARA § 11608 (a).

²³ *Family Abduction: Prevention and Response*. Produced by co-operation between NCMEC and the ABA Center on Children and the Law - A program of the Young Lawyers Division - American Bar Association 2002 - available at <http://www.missingkids.com> (Hereafter 'Family Abduction: Prevention and Response').

²⁴ <http://www.missingkids.com>

²⁵ <http://www.hcch.net/e/status/stat28e.html>

abductor informing them that an application has been made and asking for the child to be returned on a voluntary basis. The parent is given approximately 10 days to respond to the letter. This letter will not be sent if it is believed that the abductor will flee with the child. If the abductor does not respond to the letter, the application will proceed. If the abductor is agreeable to a voluntary return arrangements are made between the parents and the Central Authorities or the attorneys representing the parents.²⁶

NCMEC does not obtain orders for the return of a child abducted to the USA, rather its role is to seek co-operation between the parties and act as a source of information about the Convention and the procedures involved with its enforcement. In all applications for return, NCMEC co-ordinates transmittal of a letter to the judge (with copies to parties on both sides) explaining Hague Convention procedure and advising of receipt of an application in the specific case. NCMEC may also provide information regarding the contents and status of an application. After six weeks, NCMEC will routinely request an update about the progress of the case and will remind the court of the expeditious nature of the case.²⁷

3.3 LEGAL REPRESENTATION

Applicants in Convention proceedings before the USA courts are generally represented by private attorneys.

In California, there is some difference in approach to handling Convention cases. The District Attorneys and the California Attorney General's Office play an important role. Local prosecutors handle cases, often negating the need for applicants to hire private attorneys. The District Attorney's Office does not represent the applicant parent as such but acts as a 'friend of the court'. Upon receipt of a Convention application, the Attorney General's Office assesses the need for the applicant to have private representation, and where it is considered appropriate, it co-ordinates with NCMEC to identify available attorneys. Even where private attorneys are involved, the California prosecutors still maintain a role in Convention cases. This role may include:

- Locating the children or confirming location information.
- Picking up the children.
- Preparing and filing points and authorities in support of the petition for return filed by the private attorney.
- Appearing in court to support the petition for return on behalf of the Central Authority and to monitor proceedings.²⁸

In all cases the District Attorney presents information to the court regarding the objectives and obligations of the Convention. If there are allegations of child abuse then an attorney will be appointed. California will pay for cases processed via the Attorney General's office.²⁹

²⁶ USA Response to Hague Questionnaire, op. cit., n. 8, p. 1.

²⁷ Ibid., p. 5.

²⁸ Raquel M Gonzalez, California Deputy Attorney General *How Hague Cases are Handled by California District Attorneys and the California Attorney General's Office*. Published in North American Symposium on International Child Abduction: How to Handle Child Abduction Cases, 30 September-1 October 1993.

²⁹ Information in this paragraph taken from USA Response to Hague Questionnaire, op. cit., n. 8, p 2.

3.4 COSTS AND LEGAL AID

The USA made a reservation to Article 26 of the Convention and is therefore not bound to assume any costs relating to Convention applications.³⁰ The reservation met with criticism³¹ as there is no comprehensive system of legal aid in the USA. Consequently, the USA Department of Justice agreed in 1985 to fund the American Bar Association's creation of the International Child Abduction Attorney Network (ICAAN). ICAAN has a pool of attorneys who provide pro bono or reduced fee legal assistance in incoming Convention cases to the USA.³² This list is now updated and maintained by NCMEC. Some local Bar Associations maintain lists of attorneys who are proficient in cases involving questions of jurisdiction in international child custody issues.³³ Some States require lawyers to undertake a certain amount of pro bono work every year. In most cases, however, lawyers can choose which cases they are willing to undertake.

NCMEC determines, using an objective scale, whether a party is eligible for a pro bono or reduced fee lawyer. This scale is based on the one used by the Washington DC Bar Association and is adjusted for cost of living increases every year. There has been criticism that the scale is difficult to fathom, however, it is publicly available and has been given upon request to others, for example, the German Central Authority. If the applicant is eligible for a reduced fee or pro bono lawyer, NCMEC will help the applicant find a lawyer using ICAAN. The creation of ICAAN in a jurisdiction which has no comprehensive legal aid system is a significant achievement.

If the applicant is not eligible for a pro bono or reduced fee attorney, the costs of a successful application for return can be significant. Attorney's fees vary between US \$150 to US \$400 per hour.³⁴ The implementing legislation, ICARA, makes the abductor responsible for the petitioner's costs unless that would be unjust.³⁵

3.5 LEGAL PROCEEDINGS

Applications may be filed in a State court or a Federal court. The attorney in consultation with the applicant will decide which court would be more advantageous for the case.³⁶ To a certain extent the choice of State or Federal court could depend on whether the attorney has audience rights before the Federal court. Oral evidence is not always necessary and some cases are determined upon written evidence alone. If the case is sensitive, such as where an Article 13b defence has been raised, the parties are likely to present oral evidence.³⁷

³⁰ <http://www.hcch.net/e/status/stat28e.html>

³¹ For a summary of the criticisms see National Report of the United States of America, op. cit., n. 7.

³² Ibid.

³³ Ibid.

³⁴ See Degeling, J and Levett, N. *International Child Abduction: A guide for parents and practitioners* November 2001. The earlier version of June 2000 is available at <http://www.law.gov.au/childabduction/guide.pdf> (Hereafter 'Australian Information Document').

³⁵ ICARA § 11607 (3).

³⁶ Australian Information Document, op. cit., n. 34.

³⁷ USA Response to Hague Questionnaire, op. cit., n. 8, p. 5.

