Attorney-General's Department Submission to the Senate Committee on Legal and Constitutional Affairs – Inquiry into international child abduction to and from Australia

On 11 May 2011, the Senate referred the following matter to the Legal and Constitutional Affairs Committee for inquiry and report:

The incidence of international child abduction to and from Australia, including:

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.

The Attorney-General's Department is responsible for international child abduction matters arising under the Hague *Convention on the Civil Aspects of International Child Abduction* (the Convention) as the Australian Central Authority for the Convention (ACA), and matters arising under bilateral agreements with Egypt and Lebanon. This submission provides a response to the terms of reference above in the context of the Department's roles and responsibilities.

Background

International parental child abduction (IPCA) occurs where a child is either wrongfully removed from their country of habitual residence or is wrongfully retained outside their country of habitual residence without the consent of both parents and anyone who has parental responsibility for the child. Parental responsibility, which encompasses the Convention concept of rights of custody in Australia, is governed by a number of provisions of the *Family Law Act 1975.*

Section 61B defines 'parental responsibility' as 'all the duties, powers, responsibilities and authority which, by law, parents have in relation to children'. Section 61C provides that each parent has parental responsibility over his or her children who are under the age of 18 years. Section 111B(4)(a) provides that a parent in Australia has 'rights of custody' over his or her children within the meaning of the Convention, unless an order of a court provides that the parent has no parental responsibility for the children.

Commonly it is a parent who has removed or retained the child without the consent of the other parent, however children may also be removed or retained by a grandparent, aunt, uncle or other family member who may have parental responsibility for the child.

IPCA is primarily a private civil issue between parents, similar to issues of domestic relocation matters within Australia, which may be agreed voluntarily between the parties or may require intervention by the family law courts. The Australian Government's role and responsibilities in relation to IPCA matters arises primarily due to the movement of children across international borders. However the assistance provided to left behind parents under current arrangements will largely be dependent upon whether a child has been removed to or retained in a country with which Australia has an international agreement for assistance on the issue of international child abduction, that is, the Convention or a bilateral agreement (currently Egypt and Lebanon).

Offences under Australian Law for IPCA

Sections 65Y and 65Z of the *Family Law Act 1975* (the Act) provide offences for removing a child from Australia where parenting orders have been made or proceedings for the making of such orders are pending. Removal of a child from Australia is only permitted where there is consent in writing by all parties, or if it is done in accordance with a court order. Both offences carry a maximum of three years imprisonment.

Whilst it is a criminal offence in Australia to wrongfully remove a child from Australia in limited circumstances under Commonwealth and State and Territory law, there is no general criminal offence of IPCA making it a crime to remove or retain a child outside of Australia without the consent of both parents in all cases. IPCA differs from the criminal abduction or trafficking of children across international borders in that the child is usually in the care of a parent or other family member and is usually not removed or retained for the purposes of exploitation.

Recent media attention in Australia has seen renewed calls for strengthening existing offences relating to the wrongful removal or retention of a child overseas from Australia. In November 2010 the Attorney-General asked the Family Law Council to examine this issue. On 14 March 2011 the Family Law Council provided a letter of advice to the Attorney-General with recommendations to strengthen Australia's response to IPCA. A copy of the letter of advice is attached to this submission (**Attachment A**).

In all IPCA matters parents are encouraged to resolve the issue voluntarily or through the family law courts of the country in which the child is located, and in some cases may do so with the assistance of the Australian Government. The level of assistance available will depend on whether the child is located in a Hague or non-Hague country.

(a) the costs, terms and conditions of legal and departmental assistance for parents whose child has been abducted overseas.

The level of assistance available to parents seeking the return of their child to Australia will vary depending on which country their child has been removed to or retained in.

The Convention

If a child has been wrongfully removed to or retained in a country which is a signatory to the Convention, a parent may make an application to the Department in its capacity as the Commonwealth Central Authority (CCA) seeking the return of their child (an 'outgoing' application).

If a child has been wrongfully removed to or retained in Australia, an overseas Central Authority may make an application to the CCA on a parent's behalf seeking the return of their child (an 'incoming' application).

To assist in the implementation of the Convention in Australia, the Attorney-General is able, under Regulation 8 of the *Family Law (Child Abduction Convention) Regulations 1986* (the Regulations), to appoint a Central Authority for a State or Territory. Under regulation 9, a State Central Authority (SCA) has all the duties, may exercise all the powers, and may perform all the functions of the CCA, with the exception of responsibility for transmitting and receiving Convention matters from overseas. This function remains exclusively that of the CCA. A list of the appointed SCAs is at **Attachment B**.