There are four possible methods by which a child's wishes may be heard: the child may be allowed to testify; the child may be interviewed in the judge's chambers; the child may be examined by a court-appointed psychologist; or the court may appoint a guardian-ad-litem or attorney for the child.³⁸

If defences have been raised two different burdens of proof are relevant. For defences raised under Article 12 and Article 13a and child's objections a civil burden of proof applies i.e. the 'preponderance of evidence' standard. For a defence raised under Article 13b or Article 20, a higher burden of proof is applicable, that there must be 'clear and convincing evidence'.³⁹

3.6 APPEALS

Under the USA system, all final orders granting or denying a petition for return of the child can be appealed, although this step is rarely taken.⁴⁰ In some States filing of an appeal automatically stays the order of the trial court. In other States and in the Federal courts, a stay of the order must be requested from either the trial court or the appellate court. According to Judge James Garbolino,⁴¹ "the practice of entering 'stays' of trial court orders pending appeal" is "of some concern". Final appeal is to the USA Supreme Court, which has discretionary jurisdiction in these cases. As the Act implementing the Convention is Federal legislation, there may be differences in the ways in which it is interpreted by Federal and State appeals courts. These differences could be resolved by the USA Supreme Court but as yet it has not had an occasion to do so.⁴²

There are built in delays inherent in many of the appeal procedures.⁴³ According to Garbolino, "[w]hen parties appeal Convention cases, 'promptness' regrettably becomes a relative term".⁴⁴ However, some courts have used expedited procedures to determine appeal.⁴⁵

In 1999, only 2 of the 60 cases which went to court were appealed, a proportion of 3% which is well below the global average of 14%. Additionally at least two cases classified as pending were pending appeals.⁴⁶ The two cases which were resolved on appeal both ended in judicial decisions to return the child. They took an average of 362 days which is slower than the global average for judicial returns on appeal of 208 days.⁴⁷

³⁸ Ibid., p. 6.

³⁹ Ibid., p. 7.

⁴⁰ Only 2 out of 60 cases which went to court were appealed. See *A Statistical Analysis of Applications made in 1999 under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, drawn up by Professor Nigel Lowe, Sarah Armstrong and Anest Mathias and available at <http://www.hcch.net/e/conventions/reports28e.html> (Hereafter 'Preliminary Document No. 3').

⁴¹ See Garbolino, op. cit., n. 11.

⁴² USA Response to Hague Questionnaire, op. cit., n. 8, p. 8.

⁴³ See post at 7.1.3.

⁴⁴ Garbolino, op. cit., n. 11, p. 52.

⁴⁵ See National Report of the United States of America, op. cit., n. 7.

⁴⁶ Preliminary Document No. 3, op. cit., n. 40.

⁴⁷ See post at 7.1.3.

3.7 ENFORCEMENT OF ORDERS

Orders made by USA courts directing the return of a child to a country outside the USA are enforceable throughout the USA by both Federal and State law enforcement authorities.

Courts in the USA may enforce court orders by contempt powers, which include fines or imprisonment. In some States, the aggrieved party may also file a habeas corpus or analogous motion that would request that law enforcement pick up and take the child into custody.⁴⁸

The USA does consider that undertakings can be consistent with the Hague Convention. Nevertheless, the concept of undertakings is not widely used by USA courts. To the extent that undertakings are commitments on the return of the child, it is possible that as a result of the *Blondin*⁴⁹ case the use of such undertakings will increase in the USA courts.⁵⁰

4. OPERATING THE CONVENTION – INCOMING APPLICATIONS FOR ACCESS

4.1 CENTRAL AUTHORITY PROCEDURE

Access applications are processed in the same manner as applications for return.⁵¹ NCMEC will try and negotiate voluntary access. If negotiations are unsuccessful, NCMEC will identify attorneys who are willing to handle the case on a paid, pro bono or reduced fee basis. Due to the fact that access applications can take considerably longer than return applications, it may be difficult to find an attorney, and there may be a delay before a lawyer is found.⁵²

4.2 LEGAL PROCEEDINGS

Access applications are heard under domestic law. Although Federal Courts have jurisdiction to hear Convention applications, many apparently refuse to hear an access application, because they consider that access is a State law matter.⁵³ There are no specific procedural rules determining that an application for access is heard expeditiously.⁵⁴

4.3 ENFORCEMENT OF ORDERS

The mechanisms available to enforce access decisions vary from one USA jurisdiction to another. Possible enforcement mechanisms include:

- Contempt of court – imposing fines and / or imprisonment.
- Imposing a monetary bond.

⁴⁸ USA Response to Hague Questionnaire, op. cit., n. 8, p. 7.

⁴⁹ *Blondin v Dubois* 189 F.3d 240 (2d Cir.1999), since appealed, see 238 F.3d 153 (2d Cir 2001).

⁵⁰ Information in this paragraph taken from USA Response to Hague Questionnaire, op. cit., n. 8, p. 10.

⁵¹ *Ibid.*, p. 3.

⁵² *Ibid.*

⁵³ This is NCMEC's experience.

⁵⁴ USA Response to Hague Questionnaire, op. cit., n. 8, p. 15.

- Ordering injunctive and equitable relief.
- Assuming the court has jurisdiction, modifying existing custody orders, including giving custody to the other parent.
- Assessing monetary damages.
- Using criminal penalties in accordance with State and Federal law.⁵⁵

5. OPERATING THE CONVENTION – OUTGOING APPLICATIONS FOR RETURN

5.1 PREVENTING THE REMOVAL OF THE CHILD FROM THE JURISDICTION

5.1.1 CIVIL LAW

NCMEC has produced information documents relating to the prevention of abductions.⁵⁶ In *Family Abduction: Prevention and Response*,⁵⁷ it is suggested that parents who are worried about the possibility of their child being abducted should obtain legal custody of their child. The custody order should detail specific times and locations for visitation. The parent should also ask for special prevention provisions to be stated in the custody decree such as:

- Restricting where the child may be taken, for example the parent may not be allowed to take the child out of the State.
- Penalties for failure to comply with an order.
- Making the parent post a bond, which will be forfeited in the case of abduction.

NCMEC also suggests that where possible, parents should seek mediation or counselling to attempt to resolve any difficulties and that where abduction has been threatened, parents should be particularly alert to the danger. They should teach their children how to call home if anything unusual happens and they should alert schools, day care centres, babysitters and anyone else with care of the child to be aware of the potential risk of abduction.