Outgoing matters – assistance for left behind parents in Australia.

The SCAs in New South Wales, Victoria, Queensland, South Australia and Tasmania can provide assistance to left behind parents in Australia to make their Convention application. This assistance includes preparation of application forms and documents, including affidavits. This assistance is provided at no cost to parents and is paid for by the Commonwealth via a charging regime with the SCAs. Parents who are located in Western Australia, the Australian Capital Territory and the Northern Territory, or otherwise choose not to access an SCA can be provided with direct assistance from the CCA at no cost to them. If they choose, parents are also able to seek the assistance of private lawyers at their own cost or apply for legal aid.

The Department also provides funding to International Social Service Australia to provide counselling and assistance to families separated because of IPCA. In 2010-11, the Department provided a grant of $200,746 to ISS.

Assistance provided by other Convention countries to left behind parents in Australia may differ significantly between countries. Under Article 26 of the Convention, each Contracting State is required to bear its own costs in applying the Convention, and cover legal costs in seeking the return of a child, unless it made a reservation at the time of signing up to the Convention declaring that it shall not be bound to cover any legal costs in seeking the return of a child. At the time of ratifying the Convention, Australia did not make a reservation as to costs.

However, while some Convention countries will cover all costs relating to running a Convention matter before their courts, others that have made a reservation under Article 26 of the Convention may assess parents on an individual basis and provide legal aid if the parent is considered eligible or require parents to cover all legal expenses related to their application for the return of their child to Australia. Where a child is wrongfully removed or retained from Australia in these circumstances Australian parents may be eligible for financial assistance from the Department under the Overseas Custody (Child Removal) Scheme. Further information on this scheme is set out below.

Incoming matters – assistance to overseas authorities

Where a request for the return of a child wrongfully removed to or retained in Australia is received from the Central Authority of a contracting state to the Convention, once satisfied the request meets the terms of the Convention, the CCA will undertake to seek the return of the child either

voluntarily, or through the order of the Australian Family Court. As Australia did not make a reservation under Article 26 of the Convention the Attorney-General's Department currently meets all costs associated with seeking such orders. This includes where the matters are referred to the relevant SCA who run the matters in their own name before the courts. Costs of running these matters are fully met by the Department as the CCA.

Bilateral agreements

If a child has been removed to or retained in a country with which Australia has a bilateral agreement on the issue of IPCA, that is, Egypt or Lebanon, the Department can provide assistance in transmitting an application to the relevant authority in those countries.

Non-Convention

Parents who are seeking the return of a child removed to or retained in a country with which Australia has no agreement on the issue of IPCA often face the prospect of instituting private legal action in the country in which their child is located to try to secure the return of their child to Australia. Parents may contact the Department of Foreign Affairs and Trade's (DFAT) Consular Emergency Centre for assistance.

Financial assistance

Australian parents, whose children are ordinarily resident in Australia and are removed from or detained outside Australia without their consent, may apply to the Department for financial assistance under the Overseas Custody (Child Removal) Scheme (OCCR Scheme) to commence legal proceedings in the overseas country for recovery of their children.

This is a means and merits tested scheme that covers the costs of engaging an overseas lawyer if legal aid is not available in the overseas country. Airfares for children to be returned to Australia are typically covered under the Scheme, and an applicant's travel costs may also be covered if they are compelled to attend an overseas hearing, or to escort children back to Australia pursuant to a Court Order, or an agreement between the parties.

Consideration is given to whether the applicant has reasonable prospects of success in having the children returned to Australia. For non-Hague matters (legal proceedings in countries that are not signatories to the Convention) the applicant may be required to obtain a written opinion from an overseas lawyer to support their application, before a decision can be made on whether to provide financial assistance. In these circumstances, the Department may provide a small grant of assistance to cover the cost of obtaining a legal opinion.

This scheme does not cover costs associated with overseas access or visitation cases. Nor does it cover legal costs incurred by the applicant in Australia. However, the applicant may be eligible for assistance from their local State or Territory legal aid commission for those costs. Generally, a grant of financial assistance will not cover costs incurred prior to the Department receiving an application.

Preliminary figures for 2010-2011 indicate an overall expenditure of $154,000 for legal and related costs under the OCCR Scheme, compared to $236,000 for 2009-2010.

The Scheme is demand driven, and the legal and associated cost of individual matters can vary greatly depending on the overseas country involved, whether the matter goes to hearing, or is resolved by agreement, and whether appeals are subsequently lodged. Accordingly, it is difficult to draw any conclusions based on expenditure figures alone.

Statistics relating to the OCCR Scheme are provided at **Attachment C**.

(b) the effectiveness of the Hague Convention in returning children who were wrongly removed or retained, to their country of habitual residence.

Requirements of the Convention

The Convention entered into force on 1 December 1983 and came into effect in Australia on 1 January 1987. There are currently 85 Contracting States and the Convention is in force between Australia and 79 of those States. A list of the Contracting States with which the Convention is in force with Australia is at **Attachment D**.

The Convention is implemented in Australia under the Act and the Regulations.

The purpose of the Convention is to protect children from the harmful effects of wrongful removal or retention and to establish procedures to ensure the prompt return to the country of their habitual residence so that the question of who a child is to live with and spend time with can be determined by the Courts in the appropriate jurisdiction, as well as to secure protection for rights of access. It is not the purpose of the Convention to determine what may be in the best interests of a child in terms of their living arrangements. A decision under the Convention concerning the return of a child is not to be taken to be a determination of the merits of any custody issue.

Two concepts that sit at the heart of the Convention are 'habitual residence' (under Article 4 of the Convention) and 'rights of custody' (under Article 5 of the Convention). The Convention applies only where a child has been habitually resident in one Contracting State immediately prior to their removal or retention to a second Contracting State. The Convention does not provide a clear definition of what it means to be habitually resident in a country and habitual residence is determined based on the facts and circumstances of each individual matter, although there has been significant case law on these issues developed both in Australia and internationally.

A person, institution or other body claiming that a child has been wrongfully removed or retained in a Convention country in breach of those custody rights may apply under the Convention for the return of a child to their country of habitual residence. Similarly a person, institution or other body claiming rights of access to a child in a Convention country may apply to secure rights of access to a child located in a Convention country.

To make an application under the Convention for the return of a child, an applicant must have rights of custody to a child (what is now termed 'parental responsibility' under Australian Family Law) and have been exercising those rights of custody immediately prior to the wrongful removal or retention of the child. Terms such as 'rights of custody' should be interpreted having regard to the

autonomous nature of the Convention and in light of the objectives of the Convention, as well as having regard to the relevant law of the child's country of habitual residence and the country in which the child is located.

Exceptions to return under the Convention

Under the Convention, a court is bound to order the return of a child to their country of habitual residence unless the taking parent is able to successfully argue one or more of the following exceptions to return outlined in the text of the Convention:

- The child has been in the new country for over 12 months and is settled in their new environment (Article 12).
- The requesting parent was not exercising their rights of custody at the time of the removal or retention (Article 13a).
- The requesting parent consented or subsequently acquiesced to the removal or retention (Article 13a).
- There is a grave risk that the return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation (Article 13b).
- The child objects to the return and has attained an age and degree of maturity at which it is appropriate for the court to take into account these views (Article 13).
- A return would not be permitted by the fundamental principles of the requested country relating to the protection of human rights and fundamental freedoms (Article 20).

A key concept underpinning the operation of the Convention is that decisions on return, or not, are normally made by the courts of the country in which the child is located. As in Australia these courts are independent of the Government agencies who act as the Central Authority for the member state to the Convention. Additionally, a decision from a court not to return a child does not mean a member country has not met their obligations under the Convention, as the non-return may be subject to one of the above exceptions or may have been found to be in the best interest of the child.

Case law and protocols developed by member States on the implementation and purpose of the Convention are constantly evolving. Protocols between member States can be used to clarify the application of the Convention including the application of the exceptions to return. For example, the Brussels II a Regulation ('Brussels II') is an agreement which is currently binding on all member States of the European Union (excluding Denmark) that seeks to clarify how the Convention is to be applied between member States. In particular Brussels II may negate the 'grave risk' exception to return in many cases as if it is established that adequate arrangements have been made to secure the protection of the child after his or her return.