There is no comprehensive system to prevent exits from the USA. However, the National Child Search Assistance Act of 1990⁵⁸ requires Federal, State and local law enforcement agencies to report any missing child under the age of 18 to the National Crime Information Center (NCIC) computer, without delay. Parents can go to their local police to ask that this be done. When a child is entered into this database as a missing child, all internal law enforcement agencies, including those at airports and border points, have access to this information alerting them to a potential abduction. If a criminal warrant is pending, the parent's information is entered as a wanted person allowing law enforcement to arrest them when discovered.

⁵⁵ See *Ibid.*, p. 17.

⁵⁶ See the NCMEC web site at <http://www.missingkids.com>

⁵⁷ See n. 23.

⁵⁸ P.L. 101-647; 42 USC 5779 and 5780.

A law which came into effect on 2 July 2001,⁵⁹ requires the signature of both parents prior to the issue of a USA passport to children under the age of 14.⁶⁰ Where a parent has a court order providing full legal custody or prohibiting the removal of the child from the jurisdiction, they can request that a passport not be issued to their child. A certified copy of the relevant court order should be sent to the Office of Children's Issues.⁶¹

If a person does not have a custody order he or she may still contact the Department of State's Passport Lookout Program⁶² which can determine whether a USA passport has been issued. It is also possible to put a child's name on the Department's Children's Passport Issuance Alert Program which will enable the Department to notify the parent if an application is received for a passport for the child. The second measure is only a temporary measure until a court order has been made.⁶³ If a passport has already been granted to a child, it cannot be revoked.⁶⁴

The Department of State cannot prevent an Embassy or Consulate of another State from issuing a passport to a child who is also a national of their State. It is possible to request that Embassies and Consulates do not issue passports by sending certified copies of court orders concerning custody or travel restrictions for the child. Where the child is only a USA national, it is also possible to request that no visas be granted to allow the child to travel to the relevant country. No international law requires compliance with these requests but many countries may comply voluntarily.⁶⁵

5.1.2 CRIMINAL LAW

The removal or retention of a child outside the USA is a Federal felony offence under the International Parental Kidnapping Crime Act of 1993 (IPKCA).⁶⁶ In many States a custody order must have been made in order for the offence to be committed.⁶⁷ The IPKCA is broad in that it applies to abductions to non-Hague States as well as Contracting States to the Convention. However, where available, the Convention "should be the 'option of first choice' for the left-behind parent",⁶⁸ in line with the USA preference that cases should be resolved through civil means if at all possible.

⁵⁹ PL. 106 – 113. For more information see <http://www.state.gov/specialreq.html>

⁶⁰ United States Department of State Bureau of Consular Affairs - *International Child Abduction*. Last updated July 2001. At <http://www.travel.state.gov/int'lchildabduction.html> (Hereafter 'International Child Abduction').

⁶¹ See contact details ante at 2.1.

⁶² Ibid.

⁶³ Family Abduction: Prevention and Response, op. cit., n. 23.

⁶⁴ International Child Abduction, op. cit., n. 6.

⁶⁵ Ibid.

⁶⁶ IPKCA (1993) PL. 103-173; 18 USC 1204. For the impact of this offence on returning abducting parents see p. 12.

⁶⁷ Hutchinson, et al., op. cit., n. 14.

⁶⁸ Comments made by President Clinton on signing the Bill H.R. 3378, 1993 U.S.C.C.A.N 2424-1. See further in Garbolino, op. cit., n. 11, p. 26 ff.

5.2 CENTRAL AUTHORITY PROCEDURE

The USA State Department - Office of Children's Issues as the Central Authority for the USA deals with all outgoing applications. In general, the State Department checks the application and then forwards it to the relevant Central Authority in the foreign jurisdiction.

In California, some different mechanisms have been introduced for processing applications with Mexico. Applications are made directly from California bypassing the USA Central Authority, although a courtesy copy of the application is sent to the State Department. In these cases, the California Attorney General's Office routinely provides a Spanish version of the Convention application form. This translated form was produced by the San Diego District Attorney's Office in an attempt to comply with Mexico's request that all documentation be in both English and Spanish.⁶⁹

If the child is a USA citizen, it is possible to request that the USA State Department conduct a "Welfare and Whereabouts" check for the child. This involves using USA Embassy officials in the State to which the child has been taken, who will attempt to obtain information about the child's location and welfare. Embassy officials abroad, will attempt to discover information about the child from local government officials. They cannot act as private investigators and it is therefore important that they have all relevant and necessary information regarding the probable or actual location of the child. Requests for this service should be made to the Consular Services Department of the USA State Department.⁷⁰

If parents have specific concerns about the welfare of an abducted child they can seek the assistance of International Social Services:

International Social Services New York Office
95 Madison Avenue
New York, NY 11016
United States of America
Tel: +1 (212) 532 5858

5.3 PROTECTION AND ASSISTANCE ON RETURN

There are many illegal immigrants in the USA and in some cases, non-USA children have been habitually resident in the USA prior to abduction. Consequently, if under the Convention a return is voluntarily agreed or ordered by a court, the child may have no legal right to enter the USA. The Immigration and Naturalization Service (INS) has to consider whether or not to allow these children into the country. The INS considers each case on an individual basis but will not guarantee that every child will be able to re-enter into the USA.

⁶⁹ See Gonzalez, *op. cit.*, n. 28, p. 8.

⁷⁰ See contact details ante at 2.1.

There have also been immigration problems for abducting parents returning to the USA. Since June 1998,⁷¹ it has been possible to apply for “Significant Public Benefit Parole” (SPBP), which if accepted, will enable the abductor to enter into the USA. Requests should be made to the Central Authority of the country in which they are located. This Central Authority will then transmit the application to the USA Central Authority, who will present the application to the INS. Most requests are decided quickly and in favour of the applicant. However the INS may refuse an application if the abductor has a criminal warrant pending for his arrest (although not for parental kidnapping), if he is believed to be a terrorist, or if he is destitute.⁷² The use of SPBP in child abduction cases has greatly improved the situation for those who have no legal right to enter the USA.

International parental child abduction is a crime under IPKCA⁷³ and under the law of each individual USA State. Although some States are willing to drop charges if the child is returned, others will continue with criminal proceedings once the abductor returns to the USA. Pending criminal charges can also influence the type and scope of the abductor’s access to the child if the child is returned to the USA.

Where there are allegations of child abuse, child protection services are responsible for ensuring the safety of the returned child. It is not unusual for child protection services to take temporary custody of the child by placing the child with foster parents for the period of time needed to investigate the allegations of abuse.⁷⁴ The USA Central Authority provides information for returning parents on legal aid, shelter and protection in alleged cases of abuse or domestic violence. The specific assistance which is available depends upon the area of the USA, due to variations in State laws and resources.

5.4 COSTS AND LEGAL AID

As with incoming applications to the USA, applicants must pay for any attorneys they hire in the USA. In 1999, the USA Department of Justice’s Office of Victims of Crime determined that if a left-behind parent could not afford international travel, the Office of Victims of Crime would fund the parent and the child’s return travel. Similarly, if a parent cannot afford it, the Office of Victims of Crime will fund travel to attend a Convention or custody hearing if the parent’s presence is required by the courts in the other State. Money for this comes from fines levied by the Federal Courts. As this programme is available to the victims of crime, it is not available to the abductor.⁷⁵ As with the introduction of ICAAN for incoming applications, this is an important aid to parents and children in a system which does not generally offer legal aid assistance.

⁷¹ State Department Memo 107944, 10 June 1998.

⁷² See USA Response to Hague Questionnaire, op. cit., n. 8, p. 11-12.

⁷³ 18 U.S.C.A. § 1204.

⁷⁴ *Ibid.*, p. 3.

⁷⁵ USA Response to Hague Questionnaire, op. cit., n. 8.

5.5 ENFORCEMENT OF ORDERS

The UCCJA whilst being domestic USA legislation is expressly extended to foreign custody orders under § 23. However, not all States have adopted § 23⁷⁶ and not all foreign orders qualify for enforcement. Thirty States and the District of Columbia have now implemented the UCCJEA,⁷⁷ which automatically extends recognition to qualifying foreign orders as if the order was made in a USA State. Both Acts state that a child custody determination will be recognised and enforced, provided that it has been made in substantial conformity with the jurisdictional provisions of the Act. The UCCJEA adds that the child custody law of that foreign State may not violate the fundamental principles of human rights.⁷⁸ This last provision is expressly extended to cover Convention cases.⁷⁹

6. AWARENESS OF THE CONVENTION

6.1 EDUCATION OF CENTRAL AUTHORITIES, THE JUDICIARY AND PRACTITIONERS

The Office of Children's Issues has an active outreach programme, educating judges, practitioners, law enforcement officers and the public on the Hague Convention and other civil legal methods available in international custody, access and abduction matters. The Office also educates parents and attorneys on how to prevent international child abduction.

Due to special arrangements which exist between California and Mexico with regard to Convention cases, several bi-national meetings have been held between judges and authorities from Southern California and Baja California, a State in Mexico. These meetings help delegates to be informed about procedures in the two States, and consequently how best to make Convention applications.

New attorneys who are added to ICAAN are provided with practical legal information and have access to more experienced attorneys who will act as mentors and provide support.⁸⁰

Education for the judiciary largely occurs "on the bench".⁸¹ However, The National Judicial College provides educational opportunities for judges. Education concerning the Hague Convention is included in the curriculum for State judges handling family law cases. The State Justice Institute and the National Council of Juvenile and Family Court Judges, also provide training to judges that covers the Hague Convention.⁸²

⁷⁶ Spector, *op. cit.*, n. 1, p. 259.

⁷⁷ As at 22 July 2002.

⁷⁸ UCCJEA § 105.

⁷⁹ UCCJEA § 302.

⁸⁰ USA Response to Hague Questionnaire, *op. cit.*, n. 8, p. 2.

⁸¹ National Report of the United States of America, *op. cit.*, n. 7.

⁸² See *Ibid.*

6.2 INFORMATION AND SUPPORT PROVIDED TO THE GENERAL PUBLIC

There are numerous agencies providing support for those searching for their child, NCMEC and the USA State Department in particular have excellent web sites.⁸³ NCMEC has produced a useful document, entitled *Family Abduction: Prevention and Response*⁸⁴ which is free to download. NCMEC acts as a source of information to all parties involved in an abduction case. NCMEC is greatly experienced in handling missing children cases and is well resourced both in terms of human resources and technical resources.

Each State has established an agency to assist parents in the location and return of missing children. The scope and extent of each agency varies; some States publish photos of the children, some offer assistance in obtaining information from State agency records, assistance in having the child entered into the FBI's National Criminal Information Center (NCIC) computer, law enforcement training programs or technical assistance on case investigations.⁸⁵

Missing children's organisations (non-profit organisations or NPOs) exist across the USA and are usually small, local groups comprising left-behind parents and other individuals concerned with child abduction. Many of these groups offer direct assistance to a parent searching for their child. These groups may offer advice concerning local law, social services and other policies and procedures.⁸⁶

The State Department has also produced country fliers available on their web site which provide information to parents whose children have been taken to certain foreign States. There are fliers for Hague and non-Hague States. At the Fourth Special Commission of the Convention, the USA delegation introduced a Working Document⁸⁷ suggesting that each Contracting State should produce a country flier providing "basic, but comprehensive, information to persons inquiring on the Hague process in that country". In the Conclusions and Recommendations produced from the Special Commission⁸⁸ it was suggested⁸⁹ that each Central Authority should publish such a flier.

7. THE CONVENTION IN PRACTICE – A STATISTICAL ANALYSIS OF APPLICATIONS IN 1999⁹⁰

The USA handles more applications on an annual basis than any other State. In total, the USA handled 466 applications through the State Department and through NCMEC in 1999.

⁸³ See <http://www.missingkids.com> and http://travel.state.gov/children's_issues.html

⁸⁴ Family Abduction: Prevention and Response, op. cit., n. 23. This edition from March 2002 replaces the 1994 edition.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Working Document No. 13, presented at the Fourth Special Commission in The Hague, March 2001.