Having 85 Contracting States to the Convention, there is wide international support for Convention processes. These processes, whilst set out in the text of the Convention, depend largely on the way in which the Convention is implemented and the legal system and processes in each Contracting

State. The Permanent Bureau of the Hague Conference on Private International Law, in conjunction with an international working group of member states (including Australia) recently developed a standardised country profile form to assist each member state to better understand the requirements and operating system within each country. Copies of these are available on the Hague website at www.hcch.net.

Australian statistics on returns under the Convention

Statistics can offer a summary of the effectiveness of the Convention purely in terms of children returned to their country of habitual residence. However in some cases return of the child to their previously country of habitual residence may not necessarily be the most appropriate outcome under the Convention or even in the best interest of the child.

The Department collects statistics on those matters where an application for the return of a child to or from a Convention country has been received by the Department.

In 2010, the Department received 94 applications under the Convention relating to 125 children who were wrongfully removed from or retained outside Australia. In the same year, there were 55 cases where 74 children were returned to Australia. Not all Convention applications are finalised in the same calendar year and therefore a proportion of those 55 cases were carried over from previous years.

In 2010, the Department also received 70 applications under the Convention relating to 89 children who were wrongfully removed to or retained in Australia. In 36 cases, a total of 49 children were returned to their country of habitual residence.

From 1 January 2011 to 30 June 2011, the Department received 37 applications under the Convention relating to 50 children wrongfully removed from or retained outside Australia. In 6 cases, 9 children were returned to Australia.

In the same period, the Department also received 27 applications under the Convention relating to 33 children wrongfully removed to or retained in Australia. In 8 cases, a total of 10 children were returned to their country of habitual residence.

A summary of statistics relating to applications received by the Department under the Convention for the previous four years is provided at **Attachment E**.

International statistics on returns under the Convention

Three large scale statistical surveys into the operation of the Convention worldwide have been conducted by the Centre of International Family Law Studies at Cardiff University Law School in collaboration with the Permanent Bureau of the Hague Conference on Private International Law. The surveys concerned applications made in 1999, 2003 and 2008. Individual Contracting State provided data in the applications received and transmitted in those years.

An analysis of applications made in 2008 under the Convention was released in May 2011. 60 Contracting States provided data for this analysis. The analysis provides that: [1]

- A total of 2,703 children were involved in 1,965 applications for return;
- The overall return rate was 46%, with 19% being voluntary returns and 27% judicial returns;
- 3% of applications concluded with access being agreed or ordered;
- 15% of cases ended in a judicial refusal;
- 18% of cases were withdrawn; and
- 8% of cases were pending at 30 June 2010 (the cut off date for the analysis).

These figures relate only to applications under the Convention made to Central Authorities and not to child abduction overall. In particular, these figures do not include abductions within countries and they do not include all abductions even between Contracting States to the Convention. Some applications may have been made under other international agreements such as the *European Convention (Luxembourg) on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody in Children 1980.*[2]

Copies of *A Statistical Analysis of Applications made in 2008 under the* Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, *Part 1 – Global Report, Part 2 – Regional Reports* and *Part 3 – National Reports* are at **Attachment F**.

(c) the roles of various Commonwealth departments involved in returning children who were wrongly removed or retained, to their country of habitual residence.

The Attorney-General's Department's primary responsibilities in relation to IPCA arise under the Convention. The Secretary of the Department is the designated Central Authority for the Convention in Australia (the Commonwealth Central Authority (CCA)). The Department carries out the role of the Central Authority on behalf of the Secretary as set out under regulation 5 of the Regulations. The Department of Foreign Affairs and Trade has responsibility for providing consular support to parents.

The Convention

Australia's responsibilities for the return of children under the Convention are set out in the Act and the Regulations.

[1] Nigel Lowe, *A Statistical Analysis of Applications made in 2008 under the* Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part 1 – Global Report, p 6.

[2] Lowe, p 9.

Where the CCA receives a request from an individual, institution or other body that claims under a law in force in Australia to have rights of custody to a child under Regulation 4 of the Regulations who, in breach of those rights, has been removed to, or retained in, another Convention country, the CCA will take action to forward a request for the child's return to the appropriate Convention country, and provide support as required to ensure the child's return is secured as expeditiously as possible.

Where the CCA receives a request for the return of a child abducted to or retained in Australia that meets the requirements of the Convention and the Regulations, the CCA will arrange for attempts to be made to amicably resolve the matter or, if necessary, institute proceedings to secure the child's return.