⁸⁸ Conclusions and Recommendations of the Fourth Meeting of the Special Commission to Review the Operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (22-28 March 2001) – Drawn up by the Permanent Bureau. (Hereafter "Conclusions and Recommendations").

⁸⁹ See *ibid.*, para. 1.8.

⁹⁰ The following analysis is based on Preliminary Document No. 3, op. cit., n. 40.

| | |
|----------------------------------|-----|
| Incoming applications for return | 210 |
| Outgoing applications for return | 183 |
| Incoming applications for access | 44 |
| Outgoing applications for access | 29 |

Total number of applications 466

7.1 INCOMING APPLICATIONS FOR RETURN

7.1.1 THE CONTRACTING STATES WHICH MADE THE APPLICATIONS

| Requesting States | | |
|----------------------|------------------------|-------------|
| | Number of Applications | Percent |
| Mexico | 57 | 27 |
| Canada | 25 | 12 |
| Germany | 21 | 10 |
| UK-England and Wales | 19 | 9 |
| Australia | 9 | 4 |
| Israel | 7 | 3 |
| Norway | 7 | 3 |
| France | 5 | 2 |
| Argentina | 4 | 2 |
| Netherlands | 4 | 2 |
| Spain | 4 | 2 |
| Belize | 4 | 2 |
| New Zealand | 4 | 2 |
| Greece | 3 | 1 |
| Italy | 3 | 1 |
| Portugal | 3 | 1 |
| Switzerland | 3 | 1 |
| UK-Scotland | 3 | 1 |
| Poland | 3 | 1 |
| Czech Republic | 2 | 1 |
| Finland | 2 | 1 |
| Sweden | 2 | 1 |
| Venezuela | 2 | 1 |
| Colombia | 2 | 1 |
| Ecuador | 2 | 1 |
| South Africa | 2 | 1 |
| Austria | 1 | 0 |
| China-Hong Kong | 1 | 0 |
| Ireland | 1 | 0 |
| Chile | 1 | 0 |
| Cyprus | 1 | 0 |
| Honduras | 1 | 0 |
| Hungary | 1 | 0 |
| Panama | 1 | 0 |
| Total | 210 | ~100 |

Mexico made over twice as many applications to the USA than any other Contracting State. Indeed 27% of all incoming return applications to the USA were from Mexico. Thirty nine percent of applications received by the USA were made by its two geographically proximate neighbours, Canada and Mexico. There were also a significant number of applications received from Germany and England and Wales.

7.1.2 THE OUTCOMES OF THE APPLICATIONS

| Outcome of Application | | |
|------------------------|------------|------------|
| | Number | Percent |
| Rejection | 13 | 6 |
| Voluntary Return | 59 | 28 |
| Judicial Return | 50 | 24 |
| Judicial Refusal | 10 | 5 |
| Withdrawn | 44 | 21 |
| Pending | 25 | 12 |
| Other | 9 | 4 |
| Total | 210 | 100 |

Twenty four percent of applications to the USA resulted in a judicial order to return, and 28% resulted in a voluntarily agreed return. The judicial return rate was below the global average of 32% while the voluntary return rate was higher than the global average of 18%. Overall, 52% of applications made to the USA ended in the child being returned either by a court order or voluntarily, which is marginally above the global rate of 50%. Nevertheless, this is well below the 90% return rate sometimes quoted with reference to USA cases.⁹¹ Lowe's study of Anglo-American cases⁹² found that analysing all "positive" responses as a proportion of all disposed cases, led to a 74% positive response in applications to the USA.

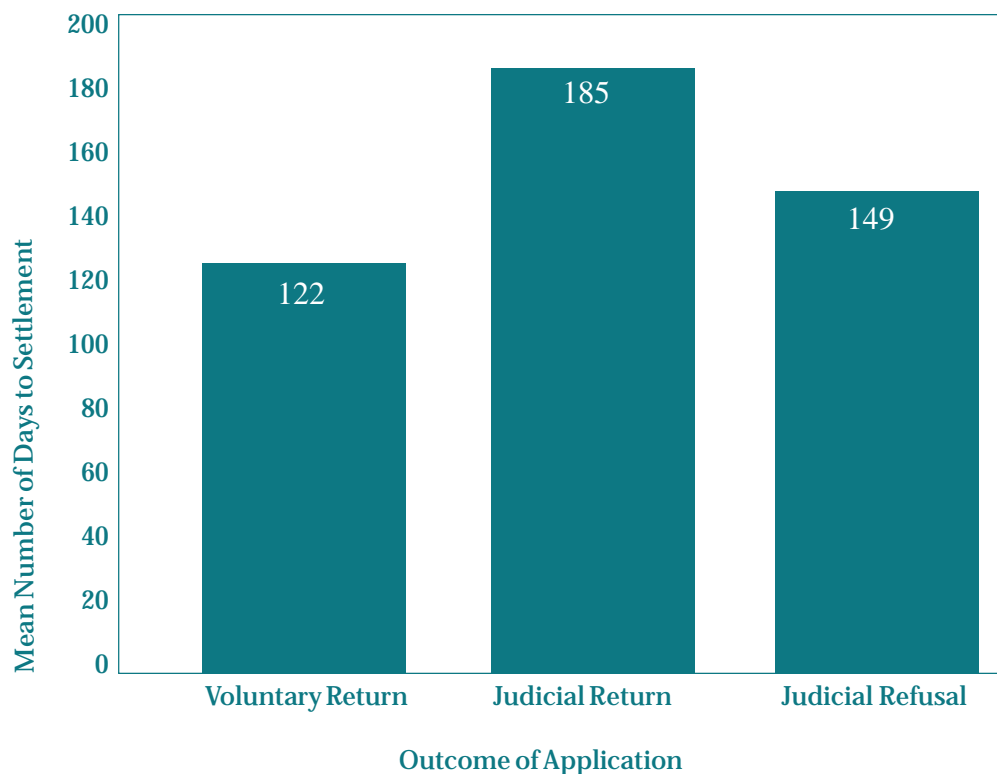
Of the 60 cases which went to court in 1999, 83% ended in a judicial return, which is above the global average of 74%. In only 5% of cases was return judicially refused compared with a global average of 11%. Twenty one percent of applications were withdrawn, which is higher than the global average of 14% and just 6% of applications were rejected which is below the global average of 11%. It is worth noting that 12% of applications were still pending as of 30 June 2001, which is at least 1 ½ years after the last possible application in 1999 could have been made. This is higher than the global average of 9%.⁹³

⁹¹ See for example Johnson, T. A. *The Hague Child Abduction Convention: Diminishing Returns and Little to Celebrate for Americans*. (2000) 33 N.Y.U.J. Int'l L. & POL. 125, p. 134.