The Convention also allows parents to make an application to seek assistance in obtaining access with their child overseas. Where the CCA receives a request from a parent who is seeking access to their child, the CCA will take action to either forward that request to the appropriate Convention country and provide support as required or, if the child is in Australia, arrange for attempts to be made to resolve access amicably or, if necessary, institute proceedings to secure access to the child.

For outgoing matters, State Central Authorities (SCAs) in New South Wales, Queensland, Victoria, South Australia and Tasmania can provide left behind parents in Australia with assistance in preparing their application. For all incoming matters, the CCA will refer the matter to the SCA in the relevant State or Territory who will then run the matter in the Family Court of Australia in its own name.

The CCA has overall responsibility for implementing the Convention in Australia and maintains oversight of the matter whilst it is being run. The CCA will continue to communicate with the requesting overseas Central Authority and will liaise with the SCA. This does create some level of duplication. The work performed by the SCAs for both incoming and outgoing matters is paid for by the CCA.

Bilateral agreements

The Department is also responsible for the implementation of bilateral agreements with Egypt and Lebanon on the issue of IPCA. These agreements are based on negotiated outcomes and differ from the Convention in that they do not provide for specific legal processes to address IPCA. However having these agreements in place allows for a dialogue to take place between Australia and these countries and provides support to parents where their children have been removed to or retained in Egypt or Lebanon, or where children from these countries have been removed to or retained in Australia.

Non-Convention matters

If a child is removed from Australia to or retained outside Australia in a country with which Australia has no agreement on the issue of IPCA, the Attorney-General's Department suggests that parents submit an application for financial assistance under the OCCR Scheme.

DFAT is responsible for providing consular support to parents including providing a list of lawyers working in the overseas country that the parent may contact to seek legal advice and assistance, and in some cases may assist in arranging a check on the welfare of the child.

Both Departments are committed to encouraging countries to sign up to the Convention or enter into bilateral arrangements with Australia on the issue of IPCA.

(d) policies, practices and strategies that could be introduced to streamline the return of abducted children.

Family Law Council Letter of Advice

In November 2010 the Attorney-General wrote to the Family Law Council in November 2010 to request their advice on the following issues in relation to IPCA:

i. Whether there are any identified gaps in existing legislation to deal with this issue.

ii. Whether there is a need to introduce new offences to strengthen Australia's response to this issue.

iii. Should a need to introduce new offences be identified, what exceptions or defences should apply.

This request arose out of increased media and public interest into the issue of IPCA and related calls for the strengthening of existing offences for the wrongful removal or retention of children from Australia.

The Family Law Council considered and identified gaps in the existing criminal offences. The Act does not currently provide an offence where a parent takes a child overseas with the other parent's initial consent, or with the consent of the court and subsequently retains the child overseas, or where a child is removed from Australia without the other parent's consent where there are no parenting orders in existence or proceedings pending. It is also not a general criminal offence for a child, who is not the subject of a parenting order or pending proceedings for the making of a parenting order, to travel outside Australia without the consent of both parents.

In light of this, the Family Law Council recommended that the criminal offence of IPCA be extended to include the wrongful retention of a child outside Australia and the wrongful removal or retention of a child where the parents have either sought or obtained court orders in relation to the child, or engaged in or invited to engage in, Family Dispute Resolution.

The Family Law Council also proposed exceptions and defences to current and any new criminal offences and identified alternative measures to improve the way that IPCA is dealt with in Australia.

The Government is currently considering the recommendations made by the Family Law Council in detail.

Mediation

A major initiative under the Convention is the focus on mediation as a tool to assist families separated by IPCA regardless of whether both countries are Contracting States to the Convention or not.

Australia is well placed to be a regional centre for mediation of international family law matters, being able to build on the domestic family dispute resolution services currently available to parents such as the Telephone Dispute Resolution Service and Online Family Dispute Resolution Service (operated by Relationships Australia Queensland).

Establishing Australia as a regional centre for international mediation would provide greater assistance to parents in the region seeking the return of their children or settled custody and access arrangements in relation to their children. Mediation services that have been developed to provide Family Dispute Resolution to families in domestic conflict (such as the Telephone Dispute Resolution Service and Online Family Dispute Resolution Service) may be very beneficial to families dealing with IPCA and a practical way of providing mediation services to families separated across international borders.