⁹² Lowe, N. *The 1980 Hague Convention on the Civil Aspects of International Child Abduction: An English Viewpoint*. (2000) 33 N.Y.U.J. Int'l L. & POL. 179, p. 204.

⁹³ At first sight this may be an indicator of the slowness of the system. However, this may instead, or in part, be due to the USA practice of not closing dormant cases. See post at 8.

7.1.3 THE TIME BETWEEN APPLICATION AND FINAL CONCLUSION



Timing was available on 47 of the 59 voluntary returns, 42 of the 50 judicial returns and 5 of the 10 judicial refusals. As such the chart above is based on these cases only.

It took a mean average of 185 days as against a global average of 107 days to make a judicial return, and with regard to voluntary returns, the mean average time taken from application to conclusion was 122 days which is slower than the global mean of 84 days. Judicial refusals were concluded in a mean average of 149 days which is similar to the global average of 147 days. It must be noted that the high number of applications which are still pending are excluded from this figure and, if these cases are ultimately resolved, then the mean period for an application to be resolved will increase dramatically.

The figures above are mean average figures and as such they give no account of particularly slow or particularly quick cases. The table below shows that there were both extremes in applications to the USA in 1999, some cases being handled quickly, others taking considerably longer.

| Number of Days Taken to Reach Final Outcome | | | |
|---|------------------------|-----------------|------------------|
| | Outcome of Application | | |
| | Voluntary Return | Judicial Return | Judicial Refusal |
| Mean | 122 | 185 | 149 |
| Median | 84 | 148 | 140 |
| Minimum | 1 | 8 | 5 |
| Maximum | 431 | 718 | 374 |
| Number of Cases | 47 | 42 | 5 |

At the appellate level there were two judicial returns; the mean period that it took to reach these decisions was 362 days, compared with the global mean of 208 days. There were remarkably few appeals, 2 out of 60 decisions which is a proportion of 3% compared with a global average of 14%.

There are an additional two cases which were judicially refused at first instance and are now pending an appeal.

7.2 INCOMING APPLICATIONS FOR ACCESS

7.2.1 THE CONTRACTING STATES WHICH MADE THE APPLICATIONS

| Requesting States | | |
|----------------------|------------------------|-------------|
| | Number of Applications | Percent |
| UK-England and Wales | 7 | 16 |
| France | 5 | 11 |
| Germany | 5 | 11 |
| Mexico | 5 | 11 |
| Israel | 4 | 9 |
| Australia | 2 | 5 |
| Canada | 2 | 5 |
| Spain | 2 | 5 |
| Colombia | 2 | 5 |
| New Zealand | 2 | 5 |
| Argentina | 1 | 2 |
| China-Hong Kong | 1 | 2 |
| Czech Republic | 1 | 2 |
| Denmark | 1 | 2 |
| Finland | 1 | 2 |
| Italy | 1 | 2 |
| Switzerland | 1 | 2 |
| Panama | 1 | 2 |
| Total | 44 | ~100 |

The proportion of return to access applications followed the global average with less than 20% of applications to the USA being for access. One might have thought that as Mexico and Canada made the greatest number of applications for return, and that these Contracting States border the USA, they would also make the greatest number of applications for access. In fact, however, most access applications were made by England and Wales.

7.2.2 THE OUTCOMES OF THE APPLICATIONS

| Outcome of Application ⁹⁴ | | |
|--------------------------------------|-----------|-------------|
| | Number | Percent |
| Rejection by the Central Authority | 4 | 10 |
| Access Voluntarily Agreed | 16 | 38 |
| Access Judicially Granted | 4 | 10 |
| Access Judicially Refused | 0 | 0 |
| Pending | 6 | 14 |
| Withdrawn | 12 | 29 |
| Total | 42 | ~100 |

⁹⁴ Additionally, the outcome was not available in two of the applications.

The overall pattern for the outcome of access applications was similar to that for applications for return. Over a third, 38%, of applications were settled voluntarily which was considerably higher than the global average of 18%. Not surprisingly, therefore, there were considerably fewer court orders granted, 10% as against the global average of 34% and notably, no judicial refusals. We understand that cases that do go to court are heard under domestic law. It is to be noted that at 30 June 2001, which was at least 1 ½ years after the final application in 1999 could have been made, 6 applications, 14%, were still pending which is similar to the global proportion of 13%.

7.2.3 THE TIME BETWEEN APPLICATION AND FINAL CONCLUSION

| Timing to Voluntary Settlement | | |
|--------------------------------|-----------|-------------|
| | Number | Percent |
| 0-6 weeks | 4 | 25 |
| 6-12 weeks | 3 | 19 |
| 3-6 months | 3 | 19 |
| Over 6 months | 6 | 38 |
| Total | 16 | ~100 |

In contrast to voluntary agreements to return, voluntary settlements of access were arrived at faster than the global averages, with 44% of cases being resolved in under 13 weeks, compared with 39% globally.

One judicial decision was made in 6 to 12 weeks, a second took 3 to 6 months and another over 6 months. For judicial decisions the numbers were too small for any valid conclusion to be drawn. However, it must, again, be noted that some cases are still pending.

8. CONCLUSIONS

The USA annually handles more Convention applications than any other State. It has also been a Contracting State to the Convention for a significant number of years. The USA faces many inherent difficulties with regard to the operation of the Convention, such as its geographical size and multiplicity of jurisdictions, but over the years numerous efforts have been made to improve the situation. To our knowledge, the USA is the only Contracting State which has delegated the powers of the Central Authority in incoming cases to a body with experience and competence in the field. While NCMEC is vastly experienced and well resourced, particularly with regard to locating children, and this has aided the operation of the Convention in the USA, it has also created certain difficulties. Other Central Authorities have commented that communication with the USA can be difficult because they are dealing with separate bodies for incoming and outgoing applications. Similarly, reciprocal arrangements between Central Authorities such as organising working languages and translation requirements, cannot easily be established with the USA because of the split in responsibilities between the two separate organisations.

Given that legal aid is not common-place in the USA internal system, the creation of ICAAN to assist with pro bono and reduced fee legal representation in Convention cases is a great help to applicants. It is an important achievement

that such a system has been created in a jurisdiction that has no comprehensive legal aid framework. However, other Contracting States have been critical that the criteria for evaluating claims for pro bono and reduced fee legal representation is hard to fathom (although as noted above,⁹⁵ the information can be obtained). Also, other costs inherent in bringing an application, notably translation costs are not covered. While the initiation of ICAAN is a great benefit, it must be stressed that as one of the most well resourced countries in the world, one might expect easier access to legal aid.

As the statistics above clearly show, many cases with the USA are to or from Mexico. The USA has developed various useful ways of improving the situation for applicants under the Convention in these cases. The State of California has reduced the need for private legal representation and has instituted a system which aids communication through the use of bilingual application forms. Bypassing the Central Authority in Washington, DC, and utilising District Attorneys Offices has allowed expertise to develop in these specific cases. A courtesy copy of all correspondence is sent to the Central Authority for the purpose of collecting statistics on cases.

With regard to returning children and abductors, the USA has faced difficulties as immigration control may be unable to allow entry to non-USA citizens who were nevertheless habitually resident in the USA prior to the abduction. The use of the Significant Public Benefit Parole in these situations has eased return difficulties for abductors.

Being a Federal State, there are multiple jurisdictions within the USA. This may create problems with different States claiming jurisdiction. The provisions in the UCCJEA⁹⁶ which specifically extend the legislation to cover Convention cases, and which require States to enforce orders from foreign jurisdictions help to ease potential problems. Also, the ability to bring Convention cases in Federal courts, whereas usually family disputes are kept within the jurisdiction of the States, allows applicants to commence cases in, or remove cases to Federal courts, if a Federal hearing may be more appropriate. The number of courts and judges able to hear Convention cases vastly outnumbers the number of actual cases and consequently, it is highly likely that a judge may only ever deal with one case under the Convention. While NCMEC is able to advise courts about the operation of the Convention and judges may have received training about the Convention at some point in their career, the system does not readily allow for expertise to develop amongst all judges and practitioners who may encounter Convention cases.

In their response to the questionnaire sent out prior to the Fourth Special Commission of the Convention, the USA stated its support for the recommendation that State Parties should “consider the considerable advantages to be gained from concentration of jurisdiction in a limited number of courts”. However, they suggested that “the consolidation should be combined with judicial training and education in systems where consolidation of courts may not be possible or realistic, or does not seem warranted.”⁹⁷ Further in the questionnaire, the USA responded to the question as to whether the appointment

⁹⁵ See ante at 3.4.

⁹⁶ UCCJEA 1997 § 302 (a) (2).

⁹⁷ USA Response to Hague Questionnaire, op. cit., n. 8, p. 8.

of a liaison judge had been made by stating that “the USA legal system does not lend itself to this kind of arrangement”.⁹⁸ While, given the multi-jurisdictional nature of the USA, it is not possible to envisage concentration of jurisdiction in line with the model in England and Wales, it must be possible to reduce the numbers of courts and judges involved in hearing applications. According to the National Report of the United States of America,⁹⁹ some experts recommend that certain courts within a geographical area should be designated to deal with Convention applications.

The statistics from cases commenced in 1999 show overall a relatively positive picture with a return rate of 52% of all cases, however this is considerably less than the 90% figure often quoted.¹⁰⁰ There were also a high proportion of judicial returns as against judicial refusals with 83% of cases going to court ending in a judicial return. There was, however, also a high proportion of both withdrawn and pending cases which presents a less optimistic view. It is to be noted that the system in the USA is still relatively slow. Possibly a concentration of jurisdiction in geographical areas as suggested above could go some way to improving expertise and therefore speed in Convention cases. A relatively large proportion of applications are still pending between 18 months and 2 ½ years after they were initiated.

Location difficulties are partly to blame for pending cases. Not only is the USA a vast geographical State, but the number of illegal immigrants also adds to location problems. The USA has made use of the Internet in helping to locate children by posting their pictures on to the NCMEC web site. NCMEC has also developed a computer package which is able to show probable age progression for children who have been missing for a long time. In this regard, the USA, and NCMEC particularly, take the matter of finding children very seriously. As a result, even Convention cases, which are supposed to be expeditious, will be kept open possibly for years, while attempts are made to locate the child. This will boost the number of pending cases. Comparatively, in certain other States, particularly those with a smaller geographical area, where a child is not found within a specified period, it is assumed that the child is not in the State and therefore the case is closed.¹⁰¹ Consequently, in considering the number of pending cases, it is important to realise that it is hard to compare States in terms of the proportion of pending cases, when policies on when to close a case may vary dramatically from one jurisdiction to another. Nevertheless, when cases are still pending such a long time after the initial application, it raises the question as to whether return is still the best option for the child.

In conclusion, aside from the fact that legal aid is not forthcoming from the USA, the lack of a concentrated jurisdiction, and the relative slowness of the system, it would appear from many of the measures mentioned above that the USA has made significant attempts to ensure that the Hague Convention operates efficiently despite internal procedures which may create difficulties in operating the Convention.

⁹⁸ Ibid., p. 12.

⁹⁹ National Report of the United States of America, *op. cit.*, n. 7.

¹⁰⁰ Johnson, *op. cit.*, n. 91.

¹⁰¹ For example England and Wales.