Malta International child abduction mediation project

In March 2009, representatives from Hague and non-Hague countries, including Australia, attended the Malta conference to discuss how to secure better protection for cross border rights of contact of parents and their children and the problems posed by international child abduction between the States concerned.

One of the most significant recommendations made at the Malta conference was that a working group be established to draw up a plan of action for the development of the proposed mediation services. It was proposed that the mediation services assist (where appropriate) in the resolution of cross border disputes concerning custody of and contact with children involving Hague and non-Hague countries.

The working group was established and subsequently met in Canada in May 2010 and in The Hague in February 2011 to consider a draft document, which set out the principles of mediation structures, including access to mediation, the establishment of contact points in the associated countries and the eventual enforceability of mediated agreements.

At the Special Commission of June 2011 on the practical operation of the1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention, all member States to the Hague Conventions met to discuss the future work on the principles for establishment of mediation structures from the Malta process. The proposed future steps are to:

- facilitate wider acceptance and implementation of the Principles as a basic framework for progress;
- consider further elaboration of the Principles; and
- report to the Council in 2012 on progress.

A copy of the draft principles is at **Attachment G**.

(e) any other related matters.

Although IPCA is primarily a civil matter, it is an offence under section 65Y of the Act for a person who is a party to a parenting order (usually a parent) to take a child out of Australia except if there is consent in writing by the other party or if it is done in accordance with a court order. It is also an offence under section 65Z to take a child out of Australia when proceedings for the making of a parenting order are pending. Both offences carry a maximum of three years imprisonment.

Calls to create a general criminal offence of IPCA where a child has travelled outside Australia without the consent of both parents need careful consideration as a consequence of such an offence could be the reduction of children returning to Australia. Foreign jurisdictions may be reluctant to order the return of a child if a parent may face prosecution on their return, as the prosecution of a parent who may be the primary carer of a child may not be in the best interests of a child. A general criminal offence would also have a negative impact on disadvantaged parents such as those fleeing from situations where interpersonal violence or child abuse is alleged, particularly in instances where parents may not be aware that removing their child from Australia would constitute an offence.

Australia is a contracting State to the Hague *Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children*. More widely known as the Child Protection Convention, it is primarily aimed at ensuring that children are protected when they move across borders. The Child Protection Convention sets up a mutual recognition and enforcement regime and establishes specific rules about which Contracting States have jurisdiction in particular circumstances and also which law applies.

There are currently 32 Contracting States to the Child Protection Convention, with many of the countries having joined only recently. As support for the Child Protection Convention increases, it is expected that there will be more options and support available to parents where their children are living overseas. Of particular note is that the Child Protection Convention provides a mechanism for recognition and enforcement of foreign orders relating to the care of children. This may result in such orders being more easily recognised and enforced across Contracting States.

Recent international case law

The return of children to Australia under the Convention is largely dependent on the legal process and structures of overseas countries. It is important therefore to note the latest developments in international case law as these developments can impact on orders for the return to Australia of children by overseas courts. In determining an application under the Convention for the return of a child overseas, the Australian Family Courts may also have regard to developments in international case law.

At the recent Special Commission Meeting on the Practical Operation of the Convention, held at The Hague in June 2011, three recent international cases were discussed. *Abbott v. Abbott* 130 S.Ct. 1983 (2010) was a decision of the United States Supreme Court which held that a right of custody for

the purposes of the Convention may arise out of a right of access combined with a right to determine the residence of a child. A copy of *Abbott v. Abbott* is at **Attachment H.**

Neulinger and Shuruk v. Switzerland (Grand Chamber, No 41615/07, 6 July 2010) was a decision of the European Court of Human Rights which appeared to signal a change in the application of the Convention in Europe. There is concern that the decision implied that courts would be required to move away from an expeditious determination on the issue of return and look at all aspects of the matter, including the family situation, before making an order for return. The President of the European Court of Human Rights recently clarified the decision of the court in an extrajudicial statement in which he stated that the decision did not signal a change of direction for the court in the area of international child abduction, and that a child should be returned to their country of habitual residence where their situation can then be assessed fully by the appropriate court. The recent United Kingdom case of *Re E. (Children)* [2011] UKSC 27 found that *Neulinger* did not require a re-appraisal of the interpretation of the Convention in the United Kingdom.

A copy of *Neulinger and Shuruk v Switzerland* is at **Attachment I.** A copy of *Re E. (Children)* is at **Attachment J.**