9. SUMMARY OF CONCERNS

- The use of separate bodies to process incoming and outgoing applications may lead to difficulties with communication.
- Jurisdiction to hear Convention cases is not limited to certain courts or judges and consequently an astonishing 30,849 judges can hear Convention cases.
- The USA has made a reservation to Article 24 requiring that all documents be translated into English but no funding is provided for translation costs.
- The USA has made a reservation to Article 26 and is therefore not bound to assume any costs relating to Convention applications.
- The system in the USA appears to operate slowly especially the judicial system and especially in relation to appeals.
- As access cases that go to court may be more drawn out, it may be hard to find lawyers under ICAAN who are willing to take the case, and generally lawyers in the USA are extremely expensive.

10. SUMMARY OF GOOD PRACTICES

- The use of NCMEC, as a specialist organisation in the field of missing children, to process incoming applications.
- The International Child Abduction Attorney Network (ICAAN) providing a pool of attorneys willing to provide pro bono or reduced fee assistance in abduction cases.
- The web sites of NCMEC and the State Department – Office of Children's Issues are excellent and informative.
- It is possible to contact both NCMEC and the State Department – Office of Children's Issues 24 hours a day.
- No caseworker in the State Department – Office of Children's Issues is allowed to exceed a caseload of 75.
- The International Child Abduction Remedies Act of 1988 gives the USA Central Authority access to certain USA records in order to search for a child.
- Federal, State and local law enforcement agencies are required to report missing children to the National Crime Information Center and details are posted on a computer which can be accessed across the USA and Canada.
- In California, the applicant does not have to pay for the application as the District Attorney will present the case to the court.
- The District Attorney in San Diego has bilingual staff who deal directly with the Mexican Central Authority.
- Meetings between judges and authorities in certain USA States and certain Mexican States have helped to aid communication and processing of cases between the two countries.
- Convention cases can be heard in Federal courts as well as State courts whereas family matters are usually restricted to State courts.
- Provisions of UCCJEA expressly extend to Convention cases, aiding enforcement of orders made under the Convention.
- The USA has produced country fliers detailing procedure and contact details for applicants who have had their children abducted from the USA to certain other countries.

- **The introduction of the Significant Public Benefit Parole enables some abductors to return with children when they would not normally be entitled to enter the USA.**
- **The Department of Justice – Office of Victims of Crime may fund international travel for left-behind parents attempting to bring their children back to the USA, and also the return travel of abducted children.**

APPENDIX

As of 1 January 2002, the Convention is in force between the following 51 Contracting States and the United States of America.

| CONTRACTING STATE | ENTRY INTO FORCE |
|---|------------------|
| ARGENTINA | 1 JUNE 1991 |
| AUSTRALIA | 1 JULY 1988 |
| AUSTRIA | 1 OCTOBER 1988 |
| BAHAMAS | 1 JANUARY 1994 |
| BELGIUM | 1 MAY 1999 |
| BELIZE | 1 NOVEMBER 1989 |
| BOSNIA AND HERZEGOVINA | 1 DECEMBER 1991 |
| BURKINA FASO | 1 NOVEMBER 1992 |
| CANADA | 1 JULY 1988 |
| CHILE | 1 JULY 1994 |
| CHINA-HONG KONG SPECIAL ADMINISTRATIVE REGION | 1 SEPTEMBER 1997 |
| CHINA-MACAU SPECIAL ADMINISTRATIVE REGION | 1 MARCH 1999 |
| COLOMBIA | 1 JUNE 1996 |
| CROATIA | 1 DECEMBER 1991 |
| CYPRUS | 1 MARCH 1995 |
| CZECH REPUBLIC | 1 MARCH 1998 |
| DENMARK | 1 JULY 1991 |
| ECUADOR | 1 APRIL 1992 |
| FINLAND | 1 AUGUST 1994 |
| FORMER YUGOSLAV REPUBLIC OF MACEDONIA | 1 DECEMBER 1991 |
| FRANCE | 1 JULY 1988 |
| GERMANY | 1 DECEMBER 1990 |
| GREECE | 1 JUNE 1993 |
| HONDURAS | 1 JUNE 1994 |
| HUNGARY | 1 JULY 1988 |
| ICELAND | 1 DECEMBER 1996 |
| IRELAND | 1 OCTOBER 1991 |
| ISRAEL | 1 DECEMBER 1991 |
| ITALY | 1 MAY 1995 |
| LUXEMBOURG | 1 JULY 1988 |
| MAURITIUS | 1 OCTOBER 1993 |
| MEXICO | 1 OCTOBER 1991 |
| MONACO | 1 JUNE 1993 |
| NETHERLANDS | 1 SEPTEMBER 1990 |
| NEW ZEALAND | 1 OCTOBER 1991 |
| NORWAY | 1 APRIL 1989 |
| PANAMA | 1 JUNE 1994 |
| POLAND | 1 NOVEMBER 1992 |
| PORTUGAL | 1 JULY 1988 |
| ROMANIA | 1 JUNE 1993 |
| SAINT KITTS AND NEVIS | 1 JUNE 1995 |
| SLOVAKIA | 1 FEBRUARY 2001 |
| SLOVENIA | 1 APRIL 1995 |
| SOUTH AFRICA | 1 NOVEMBER 1997 |
| SPAIN | 1 SEPTEMBER 1987 |
| SWEDEN | 1 JUNE 1989 |

| | |
|--|------------------|
| SWITZERLAND | 1 JULY 1988 |
| TURKEY | 1 AUGUST 2000 |
| UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND | 1 JULY 1988 |
| UNITED KINGDOM-BERMUDA | 1 MARCH 1999 |
| UNITED KINGDOM-CAYMAN ISLANDS | 1 AUGUST 1998 |
| UNITED KINGDOM-FALKLAND ISLANDS | 1 JUNE 1998 |
| UNITED KINGDOM-ISLE OF MAN | 1 SEPTEMBER 1991 |
| UNITED KINGDOM-MONTSERRAT | 1 MARCH 1999 |
| VENEZUELA | 1 JANUARY 1997 |
| YUGOSLAVIA | 1 DECEMBER 1991 |
| ZIMBABWE | 1 AUGUST 1995 |



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